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**“The dark side of technological minerals: Child
exploitation in the Congolese cobalt mines. A human rights
perspective”**

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*Alla mia nonna Silvana che mi ha insegnato a sognare,
e alla mia famiglia che mi ha permesso di vivere i miei
sogni.*

Grazie

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Abstract

Questa tesi si pone lo scopo di investigare uno dei temi più attuali e allo stesso tempo controversi del XXI secolo: le violazioni dei diritti dei bambini nelle miniere di cobalto nella Repubblica Democratica del Congo attraverso una prospettiva di diritti umani, con l'obiettivo di capire se e quali sono le responsabilità di tali violazioni da parte degli attori coinvolti, ovvero lo Stato e le Imprese Transnazionali. Nonostante la questione del lavoro minorile avvenga nel suolo Africano, il lavoro – o meglio, lo sfruttamento – di questi bambini ci colpisce da vicino. Infatti, noi cittadini dei cosiddetti “paesi del primo mondo” usufruiamo di benefits, che vanno dal banale uso di cellulari e computer, all'uso di sofisticate auto elettriche e pannelli solari, a costi umani altissimi. Infatti questi ormai comuni “sfizi tecnologici” hanno un carissimo prezzo umano: centinaia di migliaia di bambini vengono sfruttati ogni giorno nelle miniere di cobalto nella RDC, e sono costretti a lavorare in condizioni terribili per pochi spiccioli, rischiando la salute, e molto spesso la vita, affinché il resto del mondo possa godere del recente sviluppo tecnologico. Purtroppo questo fenomeno potrebbe peggiorare a causa dell'aumento del progresso tecnologico, che richiederà sicuramente sempre più cobalto. A livello internazionale sono state sviluppate diverse Convenzioni con l'obiettivo di proteggere i diritti umani dei bambini, specialmente in ambito lavorativo, affinché atrocità come quelle che avvengono in Congo possano finire e non ripetersi in futuro. Purtroppo però, l'attuazione delle disposizioni di Convenzioni quali la Convenzione delle Nazioni Unite sui diritti dell'infanzia, la Convenzione internazionale sui diritti economici, sociali e culturali, la Convenzione OIL sull'età minima per l'ammissione al lavoro (n.138) e la Convenzione OIL sulle peggiori forme di lavoro minorile (n. 182), dipendono dalla capacità di implementazione di tali disposizioni legislative da parte dello Stato a livello nazionale. Nel caso della RDC, le sue capacità sono scarse in quanto lo Stato manca di fondi economici e – in una certa misura – della volontà di far rispettare tali leggi.

Attraverso un'analisi approfondita del contesto dell'estrazione del cobalto nella Repubblica Democratica del Congo, si analizzerà il panorama storico della sua estrazione nella regione mineraria del Katanga, famosa per l'abbondanza di cobalto e rame. L'obiettivo è quello di risalire agli albori del colonialismo belga e capire in quali misure tale dipendenza ha contribuito a creare problemi sociali e diffusione di povertà. Successivamente si spiegherà il motivo dell'enorme e attuale importanza del cobalto, dei suoi molteplici usi e dei recenti sviluppi nell'arena internazionale. Questo è essenziale per capire il ruolo che tale minerale gioca a livello internazionale e perché molte delle imprese transnazionali non si mobilitano contro il lavoro minorile presente nella loro catena di fornitura. Le Imprese transnazionali però non sono gli unici attori coinvolti nelle miniere, infatti si analizzeranno anche le imprese di proprietà dello Stato, il ruolo dei minatori artigianali e dei

commercianti. Il primo capitolo si chiuderà con un'analisi approfondita dell'impatto dello sfruttamento dell'estrazione del cobalto sulla comunità e sull'ambiente, con la finalità di capire la sua enorme influenza a livello sociale. Infatti, tale sfruttamento intensifica le violazioni dei diritti umani, il lavoro minorile e la violenza sessuale, contribuendo a creare una vera e propria trappola di povertà. Questa analisi storica, economica e sociale è essenziale ai fini di presentare l'oggetto della mia tesi, poiché permette di creare un filo logico con il secondo capitolo, che si focalizza nello specifico nel lavoro minorile, definendo le sue caratteristiche ai sensi del diritto internazionale. Lo scopo che tale capitolo si pone è quello di dare una panoramica di tale problema nella regione del Katanga, ai fini di capire quali sono i fattori che contribuiscono al fenomeno in questione. Questi includono povertà e disoccupazione, un sistema educativo nazionale debole, la mancanza di un sistema giudiziario efficace, e l'impatto di una tradizione culturale molto forte. Attraverso l'analisi di questi fattori sarà possibile dimostrare che il lavoro minorile si mantiene attraverso l'insieme di più fattori scatenanti, che in qualche modo sono collegati e complementari. Per eliminare definitivamente tale fenomeno è necessario focalizzare tutti gli sforzi alla radice del problema, che riguarda innanzitutto la mancanza della presenza dello Stato e di meccanismi di "compliance" a livello locale, così come la mancanza di un sistema educativo gratuito e inclusivo e di un supporto alle famiglie.

Finalmente i capitoli terzo e quarto si pongono l'obiettivo di analizzare la responsabilità degli attori coinvolti, includendo lo Stato e le imprese nazionali e transnazionali. L'analisi verte sulla lettura e commento degli obblighi presenti ai sensi della legge internazionale, regionale e nazionale sui diritti umani sul lavoro minorile, che gravano sulla DRC dai primi anni 2000 attraverso la ratifica di tali Convenzioni. In particolare, si analizzeranno gli articoli presenti nella Convenzione delle Nazioni Unite sui diritti dell'infanzia, nella Convenzione internazionale sui diritti economici, sociali e culturali, nella Convenzione OIL sull'età minima per l'ammissione al lavoro (n.138) e la Convenzione OIL sulle peggiori forme di lavoro minorile (n. 182) e rispettive Raccomandazioni. Successivamente si prenderà in considerazione il Quadro Regionale sui diritti umani e sul lavoro minorile, approfondendo l'analisi della Carta africana dei diritti dell'uomo e dei popoli, e della Carta africana dei diritti e del benessere dei minori. In conclusione, si analizzerà la normativa nazionale sul lavoro minorile, che include la Costituzione della Repubblica Democratica del Congo, il Codice del lavoro, il nuovo codice minerario, la Legge n° 09/001 del 10 gennaio 2009 sulla tutela del minore, e l'ordinanza ministeriale n.12 sulle condizioni di lavoro minorile. Questa corposa analisi si pone come obiettivo quello di capire i doveri dello Stato di fronte alle violazioni dei diritti umani nel suo territorio. In particolare esamina le eventuali responsabilità dello Stato a livello internazionale, regionale e statale. Di fatto, gli Stati firmatari che hanno ratificato le suddette convenzioni, hanno dei diritti e dei doveri nei confronti delle disposizioni presenti in esse. Includere tali disposizioni nella

legislazione nazionale non è sufficiente a garantire la protezione e promozione dei diritti umani a livello locale; e ciò aumenta ancora di più il valore della responsabilità che gli Stati firmatari posseggono. La tesi prosegue con l'analisi di altri attori, titolari di diritti ma anche di responsabilità. Nello specifico, il quarto capitolo si pone come obiettivo quello di capire quali sono le responsabilità delle imprese nazionali e transnazionali per le violazioni del lavoro minorile nell'estrazione del cobalto della RDC. È interessante ricordare che tutte le imprese che lavorano con il cobalto nella catena di fornitura, siano esse “upstream” o “downstream”, hanno degli obblighi e delle responsabilità. A tali fini, verranno analizzati tali obblighi e responsabilità ai sensi del diritto nazionale della Repubblica Democratica del Congo, con l'obiettivo di dimostrare l'esistenza di un framework legislativo nazionale in merito alle imprese e al lavoro minorile, e la conseguente mancanza di meccanismi di attuazione e monitoraggio a livello locale. Di seguito si analizzeranno le nozioni riconosciute internazionalmente di “Responsabilità d'Impresa” e “Due Diligence sui Diritti Umani”, focalizzandoci sui Principi guida delle Nazioni Unite su imprese e diritti umani e sulle Linee guida dell'OCSE per le imprese multinazionali. Questa breve analisi dimostrerà che le imprese multinazionali, che sono normalmente caratterizzate dalla presenza di diversi uffici in zone in via di sviluppo, hanno degli obblighi. Tra questi, ci sono l'obbligo della protezione dei diritti umani e dei minori attraverso la “Due Diligence”, ovvero il monitoraggio e l'implementazione di specifiche regole ai fini di eliminare il lavoro minorile, non solo all'interno della propria azienda, ma anche nella catena di fornitura. Tale analisi è essenziale per capire se e quali sono le responsabilità delle imprese transnazionali, e se quindi si possa realmente ritenere un'impresa legalmente responsabile. A tali fini, si approfondiranno i “claims” e “decision” di uno dei casi più controversi riguardanti le responsabilità delle Imprese Transnazionali: JOHN DOE I, et al. v. APPLE INC., et al. Tale analisi dimostrerà le debolezze e le possibili minacce delle norme internazionali riguardanti la responsabilità delle imprese, fino a sollevare la questione della possibilità di ritenere davvero le Imprese responsabili di violazioni dei diritti umani.

La tesi si concluderà con un barlume di positività e speranza, poiché molti passi avanti sono stati fatti dalla Repubblica Democratica del Congo. In particolare si analizzeranno le iniziative nazionali e internazionali per eliminare tutte le forme di lavoro minorile nelle miniere di cobalto della RDC, focalizzandoci sugli organismi di recente formazione quali il Comitato nazionale per combattere le peggiori forme di lavoro minorile, l'Autorità di regolazione e controllo per i minerali strategici, e la Commissione interministeriale incaricata di affrontare la questione del lavoro minorile nelle miniere e nei siti minerari della Repubblica Democratica del Congo. Successivamente si approfondiranno le politiche nazionali estremamente recenti relative all'eliminazione del lavoro minorile nella Repubblica Democratica del Congo. Queste includono il Piano d'azione nazionale per combattere le

peggiori forme di lavoro minorile (2012-2025), la Strategia settoriale nazionale per combattere il lavoro minorile nelle miniere artigianali e nei siti minerari artigianali (2017–2025), il Piano d'azione triennale della Commissione interministeriale (2017–2020), e la Dichiarazione di Kolwezi per un'attività mineraria etica e responsabile senza lavoro minorile entro il 2025. L'analisi di tali politiche dimostrerà l'enorme impegno da parte dello Stato nel promuovere politiche efficaci affinché si possa davvero raggiungere il risultato sperato in tempi relativamente brevi. Per concludere, verranno brevemente affrontati i progetti finanziati internazionalmente relativi all'eliminazione del lavoro minorile nelle miniere di cobalto, che includono il progetto COTECCO, il Progetto del protocollo di tracciamento globale, il Progetto di misurazione, sensibilizzazione e coinvolgimento delle politiche (MAP 16) sul lavoro minorile e sul lavoro forzato e il Programma di apprendistato giovanile. Attraverso questo breve riassunto si potrà evidenziare che i progetti attuali mirano all'eliminazione del lavoro minorile utilizzando un approccio multidisciplinare, che mira non solamente al rafforzamento di politiche e meccanismi già esistenti, ma anche allo sviluppo di migliori pratiche da parte delle Imprese, alla costruzione di scuole in aree remote e allo sviluppo professionale dei giovani a rischio.

Table of abbreviations

ACHPR: African Commission on Human and Peoples' Rights

ACRWC: African Charter on the Rights and Welfare of the Child

AfCHPR: African Court on Human and Peoples' Rights

AFDL: Alliance of Democratic Forces for Liberation

AIDS: Acquired Immunodeficiency Syndrome

ARECOMS: Regulatory and Control Authority for Strategic Minerals

ASM: Artisanal and Small-scale Mining

AU: African Union

CASS: Cellule d'Analyse en Sciences Sociales

CEGA: Center for Effective Global Action

CISTEMA: Inter-Ministerial Commission Responsible for Addressing the Issue of Child Labour in Mines and in Mine Sites in the DRC

Co: Cobalt

COTECCO: Combatting Child Labour in the Democratic Republic of the Congo's Cobalt Industry

COVID-19: Coronavirus Disease 2019

DRC: Democratic Republic of Congo

GECAMINES: Société Générale des Carrières et des Mines

HIV: Human Immunodeficiency Virus

HQs: Headquarters

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICGLR: International Conference on the Great Lakes Region

ILO: International Labour Organization

IPIS: International Peace Information Service

KCC: Kamoto Copper Company

MAP16: Measurement, Awareness-Raising, and Policy Engagement Project on Child Labour and Forced Labour

MDGs: Millennium Development Goals

MNCs: Multinational Corporations

MNE Declaration: Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

MOL: Ministry of Employment, Labour, and Social Welfare

NAP: National Action Plan to Combat the Worst Forms of Child Labour

NCCL: National Committee to Combat the Worst Forms of Child Labour

NGOs: Non-Governmental Organizations

OAU: Organization of African Unity

OECD: Organization for Economic Cooperation and Development

PABEA-COBALT: Project To Support The Alternative Well-Being Of Children And Young People Involved In The Cobalt Supply Chain

SAP: Structural Adjustment Policies

SDGs: Sustainable Development Goals

SGBV: Sexual and Gender Based Violence

STDs: Sexually Transmitted Diseases

SODIMICO: Société de développement industriel et minier du Congo

TNCs: Transnational Corporations

TVPRA: US Trafficking Victims Protection Reauthorization Act

UMHK: Union Minière du Haut Katanga

UN: United Nations

UNCRC: United Nations Convention on the Rights of the Child

UNICEF: United Nations International Children's Emergency Fund

USAID: United States Agency for International Development

ZEA: Artisanal Mining Zones

Introduction

1. Child Labour in the DRC's Cobalt mines: why should it matter to us?

With the emergence of a multipolar world where political and economic forces are multiple and linked, mineral resources became a geo strategic issue. The economic liberalization and the increased mineral demand, as a result of the development of new technologies, has increased the search of these resources. Our need for minerals is constantly growing, and among the resources being sold in the global minerals market, cobalt is one of the most coveted. Among the countries that most produce it, the Democratic Republic of Congo became the world's leading supplier since it has two thirds of the world's cobalt mining in its territory. In fact, the Democratic Republic of Congo is a country of immense natural wealth located in Central Africa, where there are virtually all precious natural resources and minerals, among which gold, tin, tantalum, tungsten, copper and for instance cobalt. Nevertheless, areas rich in natural resources are often areas of armed and social conflicts that increase human insecurity and worsen living conditions. Hence, the DRC's riches come at a bitter price: human rights abuses, child labour and modern slavery are a daily practice in the country, and especially in the mining regions, making the DRC one of the poorest and humanly unsafe countries in the world¹.

The humanitarian issues linked to cobalt in the DRC have been raised recently by international organizations, including Amnesty International and Save The Children², due to the immense human rights violations that are happening on a daily basis since over a century, and that mostly affect children. In order to understand these problems, it is important to firstly understand the history of the DRC and the factors that contribute to exacerbate such violations. The DRC reached its independence in 1960, after over a century of exploitation of its land and people by the European powers. Nevertheless, the local cultural and social dynamics were abruptly affected by that century of submission, condemning the DRC into poverty and exploitation. Such abuses evolved during the 20th century, switching from foreign States to Business exploitation. In fact, businesses and Transnational Corporations were given many economic advantages in order to invest in the local territory. This, instead of bringing more wealth and prosperity to the local communities, brought even more violence

¹ Kisangani, E; and Scott Bobb, F., *Historical Dictionary of the Democratic Republic of the Congo*, Scarecrow Press, Inc., UK, 2010.

² Amnesty International, *This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt*, Amnesty International, London, 2016; and: Save the Children, *Opportunities for Businesses to Promote Child Rights in Cobalt Artisanal and Small-scale Mining*, Save the Children, Berlin, 2021.

and poverty than ever³. In particular, this situation has affected until now the youngest generations: children engage in hazardous working activities on a daily basis as a consequence of the lack of social projects and infancy protection. The life path of these children, which usually live in extreme poverty conditions, is the product of some of the identified drivers of child labour, which include poverty and unemployment, a weak national educational system, the lack of an effective judicial system and the cultural traditions⁴.

But why is cobalt so important nowadays and why should it matter to us? Cobalt is one of the most important metals since it has a wide variety of uses in the commercial, industrial and military sectors. Parallel to its use in the heavy industry, cobalt is also a “technology metal” used for example in magnetic memories, batteries and battery electrodes. In addition, with the development of new technologies that require batteries, such as electronic devices and electric cars, its demand and use will increase rapidly in the future. Therefore, simple electronic devices that we, the wealthy part of the world, use on a daily basis are actually the product of children’s exploitation. We use our phones constantly to “live” our life: we can stay in contact with friends and family, read books, watch movies, virtually travel all over the world, and even work and study... but at what price? Our technological wellbeing clearly comes at a bitter price, and while we enjoy what we have, others are literally killing themselves to provide us such benefits⁵.

During the 2010s, there have been many local NGOs and International Organizations that shed light on these issues, demonstrating for example how many children are exploited in the cobalt mines on a daily basis, what their working conditions are and what tasks they are obliged to perform to gain just \$1 to \$2 per day. These children usually engage in a 12-hour workday, in which they carry bags full of cobalt, digging with their own hands - and without gloves nor masks - minerals on open mines or even in underground tunnels, which often collapse as a result of a lack of proper and stable support, leaving them very injured or even dead. Clearly those who survive are destined to live a life of illness, pain and poverty, as there is no health care support for them⁶.

Usually children most work in the so called “artisanal mines”: very few of these are formally recognised by the DRC Government, and as a consequence artisanal miners often dig illegally everywhere is possible, including under their own houses or in industrial concessions. These miners then collect and sell the cobalt ores at a very low price to buyers, usually of Chinese nationality, who

³ Kisangani, E; and Scott Bobb, F., *Historical Dictionary of the Democratic Republic of the Congo*, Scarecrow Press, Inc., UK, 2010.

⁴ Faber, B.; Krause, B.; Sánchez de la Sierra., *Artisanal Mining, Livelihoods, and Child Labour in the Cobalt Supply Chain of the Democratic Republic of Congo*, CEGA White Papers, Berkeley, 2017.

⁵ Scheele, F.; De Haan, E.; Kiezebrink, V., *Cobalt blues, Environmental pollution and human rights violations in Katanga’s copper and cobalt mines*, Stichting Onderzoek Multinationale Ondernemingen, Amsterdam, 2016.

⁶ Amnesty International, *This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt*, Amnesty International, London, 2016.

do not question its origin or who worked to obtain it, seeking only the lowest price. They then resell the ores to the refining companies which are often located outside the DRC. At this stage, the ores coming both from Extraction Companies and Artisanal Mines are grouped together, making impossible to track its origins and whether children were employed. Many companies actually choose to buy cobalt mined artisanally as this is very cheap, therefore opting to consciously “close their eyes” on the human rights violations that come with it⁷.

At the international level many Due Diligence Guidelines have been implemented, for example by the United Nations⁸ and the Organisation for Economic Cooperation and Development⁹. Although these are not legally binding, due diligence practices are increasingly being implemented especially among some of the most famous Transnational Corporations such as Apple, which started recently to map its supply chain until the DRC mines in order to guarantee its ethical sourcing and the elimination of child labour within its supply chain¹⁰.

For what concerns the DRC and its implications and responsibility in children’s rights violations, although it is part of many International and Regional Conventions related to the protection of children’s rights, the lack of support from the government and established bodies to monitor and fulfill human rights in the country give space to national and international criminal groups of abuses of any kinds, especially against children. In fact, the DRC is part of international and regional treaties including to the ILO Minimum age Convention (n.138), the ILO Worst forms of Child Labour Convention (no. 182), the International Covenant on the Economic, Social and Cultural Rights, the African Charter on Human and People Rights and the African Charter on the Rights and Welfare of the Child¹¹. Many of the provisions included in the above mentioned treaties and conventions were implemented in the DRC National legal framework, which for instance includes the DRC

⁷ Amnesty International, *This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt*, Amnesty International, London, 2016, p.14.

⁸ UN Guiding principles on Business and Human Rights, available at: UN. (2011). ‘Guiding Principles on Business and Human Rights’. *United Nations Office of the High Commissioner for Human Rights*. New York and Geneva, and ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy available at: ILO. (2017). ‘ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy’. *International Labour Organization*. Geneva, Switzerland.

⁹ OECD Guidelines for Multinational Enterprises available at: OECD. (2018). ‘OECD Due Diligence Guidance for Responsible Business Conduct’. *Organization for Economic Co-operation and Development*. (Online). Available at: <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf> [last accessed on 20/07/2022]. And OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, available at: OECD. (2011). ‘OECD Guidelines for Multinational Enterprises’. OECD Publishing. p.4. (Online). Available at: <https://www.oecd.org/daf/inv/mne/48004323.pdf> [last accessed on 21/07/2022].

¹⁰ See chapter 4.

¹¹ See chapter 3.

Constitution¹², the DRC Labour Code¹³, and the laws on the protection of the child¹⁴. Being part of such legal framework means to bear certain obligations under International Law, meaning that for these human rights violations the State could be held responsible. At the same time, responsibility could also be held by Companies, which should not contribute to the worst forms of child labour, as acknowledged in the International standards on child labour and mentioned in the DRC National legal framework¹⁵.

2. Methodological approach and objectives

This thesis will focus on the issue of child labour in the cobalt mines of the Democratic Republic of Congo from a legal perspective. The scope of this thesis is to analyze the issue of child labour in the DRC from its characteristics and the factors that exacerbate it, to the existing International Human Rights Framework in order to understand why child labour is still a widespread practice in the 21st century and whether both the DRC and the TNCs that work in the cobalt supply chain could be held accountable for Children's Rights violations in the context of child labour. Specifically, I will briefly introduce the issue with a deep explanation of why cobalt coming from the DRC mines should be highlighted at the international level and what child labour is, I will then analyze the existing jurisprudence related to child labour, both at the National, Regional and International level. In order to do so, I will analyze the relevant primary and secondary sources of jurisprudence linked to child labour, such as internationally acknowledged treaties, conventions and guidelines, the National legal framework, and I will then make use of papers, reports and articles relevant to our analysis.

The first chapter of this thesis will introduce the local context in which our analysis focus: the DRC, its historical development and its geography. The main aim is to understand the historical background of the mining activities, especially related to cobalt, in order to understand the social and cultural links related to this phenomenon. For instance, history and the DRC submission to the European powers in the colonial era played a big role in developing and strengthening poverty and violence in the region. This analysis will reach the 21st century and will draw the main trends in the global market

¹² Journal Officiel, *Constitution de la République Démocratique du Congo*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2006., art.41 and art.42.

¹³ Journal Officiel, *Loi n°015/2002 portant Code de Travail*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2002, art.3 and art.4.

¹⁴ Which include the Law n ° 09/001 of January 10 2009 on the protection of the child available at: Journal Officiel, *Arrêté ministériel N° 12/CAB.MIN/TPSI/045 /08 du 08 août 2008 fixant les conditions de travail des enfants*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2008, art.1-8-13-38; and the Ministerial order no. 12 on Child Labour conditions, available at: Journal Officiel, *Loi N° 09/001 Du 10 Janvier 2009 Portant Protection De L'enfant*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2009, art. 58.

¹⁵ See chapter 4.

of cobalt, which for instance is one of the most important and most coveted minerals thanks to its use in technology. The analysis will then focus on the main local features linked to cobalt, hence on its impacts on the local communities, which include for example human rights abuses, child labour, forced labour, sexual violence and the several environmental and health impacts.

The second chapter will investigate in-depth the issue of child labour in the DRC cobalt mines, by drawing an overview of the definition and characteristic of child labour, including in its worst forms, taking into account its legal definition and features under International law. It will then go on by directly analyzing the issue in the DRC, from its local characteristics to its drivers, looking into poverty and unemployment, the National education and judicial system and the Congolese cultural tradition. The main aim is to have a broad understanding of this phenomenon at the local level in order to understand that child labour is not just the mere consequence of poverty, but also of more deepest and intertwined issues.

The third chapter will focus on the DRC's obligations under the International, Regional and National Human Rights Law on Child Labour. This section will analyze the existing legal framework at the three levels, looking into the relevant provisions that describe the State's obligations. In particular, it will focus on the UN Convention on the Rights of the Child, the International Covenant on the Economic, Social and Cultural Rights and its General Comment No.18: The Right to Work, the ILO Minimum age Convention (n.138) and the ILO Minimum Age Recommendation (no. 146), the ILO Worst forms of Child Labour Convention (no. 182) and the Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms Of Child Labour (no.190), the African Charter on Human and People Rights, the African Charter on the Rights and Welfare of the Child, and the National legislation on child labour included in the DRC's Constitution, Labour Code, New Mining Code, Law n ° 09/001 of January 10 2009 on the protection of the child, and Ministerial order no.12 on Child Labour conditions. The main objective is to find what the duties and obligations of the DRC are on the issue and whether it could be held accountable for children's Human rights violations.

The fourth chapter will analyze the National and Transnational companies' responsibility for child labour violations. In fact, not only the companies that directly work in the DRC cobalt mines bear Human Rights obligations, but also those that are part of the cobalt supply chain, hence the well known upstream companies like Apple and Tesla, which employ cobalt in their technological creations. This chapter will look into the obligations that National businesses and TNCs bear under the DRC National law, as well as the existing internationally acknowledged principles of Corporate Responsibility and Human Rights Due Diligence developed by the UN, ILO and OECD. The chapter will close with a very interesting and updated case study analysis of one of the most important cases

of the 21st century in this field: the Lawsuit Case against transnational companies: JOHN DOE I, et al. v. APPLE INC., et al., looking into the Claims and the Decision in order to draw the implications for the victims and Transnational Corporations on the issue.

The fifth chapter will focus on the National and International initiatives put in place in order to eliminate all forms of child labour in the DRC Cobalt Mines. In fact, although developing and passing National laws to eliminate child labour and mechanisms for its compliance is important, targeting just the National legal framework is not enough to make a real change: National bodies and polices to coordinate efforts to end this phenomenon as well as targeted projects on the ground are essential. Hence, we will analyze the latest development of the National Bodies, including the National Committee to Combat the Worst Forms of Child Labour, the Regulatory and Control Authority for Strategic Minerals and Inter-Ministerial Commission Responsible for Addressing the Issue of Child Labour in Mines and in Mine Sites in the DRC. We will then investigate the most recent National Policies related to end Child Labour, which include for example the National Action Plan to Combat the Worst Forms of Child Labour, the National Sectoral Strategy to Combat Child Labour in Artisanal Mines and Artisanal Mining Sites, the Inter-Ministerial Commission's Triennial Action Plan, and the Kolwezi Declaration For Responsible And Ethical Artisanal Mining Without Child Labour By 2025. The last step will be to look into the projects that have been financed at the International level by IOs, such as the ILO, in order to target child labour directly on the ground with "face-to face" projects with several objectives: awareness-raising, Policy engagement, labour measurement and apprenticeship programs.

Finally, we will draw the conclusions of this research based on our findings. We will argue whether the DRC and the TNCs can be held responsible for children's rights violations, by underlying the current challenges of the International Human Rights law. Lastly, we will close our thesis by stressing the importance that humanitarian projects and newly established national bodies and policies have in the promotion and protection of human rights.

Chapter 1: The context of cobalt mining in the Democratic Republic of Congo (DRC)

1. Mining activities in the DRC: an historical and geographical overview

1.1 History of mining activities in the DRC

The history of mining activities in the Democratic Republic of Congo (DRC) dates back to the pre-colonial era, when local mining activities were already widespread among the indigenous population. In fact, in the region of central Africa, and in particular in the DRC territory¹⁶, large-scale exploitation of metals such as copper and iron was widespread due to its importance in rituals and in socio-political activities. In addition, trade businesses were already present in the region and can be traced back to the 16th century when the East and North-East of the Congo¹⁷ entered in the circuits of the world trade, mainly through the western trade routes connecting the region to Angola and therefore to Portuguese traders; and from the 18th century through Arab and Afro-Arab merchants who ventured into the region in search of metals, natural resources and slaves in exchange of goods that allowed some local wealth accumulation¹⁸. It is interesting to notice that the reigning king in the Congolese territory welcomed the European travelers, missionaries and traders: the relations with Portugal eventually evolved into cultural and military cooperation, Congolese ambassadors were sent in several courts in Europe and the local population was converted to Christianity.

Unfortunately, the relations with the European powers changed starting from the 19th century and eventually led to an abrupt change in the normal social and cultural dynamics in the Congolese territory. In fact, during the 19th century, the Congolese region entered a period of social, political and economic instability due to the European colonization and the subsequent arrival of large western

¹⁶ Particularly the Katanga region.

¹⁷ Angola, lower Congo, Kasai Basin, and southern part of the former Katanga province.

¹⁸ Cyuzuzo, L, *L'exploitation minière à l'Est de la République Démocratique du Congo (RDC): Réflexions sur les enjeux économiques, politiques et environnementaux d'une enquête ethnographique*, The University of Manchester, Manchester, 2020, p.10.

exploitation companies, which damaged the future development of the country, as well as its social and cultural organization¹⁹.

The subjugation of today's Democratic Republic of Congo started when, in the early 19th century, the Belgian King Leopold II signed several treaties with local chiefs - gaining the sovereignty of these regions, which eventually were unified under the so called "Congo Free State", and were given officially to the King of Belgium as a private domain during the Berlin Conference in 1885²⁰. The interests of Belgium in the region were mainly directed to the mineral and natural wealth that was present in these lands. In fact, one of the first political actions that the King promoted was to guarantee the property of all Congo's mineral wealth and lands to Belgium through the decree of the 6th of June of 1888 which defined that all mineral wealth could be converted into State property; and with the decree of the 3rd of June of 1906 which formally declared that all non-native lands²¹ were property of the colonial State, and therefore were subsequently allocated to private individuals or mining companies²². As a consequence, international mining companies moved their operations in the DRC and started a harsh and long exploitation of Congolese lands and people. In particular, the cobalt mining in the DRC started from 1924 as a "by-product of copper production" and was essentially carried throughout the mid 20th century by state-owned and private companies on an industrial scale²³. Going back to the DRC history, it is important to stress that even if the Congolese territory became officially a colony of Belgium on 15 November 1908, the realm was considered just an "economic investment" by the Belgian government. Therefore, no measures were established to promote Congolese economic and social development: the exploitation of its land and people was essential in order to increase Belgium profits and was exacerbated by the arrival of the European mining companies. These companies were granted exclusive rights to trade and operated in the territory in exchange of the half of the overall profits; Belgium contributed to the exploitation by passing labour laws that allowed such companies to forcibly employ local populations in mining activities with the result of promoting slaving/bondage labour. In addition, all the revenues were not employed to develop the local communities, instead were used to build projects in Belgium and to buy properties

¹⁹ Ibid, p.10; Kiros, L., *A look into the History of Exploitative Mining in the DRC*, Amplify Africa, 2020. (Online). Available at: <https://www.amplifyafrica.org/post/a-look-into-the-history-of-exploitative-mining-in-the-drc> [last accessed on 04/02/2022].

²⁰ Kisangani, E; and Scott Bobb, F., *Historical Dictionary of the Democratic Republic of the Congo*, Scarecrow Press, Inc., UK, 2010, p. li.

²¹ "land of the natives" are those that are inhabited, cultivated and exploited in any way by the Congolese people.

²² Cyuzuzo, L, *L'exploitation minière à l'Est de la République Démocratique du Congo (RDC): Réflexions sur les enjeux économiques, politiques et environnementaux d'une enquête ethnographique*, The University of Manchester, Manchester, 2020, p.11.

²³ BGR, *Mapping of the Artisanal Copper-Cobalt mining sector in the provinces of Haut-Katanga and Lualaba in the Democratic Republic of Congo*, Bundesanstalt für Geowissenschaften und Rohstoffe (BGR), Hannover, 2019, p.2.

in Europe, with the result of maintaining a high and worrying grade of underdevelopment and widespread poverty in all the Congolese territory²⁴.

This “reorganization” of Congolese lands and people represent the beginning of the so called “ecological imperialism”, which was the domination of the economic, political and social institutions of a “peripheral” country for the needs of the "center", usually a western and colonizing State²⁵. Such socio-political reorganization and intensive exploitation of natural resources represents a deep break with the pre-colonial era and contributed to the evolution of an underdeveloped and exploited society, which in addition had to bear the environmental, ecological and societal burdens of the mineral exploitation.

Only in June 1960 the country gained its independence from Belgium, but not from the western world. In fact, the country was bitten by waves of violence, often encouraged by Belgians, and lately by a coup d'état supported by the USA. The ideology behind the US support of the coup d'état was based on the fighting against the spread of communism in central Africa²⁶; nevertheless, this can barely explain the real reasons behind it: the American involvement in the country was mainly due to its interests in the local mineral resources, which included gold, diamonds, cooper and cobalt. For instance, local mineral resources played a crucial role in the military and political projects of the colonizing countries during the 20th century: for example, during the World Wars minerals were used to build arms and more than 75% of the Uranium²⁷ used in atomic bombs manufacturing²⁷ came from the mines in the former Katanga region²⁸.

When the independence was reached in 1960, at the head of the government there were the Prime Minister Patrice Lumumba - leader of the Mouvement National Congolais (MNC), and the President Joseph Kasavubu - the leader of the Alliance des Bakongo (ABAKO). The Congolese Government for the first time in almost a century unleashed a wave of hope for local development and enrichment among the Congolese people; but even if with the independence the development of the country and

²⁴ Kisangani, E; and Scott Bobb, F., *Historical Dictionary of the Democratic Republic of the Congo*, Scarecrow Press, Inc., UK, 2010, p. lxii.

²⁵ Cyuzuzo, L., *L'exploitation minière à l'Est de la République Démocratique du Congo (RDC): Réflexions sur les enjeux économiques, politiques et environnementaux d'une enquête ethnographique*, The University of Manchester, Manchester, 2020, p.11.

²⁶ In the 1960s the United States were involved in the Cold War, which according to Britannica is defined as “an ongoing political rivalry between the United States and the Soviet Union and their respective allies”. It began in 1945, when the Soviet Union started to establish left-wing governments in Eastern European countries in order to protect them against a possible threat from Germany; on the other side, the Americans and the British feared that the Soviet domination in Eastern Europe would be permanent. This war, which was characterised by tensions between the two superpowers, was fought mainly in political and economic terms and lasted until 1991. Britannica, *Cold War*, Britannica, 2022. (Online). Available at: <https://www.britannica.com/event/Cold-War> [last accessed on 04/02/2022].

²⁷ of the Manhattan project.

²⁸ In the DRC.

its political, social and economic stability became a responsibility of the Congolese government, the DRC never used its natural and mineral wealth at the benefits of the State and community. In fact, governmental corruption and international exploitation contributed to maintain the “bad habits²⁹” that flourished during the colonial era, and the local natural resources increased the likelihood and intensity of military clashes between the DRC and the rebels³⁰.

During the post-independence decade, the Government tried to promote some changes in the exploitation of mining activities in order to develop the local communities and therefore advanced new mining policies. An interesting example can be found in the mid 1960s, when the regime of Mobutu Sesse Seko³¹ began the so called process of “Zairianization³²” of the National economy, which resulted into an indigenization of some economic sectors such as small businesses, plantations, mines, agro-industrial enterprises and quarries. The indigenization translated into the redistribution of foreign enterprises to Congolese citizens³³.

Nevertheless, even if the program could potentially contribute to develop the society by sharing equally the resources among the local communities, the program was not successful: these businesses were taken over by politicians, officials and members of the local politico-commercial bourgeoisie with the consequence of continuing the exploitation cycle, implementing a bad management of the mining companies and dissipating the acquired fortune for personal purposes³⁴.

In the next few decades the situation of the mining sector even worsened: in the 1970s major crisis occurred - mainly due to the instability of the mineral prices in the international market, to the closure of the trade routes passing through Angola³⁵ and to internal tensions generated by the Shaba wars³⁶ which eventually led to the rebel invasion of numeral mining sites in the Katanga region³⁷. As a consequence, these factors had huge consequences to the DRC’s economic and political stability: in particular, the collapse of the mining sector led to a drop in productivity and therefore to a general impoverishment due to the country’s wealth dependence on mineral resources. Not only the Mining

²⁹ Social exploitation, human rights abuses, bad health practices, environmental pollution.

³⁰ Kiros, L., *A look into the History of Exploitative Mining in the DRC*, Amplify Africa, 2020. (Online). Available at: <https://www.amplifyafrica.org/post/a-look-into-the-history-of-exploitative-mining-in-the-drc> [last accessed on 04/02/2022].

³¹ Which took over the government on 24 November 1965 with a military coup d’état.

³² Nationalization of DRC economic sectors.

³³ Schatzberg, M., *The State and the Economy: The "Radicalization of the Revolution" in Mobutu's Zaire*, Canadian Journal of African Studies, Vol.14, No.2, 1980, p.242.

³⁴ Ibid. p.242.

³⁵ Due to Angolan liberation war.

³⁶ Shaba wars of 1977 and 1978.

³⁷ rebellion of former members of Moïse Tshombe's police in Katanga who decided to invade the most important mining sites in the district starting from Angola.

Companies³⁸ were affected, but also the overall population and in particular the employees of such companies, which suddenly were unemployed. In order to survive, Congolese citizens started the practice of the so called “artisanal mining”, which was eventually legalized in 1982. According to the International Institute for Environment and Development³⁹, artisanal mining is defined as “mining by individuals, groups, families or cooperatives with minimal or no mechanization, often in the informal (illegal) sector of the market”⁴⁰. The local community was able to easily extract these minerals since they were close to the surface and no mechanical help was needed⁴¹.

At the governmental level, the overall mining crisis led the DRC to the implementation of the “Structural Adjustment Policies” (SAP) that were forcibly advised by the International Financial Institutions⁴² to all the indebted countries worldwide. The main idea behind the SAP was to liberalize some sectors of the economy, such as the mining sector, with the assumption that local corruption and mismanagement would have been finally solved by giving to private investors⁴³ the control of the local economic sectors⁴⁴, but unfortunately its implementation did not lead to the expected results. The SAP were based on the ideology of Neoliberalism, which was characterized by the idea of a shift in the role of the State and public institutions: with a promotion of the “reconfiguration” of the role of the State, the government would have been able to participate in the construction and management of legal, fiscal and social policies, therefore promoting the changes that the local communities had long been waiting for. Nevertheless, local development promises were not kept and privatized Companies operated with little or no regards to local society and local economy. For example there were no regards to the populations affected by the exploitation⁴⁵, nor to the environmental consequences that the industrial exploitation was bringing to the local nature⁴⁶.

The 1990s represented the beginning of another crisis: while the DRC accelerated the process of privatization of its National mining companies⁴⁷, the country entered hyperinflation following a

³⁸ Such as the “Office des mines d’or du Kilo Moto” (OKIMO) in Ituri and “General des Carrières et des Mines” (Gécamines) in Katanga, the MGL In South Kivu.

³⁹ International Institute for Environment and Development’s Website: <https://www.ied.org>

⁴⁰ Hentschel, T; Hruschka, F; Priester, M., *Artisanal and small scale mining. Challenges and Opportunities*, International Institute for Environment and Development, UK, 2003, p.5.

⁴¹ BGR, *Mapping of the Artisanal Copper-Cobalt mining sector in the provinces of Haut-Katanga and Lualaba in the Democratic Republic of Congo*, Bundesanstalt für Geowissenschaften und Rohstoffe (BGR), Hannover, 2019, p.2.

⁴² Such as the World Bank.

⁴³ Often were foreign investors.

⁴⁴ Cyuzuzo, L., *L’exploitation minière à l’Est de la République Démocratique du Congo (RDC): Réflexions sur les enjeux économiques, politiques et environnementaux d’une enquête ethnographique*, The University of Manchester, Manchester, 2020, p.15.

⁴⁵ Employment rates dropped sharply due to the high mechanization of the work.

⁴⁶ Cyuzuzo, L., *L’exploitation minière à l’Est de la République Démocratique du Congo (RDC): Réflexions sur les enjeux économiques, politiques et environnementaux d’une enquête ethnographique*, The University of Manchester, Manchester, 2020, p.24.

⁴⁷ Ex: SOMINKI was sold 50% to Banro Corporation, and 50% to Cluff Mining Ltd.

massive printing of local currency, with the consequence of a dollarization of the economy that led to a widespread poverty. In addition, the post Cold-War decade saw not only an increase in poverty, but also an increase of violence, which resulted in the outbreak the First Congo War in 1996 and of the Second Congo War in 1998.

The First Congo War included both internal and external conflicts and can therefore be defined as both a civil war and an international military conflict that escalated when Rwanda, followed by other African States⁴⁸, invaded the DRC. The State authority in many Congolese regions had already collapsed and militias, warlords and rebel groups were already exercising effective power, with the consequence of a civilian unrest. During this time, a new national actor gained the support of powerful regional and Western allies: Laurent Désiré Kabila, a Congolese revolutionary and politician that led the Alliance of Democratic Forces for Liberation (AFDL).

The role of the AFDL and of Laurent Kabila is essential in order to understand the development of the mining issues during the last decade of the 20th century: the progressive conquests on the field by the AFDL were soon followed by the signing of mining exploitation and purchase contracts with foreign companies. Interesting examples can be found in the city of Kisangani where, in December 1996 after the city's surrender to the AFDL forces, the American Diamond Buyers⁴⁹ was granted the monopoly on the sale of diamonds in the exchange for withholding taxes; and in South Kivu, where SOMINKI was took over by the multinational Banro Corporation⁵⁰.

The First Congo War ended in 1997 when, following the death of Mobutu, Kabila proclaimed himself the president of the DRC and immediately ordered a violent repression to restore the national order. Nevertheless, the country's social and political unrest eventually culminated in 1998 with the outbreak of the Second Congo War, which involved internal groups and other African Nations. Therefore, both internal and external factors must be taken into account when analyzing the breakout of the conflicts. Among the most important there are the second genocide perpetrated against the Hutu refugees in eastern DRC, ethnic tensions and the growth of militias and armed groups supported by the Rwandans. In addition, it is important to stress the decisive role that the DRC's natural and mineral wealth played in fueling the conflict, internally and externally. In fact, many African neighboring countries were particularly interested in the DRC local wealth, and spent over a year plundering the resources found in the DRC, among which diamonds, gold, coltan, timber, cassiterite, tin and coffee⁵¹.

⁴⁸ Such as Uganda, Burundi, Angola and Eritrea.

⁴⁹ Foreign society.

⁵⁰ Canada.

⁵¹ Venugopalan, H., *Understanding the conflict in Congo*, Observer Research Foundation (ORF), Issue no. 139, 2016, p.4-5.

The war eventually ended in 2002, even though internal conflicts shook the social and political stability until 2006.

The First and Second Congo War represent a perfect example of the so called “resource curse”, according to which the presence of natural resources has a huge role in fueling internal and external conflicts; and in addition, it has been shown⁵² that countries rich in natural resources are usually the ones that have the worst economic performances compared to the less endowed countries⁵³. Although the two wars cannot be totally attributable to the presence of minerals, their importance cannot be minimized: minerals and natural resources had a huge role in the outbreak of conflicts and in maintaining the instability still present nowadays.

Once the conflict came to an end, the government promoted some reforms in order to strengthen the role of the State and its ability to control the mining sector: it published a new mining code⁵⁴ with the aim of bringing back the industrial mining sector and to attract foreign investments, and created the Artisanal Mining Zones (ZEA) with the aim of regulating the artisanal mining activities in order to give the State the control of the mining sites, to put an end to criminal practices and to avoid the mines’ militarization. In particular, the final aim of such reforms was to transform the informal mining into a “small-scale mining sector” in order to attract foreign investors. According to the International Institute for Environment and Development, the small-scale mining sector is defined as “mining that has some mechanization and is on a larger scale (...); is differentiated from artisanal mining by the presence of permanent, fixed installations that are established once an ore body is confirmed”⁵⁵. Unfortunately, the results of such reforms did not meet the expectations: artisanal miners were actually expelled from many of the mining sites, which in turn were given to multinationals⁵⁶. The expelled artisanal miners did not have any other option: in order to survive, they found themselves working in unauthorized and unregulated areas or working illegally on lands controlled by the industrial mining companies⁵⁷.

It is important to underline that the main idea behind the reforms was that by attracting foreign investors they would have been able to counter corruption, criminal practices and the militarization of mining sites; therefore, liberalization reforms were pursued and foreign companies were given

⁵² The world bank classified twelve of the states that are most dependent on mining production and six that depend on petroleum as heavily indebted poor countries with the worst ratings on the Human Development Index.

Mazalto, M., *Governance, Human Rights and Mining in the Democratic Republic of Congo in Campbell Mining in Africa, Regulation and Development*, Pluto Press, New York, 2009, p.190.

⁵³Ibid. p.190.

⁵⁴ Code miniere de 2002 available at: <http://www.droit-afrique.com/upload/doc/rdc/RDC-Code-2002-minier.pdf>

⁵⁵ Hentschel, T; Hruschka, F; Priester, M., *Artisanal and small scale mining. Challenges and Opportunities*, International Institute for Environment and Development, UK, 2003, p.5.

⁵⁶ Mainly Western and Chinese companies.

⁵⁷ Amnesty International, *This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt*, Amnesty International, London, 2016, p.16.

fiscal, economic and environmental advantages. In addition, even though at the beginning of the 21st century traceability and due diligence measures⁵⁸ were designed and put in place in order to protect the local communities and the environment, such measures were not really enforced due to a lack of means and of a political and economic will⁵⁹.

Such issues have been underlined recently by International Organizations and NGOs, among which Amnesty International and the United Nations. But even if spotlights have been turned on to multinationals working in the DRC, their activities have witnessed little improvement - and still do not fully fulfill the international standards. In particular, there has been a deterioration of living conditions for the local communities and serious environmental impacts that have affected water, forests, soil and sub-soil and that led for example to water pollution, deforestation and to an increase in conflicts between the locals and the multinational mining companies⁶⁰.

By focusing on the recent developments of the cobalt mining activities in the country, cobalt mining production increased significantly starting from the 2010s thanks to a rising in the demand and an increase in cobalt prices in the international market. Therefore, exploration projects were intensified and its production was maximized by multinational corporations. Nevertheless, the recent developments did not change the widespread artisanal mining that is still very present in the region and represents for many the only source of income available, nor the widespread violence that often leads to internal conflicts.

1.1.2 The conflicts related to cobalt mining in the DRC

In countries rich of natural resources there is a complex relationship between conflicts and mineral resources. These countries are usually very underdeveloped and are characterized by a widespread violence which affects the local communities and which may eventually escalate in local/regional/national conflicts. The DRC's wars of 1996 and 1998 described above represented just an example of regional conflict, but many others can be added to the list.

It has to be noted that cobalt is not considered a primary mineral resource that finance rebel forces, militias and armed groups, although some cases have been reported: for example the

⁵⁸ Such as international tin supply chain initiative, Dodd Frank Act and the OECD guide.

⁵⁹ Due to the DRC poverty and instability, fraudulent practices persist.

⁶⁰ These reforms have led to a rising in socio-environmental conflicts between mining companies and local populations, since the large land granted to the extractive industries inevitably came into conflict with the interests of local actors, especially because they also depend heavily on artisanal mining.

International Peace Information Service (IPIS) has reported that many of the 2400 artisanal mines⁶¹ that have been mapped in eastern Congo allow the local warlords to finance militias and armed groups by “enslaving” locals⁶².

Another form of widespread violence linked to mining activities in the DRC regards the local conflicts in the former Katanga region, where widespread violence between miners and the police is registered on a daily basis: the majority of violence occurs around the mining sites and is often promoted by the police, which instead of providing safety and security to the community, prosecutes, chases and kills the locals. In fact, the police has been reported to shot and kill tenths of illegal miners, as well as destroyed and burned unlawful hundreds of houses⁶³ – probably because of an interest in natural resources present in the area⁶⁴. Around the mining sites in the Copperbelt the army is often involved: it periodically removes hundreds of illegal artisanal miners from the mining sites and as a consequence, periodical violent – and sometimes deadly - demonstrations take place⁶⁵.

Unfortunately, this violence is not likely to be solved quickly, both due to the issues of artisanal mining and to the avarice that such resources fuel among the local warlords and transnational companies.

1.2 An approximate mapping of cobalt mining in the DRC

In order to understand the development of cobalt mining related issues in the DRC, it is essential to understand where cobalt minerals are present and where the most important cobalt mining sites are located; therefore, we will go on by addressing an approximate mapping of cobalt mining in the DRC with the aid of a geographical map that shows where the former Katanga province and Katanga Copperbelt are located in the DRC and which are the main cities in which the cobalt mining is present.

⁶¹ Of gold, tin, cobalt and copper.

⁶² Particularly women and children. Children often enter the militia groups.

Grossman, E., *Ending the curse in the DRC: a game of thrones, mines and militias*, Small Wars Journal, 2018. (Online). Available at: <https://smallwarsjournal.com/jrnl/art/ending-curse-drc-game-thrones-mines-and-militias> [lasted accessed on 06/02/2022].

⁶³ At Luiswishi mine in 2009.

⁶⁴ Scheele, F.; De Haan, E.; Kiezebrink, V., *Cobalt blues, Environmental pollution and human rights violations in Katanga's copper and cobalt mines*, Stichting Onderzoek Multinationale Ondernemingen, Amsterdam, 2016, p.36.

⁶⁵ ICG, *Mineral Concessions: Avoiding Conflict in DR Congo's Mining Heartland*, International Crisis Group, Africa Report No. 290, Brussels, 2020, p.11-12.



Source: SOMO et. Al., *Congolese Cobalt and Consuming Eletronics, Katanga calling*, SOMO et. Al, 2015, p.3.

While most minerals such as gold, cassiterite, coltan and diamonds are mainly found in Eastern DRC⁶⁶, cobalt is mainly found in the so called “Copper Belt”, which in African geography is defined as “the zone of copper deposits and associated mining (...) forming the greatest concentration of industry in sub-Saharan Africa⁶⁷”. This particular geographic area extends for about 450 km and crosses northern Zambia and the Katanga, which is the Southern region of the DRC. The Copper Belt alone holds more than 10% of the world’s copper deposits to which cobalt is associated: in fact, it is estimated that it contains more than 3,400,000 tonnes of cobalt⁶⁸.

While informal mining is present in the overall region, the exploitation activities promoted by national and multinational companies in the Katanga can be found mostly in the Provinces of Lualaba and Haut-Katanga. In fact, these provinces contain vast deposits of copper and other associated minerals, such as cobalt. While the smaller towns of Tenke and Fungurume⁶⁹ hold the “Tenke Fungurume Mining SA”, which is one of the largest producers of copper and cobalt in the DRC, mining sites

⁶⁶ Haut-Uele, Ituri, North-Kivu, South-Kivu, Tanganika, Haut-Katanga, Lualaba.

⁶⁷ Britannica, *Copperbelt*, Britannica, n.d. (Online). Available at: <https://www.britannica.com/place/Copperbelt-region-Africa> [last accessed on 06/02/2022].

⁶⁸ Cotton, A; et. Al., *Stratégies d’influences autour des ressources minières -Cuivre, Cobalt, Coltan- dans l’Est de la République Démocratique du Congo*, Association de l’Ecole de Guerre Economique, Paris, 2014, p.4.

⁶⁹ Both in Lualaba province, DRC.

mostly concentrate in the biggest cities of Lubumbashi, Kolwezi and Likasi⁷⁰. The most important and biggest mines active in 2020 in these cities were: the Metalkol RTR Project, the Mashamba East Mine, the Sicomines Copper-Cobalt Mine, the KOV Mine, the Tenke Fungurume Mine, the Kolwezi Mine, the Kamoya Mine and the Mutanda Mine⁷¹.

These Mines represent just a small example of all the industrial mines active in cobalt mining in this area. In addition, in the region thousands of artisanal cobalt mining sites are active, which usually take place illegally or informally. The illegal activities related to artisanal mining are usually performed by miners when they work on industrial concessions without a permission to do so, and the work usually consist in hand picking the minerals. Unfortunately, these illegal activities are very difficult to prevent, usually involve many children and women, and may lead to accidents due to the unsafe working conditions⁷².

In addition, other illegal activities linked to cobalt mining have been reported, not only in rural areas, but also in urban areas. In particular during the past, it was very common to dig in one's own backyard in order to search for minerals, and when minerals were found the miners would go on digging underground galleries that often extended to all the neighborhood. Even though these practices have been made illegal by the Government, artisanal miners would not stop and in this way, many neighborhoods in the former Katanga have become very dangerous and unstable places to live due to the possibility of landslide⁷³.

In conclusion, due to the thousands of legal and illegal mining sites in the former Katanga region, it is actually very difficult – and almost impossible – to track all the mining activities related to cobalt in the DRC; nevertheless this quick geographical summary has to be taken into consideration when studying the issue of cobalt mining, since it is a reality that mainly affects the southern regions.

⁷⁰ SOMO et. Al., *Congolese Cobalt and Consuming Electronics, Katanga calling*, SOMO et. Al., Amsterdam, 2015, p.3.

⁷¹ Carmen, *World's ten largest cobalt mines in 2020*, Mining Technology, 2021. (Online). Available at: <https://www.mining-technology.com/marketdata/ten-largest-cobalts-mines-2020-2/> [last accessed on 06/02/2022].

⁷² BGR, *Mapping of the Artisanal Copper-Cobalt mining sector in the provinces of Haut-Katanga and Lualaba in the Democratic Republic of Congo*, Bundesanstalt für Geowissenschaften und Rohstoffe (BGR), Hannover, 2019, p.5.

⁷³ Niarchos, N., *The Dark side of Congo's Cobalt rush*, The New Yorker, 2021. (Online). Available at: <https://www.newyorker.com/magazine/2021/05/31/the-dark-side-of-congos-cobalt-rush> [last accessed on 06/02/2022].

2. Why is cobalt so important? An overview of cobalt use and recent developments in the international arena

2.1 *The use of cobalt*

In order to understand the role of cobalt in the national and international panorama, we first need to clarify what cobalt is and why is so important, what the recent developments in the cobalt market are and which role cobalt is predicted to have in the future.

According to “Britannica”, cobalt (Co) is defined as “chemical element, ferromagnetic metal of Group 9 (VIIIb) of the periodic table, used specifically for heat-resistant and magnetic alloys⁷⁴”. Cobalt ore is usually recovered as a by-product from the mining of copper, silver and iron among others, which contain traces of cobalt; however, few exceptions of mining directly cobalt ore exist⁷⁵. In order to extract cobalt, these ores are usually processed and refined: this process consist in treating ores by using the method of flotation⁷⁶ in order to separate the cobalt-rich concentrate to the rest, which is then processed further in order to obtain the final product⁷⁷.

By looking at the history of the use of cobalt, in the past its use was mainly restricted to color ceramics and glasswork on jewelry, but with the birth and advancements of technology its use has changed. In fact, cobalt is now employed in a variety of different technological products, such as in the rechargeable batteries and medical equipment⁷⁸. For instance, the largest use of cobalt worldwide is in lithium-ion batteries, which are used for example in mobile phones, laptops, iPads, digital cameras and electronic games⁷⁹. For what concerns other important uses, cobalt is often mixed with other metals, such as iron and nickel, in order to form the so called “alloys”⁸⁰, which are used to make some parts of gas turbine engines, high speed cutting tools and magnets; it is also employed as chemical agent in the petroleum and chemical industries and in addition, because some forms of cobalt are radioactive, it has also been employed in the medical industry for sterilizing medical equipment, in

⁷⁴ Britannica, *Cobalt*, Britannica, n.d. (Online). Available at: <https://www.britannica.com/science/cobalt-chemical-element> [last accessed on 07/02/2022].

⁷⁵ Ibid.

⁷⁶ Separation flotation utilizes pneumatic and mechanical agitation to produce air bubbles that carry the mineral particles to the surface.

⁷⁷ Britannica, *Cobalt processing*, Britannica, n.d. (Online). Available at: <https://www.britannica.com/technology/cobalt-processing/The-metal-and-its-alloys> [last accessed on 07/02/2022].

⁷⁸ Such as for imaging, cancer radiotherapy, prostheses and sterilizing medical equipment.

⁷⁹ Scheele, F.; De Haan, E.; Kiezebrink, V., *Cobalt blues, Environmental pollution and human rights violations in Katanga's copper and cobalt mines*, Stichting Onderzoek Multinationale Ondernemingen, Amsterdam, 2016, p.39

⁸⁰ Is a mixture of metals.

radiation therapies for cancer patients and in order to destroy harmful bacteria that might cause human diseases⁸¹. Furthermore, Cobalt plays a fundamental role in the transition from fossil fuels to green energy, it powers the so called “electric-vehicle revolution”: in fact, is used in batteries that power the electric vehicles and e-bikes, as well as in batteries that store the energy from the renewable resources such as the solar and wind panels⁸².

Cobalt is therefore associated to technological innovation, which often leads to the desire of companies to create new and updated technologies and to the desire of consumers to always buy the latest high-tech; as a result the global market of electronics is growing and developing now more than ever: this translates in the fact that companies are often involved in sharp competitions in order to produce the latest technological innovations and to gain the bigger shares in the market, while securing a cheap access to raw materials used in batteries - for instance, cobalt.

2.1.1 Cobalt supply and consumption trends

Cobalt demand and supply has shown a great growth in the past few decades, and although in 2020 the world was challenged by the COVID-19 pandemic, cobalt demand is still very strong in the market thanks to the contribution of the green revolution and to the green recovery policies, subsidies and other incentives that were promoted especially in Europe throughout 2021⁸³. Indeed, the role of cobalt in the future is predicted to rise accordingly to the technological innovations, that as demonstrated will probably transform further the world as we know it: not only new hi-tech will be developed, but electric cars and panels for renewable energy will largely replace the old transportations and ways to do electricity. According to the Report “Lithium and cobalt: a tale of two commodities⁸⁴”, the global demand for cobalt is predicted to rise by 60% by 2025 and even more in the next few decades.

For what concerns the cobalt Global consumption in recent years, according to the Cobalt Institute, it has increased at an annual rate of more than 5% since 2013⁸⁵. Instead in 2020, due to the impact of COVID-19 pandemic, the global cobalt consumption fell back by 0.6%; nevertheless, it is important to stress that due to the huge growth of the electric vehicles business, which increased 42% over the

⁸¹ TDSHS, *What you should know about cobalt*, Texas Department of State Health Services, Texas, 2012.

⁸² Nogrady, B., *Cobalt is Critical to the Renewable Energy Transition. How can we minimize its social and environmental costs?*, Ensia, 2020. (Online). Available at: <https://ensia.com/features/cobalt-sustainability-batteries/> [last accessed on 07/02/2022].

⁸³ Cobalt Institute, *State of the Cobalt market report*, Cobalt Institute, Guildford, 2021, p.3.

⁸⁴ Azevedo, M et. Al., *Lithium and Cobalt: a tale of two commodities*, McKinsey & Company, 2018. (Online). Available at: <https://www.mckinsey.com/industries/metals-and-mining/our-insights/lithium-and-cobalt-a-tale-of-two-commodities> [last accessed on 07/02/2022].

⁸⁵ Cobalt Institute, *State of the Cobalt market report*, Cobalt Institute, Guildford, 2021, p.5.

last years, a growth in cobalt demand in batteries is predicted to counterbalance the recent decline in cobalt demand in several other end uses in 2020, such as in aerospace and tool materials used in industrial applications⁸⁶.

For what concerns the geographic cobalt-consuming regions, Asia is the largest consumer in the world: in 2020, it accounted for half of the total cobalt consumption. Cobalt in this region is mainly used for the production of battery materials, specifically in China, Japan, and South Korea. The remaining 40% of the 2020 global consumption is related to Europe and North America, which mainly use cobalt in batteries, nickel-based alloys, and tool materials⁸⁷.

In order to properly understand how the Cobalt supply-chain works locally and globally, we will firstly address the actors and their role in the supply-chain locally, regionally and globally.

2.2 The Cobalt Mining Actors

The understanding of the cobalt supply-chain is essential to explain how the cobalt is produced and delivered in the global market. Even though it is clear that national and multinational mining companies exist locally and regionally, it is important to stress that other local and global actors play a fundamental role in the cobalt supply-chain. According to the “Corporate Finance Institute”, a supply-chain is defined as “an entire system of producing and delivering a product or service, from the very beginning stage of sourcing the raw materials to the final delivery of the product or service to end-users. (...) it includes all aspects of the production process, including the activities (...) and Human Resources involved at each stage”⁸⁸. The actors in the cobalt supply-chain can be found at the formal⁸⁹ and informal⁹⁰ level and usually include State-owned companies, transnational companies, artisanal miners and traders⁹¹.

⁸⁶ Cobalt Institute, *State of the Cobalt market report*, Cobalt Institute, Guildford, 2021 p.5.

⁸⁷ Ibid. p.8.

⁸⁸ CFI, *Supply Chain*, Corporate Finance Institute, n.d. (Online). Available at: <https://corporatefinanceinstitute.com/resources/knowledge/strategy/supply-chain/> [last accessed on 07/02/2022].

⁸⁹ The formal sector is dominated by multinational companies using industrial methods.

⁹⁰ The informal sector refers to small-scale artisanal mining. Workers use their hands to gather mineral ores. It is important to stress that the two sectors interact.

⁹¹ Nordbrand, S; Bolme, P., *Powering the Mobile World: cobalt production for batteries in the DRC and Zambia*, SwedWatch. Sweden, 2007, p.29.

2.2.1 The formal sector: State-owned companies

The formal sector, which is mainly characterized by mining activities using industrial methods, is composed by State-owned companies and transnational corporations. Despite the presence of several transnational companies, the DRC State itself owns two of the major actors in the mining sector: the “SODIMICO” and the “Gecamines”, which is one of the world’s most important producers of copper, cobalt, zinc and uranium among others.

The Gecamines, which is based in the city of Lubumbashi (Haut-Katanga), was first founded in 1906 under the Belgian dominion and was known as “Union Minière du Haut Katanga ” (UMHK); following the independence of the DRC, in 1966 the UMHK was nationalized and was renamed “Société Générale des Carrières et des Mines” (Gecamines)⁹². Starting from the late 1960s throughout the 1980s the Gecamines became the driver of the Congolese economy: according to the “Natural Resource Governance Institute”, between 1967 and 1985 the company generated 70-80% of hard currency export receipts and 20-30% of the government revenues. In addition, it contributed to the development of communities located in Katanga by providing them high standards of living: not only the company employed more than 20,000 local people, but also invested in education and medical infrastructures for their employees and families. Therefore, by providing access to basic services and by creating educational opportunities, the company developed a strong economic and social structure in the region⁹³.

Unfortunately, during the 1990s the Gecamines went in bankruptcy due to the end of western monetary support to Mobutu and Kabila and to an unsustainable economic strategy: through the Zairianization policies, the company’s primary goal changed from sustainable net profit to gross revenue with the aim of sustaining the political elite⁹⁴. Substantially, the company’s revenues were no longer reinvested in mining operations⁹⁵, which led to a drastic production decline; as a consequence, the region underwent huge socio-economic transformations for the worse: not only the decreasing in mineral exports and the crisis of copper prices contributed to weaken the national

⁹²Mazalto, M., *Governance, Human Rights and Mining in the Democratic Republic of Congo in Campbell Mining in Africa, Regulation and Development*, Pluto Press, New York, 2009, p.209.

⁹³ NRGI, *Copper Giants: lessons from State-owned mining companies in the DRC and Zambia*, Natural Resource Governance Institute, New York, n.d., p.17. Available at: https://resourcegovernance.org/sites/default/files/nrgi_NMC_English.pdf [last accessed on 08/02/2022].

⁹⁴ Ibid. p.12.

⁹⁵ Investment in new research, maintenance of existing infrastructure and stocks, and investment in new machinery was minimal- to-non-existent.

economy, but also the former employees found themselves unemployed. This had disastrous consequences on the local communities which fell into absolute poverty⁹⁶.

For what concerns the fate of the Gecamines, the company was privatized and reduced its workforce. With the turn of the 21st century the company changed its role in the mining projects: following the entry into force of the 2002 mining code, which liberalized the access to mining permits, the company established several partnerships with private and foreign investors - therefore becoming a minority participant in mining operations, which are mostly exploited by other transnational companies. Up to now, the company has not recovered yet from bankruptcy and it is estimated that its debt amounts at over 1\$ billion⁹⁷.

Another important National company is the “Société de développement industriel et minier du Congo” (SODIMICO), which is based in the city of Lubumbashi. It was created during the 20th century and was initially owned by the Japanese “Nippo Mining Company”. With the Zairianization of the economic sector, the company was nationalized and was further reformed in 2002 with the “Décret 131/2002 du 16 octobre 2002⁹⁸”, which redefined the company’s main purposes, among which exploration and exploitation of mining deposits, and mining and marketing of precious metals particularly in the DRC Copperbelt.

Throughout the years, the company obtained mainly copper and zinc concessions with low amounts of cobalt. As for the Gecamines, the company established several partnerships with foreign private companies⁹⁹ in its mining sites.

2.2.2 The formal sector: Transnational companies

The other important part of the industries that work in the formal sector is related to the transnational companies which play an essential role both in the production and refining mining process. According to the BBC, transnational corporations (TNCs) or multinational corporations (MNCs) are defined as “companies that operate in more than one country. TNCs have offices and Headquarters (HQs)

⁹⁶NRGI, *Copper Giants: lessons from State-owned mining companies in the DRC and Zambia*, Natural Resource Governance Institute, New York, n.d., p.12. Available at:

https://resourcegovernance.org/sites/default/files/nrgi_NMC_English.pdf [last accessed on 08/02/2022].

⁹⁷ NRGI, *Copper Giants: lessons from State-owned mining companies in the DRC and Zambia*, Natural Resource Governance Institute, New York, n.d., p.12. Available at:

https://resourcegovernance.org/sites/default/files/nrgi_NMC_English.pdf [last accessed on 08/02/2022].

⁹⁸ DRC, *Décret 131/2002 du 16 octobre 2002 portant création et statuts d’une entreprise publique dénommée Société de développement industriel et minier du Congo, en abrégé « SODIMICO »*, DRC, 2002.

⁹⁹ Tsurukawa, N.; Prakash, S.; Manhart, A., *Social impacts of artisanal cobalt mining in Katanga, Democratic Republic of Congo*, Öko-Institut e.V, Freiburg, 2011, p.22.

located in the developed world, but have factories in countries that are not as economically developed, to take advantage of cheaper labour¹⁰⁰". It is important to stress not only that the TNCs are among the biggest economic institutions in the world, but also that they have a huge influence in the world trade and over the developing countries, specifically through employing government officials involved in economic policy making and bribery. In addition, there is no intergovernmental organization specifically in charge to regulate TNC's behavior, as a consequence TNCs are usually involved in the exploitation of land and people in the underdeveloped countries without much repercussions for their actions, even though Due Diligence obligations exist (see chapter 4).

Foreign investors and Transnational corporations started to come back to the DRC during the first decade of the 21 century, also thanks to the reforms promoted by the Government in order to attract them and bring overall wealth and development to the region.

By looking at the Transnational Corporations that work in the former Katanga region, it is clear that they are usually involved in a variety of different activities in mostly all of the industrial active mines: they provide capital for rights on concessions, operate in underground/open pit mines, and refine minerals in order to produce copper, cobalt and zinc commodities. Among the biggest and most important TNCs operating in the DRC there are Glencore, Zhenjiang Huayou Cobalt, China Molybdenum and Fleurette Group¹⁰¹.

During the 2010s, the TNCs work in DRC's cobalt mining has been exposed by international Organizations such as Amnesty International and UNICEF due to their huge involvement in human rights violations and environmental pollution; particularly, their reports point out to the issues of child labour and pollution effects on the environment and on people's health¹⁰².

2.2.3 *The informal sector: Artisanal miners*

For what concerns the informal sector, the key actors are the Artisanal miners and Traders. When during the 1970s and 1980s the DRC nationalized its mining companies and entered into a period of crisis followed by bankruptcy, most of the workers of the mining sector were fired and left in a state of poverty: their only option became to work in the so called "informal sector" as artisanal miners, also know as "creuseurs". The informal sector differs from the formal one because workers do not

¹⁰⁰ BBC, *Impact of World Trade Pattern*, BBC, n.d. (Online) Available at: <https://www.bbc.co.uk/bitesize/guides/z3tttfr/revision/5> [last accessed on 08/02/2022].

¹⁰¹ Tsurukawa, N.; Prakash, S.; Manhart, A., *Social impacts of artisanal cobalt mining in Katanga, Democratic Republic of Congo*, Öko-Institut e.V, Freiburg, 2011, p.22.

¹⁰² These issues will be properly addressed in paragraph 3 of chapter 1.

use industrial methods in their mining activities, instead use their hands and rudimentary tools to collect the rocks that contain minerals. Most of the artisanal miners work illegally in mines controlled by the multinational companies or in unauthorized and unregulated areas, others are employed by trading companies as “day workers” and as a consequence they usually do not have written contracts, rights nor benefits. In addition, the informal sector is often characterized by the lack of trade unions, widespread corruption and violence¹⁰³.

Although the informal sector is mostly illegal, it represents an important percentage of the country’s cobalt revenues. In fact, according to the report “This is what we die for” by Amnesty International, the DRC government estimated that artisanal miners produced more than 20% of the cobalt that is currently exported from the DRC¹⁰⁴.

Artisanal mining can be considered legal only under some circumstances, which usually include the establishment of “Artisanal Mining Zones” (ZEA), the employment of adults, the possession of a valid artisanal mining card, the sale of products to licensed traders and the respect of government regulations. All these rules can be found in the Mining Code, which was published in 2002 in order to regulate the informal mining sector¹⁰⁵.

For what concerns the establishment of ZEA in the DRC territory, artisanal mining can take place only where industrial or semi-industrial mining is not viable, as stated in Art. 109:

“When the technical and economic factors which characterize certain deposits of gold, diamonds or any other mineral substance do not allow them to be exploited industrially or semi-industrially, but allow small-scale exploitation, such deposits are erected, in the limits of a specific geographical area, in an artisanal mining area”.

In addition, artisanal miners are allowed to work on ZEA only under some conditions, among which:

- they must be adults, as stated in Art. 23:

“the following are eligible for mining and quarry rights:

a) any natural person of full age of Congolese nationality as well as any legal person governed by Congolese law which has its head office and administrative

¹⁰³ Amnesty International, *This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt*, Amnesty International, London, 2016, p.14.

¹⁰⁴ Ibid. p.16.

¹⁰⁵ Journal Officiel, *LOI N° 007/2002 DU 11 JUILLET 2002 PORTANT CODE MINIER*, Journal Officiel. N. special du 15 Juliet 2002, DRC, 2002.

office in the National Territory and whose the corporate purpose relates to mining activities;

b) any adult natural person of foreign nationality as well as any legal person governed by foreign law”;

- they must hold a valid artisanal mining card, as stated in Art. 111:

“In artisanal mining areas, only holders of valid artisanal mining cards for the area concerned are authorized to mine gold, diamonds or any other mineral substance that can be mined on an artisanal basis.

Artisanal miner cards are issued by the Head of the Provincial Division of Mines in the jurisdiction to eligible persons who request them and who undertake to comply with the regulations in terms of environmental protection, health and safety. in the artisanal mining areas, in accordance with the procedures which are fixed by the Mining Regulations after having read them.

The duration of the artisanal miner card is one year, renewable for the same duration without limitation”.

- they must sell their products only to licensed traders, as stated in Art. 116:

“Artisanal miners can only sell their mining products to traders, stock markets, counters or organizations approved or created by the State”.

- they must comply with government regulations and those regarding “safety, health, use of water and the protection of the environment” as stated in Art.112:

“The holder of an artisanal miner's card must comply with the standards in terms of safety, hygiene, use of water and protection of the environment which apply to his operation in accordance with the regulations in force”.

Even though artisanal mining regulations exist, the artisanal miners usually do not comply with the law for several reasons, among which the lack of enough ZEA, violence and corruption. And, even when they work in ZEA, they may face several issues among which: a very low level of occupational

safety and health care, low level of salaries and income, lack of social security and low levels of productivity¹⁰⁶.

2.2.4 The informal sector: Traders

Another important stakeholder in the mining sector is the “Trader”, which according to Art.1 par. 33 of the Mining Code¹⁰⁷ is defined as:

“any natural person of Congolese nationality who engages in the purchase and sale of mineral substances from artisanal mining in accordance with the provisions of this Code”;

Nevertheless, State’s agents, civil servants, members of National Security Services as well as employees of State-owned mining companies are not allowed to operate as Traders. In fact, according to Art. 27:

“The following are not eligible to apply for and obtain mining and/or quarry rights, artisanal miner and trader cards, as well as approval as a counter for the purchase and sale of mineral substances from artisanal mining:

a) agents and civil servants of the State, Magistrates, members of the Armed Forces, Police and Security Services, employees of public bodies authorized to carry out mining operations. (...)”

One of the main issue regarding Traders is that Congolese people and foreigners do not comply with the regulations mentioned above. Civil servants and State employees, besides of regulating corruption and illegal taxation, often act as traders by running groups of artisanal miners for hand-picking. In addition, there is the presence of many illegal traders often coming from China, India, Lebanon and Zambia who work for years as traders without any official authorization nor working visa¹⁰⁸.

¹⁰⁶ Hentschel, T; Hruschka, F; Priester, M., *Artisanal and small scale mining. Challenges and Opportunities*, International Institute for Environment and Development, London, 2003, p.6.

¹⁰⁷ Journal Officiel, *LOI N° 007/2002 DU 11 JUILLET 2002 PORTANT CODE MINIER*, Journal Officiel. N. special du 15 Juliet 2002, DRC, 2002.

¹⁰⁸ Tsurukawa, N.; Prakash, S.; Manhart, A., *Social impacts of artisanal cobalt mining in Katanga, Democratic Republic of Congo*, Öko-Institut e.V., Freiburg, 2011, p.23.

The role of traders is also that of allowing purchasing companies from the formal market to buy commodities produced illegally by artisanal miners without taking any responsibility for the social and environmental impacts that the illegality brings. In fact, they do not assess where ores are coming from; therefore promoting huge human rights abuses - among which child labour – and huge environmental disasters¹⁰⁹.

2.3 Cobalt supply-chain in the global market

If we consider the cobalt supply-chain in the global markets, four main different actors and five main stages can be identified. Since the main actors at the National level had already been identified and described above, we will go on by clarifying what the main stages in the cobalt supply-chain at a Global level are.

The first stage that we have to take into account is the “Mining Stage”¹¹⁰: as mentioned above, Cobalt is generally mined as a byproduct of other metals such as nickel and copper, and mining is performed both at a formal and informal level¹¹¹.

The second stage, is the so-called “Refining Stage”: at this stage, cobalt is recovered from other raw materials mainly from copper-cobalt ores, iron ore and nickel. Usually these ores are brought to refinery production sites, which are mainly located in China and Finland¹¹².

The third stage is the “Manufacturing Stage”: at this stage the refined cobalt ores are transformed into elements to form products such as batteries, battery derivatives, superalloys and magnets among others. While in early 2000s the fabrication and manufacturing of cobalt occurred mainly in the USA, nowadays China is the leading country in this sector, followed by Korea and Japan.

The fourth stage is the “Use Stage”: cobalt manufactured products – batteries, superalloys, magnets... - are sold to multinational companies such as Apple, Microsoft and Huawei among others, and are incorporated in the everyday use technological devices which reach the global population¹¹³.

The fifth and final stage is the “Waste Management Stage”: technological products containing cobalt scattered among nations either become a waste or are recycled for secondary cobalt production¹¹⁴.

¹⁰⁹ Ibid. p.23.

¹¹⁰ For the purpose of this thesis, we will consider just the DRC at the first stage, nevertheless it is important to stress that a little percentage of the cobalt traded worldwide comes from other countries rich in cobalt mines such as Australia, Canada and China.

¹¹¹ Van Den Brink et. Al., *Identifying supply risks by mapping the cobalt supply chain*, Institute of Environmental Sciences (CML), Leiden University, Leiden, 2020, p.47.

¹¹² Ibid. p.50.

¹¹³ Ibid. p.50.

¹¹⁴ Ibid. p.48.

As demonstrated, it is clear that the DRC plays a central role in the mining stage but then the cobalt ores are refined and manufactured mainly abroad – particularly in China. This shows the essential role that global trade plays in such products and the “division of labour” that the global trade made possible at the international level. As a consequence, from an economic point of view the DRC is entitled of little economic compensation since the final products are manufactured mostly abroad; while from a social and environmental point of view, the DRC is condemned to bear alone the consequences of its mining activities.

3. The impact of cobalt mining exploitation on the community and the environment

3.1 The social impact of Cobalt mining: a poverty trap

As analyzed above, Cobalt mining in the DRC is an essential part of the State’s economy since it represents one of the biggest economic sectors of the country; and in particular, the Artisanal mining represents an essential source of income for hundreds of thousands of families throughout the DRC. If we analyze the cobalt mining in the former Katanga region, a clear image stands out: cobalt mining becomes for many a “poverty trap”: in fact, even if initially it may appear that Artisanal mining has an effect of creating jobs, these activities are just an illusion of enrichment and wealth which eventually generate a cycle of impoverishment¹¹⁵. Often, this cycle of impoverishment is bleary by the belief that mining represents a good chance to make “easy money” and an “easy way” to enter the modern world and make good business: in fact, for many it represents an opportunity to supplement their income; while for those who have fled violence and wars, it represents the only chance of survival.

As reported by “International Alert”, the Artisanal mining diggers are unable to turn their earnings into profits since their salary is minimal: for instance, the digger’s income is reported¹¹⁶ to vary from \$1 to \$6 a day depending on the site and on the ore they are digging. If we consider cobalt, it is

¹¹⁵ International Alert, *The role of the exploitation of natural resources in fueling and prolonging crises in the eastern DRC*, International Alert, London, 2010, p.57-58.

¹¹⁶ Ibid. p.58.

reported¹¹⁷ to be usually between \$2 to \$3 a day. While miners usually have to spend their earnings in order to survive, they often face debts with the traders to which they sell the minerals and therefore are often dependent on them.

As a conclusion, it is clear that those who enter the cobalt mining chain as diggers have no other choice than working in it and have no opportunity to increase their wealth and their economic status, nor to give to their family a stable and secure environment to develop; and as a result of these difficulties, diggers often leave their wife and children alone and in poverty, making for the almost compulsory to dig at the mining sites – which eventually increase the possibility to become victims of gender-based violence.

The “poverty trap” translates into 3 main issues: human rights abuses, child labour, forced labour and sexual abuses.

3.2 Human rights abuses: insecurity and violence

Everyday, Congolese diggers face huge human rights abuses during their working activities. According to “International Alert”, violence in mines can be divided into direct and indirect: the direct violence, which includes armed activities and armed clashes among armed forces and miners, is registered on a daily basis and is often promoted by the police, the mining companies and the security guards, which prosecute and sometimes kill the locals, especially those working illegally in the mining sites. This is often related to the “thirst for money” of the police forces and mining companies that show no hesitation in promoting and enhancing human rights abuses and violence to preserve their own wealth. The police forces and army has been reported to perpetrate abuses of every kinds while removing periodically the illegal artisanal miners, and as a consequence periodical violent demonstrations take place and often end in tragedy¹¹⁸.

The other form of violence is the “indirect violence”, which is usually the one that involves the most vulnerable groups such as women and children and is often the result of social and cultural traits, as well as unstable environments. This type of violence does not include direct clashes nor direct fights, instead is a subtle form of violence that can be perceived if we look closer: forced labour, child labour,

¹¹⁷ Frankel, T., *The Cobalt Pipeline: Tracing the path from deadly hand-dug mines in Congo to consumers’ phones and laptops*, The Washington Post, 2016. (Online). Available at: <https://www.washingtonpost.com/graphics/business/batteries/congo-cobalt-mining-for-lithium-ion-battery/> [last accessed on 09/02/2022].

¹¹⁸ ICG, *Mineral Concessions: Avoiding Conflict in DR Congo’s Mining Heartland*, International Crisis Group, Africa Report No. 290, Brussels, 2020, p.11-12.

sexual and gender-based violence are the ones that are denounced more frequently by the locals and by the international Organizations¹¹⁹. These issues are often found near the mining sites and include all types of diggers, regardless of the region or the ore they are digging¹²⁰; in particular the most vulnerable, which are usually women and children, are the victims of such abuses. This violence is the result of the masculine traits that have been strongly developed in the communities near the mining sites: all the community is involved, from bosses, to co-workers to security guards, and even if attention has been directed to such issues throughout the 2010s, remarkable improvements have not been registered in the DRC. Therefore, these forms of indirect violence continue to harass the most vulnerable leaving no other choice for them than to adapt and endure it.

3.2.1 *Child Labour*

One of the main issues and human rights abuses related to cobalt mining in the DRC concerns child labour. Although the DRC ratified the ILO No. 138 Minimum Age Convention for employment, children at the age of 6 years old have been found working in the cobalt mining sites. In the country, child labour is very common in every sector of the economy¹²¹ since 2/3 of the population suffer from poverty¹²²: it has been reported that at least 28% of the workers in the Copperbelt are children under the age of 15 and that 14% are 15 to 17 years old. Usually the most youngest perform light tasks, which may include selecting, washing and serving ores – sometimes they are hired to dig in small galleries to extract ores where adults cannot arrive; while the oldest teenagers usually dig and transport the ores¹²³. Children are usually obliged to dig by their families in order to sustain themselves¹²⁴ and to pay for the school fees; they have been reported working for up to 12 hours a day especially during the weekend and holidays, even though cases of children dropping out of school to work full time are reported on a daily basis.

¹¹⁹ Such as Amnesty International and the United Nations.

¹²⁰ International Alert, *The role of the exploitation of natural resources in fueling and prolonging crises in the eastern DRC*, International Alert, London, 2020, p.60-61.

¹²¹ Especially in the mining activities

¹²² Tsurukawa, N.; Prakash, S.; Manhart, A., *Social impacts of artisanal cobalt mining in Katanga, Democratic Republic of Congo*, Öko-Institut e.V., Freiburg, 2011, p.31.

¹²³ Ibid. p.32.

¹²⁴ Usually Congolese families are huge and there is no money for everyone, therefore children are obliged to work and sustain themselves and their siblings.

Clearly child labour is a well known issue both locally and internationally, and even if some programs to eradicate it exist, local authorities are not really promoting a change since they financially benefit from child labour by extorting illegal payments to children¹²⁵.

In order to fully understand the object of this thesis, we will properly address the issue and consequences of child labour in Chapter 2.

3.2.2 *Forced Labour*

Forced labour is another of the issues that affect cobalt miners in the DRC: while this kind of human abuses is still a present practice especially among the most vulnerable and underdeveloped communities, the percentage of forced labour victims in the DRC cobalt mines is relatively small (3.7%). Usually the victims of such crime are the most vulnerable: women and children; which in addition are often involuntarily involved in prostitution in the mining communities and camps¹²⁶.

force labour is a human right abuse and not being subject to it is a fundamental human right: in fact as stated by the ILO, all ILO member States¹²⁷ have to respect the principle of the elimination of forced labour¹²⁸ regardless of its ratification¹²⁹.

According to Art. 2.1 of the ILO Forced Labour Convention 1930 No. 29, forced labour is defined as:

“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily¹³⁰”.

¹²⁵ Cataleta, M. S., *Human rights violations against children in the Democratic Republic of Congo, the international trade in minerals*, Revista Misión Jurídica, 13, (18), Universidad Colegio Mayor de Cundinamarca, Bogota, 2020, p. 217-220.

¹²⁶ Schwartz, F. W.; Lee, S.; Darrah, T. H., *A Review of Health Issues Related to Child Labor and Violence Within Artisanal and Small-Scale Mining*, GeoHealth, Columbus, 2021, p.11-12.

¹²⁷ The DRC is an ILO Member State since 1960.

¹²⁸ ILO, *What is forced labour, modern slavery and human trafficking*, ILO, n.d. (Online). Available at: <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm> [last accessed on 10/02/2022].

¹²⁹ The DRC ratified the Forced Labour Convention on 20 September 1960.

¹³⁰ ILO, *C029 - Forced Labour Convention, 1930 (No. 29)*, ILO, 1930. (Online). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:C029 [last accessed 10/02/2022].

Forced labour has been specifically found around the Mining sites in the DRC and the perpetrators usually include local armed groups, concession owners, and the military forces¹³¹. This kind of human abuses can be found either because the family is entitled of debts or because the vulnerable victims have no one to protect their rights and freedom¹³².

3.2.3 *Sexual and gender-based violence*

The last but not least worrying form of indirect violence are the sexual and gender-based abuses that especially women and children in the DRC cobalt mines face daily. Sexual and Gender Based Violence (SGBV) is defined as “a term that encompasses harmful acts perpetrated against a person’s will, based on gender norms and unequal power relationships”¹³³. In particular, women and young females that live and work near the mining sites are more likely to become victims: according to Rustal et Al., women living in proximity to artisanal and small-scale mining sites are more in danger of being sexually abused than women living in biggest cities. In particular, two main causes of why sexual abuses near the mines are committed have been identified¹³⁴: armed groups around the mining sites often use sexual violence as a strategic tool to terrorize and expel the settled communities in order to control the mines and the resources – in particular sexual violence can be exacerbated by post-conflict environments; the second cause is related to a “hyper-masculine” society and culture, which is even more exacerbated by the “masculine nature” of the mining sector, therefore SGBV is used as a mean through which the norms of female roles in ASM are maintained and to reinforce the power dynamics by those who hold a greater relative power¹³⁵: as a consequence gender stereotypes are reinforced and gender inequality and violence persist¹³⁶.

Sexual abuses are reported on a daily basis in mining sites, where women are often forced to sleep with their bosses/colleagues/security guards in order to maintain their working position and not be

¹³¹ Schwartz, F. W.; Lee, S.; Darrah, T. H., *A Review of Health Issues Related to Child Labor and Violence Within Artisanal and Small-Scale Mining*, GeoHealth, Columbus, 2021, p.11.

¹³² Often children and wives are left alone by the males of the family and become vulnerable preys since they are not able/do not have the means to defend themselves.

¹³³ Atim, L. et. Al., *Sexual and Gender-Based Violence in the Mining Sector in Africa. Evidence and reflections from the DRC, South Africa, Tanzania & Uganda*, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Bonn, 2020, p.8.

¹³⁴ Rustad, S. et. Al., *Artisanal Mining, conflict and sexual violence in Eastern DRC*, The Extractive Industries and Society Volume 3 Issue 2, 2016, p.3.

¹³⁵ Such as bosses, other miners, security forces, local officials, traditional leaders and family members.

¹³⁶ Atim, L. et. Al., *Sexual and Gender-Based Violence in the Mining Sector in Africa. Evidence and reflections from the DRC, South Africa, Tanzania & Uganda*, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Bonn, 2020, p.11, p.21.

punished with harder tasks. As a result, especially widows and young teenagers are forced into sexual activities, therefore becoming “sex slaves”. Unfortunately, many girls reported that there is no possibility for them to refuse such sexual advances because usually women that work in mining sites are widows or separated from their husband, and therefore are the “leader” of their families: in other words they are the only source of income and are therefore responsible to economically maintain their family – often composed of their children, parents and sibling¹³⁷.

In addition, many of the women that work in the mining sector are also recruited in the sex industry and are therefore involved in transactional sex and promiscuous activities which can result in rape, violence and in the spread of STDs among the overall community, such as HIV and AIDS¹³⁸.

Unfortunately these abuses affect children that work in the mining sites as well, particularly young females: children of the age of 12¹³⁹, which are often exploited orphans and street children, have been reported to be involved in prostitution in the settlement of the artisanal miners¹⁴⁰. Additionally, it has been reported that particularly migration - as a result of mining - can increase the risk for children to sexual violence and pregnancy: child abuse is perpetrated by miners, member of the community and even by security guards¹⁴¹.

3.3 The health impact of Cobalt mining

Cobalt mining in the DRC is not only related to human rights abuses, but has also devastating consequences to human health: any of the miners do not possess the minimal equipment that could protect them from radiation, dust, dangerous falls and wounds. If we consider specifically the ASMR and artisanal mining sites, miners are often exposed to a range of different health concerns, that include direct short and long term diseases and indirect health related problems, that could arise from injuries, lack of sanitation and promiscuity¹⁴².

¹³⁷ Tsongo, E., *Children in the Democratic Republic of Congo mine for coltan and face abuse to supply smartphone industry*, ABC News, 2020. (Online). Available at: <https://www.abc.net.au/news/2020-03-01/tech-companies-rely-child-labour-abuse-to-mine-coltan-in-congo/11855258> [last accessed 11/02/2021].

¹³⁸ Rustad, S. et. Al., *Artisanal Mining, conflict and sexual violence in Eastern DRC*, The Extractive Industries and Society Volume 3 Issue 2, 2016, p.10.

¹³⁹ in violation of article 19 and 34 of the Convention on the Rights of the Child, and article 3 of the convention about the Worst Forms of Child Labour (ILO, C182), both signed and ratified by DRC.

¹⁴⁰ Tsurukawa, N.; Prakash, S.; Manhart, A., *Social impacts of artisanal cobalt mining in Katanga, Democratic Republic of Congo*, Öko-Institut e.V., Freiburg, 2011, p.41.

¹⁴¹ Atim, L. et. Al., *Sexual and Gender-Based Violence in the Mining Sector in Africa. Evidence and reflections from the DRC, South Africa, Tanzania & Uganda*, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Bonn, 2020, p.12.

¹⁴² Sovacool, B., *The precarious political economy of cobalt: balancing prosperity, poverty, and brutality in artisanal and industrial mining in the Democratic Republic of the Congo*, The Extractive Industries and Society, UK, 2019, p.48.

According to Amnesty International, a high level human exposure to cobalt is likely to bring both short and long term health issues; in fact, a chronic exposure to cobalt dust can lead to the so called “Hard Metal Lung Disease”, which is a potentially fatal lung disease. In addition, other health issues have been reported, which include asthma, respiratory sensitisation and a decreased pulmonary function¹⁴³. Cobalt can also be ingested through contaminated food or water, and this may result in nausea, vomiting, urinary infections, dermatitis, thyroid damage, vision and heart damage and may eventually lead to death¹⁴⁴.

If we consider in particular the health impact on children working in cobalt mines, serious issues emerge: usually neither these children have the basic protective equipment¹⁴⁵ and as a consequence they can experience dangerous and dead-likely infections as well as the development of serious illnesses and long-term physical damages, such as joint and bone deformities, back injury, muscle injury and musculoskeletal injuries. In addition, foetus and new-born babies that are brought to the mining sites by their mothers¹⁴⁶ may develop physical malformations and mental defects¹⁴⁷.

Other types of health problems related to cobalt mining exist, and are defined as “indirect” health issues. For instance, this include both injuries and the spread of sexual diseases near the mining sites, which are often the consequence of gender-based violence and rapes: injuries are very common especially among the artisanal miners, which usually lack of any type of equipment and to the fact that mines are often nor constructed properly nor managed safely. Numerous incidents have been reported, which include the collapse and fire in the tunnels and the sudden lack of oxygen which eventually lead to suffocation and death¹⁴⁸. In addition, lack of sanitation and promiscuity often result in the spread of sexual infections and parasitic diseases such as HIV/AIDS, malaria, cholera, diarrhea and tuberculosis which if not addressed on time can be deadly or leave permanent scars on the wealth of the sick person, for instance HIV and AIDS¹⁴⁹.

¹⁴³ Amnesty International, *This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt*, Amnesty International, London, 2016, p.22.

¹⁴⁴ TDSHS, *What you should know about cobalt*, Texas Department of State Health Services, Texas, 2012.

¹⁴⁵ such as gloves, boots, helmets or face-masks.

¹⁴⁶ Often mothers have to work to maintain their family and therefore are obliged to bring their newborns to the mining sites.

¹⁴⁷ Cataleta, M. S., *Human rights violations against children in the Democratic Republic of Congo, the international trade in minerals*, Revista Misión Jurídica, 13, (18), 2020, p. 217-220.

¹⁴⁸ Amnesty International, *This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt*, Amnesty International, London, 2016, p.24-25.

¹⁴⁹ Sovacool, B., *The precarious political economy of cobalt: balancing prosperity, poverty, and brutality in artisanal and industrial mining in the Democratic Republic of the Congo*, The Extractive Industries and Society, UK, 2019, p.48

3.4 *The environmental impact of Cobalt mining*

The last impact analyzed in this thesis concerns the environment: the cobalt mining has a huge negative impact on soil, water and animals, which translates also in serious health problems for the local population which end up to be highly affected by the environmental pollution that both mining and refinery activities bring to nature.

Although the mining sector plays a big role related to environmental pollution, it is essential to stress that the issues caused to the environment cannot all be attributed to the mining economy: they should be attributable to the “predatory” system of the industries that do not properly address local environmental concerns, therefore leaving all the burdens of pollution to the local poor and underdeveloped communities¹⁵⁰.

According to researches and statistics made by “Premicongo”, industrial pollution can be found in any industrial site and if we look especially at cobalt, the MKM’s hydro-metallurgical plant represent a perfect example of the effects that the dispersion of metals provoke to the environment: due to the fact that industrial wastes made by cobalt refining effluent directly into the Dikanga river, the water around mining and industrial sites has been found highly mineralized with a high concentration of lead. As a result, the river is highly polluted and the water is improper to be used by the local communities. In addition, activities such as fishing, irrigating farmland, swimming, washing and drinking have become almost impossible since they represent a risk to human health. In order to properly understand the extent to which pollution affects human’s and animal’s life and health it is important to make some examples: not only water smells bad, but it is such polluted that occasionally dead fish can be found floating the river; in addition, water cannot be used in sport activities since its contact with the skin often provokes rashes and eye irritation¹⁵¹.

Other issues related to pollution by cobalt industries concern the air pollution made primarily by the “dense smoke” produced by these processing industries and by the dust generated by trucks. As a result, respiratory problems, lung diseases, breathing difficulties, changes in water color, animals and plants’ wealth are at stake¹⁵².

¹⁵⁰ International Alert, *The role of the exploitation of natural resources in fueling and prolonging crises in the eastern DRC*, International Alert, London, 2010, p.63.

¹⁵¹ Tsurukawa, N.; Prakash, S.; Manhart, A., *Social impacts of artisanal cobalt mining in Katanga, Democratic Republic of Congo*, Öko-Institut e.V, Freiburg, 2011, p.19-20.

¹⁵² *Ibid.* p.23.

Chapter 2: The issue of child Labour in the DRC Cobalt mines

1. Children and child Labour: an overview

The wealth and development of children in the DRC has recently been at the center of many inquiries and critiques at the international level¹⁵³ due to children's huge involvement in labour activities in mainly every sector of the Congolese economy, and in particular in the mining sector.

Although every society perceives children differently, the ILO has tried to establish universal standards related to Labour¹⁵⁴ in order to avoid any form of exploitation and to promote childhood and growth for every child equally around the world. The concept of children and childhood at the international level are essential in order to understand why the universal standards related to labour had been created by the ILO, and why many signatory States¹⁵⁵ do not comply with them.

While the concept of "children" has been universally defined as "every human being below the age of eighteen years¹⁵⁶", the concept of childhood results to be a little more complicated. The notion of "childhood" comes from neuroscience and behavioral research, which over the last decades studied the importance of the child's early years related to their physical, cognitive, linguistic and socio-affective development. The results that emerged stressed the huge importance that children's early experiences play in shaping their development and consequently their future life: children's early experiences strongly influence their ability to learn, their behavior in the society, their overall health and their future life. Nevertheless, not all the children around the world experience the same type of childhood both in terms of quality and length: their childhood depends from "external factors", which include their home, their community and the environment in which they live. Therefore, children since their early age need to be protected from threats to their development both at home and in their community. Ensuring this type of safety means to ensure a child's healthy development and therefore

¹⁵³ mainly coming from international organizations and NGOs, including the US Department on Labor, available at: Bureau of International Labour Affairs, *Findings on the Worst Forms of Child Labour, Congo, Democratic Republic of the*, Bureau of International Labour Affairs, 2020. (Online). Available at: https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Congo-Democratic-Republic-of-the.pdf [last accessed on 15/02/2022]; and by Amnesty International, available at: Amnesty International, *This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt*, Amnesty International, London, 2016. And Amnesty International. (2016). 'Child Labour Behind Smartphones Exposed'. *Amnesty International*. (Online) Available at: <https://www.amnestyusa.org/child-labor-behind-smart-phone-and-electric-car-batteries-exposed/> [last accessed on 07/03/2022].

¹⁵⁴Bhukuth, A., *Defining Child Labour: A Controversial Debate*, Development in Practice, vol. 18, no. 3, 2008, p.391. Available at: https://www.jstor.org/stable/27751932?refreqid=excelsior%3A2ec9b75645bc80e83c0514fdd5b4b262&ab_segments=&origin= [last accessed on 10/02/2022].

¹⁵⁵ Including the DRC.

¹⁵⁶Ibid, p.390.

a possibility to succeed in life and spread the benefits to their community. However, in many countries around the world, and particularly in the so called “underdeveloped countries”, obstacles and threats to a healthy childhood exist and make almost impossible for the locals to enjoy the same quality and length of infancy.

For example, many families in the DRC lack financial resources to provide their children a healthy development. Parents’ financial struggles expose their kids to poverty, malnutrition, poor health and environment, which contribute to inhibit their cognitive, social and emotional development. In addition, although education is essential for their future, it is estimated that 7 million children aged 5 to 17 do not have access to it. This is not only linked to political instability and natural disasters, but also to the financial costs related to it: poor families that often have a lot of children do not have the possibility to financially support their education and their maintenance¹⁵⁷. All of these obstacles are likely to affect children in the long term as well: the ones that have the chance to go to school while working often experience educational difficulties¹⁵⁸ and eventually drop their studies. As a consequence, when growing up, they will likely earn a low income and will have a high fertility rate, continuing the “never ending” poverty cycle by providing poor care for their own future children¹⁵⁹.

For these reasons, the UN tried to set universal standards for the concept of childhood: all the children should benefit from the same minimum conditions, so they should be educated by going to school and they should spend their free time in entertaining activities. If the parents are not able to providing so, the State should intervene by promoting and implementing National projects that offer these services¹⁶⁰. Unfortunately some States, especially in third world countries, tolerate child labour because banning it oblige them to offer social services to help poor families to face poverty, which is often something that States are not able to do because of the lack of resources¹⁶¹.

Furthermore, due to the fact that often child labour happens in the informal sector¹⁶², the elimination of it is a very difficult and complex issue: government measures are often not enough to eliminate

¹⁵⁷ Prashad, J., *Realizing Children’s Rights in the Democratic Republic of the Congo*, Humanium, online, 2020. [last accessed on 10/02/2022]. Available at: <https://www.humanium.org/en/democratic-republic-congo/>

¹⁵⁸ which often lead to dropout of school.

¹⁵⁹ Kouamé, H., *Early childhood development: The foundation of a sustainable and prosperous society*, Humanium, online, 2019. [last accessed on 10/02/2022]. Available at: <https://www.humanium.org/en/early-childhood-development-the-foundation-of-a-sustainable-and-prosperous-society/>

¹⁶⁰ Bhukuth, A., *Defining Child Labour: A Controversial Debate*, *Development in Practice*, vol. 18, no. 3, 2008, p.390. Available at:

https://www.jstor.org/stable/27751932?refreqid=excelsior%3A2ec9b75645bc80e83c0514fdd5b4b262&ab_segments=&origin= [last accessed on 10/02/2022].

¹⁶¹ Ibid, p.391.

¹⁶² Definition of the OECD of informal sector: “consists of units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned. The informal sector is a subset of unincorporated enterprises not constituted as separate legal entities independently of their owners (ICLS, 1993[3]). They are owned by individual household members or several members of the same or different households. Typically,

child labour and therefore local, and to a certain extent international initiative, can play a major role in controlling and suppressing this phenomenon¹⁶³.

1.1 Definition of Child Labour under International Law

Although the employment of children to be considered “child labour” often varies depending on the country and sectors involved, and on the age and conditions under which it is performed, the ILO defines “child labour” as the “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development¹⁶⁴”. This definition refers to the types of work that are harmful to children from a mental, physical social and moral point of view, and also that interfere with their education by denying them the chance to attend school full time¹⁶⁵. Therefore, for the purpose of the definition, all types of works intended for the market and for personal consumption undertaken in and outside the family are taken into account, regardless if they are paid or not¹⁶⁶. In addition, because children that work are deprived of the possibility to be fully educated, child labour results in unqualified and under skilled workers that will never have the possibility to grow professionally¹⁶⁷.

It is important to recall, as the UN Global Compact underlines¹⁶⁸, that there is a big difference between “child labour” and “youth employment”: the former is a form of exploitation against young human beings and therefore is a violation of human rights; instead the latter is a form of employment that can be beneficial to the development of the young person, both personally and professionally, with the condition that it does not jeopardize the children’s health and development, for instance by preventing them from attending school. In addition, it can be beneficial also because it contributes to the household income and therefore alleviates poverty and eventually improves their lifestyle. For example, a positive youth employment is one that provides additional skills and

they are operating at a low level of organization, on a small scale and with little or no division between labour and capital as factors of production”. OECD/ILO, *Tackling Vulnerability in the Informal Economy*, OECD Publishing, Paris, 2019.

¹⁶³Zamfir, I., *Child labour a priority for EU human rights*, European Parliamentary Research Service, EU, 2019, p.6.

¹⁶⁴ ILO, *What is child Labour*, International Labour Organization. (Online). Available at: <https://www.ilo.org/ipec/facts/lang--en/index.htm> [last accessed on 12/02/2022].

¹⁶⁵Ibid.

¹⁶⁶Bhukuth, A., *Defining Child Labour: A Controversial Debate*, *Development in Practice*, vol. 18, no. 3, 2008, p.385-386. Available at: https://www.jstor.org/stable/27751932?refreqid=excelsior%3A2ec9b75645bc80e83c0514fdd5b4b262&ab_segments=&origin= [last accessed on 12/02/2022].

¹⁶⁷UN Global Compact, *The ten principles of the UN Global Compact*, UN Global Compact. (Online). Available at: <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-5> [last accessed on 12/02/2022].

¹⁶⁸ Ibid.

education to the young worker, and that contributes to the development of its personality, abilities and interests besides the learning activities undertaken at school. Moreover, this working activity can provide useful skills and knowledge in the practice that can complement what learned so far in the theory. Among the skills learned, there are for example communication, intern personal relations and entrepreneurial skills¹⁶⁹.

For what concerns the regulatory framework of labour, the ILO provides at the international level a legal framework¹⁷⁰ for States to establish in their national law a minimum age for employment. For example, according to Art.2 of the ILO's Minimum Age Convention No.138, the minimum age for employment should be set around the age of 14 and 15 years. If we consider the light and hazardous work, the minimum age change: in some countries the minimum age for light work is 12, while for all countries the minimum age for hazardous work is 18¹⁷¹. Light work is often tolerated and sometimes is even seen positively by IOs because it does not jeopardize the physical and mental development of the child; and as explained above, it can be even beneficial. Instead, the hazardous work, which includes mining activities, jeopardizes the young's childhood because it harms their physical and mental development. Unfortunately, children who engage in hazardous work are often obliged to do so by the circumstances. In fact they often come from very marginalized communities, live in extreme poverty and have no other choice than working in order to contribute to maintain themselves and their families¹⁷².

1.2 Characteristics of Child Labour

The characteristics of child labour around the world seem to have common points, especially in the “developing countries”. According to the ILO's Global Estimates for 2020, approximately one third of all children that are involved in child labour activities are excluded from school, especially the ones that undertake hazardous activities. Among these children, there is a high portion that does not attend school, despite it being compulsory. For example, globally it is estimated that almost 28 % of

¹⁶⁹ Bourdillon, M., *Ignoring the benefits of children's work*, Open Democracy, 2017. (Online). Available at: <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/ignoring-benefits-of-children-s-work/> [last accessed on 13/02/2022].

¹⁷⁰ “Minimum Age Convention No. 138” and the “Worst Form of Child Labour Convention No. 182”.

¹⁷¹ ILO, *International Labour Standards on Child labour*, International Labour Organization. (Online). Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/index.htm> [last accessed on 13/02/2022].

¹⁷² Bhukuth, A., *Defining Child Labour: A Controversial Debate*, Development in Practice, vol. 18, no. 3, 2008, p.392. Available at: https://www.jstor.org/stable/27751932?refreqid=excelsior%3A2ec9b75645bc80e83c0514fdd5b4b262&ab_segments=&origin= [last accessed on 12/02/2022].

children between 5 to 11 year old and 35 % of children between 12 to 14 year old involved in child labour activities do not attend school. Although the reasons why they do not attend school might vary, in most cases it is either because they cannot conciliate school and work since it requires too much time and efforts, because the school system is often so lousy that they do not have the economic means to attend it, or because their family's economic conditions are so terrible that they have no other choice than to enter the labour market at such an early age¹⁷³.

Although the problem of child labour affects particularly children living in the “low-income countries”, children coming from middle-income countries have also been reported to undertake work at an early age. This is due to a poor National wealth, an exclusive economic growth, an unequal distribution of economic benefits to all the population and a lack of programs and services focused in education and childhood protection¹⁷⁴.

If we take into account the DRC, the same features and problems described above can be found. In fact, the characteristics and causes of child labour reflect the ILO's Child Labour 2020 World report¹⁷⁵. According to a survey undertaken in the DRC's mining region by CEGA¹⁷⁶, it emerged that the dominant reason for child labour is related to the family's economic issues. In fact, most of the children that work in mines do so to earn an additional household stipend to help maintaining their family members. According to the same survey, the premature abandon of school is not determined by a lack of will or interest in schooling, but rather to a lack of equal access to it. In fact, school fees are often too high for families that live in marginalized communities that cannot afford them; as a consequence, they are unable to send them to school. Moreover, the children¹⁷⁷ that undertook the survey reported that child labour is a feature of their “cultural tradition”, and as such they perceive child labour as a positive contribution to their community¹⁷⁸.

Another interesting point related to the characteristics of child labour regards the health issues linked to artisanal and small-scale mining that affect children working there. For example, children were reported to work in hazardous conditions, that include working in deep underground tunnels, employing toxic chemicals to separate metals from the ore, and being exposed to polluting fumes of

¹⁷³ International Labour Office and United Nations Children's Fund, *Child Labour: Global estimates 2020, trends and the road forward*, ILO and UNICEF, New York, 2021. p.47.

¹⁷⁴ International Labour Office and United Nations Children's Fund, *Child Labour: Global estimates 2020, trends and the road forward*, ILO and UNICEF, New York, 2021. p.50.

¹⁷⁵ Faber, B.; Krause, B.; Sánchez de la Sierra., *Artisanal Mining, Livelihoods, and Child Labour in the Cobalt Supply Chain of the Democratic Republic of Congo*, CEGA White Papers, Berkeley, 2017, p.40.

¹⁷⁶ Ibid.

¹⁷⁷ Both boys and girls.

¹⁷⁸ Ibid, p.40-44.

the vehicles that ride around the mining sites. Moreover, they are subjected to mental issues related to their vulnerability to physical, verbal and sexual abuse around the mining sites¹⁷⁹.

All these problems concerning child labour, not only have huge negative consequences to the health and development of children, but also to the local communities and National wealth. Drivers and consequences of child labour have been identified in the DRC, and will be properly addressed in chapter 2 paragraph 1.3 and paragraph 2.

1.3 Worst forms of Child Labour in the DRC

Child labour is a dramatic issue worldwide because it entails the accomplishment of some of the worst forms of labour for children. According to the ILO, it is estimated that approximately 79 million children¹⁸⁰ between the age of 5 to 17 are subjected to worst forms of child labour, which are performed in sectors like agriculture, mining, construction, manufacturing and domestic services¹⁸¹. According to the ILO, the worst forms of child labour involve “children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities – often at a very early age¹⁸²”. The worst forms of child labour are defined in Art.3 of the ILO Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and include¹⁸³:

3. “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

¹⁷⁹International Labour Office and United Nations Children’s Fund, *Child Labour: Global estimates 2020, trends and the road forward*, ILO and UNICEF, New York, 2021. p.37.

¹⁸⁰ Including both girls and boys.

¹⁸¹ ILO, *What is child Labour*, International Labour Organization. (Online). Available at: <https://www.ilo.org/ipec/facts/lang--en/index.htm> [last accessed on 12/02/2022].

¹⁸² ILO, *What is child Labour*, International Labour Organization. (Online). Available at: <https://www.ilo.org/ipec/facts/lang--en/index.htm> [last accessed on 12/02/2022].

¹⁸³ International Labour Organization, *C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)*, ILO, 1999. (Online). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 [last accessed on 14/02/2022].

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.

In particular, Art.3 (d) refers to the so called “Hazardous Child Labour”, which is considered to be one of the worst forms of child labour because it includes all types of work that are very dangerous for the health and safety of the child. For instance, according to the ILO “mining is by far the most hazardous sector for children with respect to fatal injuries¹⁸⁴”. Hazardous activities are carried out in very dangerous and unhealthy conditions, which can result in injuries, deaths and even in permanent disabilities and psychological harm. As underlined by the ILO, the hazardous labour can have detrimental consequences especially for children rather than for adults, because children are still developing their physic, mind and behavior¹⁸⁵. Hazardous activities include the ones performed by children in the mining sector: not only the mining sites are physically dangerous places to work due to the unsafe way they were built and to their low level of maintenance and supervision, but also because of the lack of safety and equipment. For instance, mines are characterized by unstable underground structures, toxic chemicals and dust, and heavy tools. In addition, it was demonstrated that, when working in the tunnels and when entering in contact with the minerals without a proper equipment, cobalt can have detrimental short-term and long-term negative effects on health¹⁸⁶.

Another important “worst form” of child labour is the so called “Forced labour”. This form of labour is a bit different from hazardous work, and is defined under international law as “work or service which is exacted from any person under the menace of any penalty for its non-performance and for which the worker does not offer himself voluntarily¹⁸⁷”. In the case of child labour, it can be divided mainly in two forms: some children are forced into labour by their parents, others are forced into labour as a consequence of “trafficking, coercion or deceptive recruitment¹⁸⁸”.

¹⁸⁴International Labour Organization, *Children in hazardous work: What we know, what we need to do*, ILO, Geneva, 2011, p.34.

¹⁸⁵ ILO, *What is child Labour*, International Labour Organization, n.d. (Online).

Available at: <https://www.ilo.org/ipec/facts/lang--en/index.htm> [last accessed on 12/02/2022].

¹⁸⁶ Tsurukawa, N.; Prakash, S.; Manhart, A., *Social impacts of artisanal cobalt mining in Katanga, Democratic Republic of Congo*, Öko-Institut e.V., Freiburg, 2011.

¹⁸⁷ Cezarita Cordeiro, V., *Child Labour*, Humanium, 2011. (Online). Available at: <https://www.humanium.org/en/child-labour/> [last accessed on 15/02/2022].

¹⁸⁸ Ibid.

For what concerns the DRC, children are still exposed to the worst forms of child labour, which for instance in our case mainly concern mining and the related activities¹⁸⁹. Sometimes these children are forced to work in mines by their parents, while instead some other times they are forced into mining labour by armed groups, especially in the artisanal mines in the regions of Ituri, North Kivu, South Kivu and Maniema, where the issue of armed groups and child labour are often intertwined. As a consequence, children at all ages are often taken away from their families and are forced for example into extraction and transportation of minerals such as tin, tantalum and tungsten, as well as diamonds and gold. A similar situation can be found in the region of the Copperbelt where, even if there is not a massive presence of armed group, children can be found working in the ASM as a result of their family's economic conditions. According to the US Bureau of International Labour Affairs, in 2020 child labour in the DRC was found at one in four ASM mines, where children have been reported to work illegally in hazardous working conditions¹⁹⁰.

1.4 Drivers of Child Labour in the DRC

When we examine child labour, its drivers must be taken into account in order to understand why in the 21st century this phenomenon is still widespread at the DRC National level. Although this thesis focuses on the DRC, it is interesting to underline that the drivers of child labour described below have very similar characteristics around the world and its causes can be traced back to socio-economic and cultural factors, deficiencies in the educational system, shortcomings in the legal framework and employment policies. Additional characteristics can be added to those regions of the world that are affected by armed conflicts: wars lead to the disruption of the local economies, the removal of children from school and their forced recruitment in activities related to the conflicts. All these factors are interconnected and to a certain extent maintain and promote child labour around the world¹⁹¹.

¹⁸⁹ Bureau of International Labour Affairs, *Findings on the Worst Forms of Child Labour, Congo, Democratic Republic of the*, Bureau of International Labour Affairs, 2020, p.1. Available at: https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Congo-Democratic-Republic-of-the.pdf [last accessed on 15/02/2022].

¹⁹⁰ Bureau of International Labour Affairs, *Findings on the Worst Forms of Child Labour, Congo, Democratic Republic of the*, Bureau of International Labour Affairs, 2020, p.2. Available at: https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Congo-Democratic-Republic-of-the.pdf [last accessed on 15/02/2022].

¹⁹¹ Ministère de l'emploi, du travail et de la prévoyance sociale, *Plan d'Action National de Lutte Contre les Pires Formes de Travail des Enfants en République Démocratique du Congo*, Ministère de l'emploi, du travail et de la prévoyance sociale, DRC, 2011, p.9-10.

By focusing specifically on the DRC, it is clear that child labour has very similar characteristics of the ones listed above, in fact at the National level several different drivers of child labour can be identified: poverty and unemployment, weak national educational system, lack of effective judicial system and local cultural tradition. These issues will be specifically addressed below.

1.4.1 Poverty and unemployment

The main driver of child labour regards poverty and unemployment. In the marginalized communities located in developing countries is very common for children to support their families by working in order to earn an additional income¹⁹². According to “Britannica”, poverty is defined as “the state of one who lacks a usual or socially acceptable amount of money or material possessions, (...) and exist when people lack the means to satisfy their basic needs¹⁹³”. The effects of poverty jeopardize some fundamental human rights such as dignity, the exercise of individual liberties, security, access to medical care and justice, as well as one’s personal development related to culture, family and society. If we consider specifically children, poverty is one of the main sources of violation of their fundamental rights: poverty jeopardizes their human rights and future development by severely restricting their possibilities to make personal choices related to their evolution. In addition, it often plays a role in impeding the fully development of their physical, cultural, emotional and social development. Poverty is a threat also to children’s lives, since frequently deprive them to access to medical care, water, food, security and shelter¹⁹⁴. Although in the DRC in the 2010s the trend related to poverty and unemployment improved, poverty is still widespread in the society. In particular, poverty is more marked in rural areas, where the 65.2% of the population is affected from it, than in urban areas where 60.4% of the people suffer from it¹⁹⁵. As a consequence of poverty, families do not have the economic means to maintain all of its members and therefore children at an early age are obliged by the circumstances to engage in some forms of labour, which in the mining zones like in the Katanga region take place mainly in the mines. According to the CEGA’s report “Artisanal Mining, Livelihoods, and Child Labour in the Cobalt Supply Chain of the DRC”, the 51% of the minor workers interviewed are

¹⁹² Soret, O., *Poor Children*, Humanium, 2011. (Online). Available at: <https://www.humanium.org/en/poor-children/> [last accessed on 15/02/2022].

¹⁹³ Britannica, *Poverty*, Britannica, n.d. (Online). Available at: <https://www.britannica.com/topic/poverty> [last accessed on 17/02/2022].

¹⁹⁴ Soret, O., *Poor Children*, Humanium, 2011. (Online). Available at: <https://www.humanium.org/en/poor-children/> [last accessed on 17/02/2022].

¹⁹⁵ International Monetary Fund, *Democratic Republic of the Congo Selected Issues*, IMF, Washington, 2021, p.4.

between the age of 15 and 17, the 41% are between the age of 10 and 14, and the 8 % are between the age of 5 and 9¹⁹⁶. The dominant reason of child labour reported by them was related to their family's poverty condition. In fact, families who reported sending their children to work in mining-related activities are on average poorer in terms of income. In particular, the results among the poorest families interviewed showed their need for an additional salary¹⁹⁷. If we consider the recent period of poorness and unemployment linked to COVID-19 pandemic, according to the data collected by the CASS, parents are increasingly relying on their children's¹⁹⁸ salary to economically support their family. They felt compelled, due to the crisis' challenges, to send their children to work in order to have an additional household financial support¹⁹⁹.

1.4.2 *Weak national educational system*

Another important driver of child labour is related to a weak educational system. In fact, in the communities that lack resources invested in the education system, which include infrastructures and teachers, children often do not have access to school and therefore engage in child labour. To “not have access” means that their families are not able to afford the education fees because often they are too high due to a lack of governmental support in the public education system²⁰⁰. In developing countries this is a worrying issue, since governments often do not finance the resources needed to provide support to schools, which include school materials, uniforms, training and salaries for teachers. As a result, children either do not receive an education or have to work to pay for it. Moreover, children in marginalized communities do not receive a high-quality teaching since teachers do not receive a basic teaching training and have to train “oversized” classes that often have different educational levels²⁰¹.

If we focus on the DRC, the same issues can be found: schools often lack the infrastructure and materials to welcome all the children and in certain areas of the country schools are even absent, there is a lack of schooling personnel and qualified teachers, school programs are not adapted to the

¹⁹⁶ Faber, B.; Krause, B.; Sánchez de la Sierra., *Artisanal Mining, Livelihoods, and Child Labour in the Cobalt Supply Chain of the Democratic Republic of Congo*, CEGA White Papers, Berkeley, 2017, p.39.

¹⁹⁷ Ibid, p.41.

¹⁹⁸ Of primary and secondary school age.

¹⁹⁹ Social Sciences Analytics Cell, *COVID-19 School Closures in the DRC: Impact on the Health, Protection and Education of Children and Youth*, CASS, DRC, 2021, p.7.

²⁰⁰ Cezarita Cordeiro, V., *Child Labour*, Humanium, 2011. (Online). Available at: <https://www.humanium.org/en/child-labour/> [last accessed on 17/02/2022].

²⁰¹ Humanium, *Right to Education: situation around the world*, Humanium, n.d. (Online). Available at: <https://www.humanium.org/en/right-to-education/> [last accessed on 17/02/2022].

age and skills of children²⁰², nor to the job market, and families do not possess the economic means to pay school fees²⁰³. This last point plays an essential role in the access to education, especially for children victims of child labour which do not have the economic means to pay the school fees.

According to National law²⁰⁴, primary education should be free, in fact Art.38 of the DRC Child Protection Code states that:

38. “Every child has the right to education.

Parents have an obligation to send their children to school without any discrimination.

The State guarantees the child's right to education by making public primary education compulsory and free (...)”²⁰⁵.

Moreover, Art. 12 of the Law on National Education states that the DRC should guarantee compulsory and free education for all:

12. “To achieve basic education for all, throughout life, the State:

(1) guarantees compulsory and free primary education for all in public national educational establishments, by devoting appropriate human, material and financial resources to it;

(2) ensures the democratization of education by guaranteeing the right to quality education, equal opportunities of access and success for all, including people living with disabilities; (...)”²⁰⁶.

Nevertheless, according to UNICEF’s estimations, just half of the 51,574 public schools in the DRC are financed by the State, and as a consequence families have to pay school fees that they cannot afford²⁰⁷. According to USAID, in the DRC 3.5 million children of primary school aged 6 to 12 do

²⁰² In fact, because of the lack of qualified personnel classes are often mixed with children that have different a educational levels. As a consequence, students do not have the chance to develop depending on their knowledge and skills.

²⁰³ Ministère de l’emploi, du travail et de la prévoyance sociale, *Plan d’Action National de Lutte Contre les Pires Formes de Travail des Enfants en République Démocratique du Congo*, Ministère de l’emploi, du travail et de la prévoyance sociale, DRC, 2011, p.10.

²⁰⁴ DRC Child Protection Code and in the DRC Law on National Education.

²⁰⁵ DRC, *Loi n° 09/001 du 10 janvier 2009 portant protection de l’enfant*, DRC, Kinshasa, 2009.

²⁰⁶ DRC, *LOI-CADRE n° 14/004 du 11 Février 2014 DE L’ENSEIGNEMENT NATION*, DRC, Kinshasa, 2014, p.7.

²⁰⁷ Bureau of International Labour Affairs, *Findings on the Worst Forms of Child Labour, Congo, Democratic Republic of the*, Bureau of International Labour Affairs, 2020, p.3. Available at:

not attend school; and of those who do attend, it is estimated that only the 67% of the ones that enter the first grade will complete the primary education cycle²⁰⁸. Of course, statistics vary depending on the DRC region, but in general fees represent a barrier in all the country for children to both enter and stay in the school. In addition, a little remark to gender must be made: gender inequalities related to access to education also represent a cause of school's non-attendance: it is estimated that only 24% of rural girls who have the possibility to enter school complete the primary education cycle, compared to a 69% of rural boys. These children who either do not enter or drop earlier school are destined to child labour²⁰⁹.

In order to address the weak national education system, in 2019 the DRC supported by the World Bank, implemented a policy that promotes free primary education by contributing to fund the administrative fees to reduce the economic impact on students²¹⁰. Unfortunately, the COVID-19 is jeopardising such National efforts. In fact, not only school closed as a result of the lockdowns, but also due to poverty and unemployment born out of the pandemic, children's salary is now essential to maintain their family and therefore it is likely that they will not go back to school once the pandemic will be over²¹¹.

1.4.3 Lack of effective judicial system

The third driver of child labour is in a certain way related to the lack of an effective judicial system that controls child labour activities and implement the labour regulation. In fact, the deficiency of the State agencies in charge of the protection and development of children's rights limits the extent and effectiveness of the national policies that should contribute to the elimination of its worst forms. In particular, the issues and difficulties related to public finances and the small share of the National budget allocated to public education contribute to the development of social-economic and institutional structures that favour the endurance of child labour, even in its worst forms²¹².

https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Congo-Democratic-Republic-of-the.pdf [last accessed on 17/02/2022].

²⁰⁸ United States Agency for International Development, *Education*, USAID, US, 2021.

²⁰⁹ Latif, S., Adelman, M., *Free Primary Schooling in the DRC? Where we are on the road to reform*, World Banks Blog, DRC, 2021.

²¹⁰ Ibid.

²¹¹ Social Sciences Analytics Cell, *COVID-19 School Closures in the DRC: Impact on the Health, Protection and Education of Children and Youth*, CASS, DRC, 2021.

²¹² Ministère de l'emploi, du travail et de la prévoyance sociale, *Plan d'Action National de Lutte Contre les Pires Formes de Travail des Enfants en République Démocratique du Congo*, Ministère de l'emploi, du travail et de la prévoyance sociale, DRC, 2011, p.11.

For what concerns the DRC, although penalties for violating such laws²¹³ are high and usually go from 1 to 3 years of incarceration, this does not stop nor intimidate the alleged violators linked to child labour to stop their abuses. In addition, even if child labour complaints are reported regularly, neither the courts nor the government agencies enforce these laws. The government and its agencies²¹⁴ lack the resources and funds to actually investigate the issues related to it, to prosecute its alleged violators and to implement National actions plans to fight its worst forms. Although some advancements related to child labour in the mining sector have been made, there was no real impact on children's lives: for example, "the Ministry of Mines International Conference on the Great Lakes Region's certificate" prohibits the exportation of minerals from artisanal mines that have children working in it, but in reality, the Ministry of Mines has a very limited capacity to enforce it. As a result of such ineffective judicial system, laws and regulations that should control and put an end to child labour do not play a real weight in discouraging human rights violations in the DRC²¹⁵.

1.4.4 *Child Labour as a "cultural tradition"*

The last but not least driver of child labour analysed in this thesis is related to "cultural traditions". All around the world cultural traditions and norms play a big role in encouraging or fighting child labour. For example, the western cultural tradition used to promote and implement child labour in the preindustrial era, but while industrialisation advanced, child labour was condemned since it was perceived as "uncivilised"²¹⁶. Instead, in the developing countries child labour is often accepted and even encouraged by the family and the community, which to a certain extent benefit from it. For example, in these countries the marginalised communities often give a positive and cultural²¹⁷ connotation to it since it is believed to increase the children's skills and is a way to follow their

²¹³ Especially related to the worst forms of child labour.

²¹⁴ Ministry of Labour; Ministry of Gender, Family, and Children; Ministry of Justice; Ministry of Social Affairs; and National Committee to Combat the Worst Forms of Child Labor.

²¹⁵ United States Department of State. Bureau of Democracy, Human Rights and Labour, *Democratic Republic of the Congo 2018 Human Rights Report*, United States Department of State, US, 2018, p.47-49.

²¹⁶ Schrumpf, E., *Child Labour in the West*, Encyclopedia.com, 2022. (Online). Available at: <https://www.encyclopedia.com/children/encyclopedias-almanacs-transcripts-and-maps/child-labor-west> [last accessed on 20/02/2022].

²¹⁷ For the purposes of this thesis we will not analyse gender inequalities linked to child Labour. Nevertheless, it should be stressed that often cultural beliefs related to education may result into push young girls into child Labour.

“parents’ footsteps”²¹⁸. In addition, cultural traditions may also contribute in encouraging child labour in order to pay off the family’s debts linked to “social occasions” and “religious events”²¹⁹. In the DRC, although child labour related to mining activities is mainly a result of poverty and economic needs, child labour as a cultural tradition has been reported. According to a survey made by CEGA, the young boys and girls interviewed reported that their personal decision of working was influenced by the social environment, and was made in order to “make a good impression”. This shows how determinant local social norms and local perceptions are in promoting child labour, which in the DRC society is often seen as something positive²²⁰.

In conclusion, the drivers of child labour in the DRC contribute to maintain and exacerbate child labour at the local and National level. Its causes go beyond the simple need for extra money to maintain the family: it is true that poverty and unemployment, particularly in the pandemic era, play an important role in promoting child labour, but also the lack of governmental resources, linked to the social regulations and norms that should promote the end of child labour, exacerbate even further this issue. The State clearly lacks economic means and will to eliminate this phenomenon and as a consequence, no support is given to families and educational infrastructures, and no punishments are given to the perpetrators of human rights violations concerning child labour. In the DRC, the causes of child labour clearly demonstrate the countries’ flaws and defects, which could be overcome by giving priorities to children’s rights and welfare. Unfortunately, with the beginning of the COVID-19 pandemic, the little results achieved during the 2010s were jeopardized and many more children were sent to work.

2. The impact of child labour in the DRC’s society

After having analyzed the issues that child labour provoke to children, it is important to recall that child labour can have negative impacts on the local society and Nation as well²²¹. As Somonova

²¹⁸ Radfar, A. et Al., *Challenges and Perspectives of Child Labour*, National Centre for Biotechnology Information, US, 2018.

²¹⁹ Cezarita Cordeiro, V., *Child Labour*, Humanium, 2011. (Online). Available at: <https://www.humanium.org/en/child-labour/> [last accessed on 17/02/2022].

²²⁰ Faber, B.; Krause, B.; Sánchez de la Sierra., *Artisanal Mining, Livelihoods, and Child Labour in the Cobalt Supply Chain of the Democratic Republic of Congo*, CEGA White Papers, Berkeley, 2017, p.44-45.

²²¹ The impacts described refer to the DRC society. Reference: Ministère de l’emploi, du travail et de la prévoyance sociale, *Plan d’Action National de Lutte Contre les Pires Formes de Travail des Enfants en République Démocratique du Congo*, Ministère de l’emploi, du travail et de la prévoyance sociale, DRC, 2011, p.12.

underlines in her paper related to the socioeconomic impacts of child labour, the effects of child labour can be divided mainly into two: on the “micro-family level” and on the “macro-level”. At the “micro-family level”, child labour can initially have positive repercussions since the child’s salary can increase the family’s living conditions; nevertheless, in the long-term the family will be overall negatively affected by it²²². In fact, it was demonstrated²²³ that children who start working at an early age will not have the necessary skills to improve their career, meaning that they will be condemned to low-paid jobs and when reaching adulthood they will probably earn a low income and therefore will not be able to support their family, continuing the so called “never ending” poverty cycle.²²⁴ In addition, it is likely that the parents that in their childhood had to work at an early age will send their own children working at an early age, and therefore will feed the so called “intergenerational child labour trap”²²⁵. Another important aspect related to the micro-family level concerns the health conditions of children involved in working activities. It has been seen that the victims of child labour, when growing tend to suffer from anxiety, depression and self-destructive habits like alcoholism and drug addiction, which can have very negative impacts both at the family level but also within the community, making for example a neighborhood very insecure or a family environment very violent²²⁶.

The effects of child labour can also be measured at the “macro-level”: child labour can have detrimental effects on a country’s economic growth, on its social and technological development and on its social in-equalities²²⁷. For example, the existence of child labour negatively affects the technological investments and labour productivity since it results in an “under-accumulated human capital accumulation” and therefore it contributes to slow or even avoid the country’s technological progress. In addition, a poor access to education linked to child labour can contribute to maintain and enhance income inequalities between skilled and unskilled workers, which can lead to a “chronic” poverty²²⁸. Although the economic aspects play an important role, they are not the only ones at stake: since child labour jeopardizes education, these children are unaware of their human rights and as a consequence, while growing they will not be involved in their country’s democratization nor governing decisions. This can have negative effects on their community

²²² Samonova, E., *Socioeconomic Impacts of Child Labour*, University College Dublin, Dublin, 2014, p.1.

²²³ Kouamé, H., *Early childhood development: The foundation of a sustainable and prosperous society*, Humanium, 2019. (Online). Available at: <https://www.humanium.org/en/early-childhood-development-the-foundation-of-a-sustainable-and-prosperous-society/> [last accessed on 10/02/2022].

²²⁴ Ibid.

²²⁵ Samonova, E., *Socioeconomic Impacts of Child Labour*, University College Dublin, Dublin, 2014, p.2.

²²⁶ Al Attar, N., *Effects of Child Labour on Society*, Bonyan Organization, 2022. (Online). Available at: <https://bonyan.ngo/en/child-labor/> [last accessed on 20/02/2022].

²²⁷ Samonova, E., *Socioeconomic Impacts of Child Labour*, University College Dublin, Dublin, 2014, p.1.

²²⁸ Samonova, E., *Socioeconomic Impacts of Child Labour*, University College Dublin, Dublin, 2014, p.2.

development and human rights protection. For instance, this could affect their healthcare, housing and safety²²⁹.

While taking into account child labour, it is important to recall the effects that its elimination could have at the National and local level. Many reports have been written related to it: for example, according to the ILO the proportion benefit/costs related to its elimination is 6.7 to 1, which means that the benefits highly exceed the costs. In particular, its abolition is likely to expand education, which will improve the quality and skills of the work force and as a result will bring more wealth to the community. Moreover, there could be an improvement in children's health and an enhancement in their personal and social development²³⁰.

In conclusion, the effects of child labour go beyond the mere psychological and developmental issues directly linked to children. child labour directly affects the local communities and the nation as a whole, impeding technological development and National welfare. Eliminating child labour does not only mean to give a brighter future to its victims, but also to give a brighter future to the country affected by it.

3. Covid-19 repercussions on child Labour in the DRC

In the last few decades, improvements related to the fight against child labour have been made. Not only International Organizations and National NGOs have raised their voices to denounce huge human rights violations linked to child labour in the DRC's mines, but also they were able to promote the beginning of a "real change" thanks to National and International efforts. In particular, educational projects and industries' compliance to due diligence obligations started to be promoted since the beginning of the 2010s. However, the COVID-19 pandemic threatened to undermine and even reverse such positive changes. In particular, the consequences of the pandemic related to economy, employment and education were catastrophic: there was an increase in unemployment and poverty, and a decrease in school attendance linked to school closures. These three factors, if summed up, further exacerbate the children's vulnerability to child labour²³¹. In particular, a CASS study made in

²²⁹ Arjun, *The Domino Effect: The Unseen Impact Of Child Labour*, Akshaya Patra Organization, 2017. (Online). Available at: <https://blog.akshayapatra.org/domino-effect-unseen-impact-of-child-labour/> [last accessed on 22/02/2022].

²³⁰ International Labour Organization, *Investing In Every Child An Economic Study Of The Costs And Benefits Of Eliminating Child Labour*, ILO, Geneva, 2003, p.3-4.

²³¹ Cezarita Cordeiro, V., *Child Labour*, Humanium, 2011. (Online). Available at: <https://www.humanium.org/en/child-labour/> [last accessed on 22/02/2022].

December 2020 in the DRC territory shows how the pandemic affected the education activities and therefore child labour. For example, in the city of Goma there was a reduction in the number of children aged 12-17 who returned to school in October 2020 compared to the year before: there was a 18,7% decrease in boys and a 24.1 decrease in girls. As the data show, the pandemic had also effects on gender inequalities. For instance, in the same city of the number of girls aged 6-11 attending school had fallen: there was a 7.5% difference of school drops between girls and boys. In addition, teachers said that parents started to prioritize even more their sons' education, leaving their daughters home to work in the formal or informal sectors of the economy²³².

As showed, the reduction in school attendance is linked to the poverty and unemployment that resulted from the pandemic, as well as to an increase of the school fees²³³. In particular, qualitative data from the CASS of Masisi and Goma in the same period show that parents have increased their dependence on their children's salary to support daily expenses. According to these data, 52% of the interviewed parents in six DRC provinces declared that the socioeconomic crisis born out of the COVID-19 forced them to send their children to work²³⁴.

Other issues related to child labour and human rights violations born out of the pandemic spread across the country. Such issues are linked to unlawful and criminal activities that unfortunately targeted children as the main victims: lockdowns prevented authorities to control and entering the mining sites, leaving free space to children to perform dangerous mining activities. In addition, because of the lack of authorities control, criminal groups linked to human trafficking started to forcibly trafficking young girls into commercial sexual exploitation and domestic labour nationally, but also in foreign countries such as in Lebanon²³⁵.

In conclusion, although big improvements had been made in the promotion and development of children's rights in the 2010s, the COVID 19 pandemic disrupted what achieved so far. Not only children are more vulnerable to child labour and violence within their community, but also at the regional, and to a certain extent, at the international level. Due to the fact that there are no social instruments to help Congolese poor families to come out of the poverty generated by the pandemic, children are forced into labour not only in mining activities, but also into sexual exploitation activities. This exacerbate even further their vulnerability to health issues related to forced labour and to human rights violations.

²³² Social Sciences Analytics Cell, *COVID-19 School Closures in the DRC: Impact on the Health, Protection and Education of Children and Youth*, CASS, DRC, 2021, p.7.

²³³ Ibid, p.5.

²³⁴ Ibid, p.7.

²³⁵ Bureau of International Labour Affairs, *Findings on the Worst Forms of Child Labour, Congo, Democratic Republic of the*, Bureau of International Labour Affairs, 2020, p.2-3. Available at: https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Congo-Democratic-Republic-of-the.pdf [last accessed on 22/02/2022].

Chapter 3: DRC’s obligations under the International, Regional and National Human Rights Law on Child Labour

1. Introduction to the International Human Rights Framework on Child Labour

During the 20th century, the issue of child labour started to be addressed internationally. In particular, in 1924 the Fifth Assembly of the League of Nations²³⁶ adopted the Geneva Declaration on the Rights of the Child, which was later adopted by the United Nations General Assembly in 1959. It is considered to be an “historic document” since it was the first international instrument that explicitly acknowledged children’s rights worldwide. The Declaration stressed that “men and women of all nations” owed children the right to develop, to receive special help in times of need and to be protected from exploitation” among others. Nevertheless, since it was a Declaration and not a Convention, it did not impose obligations on States²³⁷. During the 1940s and 1950s important steps related to children’s rights were made, for instance the 1948 Universal Declaration of Human Rights and the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, recognized equal rights for all children and upheld their right to education and protection. Moreover, important steps specifically directed to children in the context of working activities were made in 1973, 1989 and 1999: specifically, in 1973 The International Labour Organization adopted the ILO Minimum Age Convention No. 138, with the aim of setting a minimum age for undertaking work; in 1989 the United Nations General Assembly adopted The Convention on the Rights of the Child which sets minimum standards for protecting the rights of children, and for the first time children were recognized as social, economic, political, civil and cultural actors; and in 1999 the International Labour Organization (ILO) adopted the Worst Forms of Child Labour Convention No.182, with the aim of prohibiting and eliminating all forms of work that is harmful to children’s health, safety or morals²³⁸.

For the purpose of this thesis, the analysis of the International Human Rights Framework on Child Labour is essential, since the DRC ratified all the Treaties mentioned above: the UN Convention on

²³⁶ The League of Nations was an intergovernmental Organization that worked from 1920 to 1946 with the aim of promoting international cooperation, peace and security. Available at: UN Geneva, *League of Nations*, United Nations Office at Geneva, Geneva, n.d. (Online). Available at: <https://www.ungeneva.org/en/league-of-nations> [last accessed 15/04/2022].

²³⁷ UNICEF, *History of Child Rights*, UNICEF, n.d. (Online). Available at: <https://www.unicef.org/child-rights-convention/history-child-rights> [last accessed 15/04/2022].

²³⁸ Ibid.

the Rights of the Child, the Covenant on the Economic, Social and Cultural Rights, the ILO Minimum age Convention No.138, and the ILO Worst forms of Child Labour Convention No.182. When a State, in this case the DRC, ratifies²³⁹ the Convention or the Optional Protocols, it accepts the obligation to respect, protect and fulfill the rights outlined in it, including the adoption of policies that are necessary to implement the provisions of the treaty²⁴⁰.

In the following paragraphs we will focus on the International Human Rights Framework on child labour, analyzing the articles of the Conventions and Covenants linked to the protection of children against child labour ratified by the DRC. In particular, we will start by analyzing the UN Convention on the Rights of the Child, we will then go on with the Covenant on the Economic, Social and Cultural Rights, the ILO Minimum age Convention No.138, and the ILO Worst forms of Child Labour Convention No.182. In addition, we will address the General Comment No. 18: The Right to Work, the ILO Minimum Age Recommendation No.146, and the Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms Of Child Labour No.190. Although these are not legally binding documents, still are of utmost importance since they guide States on the interpretation of the Treaty that they are monitoring. In fact, the General Comments and Recommendations can provide guidance on specific provisions, on the role of national human rights institutions, and among other on the rights of persons with disabilities, violence against women, and the rights of minorities, as well as can be used as a tool by human rights defenders to monitor and advocate for the treaty implementation²⁴¹.

1.1 UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child, which was adopted by the United Nations General Assembly in 1989 and ratified by the DRC on the 27th September of 1990, is one of the most innovative treaties. In fact, it contains the idea that children are human beings and therefore are entitled of rights: since then, children were treated as “objects” belonging to their parents which made all the decisions for them. Instead, according to the Convention children are human beings below the

²³⁹ Ratification means that the agreement’s obligations are legally binding.

²⁴⁰ International Labour Organization, *Ratification for Democratic Republic of the Congo*, ILO, n.d. (Online). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102981 [last accessed on 15/04/2022].

²⁴¹ International Service for Human Rights, *Understanding the Treaty Bodies: 1.7 General Comments – What do the Treaty Bodies do?*, ISHR, n.d. (Online). Available at: <https://academy.ishr.ch/learn/treaty-bodies/general-comments---what-do-the-treaty-bodies-do> [last accessed on 15/04/2022].

age of 18 years, and are entitled of rights, which include the right to grow in a protected environment in order to be able to learn, play, develop and flourish with dignity.

It is important to stress that this Convention was a breakthrough, in fact through decades it has achieved important results. For instance, it has inspired governments all over the world to change their National laws and policies and to invest in the support of children needs, such as in the promotion of health care and nutrition and in the protection of children from violence and exploitation. Although this Convention is the most ratified in the world, it is not fully implemented, and as a consequence millions of children still suffer violations of their rights, which include the denial of adequate health care, nutrition, education and protection from violence²⁴². For the purpose of this thesis, we will limit our analysis to those Articles that relate to child labour. In particular, Art.19 and Art.32 provide States' duties related to child protection from all forms of violence, including exploitation, as well as children's rights to be protected from hazardous activities harmful to their social and mental development.²⁴³

Art.19 asserts that:

19. "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

Therefore, all States that are part of this convention following its ratification, do have the duty to develop legislative, administrative, social and educational actions in order to protect children from several types of abuses, among which exploitation. In fact, children that undertake working activities in mines, by definition are exploited not only by the owners of the company, but also by the State that is unable to apply any measure to eliminate this phenomenon and that even profits from the selling of raw materials mined by children.

More interesting is Art.32, which recognizes to children the right to be protected from any form of economic exploitation, including those working activities that are harmful to their development, for instance all the mining activities that are undertaken within the DRC territory:

²⁴² UNICEF, *Convention on the Rights of the Child*, UNICEF, n.d. (Online). Available at: <https://www.unicef.org/child-rights-convention#learn> [last accessed on 16/04/2022].

²⁴³ UN, *Convention on the Rights of the Child*, United Nations Office of the High Commissioner for Human Rights, New York, 1989.

32. “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”.

In addition, paragraph 2 of Art.32 reiterates the duties of all State Parties, including the actions that should be undertaken in order to comply with the Convention, such as setting local rules for a minimum age for employment, regulation hours and employment conditions as well as providing a range of sanctions for those who do not comply with the law. For instance, Art.32 (2) states that:

32. (2) “States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article”.

Therefore, as the DRC has ratified the Convention under examination, has the duty to regulate child labour at the National level and specially to enforce Art.32, for example through penalties and sanctions directed towards those who do not comply with it.

1.2 International Covenant on the Economic, Social and Cultural Rights

The second International instrument analyzed in this thesis is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was adopted by the UN General Assembly in 1966 and was ratified by the DRC the 1st November of 1976. It underlines the rights of enjoyment

of economic, social and cultural rights²⁴⁴, and represents an important tool to implement improvements in basic conditions of labour activities for all citizens in the areas of social security and basic standards of living, such as health, education, and cultural development²⁴⁵. Thus far, the ICESCR has had a huge impact on the jurisprudence of national courts in Latin America, as well as became a source of regional rules in Africa. For instance, the African Charter on Human and Peoples Rights; the Pretoria Declaration on Economic, Social and Cultural Rights in Africa; the Banjul Charter and the Protocol of San Salvador were inspired by the ICESCR. It also contributed to turn into legal rules the “social rights”, with which the International Labour Organization deals, such as minimum working age, social security, hours of work, work accidents, freedom of association, and non-discrimination in employment²⁴⁶.

Although the ICESCR focuses mainly on these issues, a reference to children’s rights in the context of economic exploitation is made. In fact, according to Art.10 a special care should be granted to children, which must be protected from any form of exploitation, including child labour. In particular, harmful activities are taken into account: it is prohibited to engage children in dangerous working activities that might affect their development, such as working in mines. In addition, the Covenant calls for State parties to set a minimum age for employment and punishments for non-compliance²⁴⁷:

10. (3) “Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law”.

Therefore, the DRC has the obligation to comply with the above-mentioned article, and just setting age limits is not enough. In fact, it should set specific prohibitions related to child

²⁴⁴ Pinto, *International Covenant on Economic, Social and Cultural Rights – Introductory Note*, UN, 2022. (Online). Available at: <https://legal.un.org/avl/ha/icescr/icescr.html> [last accessed on 17/04/2022].

²⁴⁵ Cooper, *Monitoring Economic, Social and Cultural Rights: ICESCR*, Cultural Survival Quarterly Magazine, 2016. Available at: <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/monitoring-economic-social-and-cultural-rights-icescr> [last accessed on 18/04/2022].

²⁴⁶ Pinto, *International Covenant on Economic, Social and Cultural Rights – Introductory Note*, UN, 2022. (Online). Available at: <https://legal.un.org/avl/ha/icescr/icescr.html> [last accessed on 19/04/2022].

²⁴⁷ United Nations Human Rights Office of the High Commissioner, *International Covenant on Economic, Social and Cultural Rights*, OHCHR, New York, 1966.

employment and specific punishments within its national legislation for those who do not comply with it.

1.2.1 General Comment No. 18: The Right to Work

Another important instrument related to the ICESCR is the General Comment No.18, which was published in 2005 by the Committee On Economic, Social and Cultural Rights. The General Comment No.18 is a treaty body's interpretation of Article 6 "Normative Content of the Right to Work" of the International Covenant on Economic, Social and Cultural Rights, and seeks to clarify the reporting duties of State parties with respect to certain provisions, in this case the Right to work. Additionally, it suggests general recommendations to implement such provisions and stresses what the obligations of States parties and actors other than States parties are²⁴⁸.

For what concerns our topic on child labour, the General Comment No.18 in its Art.15 emphasizes the need to protect children from all forms of exploitation, including hazardous working tasks that might negatively affect their development or physical and mental health. In addition, in its Art. 24, it sets the obligations for State parties to take effective measures against child labour, which include legislative measures to ensure child labour's eradication and the respect of its prohibition:

24. "With regard to the obligations of States parties relating to child labour as set out in article 10 of the Covenant, States parties must take effective measures, in particular legislative measures, to prohibit labour of children under the age of 16. Further, they have to prohibit all forms of economic exploitation and forced labour of children. States parties must adopt effective measures to ensure that the prohibition of child labour will be fully respected".

Although the General Comments are not legally binding treaties, they represent an important source of jurisprudence since they guide States on the interpretation of the Treaty that they are monitoring. The specific articles reported above stress the issue of child labour and propose a way for States to legally address it. As it is clear, both the ICESCR and its General Comment can be referred to when analyzing

²⁴⁸ UN, *What are General Comments of the Human Rights Treaty Bodies?*, UN Library, 2021. (Online). Available at: <https://ask.un.org/faq/135547> [last accessed on 19/04/2022].

child labour in the context of mining activities in the DRC, as well as when analyzing what the DRC obligations are in this field.

1.3 ILO Minimum age Convention No.138

Another important international legal instrument specifically related to child labour is given by the UN Agency “International Labour Organization” (ILO.) The ILO, which was the first Organization to regulate child labour, adopted in 1973 the Minimum Age Convention No.138 and the DRC ratified it on the 20th June of 2001. The Convention was developed to regulate child labour: for example, a minimum age for employment was set at 15 years and 13 years old for light work; while for dangerous work the admission to employment was set at 18 years²⁴⁹. The aim of the Convention was to achieve the effective abolition of child labour worldwide with the goal of giving children the right to live their childhoods by requiring signatory States to assume their legal obligations, which include the establishment of a minimum age for employment and the development of national policies for the elimination of child labour²⁵⁰. The Convention is a legally binding treaty to all State parties who ratified it, and therefore the DRC should comply with all of the obligations present in the Convention.²⁵¹ In particular, Art.1, Art.2, Art.3 and Art.7 address Member States’ obligations with relation to child labour, which entail the designing and implementation of effective National policies in order to ensure its abolition, a minimum age for employment, and the conditions under which child labour is allowed²⁵². In particular, according to Art.1 each member State, including the DRC, should design a specific national policy in order to achieve the elimination of child employment, or at least to raise the age of admission to it:

1. “Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons”.

²⁴⁹ Humanium, *C138 Minimum Age Convention 1973*, Humanium, n.d. (Online). Available at: <https://www.humanium.org/en/minimum-age-convention/> [last accessed on 19/04/2022].

²⁵⁰ International Labour Organization, *ILO Conventions on child labour*, ILO, n.d. (Online). Available at: <https://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm> [last accessed on 19/04/2022].

²⁵¹ Humanium, *C138 Minimum Age Convention, 1973*, Humanium, n.d. (Online). Available at: <https://www.humanium.org/en/minimum-age-convention/> [last accessed on 19/04/2022].

²⁵² International Labour Organization, *Minimum Age Convention No.138*, ILO, Geneva, 1973.

For what concerns our topic of labour activities in the mines, in Art.3 is specified that the employment of children in hazardous working activities, like mining, which are likely to jeopardize their health, is set at a minimum age of 18 years old²⁵³:

2. (1) “The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years”.

Unfortunately, although specific rules were set and legal obligations are in force, in the DRC, child at the young age of 5 or 6 years were found working in the mines as well as underground.

1.3.1 ILO Minimum Age Recommendation No.146

Along with the Convention No.138, the General Conference of the International Labour Organization (ILO) adopted the ILO Minimum Age Recommendation (no.146) in 1973. The Recommendation, which is a non-binding legal document, stresses that in order to achieve the elimination of child labour, National laws setting minimum age for employment should be integrated in a “comprehensive policy response”, which include national policies that among others should provide for poverty alleviation, promotion of jobs for adults, free and compulsory education, social security for children and adolescents who work²⁵⁴.

Although recommendations are “non-binding guidelines”, they play an important role since they complement the Convention to which they refer by providing more detailed guidelines on how to apply it²⁵⁵. In particular, in chapter II and III of the Recommendation, guidelines on Minimum age and Hazardous Employment or work were set. According to Art.7, member States are invited to set minimum age achievements, for example by raising the working age at 16 years old, and where is still not possible, it calls for urgent steps to achieve common results²⁵⁶:

²⁵³ Ibid.

²⁵⁴ International Labour Organization, *ILO Conventions on child labour*, ILO, n.d. (Online). Available at: <https://www.ilo.org/ipcc/facts/ILOconventionsonchildlabour/lang--en/index.htm> [last accessed on 19/04/2022].

²⁵⁵ International Labour Organization, *Conventions and Recommendations*, ILO, n.d. (Online). Available at: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> [last accessed on 20/04/2022].

²⁵⁶ International Labour Organization, *Minimum Age Recommendation No. 146*, ILO, Geneva, 1973.

7. “Members should take as their objective the progressive raising to 16 years of the minimum age for admission to employment or work specified in pursuance of Article 2 of the Minimum Age Convention, 1973.
(2) Where the minimum age for employment or work covered by Article 2 of the Minimum Age Convention, 1973, is still below 15 years, urgent steps should be taken to raise it to that level”.

Specifically, the Recommendation addresses in its Art. 9 and 10 the issue of hazardous working activities, which include the engagement with dangerous substances, agents or processes, the lifting of heavy weights and underground work. It suggests States to take immediate steps to set the minimum age for hazardous jobs at 18 years old²⁵⁷:

9. “Where the minimum age for admission to types of employment or work which are likely to jeopardize the health, safety or morals of young persons is still below 18 years, immediate steps should be taken to raise it to that level”.

1.4 ILO Worst forms of Child Labour Convention (no. 182)

The last International Convention analyzed is the “ILO Worst forms of Child Labour Convention No.182”, which was unanimously adopted by the organization’s members and subsequently universally ratified; the DRC ratified it on 20 June 2001²⁵⁸. During the last decade of the XXI century, the ILO realized that child labour was a universal problem present in the majority of countries, and as a consequence, with the aim of strengthening the already existing conventions, the ILO introduced the “Worst Forms of Child Labour Convention”. Its goal was that of prioritizing the elimination of the worst forms of child labour at a global level, therefore signatory States were required to urgently take effective measures in order to address and eradicate it²⁵⁹. In particular, within the Convention a definition of “Worst Forms of Child Labour” can be found, which include all work that is likely to

²⁵⁷International Labour Organization, *Minimum Age Recommendation No. 146*, ILO, Geneva, 1973.

²⁵⁸ International Labour Organization, *Ratification for Democratic Republic of the Congo*, ILO, n.d. (Online). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102981 [last accessed on 20/04/2022].

²⁵⁹ International Labour Organization, *ILO Conventions on child labour*, ILO, n.d. (Online). Available at: <https://www.ilo.org/ipecc/facts/ILOconventionsonchildlabour/lang--en/index.htm> [last accessed on 20/04/2022].

jeopardize children's health and safety, such as mining activities. In addition, it sets the steps that signatory States should take in order to comply with it. As stated in Art.1, effective measures to the elimination of the worst forms of child labour should be taken by all the signatory States ²⁶⁰:

1. "Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency".

The Convention also encourages States to undertake the relative steps in order to eliminate the worst forms of child labour, including sanctions. Moreover, it requires Member States to take effective measures to promote side activities that might help eliminating child labour, such as ensure free education and access to basic services, as well as social rehabilitation and integration. As stated in Art. 7²⁶¹:

7. "(1) Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions".

"(2) Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

- (a) prevent the engagement of children in the worst forms of child labour;
- (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
- (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
- (d) identify and reach out to children at special risk; and
- (e) take account of the special situation of girls".

"(3) Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention".

²⁶⁰International Labour Organization, *Worst Forms of Child Labour Convention No. 182*, ILO, Geneva, 1999.

²⁶¹International Labour Organization, *Worst Forms of Child Labour Convention No. 182*, ILO, Geneva, 1999.

Therefore, it is clear what the legal obligations of the DRC are: the DRC should implement at the National level the provisions of the Convention, by including in its national legislation specific rules to control and eradicate child employment, as well as penal sanctions. As already stated above, a way of reducing and eventually eliminating child labour is given by providing assistance and free education to all children, in this way many of them would not be forced to go to work and instead could focus on improving their knowledge.

1.4.1 Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms Of Child Labour (no.190)

Finally, the Recommendation No.190, which accompanies the Convention No. 182, is another important non-binding guideline that provides a clarification on what “hazardous work” should include and what activities should State parties implement. In particular, in its Art.9 it stresses the duties that Member States have in implementing national law and efforts to eliminate child labour. For example, States should guarantee that local authorities comply with the national law on the matter, In particular²⁶²:

9. “Members should ensure that the competent authorities which have responsibilities for implementing national provisions for the prohibition and elimination of the worst forms of child labour cooperate with each other and coordinate their activities”.

In addition, in its Art.13 and Art.14, following the obligation of States to comply with the International legal instruments, it provides the duty of State parties (including the DRC), to apply criminal penalties to the ones that do not comply with the law, suggesting the implementation of special supervisions of enterprises and working activities that are well known for breaking the rules related to the Worst Forms of Child Labour employment. According to Art.13:

13. “Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for

²⁶² International Labour Organization, *Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms Of Child Labour No.190*, ILO, Geneva, 1999.

the prohibition and elimination of any type of work referred to in Article 3(d) of the Convention”.

Lastly, according to Art.14 member States should provide legal punishments to those that do not comply with the law, which may include the revoking of working permits:

14. “Members should also provide as a matter of urgency for other criminal, civil or administrative remedies, where appropriate, to ensure the effective enforcement of national provisions for the prohibition and elimination of the worst forms of child labour, such as special supervision of enterprises which have used the worst forms of child labour, and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate”.

2. Introduction to the Regional Human rights Framework on Child Labour

Another important source of jurisprudence is given by the Regional Human Rights Framework on Child Labour, which is part of the African Union (AU) regional integration system. The African Union (AU), that is a continental body composed of 55 member States was born in 2002, and replaced the Organization of African Unity (OAU, 1963-1999). The OAU, embodied the pan-African vision of a united and free Africa; in particular, its objectives were that of fighting for decolonization in order to achieve freedom, equality, justice and dignity among African people, as well as cooperation, unity and solidarity among the African States. The OAU ceased to exist and was replaced in 2002 by the African Union (AU), whose aim was that of refocusing African’s objectives towards an increased cooperation and integration of African States in order to promote local growth and economic development. Within the AU, a particular importance was given to the promotion and protection of Human Rights: the Constitutive Act of the African Union and the Protocol on Amendments to the Constitutive Act of the African Union have among their objectives to promote and protect human and peoples’ rights, in compliance with the African Charter on Human and Peoples’ Rights and other regional human rights instruments. For this purpose, several Human Rights Bodies were created, among which the African Commission on Human and Peoples’ Rights (ACHPR), the African Court on Human and Peoples’ Rights (AfCHPR), and the African Committee of Experts on the Rights and

Welfare of the Child²⁶³. Within the context of Human Rights, the AU plays a very important role since allows to take into considerations specific regional values and local conditions within the human rights norms and enforcement mechanisms²⁶⁴.

For the purpose of this thesis we will analyze the African Charter on Human and People Rights and the African Charter on the Rights and Welfare of the Child. These two Charters not only form the bases of a regional human rights framework related to children in Africa, but also inspired some domestic legislation. In particular, in some countries the African Charter on Human and People Rights is integrated in the national law and for instance Nigeria explicitly made it part of its domestic law²⁶⁵. For what concerns the African Charter on the Rights and Welfare of the Child, it had a widespread impact at the countries' national level, for example the constitution of the Democratic Republic of Congo refers to the definition of "child" used in it²⁶⁶.

2.1 The African Charter on Human and People Rights

The African Charter on Human and People Rights, also called 'Banjul Charter', was adopted by the OAU Assembly on 28 June 1981, in Nairobi, Kenya, and came into force on 21 October 1986 and was ratified in 1987 by the DRC. Although the idea of drafting and adopting a legal document establishing a protection mechanism for human rights in Africa was developed in the early 1960's, the African Charter on Human and People Rights came into being only two decades later. Until 1981, no regional treaties imposing explicit obligations for the protection of human rights existed in Africa. In fact, until then massive human rights abuses perpetrated by some African leaders were ignored and no specific steps to their protection were imposed. But the drafting and adoption of the Charter changed the regional Human Rights Framework that existed so far. This Charter not only represented a very important step towards the protection and fulfillment of human rights, but also was specifically designed to address regional issues. In fact, it was conceived to take into consideration African values and traditions, as well as local needs and issues²⁶⁷. Among the several matters that the Charter addresses, there is the prohibition of exploitation of another human being, and therefore of children

²⁶³ African Union, *About the African Union*, African Union, n.d. (Online). Available at: <https://au.int/en/overview> [last accessed on 27/04/2022].

²⁶⁴ Heyns, Padilla, Zwaak, *A Schematic Comparison Of Regional Human Rights Systems*, International Journal on Human Rights, 2006. (Online). Available at: <https://sur.conectas.org/en/schematic-comparison-regional-human-rights-systems/> [last accessed on 27/04/2022].

²⁶⁵ Centre for Human Rights, *A Guide To The African Human Rights System*, Pretoria University Law Press, Pretoria, 2016, p.8-9.

²⁶⁶ *Ibid*, p.75.

²⁶⁷ *Ibid*, p.1-2.

in dangerous and hazardous labour activities, and the obligations of State parties to protect the rights of the child found in international conventions and declarations. In its Art.5, the Charter generally states that exploitation, including the economic one, is prohibited: “(...) All forms of exploitation and degradation of man particularly (...) cruel, inhuman or degrading punishment and treatment shall be prohibited”²⁶⁸. For what concerns State parties duties, in its Art.18 it is stated that²⁶⁹:

18. “The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions”.

Therefore, although it does not specifically address child labour, it is clear that at the regional level the protection of the rights of the child is of utmost importance, and once again State parties, including the DRC, are legally obliged to comply with it.

2.2 *The African Charter on the Rights and Welfare of the Child*

Another important regional document is the African Charter on the Rights and Welfare of the Child (ACRWC), which was adopted in 1990 and came into force in 1999; the DRC ratified it on the 8th December 2020. The project was born out of the UN’s will to develop a Charter to supplement the United Nations Convention on the Rights of the Child (UNCRC) from an African perspective; as a consequence, in 1988 the Charter was drafted. Among its goals, there were that of complementing the UN Convention on the Rights of the Child, that of facilitating African States’ ratification and implementation as well as that of complementing the African Charter and regional bills that did not adequately address children’s rights, with a focus on regional issues. Within the ACRWC are underlined rights and principles related to the status of children with a regional and local perspective, as well as signatory States’ obligations²⁷⁰.

²⁶⁸ African Commission on Human and Peoples’ Rights, *African Charter on Human and Peoples’ Rights*, ACHPR, Nairobi, 1981.

²⁶⁹ African Commission on Human and Peoples’ Rights, *African Charter on Human and Peoples’ Rights*, ACHPR, Nairobi, 1981.

²⁷⁰ African Network for the Prevention and Protection Against Child Abuse and Neglect, *The African Charter On The Rights And Welfare Of The Child (ACRWC)*, ANPPCAN, Nairobi, 2021.

For what concerns child labour, Art.15 specifically address children's rights and State's obligations related to it. In particular, children should be protected by the State from any form of economic exploitation as well as hazardous working activities²⁷¹:

15. (1) "Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development".

In addition, State parties are required to comply with the duties set in the Charter with relation to legislative and administrative measures to implement it. For example, State parties are required to provide within their national legislation minimum wages, conditions for employment as well as sanctions for the individuals and companies that do not comply with national rules. As stated in Art.15:

15. (2) "State Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children.

State Parties shall in particular:

- (a) provide through legislation, minimum wages for admission to every employment;
- (b) provide for appropriate regulation of hours and conditions of employment;
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
- (d) promote the dissemination of information on the hazards of child labour to all sectors of the community".

As a consequence, the DRC should comply with its articles, not only by fulfilling children's rights related to employment, but also by taking steps towards its implementation at the national level. These

²⁷¹ Organization of African Unity, *African Charter On The Rights And Welfare Of The Child*, OAU, Addis Ababa, 1990.

steps may include the designing of policy that target this issue as well as policies that design specific sanctions and penalties for those that do not comply with it.

2.3 Example of State Responsibility's failure to protect against Child Labour within the African Regional System

An interesting example of failed State Responsibility to protect against Child Labor in the African system can be found in the “Decision on the Communication Submitted by Minority Rights Group International and SOS-Enclaves on Behalf of Said Ould Salem and Yarg Ould Salem against the Government of the Republic of Mauritania”, which concerns the State of Mauritania.

According to the African Committee of Experts on the Rights and Welfare of the Child²⁷² (ACERWC), Mauritania violated the rights of the child to the protection against child labor and other rights, including the obligation to protect, investigate, punish and prosecute the alleged violators – as enshrined in the ACRWC, holding the State in question responsible. In this case, the two young victims in question suffered from child slavery, child labor and child abuse. According to the Committee Mauritania violated its obligations under Art.1²⁷³, Art.4²⁷⁴, Art.5²⁷⁵, Art.11²⁷⁶, Art.12²⁷⁷,

²⁷² The ACERWC is mandated from Art. 32-46 of the African Charter on the Rights and Welfare of the Child, and among its functions there are the promotion and protection of children's rights included in the ACRWC, monitor its implementation and interpret its provisions. Available at: ACERWC, *Mandate*, ACERWC. (Online). Available at: <https://www.acerwc.africa/mandate/> [last accessed on 22/09/2022].

²⁷³ Failure to realize the rights included in the Charter. Available at: ACERWC, *Decision on the Communication Submitted by Minority Rights Group International and SOS-Enclaves on Behalf of Said Ould Salem and Yarg Ould Salem against the Government of the Republic of Mauritania*, ACERWC.Addis Ababa, 2017, p.13-17.

²⁷⁴ Failure to support and implement its anti-slavery legislative measures and failure to prosecute the perpetrators. Available at: ACERWC, *Decision on the Communication Submitted by Minority Rights Group International and SOS-Enclaves on Behalf of Said Ould Salem and Yarg Ould Salem against the Government of the Republic of Mauritania*, ACERWC.Addis Ababa, 2017, p.19-20.

²⁷⁵ Failure to ensure the survival and development of the child by not properly preventing and punishing child slavery. Available at: ACERWC, *Decision on the Communication Submitted by Minority Rights Group International and SOS-Enclaves on Behalf of Said Ould Salem and Yarg Ould Salem against the Government of the Republic of Mauritania*, ACERWC.Addis Ababa, 2017, p.20-21.

²⁷⁶ Failure to provide free and compulsory education. Available at: ACERWC, *Decision on the Communication Submitted by Minority Rights Group International and SOS-Enclaves on Behalf of Said Ould Salem and Yarg Ould Salem against the Government of the Republic of Mauritania*, ACERWC.Addis Ababa, 2017, p.21-22.

²⁷⁷ Failure to prevent third parties from interfering with this article on children's right to leisure, recreation, and cultural activities. Available at: ACERWC, *Decision on the Communication Submitted by Minority Rights Group International and SOS-Enclaves on Behalf of Said Ould Salem and Yarg Ould Salem against the Government of the Republic of Mauritania*, ACERWC.Addis Ababa, 2017, p.22-23.

Art.15²⁷⁸, Art.16²⁷⁹, and Art.21²⁸⁰ under the ACRWC, which in summary include the country's failure to realize the rights enshrined in the Charter, to support and implement the anti-child labor legislative measures at the local level, to prosecute the alleged perpetrators, to provide free and compulsory education, to prevent third parties from violating the Charter, to provide appropriate remedies and to protect children from social and cultural practice that do not respect human dignity and children's rights²⁸¹.

This example, although not directly related to the DRC and its violations of the two Charters analyzed above against child labor, is extremely important because it represents the partial success of holding States accountable for their violations under International law and in particular under the African legislative regional system. It clearly defines the violation of the State of the Charter and stress its inability to implement its provisions at the National level. Unfortunately, as often happens within IL, the Decision of the Committee is not legally binding, and therefore its enforcement might not be automatic.

3. Introduction to the National legislation on Child Labour

Lastly, it is important to analyze the DRC's National legislation on child labour. The National legislation is an important instrument that encompasses a broad range of legal and other governmental instruments that may facilitate the implementation of child labour rules in order to avoid and eliminate any form of child labour nationally. Usually National Legislation includes legally binding instruments such as constitutions, decrees, acts, orders, and regulations; and non-legally binding instruments

²⁷⁸ Failure to adopt and enforce appropriate legislative measures to abolish slavery and protect the child from child labor. Available at: ACERWC, *Decision on the Communication Submitted by Minority Rights Group International and SOS-Enclaves on Behalf of Said Ould Salem and Yarg Ould Salem against the Government of the Republic of Mauritania*, ACERWC.Addis Ababa, 2017, p.24-25.

²⁷⁹ Failure to protect children against child labour, as well as to provide appropriate remedies to the victims. Available at: ACERWC, *Decision on the Communication Submitted by Minority Rights Group International and SOS-Enclaves on Behalf of Said Ould Salem and Yarg Ould Salem against the Government of the Republic of Mauritania*, ACERWC.Addis Ababa, 2017, p.25-26.

²⁸⁰ Failure to protect children's rights against "harmful social and cultural practices". Available at: ACERWC, *Decision on the Communication Submitted by Minority Rights Group International and SOS-Enclaves on Behalf of Said Ould Salem and Yarg Ould Salem against the Government of the Republic of Mauritania*, ACERWC.Addis Ababa, 2017, p.26-27.

²⁸¹ Available at: International Justice Resource Centre, *ACERWC: Mauritania failed to Protect Against and Punish Child Labor*, IJRC, USA, 2018.

which include guidelines, operating rules and procedures; as well as other types of instruments such as governmental protocols, resolutions and intergovernmental agreements²⁸².

For the purpose of this thesis, we will analyze five legally binding instruments: the DRC Constitution, the DRC Labour Code, the DRC Mining Code, the Law n ° 09/001 of January 10 2009 on the protection of the child and finally the Ministerial order no. 12 on Child Labour conditions. All of these legally binding instruments play a very important role in the framework of the elimination of child labour, since they are a primary source of law and set the basic rules within the DRC National territory with regards to child employment.

3.1 The DRC Constitution

The DRC Constitution, which was adopted the 18th February 2006, is the fundamental organic law of the DRC. The history of the Constitution dates back to 2002 when a Transitional Constitution was promulgated after the Congolese political parties and the belligerents entered into a peace agreement following the Laurent Kabila's assassination. The Transitional Constitution played a central role in the drafting of the current Constitution, since it laid down some cardinal principles currently present in the 2006 Congolese Constitution, such as the unity of the country, as well as the protection and fulfillment of some fundamental human rights and freedoms. In addition, the 2006 DRC Constitution provides the basis for institutional law as well as for human rights law²⁸³.

Although within its Articles it does not refer directly to child labour, the Constitution defines what a minor is, what his rights are and what the State should do in order to avoid children's exploitation. Once again, a definition of minor can be found in its Art. 41²⁸⁴, as well as the list of rights and the obligations of public authorities to protect children's rights and punish those who do not comply with the law:

41. "(...) The public authorities have the obligation to ensure the protection of children in a difficult situation and to bring the authors of acts of violence against children and their accomplices to justice.

²⁸² World Health Organization, *IHR: National legislation*, WHO, n.d. (Online). Available at: <https://www.euro.who.int/en/health-topics/health-emergencies/international-health-regulations/national-legislation> [last accessed on 02/05/2022].

²⁸³ Zongwe et al., *UPDATE: Overview of the Legal System of the Democratic Republic of the Congo (DRC) and Research*, Hauser Global Law School Program, New York, 2020.

²⁸⁴ Journal Officiel, *Constitution de la République Démocratique du Congo*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2006.

All others forms of exploitation of minors are severely punished in accordance with the law”.

In addition, as stated in Art. 42, the public authorities have the obligation to protect children from any form of abuse and exploitation that might jeopardize their health, education and development, which for instance include mining activities²⁸⁵:

42. “The public authorities are obliged to protect the youth against any attack on their health, education or integral development”.

3.2 *The DRC Labour Code*

The second National Instrument analyzed in the context of child labour is the DRC Labour Code, which was promulgated on the 9th August of 1967 and addresses the economic and social issues related to labour, and in particular the right to work, the professional training and development, the employment contract, the obligations of the worker and the employer, and the work for women, children and persons with disabilities among others. The Code is applicable to all workers and employers, regardless of race, sex, religion, political opinion, social origin and nationality²⁸⁶.

Although the Labour Code has been modified and supplemented since 1967, it is outdated and as a consequence the economic and social development of the country does not reflect the international labour standards. After some attempts to update the Code, in 2001 the National Labour Council was set up and a draft labour code was adopted. It was inspired by suggestions from the International Labour Organization, professional organizations of employers and workers and by the customs analyzed so far in the “world of work”. As a consequence, the National Labour Council made adjustments to certain provisions of the Labour Code, and in particular it prohibited the worst forms of child labour and called for immediate action to eliminate them and raise the age for employment from 14 to 15²⁸⁷. For example, in Art.3 a definition of Worst Forms of Child Labour is given, which again includes among others the “work which, by its nature or the circumstances in which it is carried

²⁸⁵ Journal Officiel, *Constitution de la République Démocratique du Congo*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2006.

²⁸⁶ Journal Officiel, *Loi n°015/2002 portant Code de Travail*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2002.

²⁸⁷ Ibid.

out, is likely to harm the health, safety, dignity or morals of children²⁸⁸”. The same Article also stresses that all the worst forms of child labour are abolished. In addition, in Art.4, the DRC in compliance with the international legislation, established a National Committee with the task of fighting the worst forms of child labour in order to develop new strategies and implement them properly²⁸⁹.

3. “A National Committee for the fight against the worst forms of child labor is established.

This Committee is responsible for:

- (a) to develop the national strategy for the eradication of the worst forms of child labor;
- (b) to ensure the follow-up of the implementation of the strategy and to assess the level of application of the recommended measures”.

3.3 *The DRC New Mining Code*

The DRC Mining Code, which entered into force in 2002, was enacted by the Congolese Congress with the aim of replacing the oldest, and outdated, mining legislation. Therefore, its enforcement had huge repercussions on mining production: not only there was a huge increase in copper production, but also there was an increase in foreign direct investments. Nevertheless, during the last decade The Code became old and needed to be modified in order to address modern issues. Therefore, the 2002 Mining Code was amended by the Law No. 18-001 of 9 March 2018, also known as the “New Mining Code”²⁹⁰. It was a breakthrough legal document in the mining sector since it strengthened the local content requirements²⁹¹ and reduced the tax attractiveness. For what concerns child labour, although there are no specific references to it in this sector, in its Art.28 it revised Art.299 bis of the 2002 Mining Code, which addresses human rights violations - including the violation of children’s

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Schouhette et al., *The Mining Law Review: Democratic Republic of the Congo*, The Law Reviews, 2021. Available at: <https://thelawreviews.co.uk/title/the-mining-law-review/democratic-republic-of-the-congo-mining-law> [last accessed on 15/05/2022].

²⁹¹ The fastest growing of these measures are local content requirements (LCRs), which are policies imposed by governments that require firms to use domestically-manufactured goods or domestically-supplied services in order to operate in an economy. Available at: OECD, *Local content requirements impact the global economy*, OECD, n.d. (Online). Available at: <https://www.oecd.org/trade/topics/local-content-requirements/> [last accessed on 15/05/2022].

rights²⁹². Specifically, it states that it is prohibited to trade and exploit mining products produced in mines where human rights violations took place, including those that regard children. It also stresses the punishments that might be applied to the ones that do not comply with the law, such as economic fines:

28. “The exploitation and trade of mining products from a site where a violation of laws on the protection of human rights, children's rights, or women's rights has been observed is illegal by report of a competent authority. The Mining Regulations set the terms of the report.
- Without prejudice to the provisions of article 299 of this Code, anyone who engages in mining in violation of this article is punished with a fine the amount of which is the equivalent in Congolese francs of 10,000 USD per day up to cessation of the violation. (...)”.

3.4 The Ministerial order no. 12 on Child Labour conditions

The Ministerial order no.12 on Child Labour conditions is one of the two specific national laws that entered into force in the context of child labour. In fact, although the DRC ratified the Convention No. 138 on the minimum age for admission to employment and the Convention No.182 on the prohibition of the worst forms of work, it did not have any specific National legislation that addressed this issue. Therefore, many children still suffered from abuses, discrimination, human trafficking, and deprivation of basic rights such as health care and education. As a consequence, the Minister of Labour and Social Welfare Marie Ange Lukiana in 2008 promulgated such Ministerial order. It was developed in order to strengthen the legal protection of children engaged in working activities and to set their working conditions, and specifically it supplemented Art.38 paragraph 4 of the DRC Labour Code, determining the minimum conditions and the prerequisites for child employment. In addition, the Ministerial order provides several definitions, among which what a child is and what the worst forms of child labour are. For example, in its Art.1, Art.8 and Art.13 it prohibits employers to engage children in the worst forms of working activities, specifically the ones that might expose children to risks and injuries, as well as the ones that are undertaken underground or in confined spaces, that are

²⁹² Journal Officiel, *Loi n°18/001 du 09 mars 2018 modifiant et complétant la Loi n° 007/2002 du 11 juillet 2002 portant Code minier*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2018.

carried out in an unhealthy environment and with dangerous substances, which for instance is the case of the mining activities undertaken in the Cobalt mines within the DRC territory²⁹³.

3.5 Law n ° 09/001 of January 10 2009 on the protection of the child

The last national legal document that we will analyze is the Law n ° 09/001 of January 10 2009 on the protection of the child, which was promulgated as a way to address the pressing issues of child labour within the National territory. Its main objectives were to guarantee to children administrative, social, judicial, educational, and health rights with the aim of avoiding any form of abandonment, and physical, moral and sexual exploitation. In addition to this, it specifically addresses child labour and the rules to be implemented while contracting children for working activities. For example, the minimum age for employment was set at 16 years old, the worst forms of child labour were prohibited, including all the activities that may harm the health, growth, safety and development of the child, as well as the punishment for the employers that go against it²⁹⁴. In particular, according to Art.57 parental duties are set in relation to the protection against all forms of exploitation, including the economic one, as well as the State duties to provide children with basic services that might help in the elimination of child labour. For instance, services such as public schools can have an impact on those children that work to pay their tuition fees. Another important article in the context of economic exploitation is Art.58, which stresses that every child is protected by the law against any form of economic exploitation, which include all those work that limit the full development of children's physic, moral, mind, and social skills, which for instance include the labour activities undertaken in cobalt mines. Lastly, Art. 187 addresses the penalties that might be imposed to those individuals that do not comply with the law, for example, they "(...) shall be punished with a penalty of one to three years' principal penal servitude and a fine of one hundred thousand to two hundred thousand Congolese francs. (...)".

In conclusion, by analyzing the existing International and Regional Human Rights Framework on Child Labour ratified by the DRC it is clear that, as a State party, the DRC has the legal obligation to comply with the provisions set out in the Conventions and Treaties and to implement them at the National level. During the XX and XXI century efforts were made at the National Level, both in

²⁹³ Journal Officiel, *Arrêté ministériel N° 12/CAB.MIN/TPSI/045 /08 du 08 août 2008 fixant les conditions de travail des enfants*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2008.

²⁹⁴ Journal Officiel, *Loi N° 09/001 Du 10 Janvier 2009 Portant Protection De L'enfant*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2009.

general terms and eventually in specific terms within the context of child labour, and rules, duties, and penalties were set. Nevertheless, no real changes have been made in relation to it: because national efforts to eradicate child labour are not effective, children still work at a very early age and employers still benefit from children's manpower.

Chapter 4: Responsibility for child labour violations in DRC's cobalt mining: a focus on National and Transnational companies

1. The responsibility of National and transnational companies

Although responsibility for human rights violations is primarily given to States and individuals, it is important to analyse the responsibility of National and Transnational companies (TNCs) working in the cobalt supply chain in the DRC in the context of child labour violations. According to Prochazka, TNCs are defined as “business enterprises that consist of entities located in different States, operating under a system of decision-making that permits coherent policies and a common strategy²⁹⁵”. Therefore, TNCs usually operate in many different areas of the world and usually have the headquarters located in a developed country, such as in Europe or the US. TNCs are very powerful actors both locally and at the international level. In fact, they play an important role in the society where they work since they generate profits, pay taxes, produce goods and services, and clearly have a huge influence in the lives of their employees as well as in local inhabitants and natural surroundings²⁹⁶. In addition, as already addressed in the previous chapters, TNCs’ economic power and influence increased a lot during the last decades, and as a consequence TNCs are often more powerful than States, and therefore highly influence the international arena and the areas in which they operate²⁹⁷. Nevertheless, despite the positive effects that they might bring, it is important to recall that during the last century TNCs and National companies worldwide committed several human rights abuses, such as labour exploitation, physical and mental violence, and pollution of natural resources among others²⁹⁸. As a consequence, and in particular after WW2, there was an increasing international worry over human rights abuses perpetrated by companies²⁹⁹, and therefore developments in international regulations were made. However, due to the fact that National and Transnational companies do not possess a legal personality, they are not recognized as subjects of international law and therefore they do not hold human rights obligations. A “subject of

²⁹⁵ Prochazka, *Did You Ever Expect a Corporation to Have a Conscience? Human Rights Obligations of Transnational Corporations*, Human Rights Law Review, Queen Mary University of London, 2015, p.86.

²⁹⁶ Ibid, p.96.

²⁹⁷ Ibid, p.93

²⁹⁸ Olivet, *Violations of peoples’ rights by European TNCs*, Transnational Institute, 2010. (Online). Available at: <https://www.tni.org/en/article/violations-peoples-rights-european-tncs> [last accessed on 21/07/2022].

²⁹⁹ Especially by TNCs.

International law” is understood as an entity that owns a legal personality, therefore possesses both rights and duties under international law, and in addition has the ability to bring international claims in order to maintain its rights³⁰⁰. Under international law, States are the primary responsible for enforcing human rights standards in their territory through national legislation³⁰¹, and in case of violations they are held responsible for the failure to protect their citizens and territory from human rights violations³⁰².

For what concerns TNCs, in order to counterweight the lack of TNC’s responsibility under international law, in the past 5 decades the UN and other intergovernmental bodies worked to regulate businesses’ compliance under international law, for instance by promoting guidelines for multinational enterprises. These include the UN Guiding principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

Despite the fact that these instruments play an important role within the TNCs’ conduct in the context of human rights, they are not binding treaties, and therefore are considered ‘soft law’³⁰³.

Within this context and for the sake of completeness, it is important to stress that although TNCs usually do not possess any legal responsibility related to human rights abuses, there are specific norms that apply to non-State actors, such as TNCs, that could directly attribute responsibility to them. Such norms include war crimes, and crimes against humanity among others³⁰⁴. Nevertheless, these are not enough to ensure corporate responsibility when Human rights violations are committed. In fact, not only soft laws are inadequate since do not ensure enforcement mechanisms and sanctions for violations, but also National laws under which National companies and TNCs should comply, are often ineffective since are not enforced, especially in developing countries, where much of the violations are perpetrated³⁰⁵. In many cases it happens that the wish to increase foreign investments leads governments of developing countries to not give much attention nor adequate resources to monitor TNCs’ behavior³⁰⁶.

³⁰⁰ Prochazka, *Did You Ever Expect a Corporation to Have a Conscience? Human Rights Obligations of Transnational Corporations*, Human Rights Law Review, Queen Mary University of London, 2015, p.100.

³⁰¹ Ibid, p.87.

³⁰² Adeyeye, *Corporate Responsibility in International Law: which way to go?*, Singapore Year Book of International Law and Contributors, Singapore, 2007, p.143.

³⁰³ Meaning that such international norms do not impose legally binding obligations over TNCs. Prochazka, *Did You Ever Expect a Corporation to Have a Conscience? Human Rights Obligations of Transnational Corporations*, Human Rights Law Review, Queen Mary University of London, 2015, p.87-88.

³⁰⁴ Adeyeye, *Corporate Responsibility in International Law: which way to go?*, Singapore Year Book of International Law and Contributors, Singapore, 2007, p.142-143.

³⁰⁵ Ibid, p.148.

³⁰⁶ Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, The Yale Law Journal, USA, 2001, p.462.

Therefore, as demonstrated, neither State regulations nor guidelines are enough to prevent businesses' human Rights violations, such as child labour. Until now, the only enforcement mechanisms that exist under the framework of the International Human Rights law can only be implemented through the national system of the State in which the crimes have been perpetrated, by other States in international relations and by international bodies³⁰⁷.

In the following paragraphs we will analyze the existing obligations of companies under the DRC National law in the context of child labour, and we will go on by investigating the concept of Human Rights Due Diligence and the existing International Guidelines for multinational enterprises.

1.1 Obligations of National and transnational companies in the cobalt supply chain under DRC's National law

National and Transnational companies in the cobalt supply chain working in the DRC territory have certain obligations to comply in accordance with the DRC National law, which includes the Mining Code, the Mining Regulation, the Labour Code, the Ministerial order no. 12 on Child Labour conditions and the Law n ° 09/001 of January 10 2009 on the protection of the child. According to it, all the employers within the National territory³⁰⁸ have the duty to respect, protect, fulfil and promote human rights, including children rights, and hence should contribute to the abolition of all forms of child labour – also comprising its worst forms. For instance, according to Art.133 of the Labour Code³⁰⁹ companies cannot employ children under the age of 15 years old in any labour activity. In addition, it is required that they comply with the abolishment of the worst forms of child labour, hence avoiding employing children in any labour activity of this kind. Moreover, according to Art.321, those who do not comply with some of the articles of the Labour Code, including Art.133, should be punished with “a fine not exceeding 20,000 F.C.³¹⁰”.

Going on with the analysis on National legislation, companies should also comply with the regulations present in the Law n ° 09/001 of January 10 2009 on the protection of the child and on

³⁰⁷ Adeyeye, *Corporate Responsibility in International Law: which way to go?*, Singapore Year Book of International Law and Contributors, Singapore, 2007, p.151.

³⁰⁸ including companies working in the Katanga region.

³⁰⁹ It applies to both workers and employers, as well as those enterprises exercising Labour activities in the National territory. Available at: Journal Officiel, *Code du travail*, Journal Officiel de la Republique Democratique du Congo, Democratic Republic of Congo, 2002, Art.1.

³¹⁰ Journal Officiel, *Code du travail*, Journal Officiel de la Republique Democratique du Congo, Democratic Republic of Congo, 2002, Art.133-Art.321.

the Ministerial order no. 12 on Child Labour conditions. For what concerns the former, its Art.1 states that employers³¹¹ are forbidden to employ any child in working activities that might expose them to high risks, including those that are likely to injure or even kill them. Moreover, Art.8 stresses that employers are forbidden to engage children in the worst forms of labour, which for instance include those kinds of works that are likely to harm children's health and safety. If employers, and therefore companies, that employ children in mining activities do not comply with the National law, according to Art.20 they can be punished using the penalties provided in Art. 321 of the Labour Code, which has already been analyzed above³¹². Instead, the latter includes in its Art.187 the penalties that the perpetrators of human rights abuses directed to children should face in case they promote the worst forms of child labour, which for instance include prison as well as a fine³¹³.

These Articles present in the DRC legislation show that both National and Transnational companies have duties under National law. This means that businesses, and for instance those that work within the cobalt supply chain in the DRC territory, must respect the norms related to child labour, and hence are obliged not to employ children in any labour activity. Unfortunately, these norms are often not respected and many children still perform working activities in the cobalt mines, putting at risk both their safety and future development.

In order to make sure that companies comply with National law and internationally recognised norms, IOs have set out the principles of Corporate Responsibility and Human Rights Due Diligence. These serve as a bridge between hard law and soft law in order to give more specific tools to address businesses' human rights violations.

1.2 Corporate Responsibility and Human Rights Due Diligence

According to the international standards set out by the UN and other intergovernmental bodies, National and Transnational companies have a responsibility to respect human rights through due diligence processes and policy commitments. Therefore, every company is subjected to the so

³¹¹ Are defined as "natural or legal person". Natural person means an individual, while the legal person is a legal entity or in other terms a company with a legal personality, rights and obligations. Sedomicilier, *Différences entre personne morale et personnes physique : définition*, Sedomicilier, n.d. (Online). Available at: <https://sedomicilier.fr/articles/entreprise-difference-personne-morale-physique> [last accessed on 21/07/2022].

³¹² Journal Officiel, *Arrêté ministériel N° 12/CAB.MIN/TPSI/045 /08 du 08 août 2008 fixant les conditions de travail des enfants*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2008, p.1-2-5.

³¹³ Journal Officiel, *Loi N° 09/001 Du 10 Janvier 2009 Portant Protection De L'enfant*, Journal Officiel de la République Démocratique du Congo, Kinshasa, 2009, p.46.

called “corporate responsibility”, which states that businesses must avoid to violate the rights of the community in which they operate and have to address any adverse human rights impact that they might cause by establishing policies and processes to prevent and mitigate any of those risks. This responsibility has been stressed by the Human Rights Council, and was recognized by the ILO, the OECD, and the UN Global Compact³¹⁴.

Furthermore, the responsibility of companies to respect human rights must be complied independently of a State’s ability to fulfill its own legal obligations concerning human rights. Therefore, by looking at our case, although the DRC lacks the ability to enforce human rights policies linked to businesses³¹⁵, companies working within the DRC borders or buying minerals mined in the DRC still must act in order to respect and protect human rights in their operations³¹⁶. Another norm to which companies should comply is the so called “Human Rights Due Diligence”. This is defined as “a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it’ and hence strive ‘to do no harm’³¹⁷. This is an important concept at the international level³¹⁸ because it illustrates that entities other than States are required to observe human rights as well³¹⁹.

Corporate responsibility and Human Rights Due Diligence are set out in the UN Guiding Principles on Business and Human Rights, a UN framework developed in 2005 with the aim of addressing the impact of business on human rights abuses³²⁰. This was a first attempt to reduce the so called “governance gap³²¹” between the State’s capacity to manage the adverse impacts of businesses’ operations and the huge economic power that companies had gained so far³²².

³¹⁴ UN, *Frequently Asked Questions About The Guiding Principles on Business and Human Rights*, United Nations Office of the High Commissioner for Human Rights, New York and Geneva, 2014, p.25.

³¹⁵ The DRC government has committed to the mineral supply chain due diligence through the ICGLR and the incorporation of a directive into national law in February 2012 obliging all mining and mineral trading companies to perform supply chain due diligence, in line with the OECD Guidance and UN Security Council Resolution 1952. Available at: Taka, *A Critical Analysis of Human Rights Due Diligence Processes in Mineral Supply Chains: Conflicts Minerals in the DRC*, South African Institute of International Affairs, Johannesburg, 2014, p.12.

³¹⁶ Amnesty International, *This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt*, Amnesty International, London, 2016, p.40.

³¹⁷ Taka, *A Critical Analysis of Human Rights Due Diligence Processes in Mineral Supply Chains: Conflicts Minerals in the DRC*, South African Institute of International Affairs, Johannesburg, 2014, p.6.

³¹⁸ For instance this concept is central to the international movement for corporate accountability and is at the core to all the attempts to address conflict minerals in the global supply chains.

³¹⁹ Černič, *Corporate Human Rights Obligations At The International Level*, Willamette Journal of International Law and Dispute Resolution, Willamette University College of Law, USA, 2008, p.139.

³²⁰ Taka, *A Critical Analysis of Human Rights Due Diligence Processes in Mineral Supply Chains: Conflicts Minerals in the DRC*, South African Institute of International Affairs, Johannesburg, 2014, p.6.

³²¹ In particular, “governance gap” concerns to the lack of a formal legal regime at the international level regulating the human rights obligations that transnational corporations should follow.

³²² Prochazka, *Did You Ever Expect a Corporation to Have a Conscience? Human Rights Obligations of Transnational Corporations*, Human Rights Law Review, Queen Mary University of London, 2015, p.88-89.

Although we will analyze this specific UN framework in the following paragraphs, it is interesting to look closely to the due diligence concept in the context of child labour in order to better understand how it works and what its role is. For instance, a definition has already been given, but it can be added that this process is essential for companies to identify, prevent, mitigate and account for how they address their impacts on child labour in their field operations, as well as in their supply chain and in their relationships with other businesses³²³. This international norm should help enterprises to both prevent and mitigate child labour's involvement in their activities, and it also may help them determine whether or not to go on with their operations and business relationships in case the risk of negative effects are too high or the attempts to mitigate have not been successful. At the same time, Human Rights Due Diligence aims at maximizing the positive improvements that businesses might produce towards the local communities and stakeholders, as well as enhancing their reputation. For instance, these positive contributions may include the compliance with National labour laws and the strengthening of the management of the operational risks with the consequence of decreasing the possibility of accidents and the lobbying for a more equal and free access to education for all children³²⁴.

1.2.1 UN Guiding principles on Business and Human Rights

As a consequence of the rapid expansion of activities undertaken by transnational companies and their link with human rights abuses, in 2011 the UN Human Rights Council endorsed an international framework on businesses and human rights, which provides a basis for the distribution of responsibilities for upholding human rights between both States and companies. It is known as the "UN Guiding principles on Business and Human Rights" and is based on three main concepts: firstly, States have the responsibility to protect against human rights abuses undertaken by third parties (for instance transnational corporations); secondly, businesses have a corporate social responsibility to respect and protect human rights, and lastly there is the need for a better and more effective access to remedies³²⁵. "Responsibility" entails that companies must avoid human rights violations and must know and address any impact caused by them, directly or indirectly, for

³²³ Taka, *A Critical Analysis of Human Rights Due Diligence Processes in Mineral Supply Chains: Conflicts Minerals in the DRC*, South African Institute of International Affairs, Johannesburg, 2014, p.6.

³²⁴ OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, Organization for Economic Co-operation and Development, Paris, 2018, p.16.

³²⁵ Taka, *A Critical Analysis of Human Rights Due Diligence Processes in Mineral Supply Chains: Conflicts Minerals in the DRC*, South African Institute of International Affairs, Johannesburg, 2014, p.6.

example by providing effective remedy processes³²⁶. Furthermore, the Guiding Principles through their Art.13 “Protect, Respect and Remedy”, shed light on what the duties of companies are, as well as on which processes they might follow in order to identify and address the negative human rights impacts that they directly caused or contributed to, even if they have been perpetrated by third parties, such as suppliers or business partners. In order to do so, companies must establish policies and processes of assessments of their internal operations and external involvement with local communities. In addition, once a violation leading to adverse impacts has been identified, companies should cooperate in order to remediate³²⁷.

Although the Guiding Principles do not create legally binding obligations to businesses, they play a huge role because clarify what the implications of acting against the existing legal norms and international human rights standards are. Additionally, they guide States to set out in their domestic law specific obligations for businesses related to human rights in order to legally bound companies to comply with human rights norms at the local level³²⁸, and guide companies to include human rights corporate responsibility in their operations by creating legally binding requirements between them, their clients and suppliers³²⁹.

Within the context of child labour in the DRC, the UN Guiding Principles state that in practical terms National and Transnational companies directly or indirectly linked to the cobalt supply chain must first of all put in place policies that prohibit it in compliance with National and international regulations, then should develop monitoring mechanisms in order to understand and identify possible violations along their supply chain. Once violations have been identified, companies should take actions in order to remove children from child labour by supporting them and their families. This might include promoting school attendance and taking into considerations the family needs when fixing a salary. Such monitoring mechanisms must stay in place to check the evolution of child labour in order to avoid any possible setback³³⁰.

³²⁶UN, *Frequently Asked Questions About The Guiding Principles on Business and Human Rights*, United Nations Office of the High Commissioner for Human Rights, New York and Geneva, 2014, p.7-8.

³²⁷ OHCHR, *The UN Guiding Principles on Business and Human Rights: an Introduction*, OHCHR, New York and Geneva, 2011, p.3-4.

³²⁸ UN, *Frequently Asked Questions About The Guiding Principles on Business and Human Rights*, United Nations Office of the High Commissioner for Human Rights, New York and Geneva, 2014, p.8.

³²⁹ Ibid, p.9.

³³⁰ ECLT Foundation, *Business and Human Rights: what does it mean for child labour?*, ECLT Foundation, n.d. (Online). Available at: <https://www.eclt.org/en/news/business-and-human-rights-what-does-it-mean-for-child-labour> [last accessed on 21/07/2022].

1.2.2 OECD Guidelines for Multinational Enterprises

Another important group of guidelines is given by the Organization for Economic Cooperation and Development (OECD); and for the purpose of this thesis, it is interesting to analyze the “OECD Guidelines for Multinational Enterprises”, as well as the updated booklet “Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas”. The OECD Guidelines for Multinational Enterprises was first adopted in 1976³³¹, with the aim of promoting cooperation between States and Enterprises through non-binding principles and standards³³². Within the Guidelines there is a specific chapter related to Businesses and Human Rights, which promotes the implementation of the United Nations “Protect, Respect and Remedy” framework³³³. The Guidelines are addressed to both Governments and Businesses, with the difference that the States adhering to them engage in a binding commitment to implement them, while for Businesses their compliance is voluntary and therefore is not legally enforceable³³⁴. The Guidelines’ objective is that of promoting businesses’ positive impacts to the economy, environment and society in which they operate³³⁵. In particular, in its chapter V “Employment and Industrial Relations”, it states that enterprises should contribute to the abolition of child labour and take immediate and effective measures to guarantee the prohibition and elimination of its worst forms. They are expected to do so through both the National framework, employment practices and applicable international labour standards. For example, businesses could play an outstanding role in helping to address the root causes of child labour and poverty through managing their labour practices and creating well-paid jobs³³⁶.

³³¹ Throughout the years, the Guidelines were updated in order to address the most recent developments and issues at the international level.

³³² Such principles for responsible business conduct include local laws and internationally recognised norms. Available at: OECD Observer, *Policy Brief: The OECD Guidelines for Multinational Enterprises*, OECD, France, 2001, p.1.

³³³ The framework includes to respect human rights, to avoid causing harm or contributing to human rights violations, to mitigate negative human rights impacts, to carry out human rights due diligence and to provide access to remediation. OECD, *OECD Guidelines for Multinational Enterprises*, OECD Publishing, 2011, p.4. (Online). Available at: <https://www.oecd.org/daf/inv/mne/48004323.pdf> [last accessed on 21/07/2022].

³³⁴ Nevertheless, it is important to recall that anyways both domestic and Transnational enterprises should comply with domestic laws and regulations, as well as with internationally recognised norms. In addition, the respect for human rights is an expected conduct by the international community, and does not depend on States’ abilities and willingness to fulfil their human rights obligations. *Ibid*, p.31.

³³⁵ *Ibid*, p.3.

³³⁶ *Ibid*, p.38-39.

1.2.2.1 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

A more specific set of guidelines for companies working in the mineral supply chain is given in the “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas”, which specifically addresses those companies that trade and buy minerals with the aim of guaranteeing the respect of human rights and avoiding any contribution to conflicts. This Guidance was established in 2011 and was developed through a collaboration between eleven countries of the International Conference on the Great Lakes Region, among which the DRC, OECD countries, businesses, civil society, and UN Experts on the mining sector in the DRC. Although is not legally binding, in 2010 it has been endorsed in the Lusaka Declaration by the eleven-member States³³⁷ of the ICGLR, including the DRC³³⁸.

By specifically applying it to the DRC and its complexities³³⁹, it aims at encouraging companies to take positive steps and efforts³⁴⁰ to identify and address the risks of contributing to conflicts and human rights abuses in the DRC mining areas³⁴¹ particularly through risk-based due diligence³⁴², and has the goal of enabling the DRC to benefit from its mineral resources and preventing conflicts related to it. In order to undertake risk-based due diligence, the Guidance propose a five-step framework³⁴³. This includes establishing a strong management system, identifying and assessing any risk in the supply chain, implementing a strategy to counter the identified risks, conducting independent audit of the supply chain due diligence with a focus on the identified risks in the supply chain, and publicly report any findings³⁴⁴.

In addition, the OECD acknowledges that companies in the supply chain have different roles and therefore different responsibilities, and divides them in “upstream” and “downstream” companies.

³³⁷ Among which the DRC.

³³⁸ OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, Organization for Economic Co-operation and Development, 2016, Paris, p.3.

³³⁹ According to the Guidance, the DRC’s southern regions are considered high-risk areas since have a widespread political instability, institutional weakness, insecurity, violence and human rights abuses. Ibid, p.13.

³⁴⁰ Such as due diligence practices.

³⁴¹ Taka, *A Critical Analysis of Human Rights Due Diligence Processes in Mineral Supply Chains: Conflicts Minerals in the DRC*, South African Institute of International Affairs, Johannesburg, 2014, p.8.

³⁴² Refers to the steps businesses should pursue in order to identify and address risks to prevent and mitigate any adverse impact related to their operations and sourcing decisions. Available at: OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, Organization for Economic Co-operation and Development, 2016, Paris, p.13.

³⁴³ The framework is analyzed and explained in depth in the “Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains”. Available at: OECD, *Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains*, OECD, France, 2017.

³⁴⁴ OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, Organization for Economic Co-operation and Development, 2016, Paris, p.18-19.

The upstream companies comprise of smelter, refiners and traders located in the Katanga region³⁴⁵, while the downstream companies are those businesses that buy cobalt, manufacture it or sell final products that contain cobalt³⁴⁶. Their responsibilities are slightly different: upstream companies are responsible for tracing the source of cobalt to the mines, in order to understand the conditions of its extraction until its export and address any human rights violation within their supply chain. Such informations should then be shared with their downstream customers³⁴⁷. Instead, downstream companies are responsible for tracing cobalt to the company that refined and sold it in order to control their due diligence process and assess whether their measures are enough to counter violations. If violations are found, downstream companies should be involved into actions to mitigate the risks, by helping the improvement of upstream companies' due diligence. Additionally to that, all businesses have the responsibility to “mitigate” and “take corrective measures” for the victims of human rights violations. They must do so in cooperation with suppliers, other downstream companies, NGOs, National governments and international agencies, in order to ensure remediation of harm. For what concerns children, this might entail removing children from hazardous work by guaranteeing access to education, and support to them and their families³⁴⁸.

1.2.3 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

The last relevant soft law that we will analyze is the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), which is based on the ILO Conventions and Recommendations as well as on the obligations that States have following their ratification of the ILO Conventions³⁴⁹. It was adopted in 1977 by the Governing Body of the ILO, and subsequently by governments, employers and workers globally. Since 1977, it was amended several times, the last in 2017 as a response to new economic and legal developments³⁵⁰.

³⁴⁵ Includes buying houses and international traders.

³⁴⁶ This might include any electronic brand, such as Apple, Samsung, and HuaWei among others.

³⁴⁷ Amnesty International, *This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt*, Amnesty International, London, 2016, p.42.

³⁴⁸ Ibid, p.43.

³⁴⁹ Some relevant International Declarations, Conventions, Codes of Practice and Guidelines include the Forced Labour Convention, 1930 (No. 29) and its Protocol of 2014; the Minimum Age Convention (No. 138) and Recommendation (No. 146) 1973; the Worst Forms of Child Labour Convention (No. 182) and Recommendation (No. 190), 1999.

³⁵⁰ ILO, *What is the ILO MNE Declaration?*, ILO, n.d. (Online). Available at: https://www.ilo.org/empent/areas/mne-declaration/WCMS_570332/lang--en/index.htm [last accessed on 21/07/2022].

Although it does not represent any legally binding obligations, it still is an important instrument since it provides guidance to TNCs, multinational enterprises, employers and employees as well as governments on their roles and responsibilities on issues such as employment, working conditions, industrial relations and training, in order to support the positive effects that TNCs and National businesses might have on local communities, for example by guaranteeing the realization of decent work for all³⁵¹. For example, the MNE Declaration in its Art.8 and Art.11 stress the central role that law enforcement, the rule of law and social dialogue have and emphasize the duties that all parties (the State and companies) have in guaranteeing workers' rights through targeted measures and actions such as the adoption of customized social policies³⁵². For what concerns child labour, according to Art.25 and Art.27 of the MNE Declaration both TNCs and national enterprises should take effective and immediate actions to guarantee the elimination of forced labour, with a particular focus in child labour. In fact, businesses should comply with the National and international norms regarding the minimum age of employment and therefore should contribute to eliminating the worst forms of child labour³⁵³. Since the DRC is part of the ILO network and has ratified and enforced into its National laws the norms included in the ILO Child Labour Conventions, both National companies and TNCs should follow the Guidelines contained in this Declaration.

2. Case study analysis: Lawsuit Case against transnational companies: JOHN DOE I, et al. v. APPLE INC., et al.

The lawsuit case “JOHN DOE I, et al. v. APPLE INC., et al” is one of the most valuable cases that best illustrate our topic: the possibility of protecting vulnerable children and communities against the power of transnational corporations, as well as the possibility of directly accounting TNCs for human rights violations and worst forms of child labour³⁵⁴. The suit that we will analyse was filed on 16 December 2019 in the US District Court for the District of Columbia³⁵⁵ against some of the

³⁵¹ ILO, *What is the ILO MNE Declaration?*, ILO, n.d. (Online). Available at: https://www.ilo.org/empent/areas/mne-declaration/WCMS_570332/lang--en/index.htm [last accessed on 21/07/2022].

³⁵² ILO, *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, International Labour Organization. Geneva, 2017, p.2.

³⁵³ Ibid, p.8.

³⁵⁴ Gamble, *A Corporate Human Rights Due Diligence Law for California*, University of California, US, 2022, p.2424.

³⁵⁵ The claims were brought in a US court because the US provided a forum for human rights lawsuits which allows for extraterritorial jurisdiction. In addition, there is no law in the DRC that allows Plaintiffs to seek civil damages for injuries against downstream companies operating outside of the DRC, and the local judicial system is extremely

largest US based tech companies³⁵⁶, including Apple, Google owner Alphabet, Dell Technologies, Microsoft and Tesla; and was brought by 14 Congolese families³⁵⁷ whose relatives³⁵⁸, all minors, suffered from injuries or deaths working in some of the DRC Cobalt Mines that supplied those TNCs³⁵⁹. Interesting is that the legal action was brought against the cobalt end-user companies and not against the mine's operators or "upstream" companies.

The complaint claims that the Defendants³⁶⁰ are profiting of cobalt knowingly mined by children, who are forced into hazardous labour in cobalt mines at a very young age as a consequence of widespread poverty and lack of opportunities, and therefore they often become artisanal miners working in very dangerous circumstances with the risk of being killed or severely injured³⁶¹. These companies are all well aware of the fact that the cobalt they buy from the DRC is linked with child labour, as all of them purchase it from some of the largest and worst mining operators in the DRC, among which the "Kamoto Copper Company" (KCC). KCC is owned and controlled by Glencore, an Anglo-Swiss TNC that sells cobalt to Umicore, a Belgian TNC engaged in processing the cobalt and supplying it refined to tech companies, including those suited in the present case³⁶². These companies largely benefit from this supply chain since obtain cobalt at a price that clearly reflects the employment of underpaid children. The suit relies both on testimonials of the Plaintiffs families', on investigations made by the Plaintiffs' research team in Haut-Katanga and Lualaba Provinces, which include an exhaustive documentation and photographs of the reality of children in those mines that supply the Defendants³⁶³, and on the investigations undertaken by Amnesty International on the matter³⁶⁴.

corrupted and unable offer effective remedy. Available at: International Rights Advocates, *JOHN DOE I, et al. v. APPLE INC., et al.*, US District Court for the District of Columbia, Washington, 2019, p.18-19.

³⁵⁶ Referred to as "Defendants".

³⁵⁷ Referred to as "Plaintiffs".

³⁵⁸ The suit was brought by 14 families on behalf of thousands of other children facing the same issues.

³⁵⁹ Volterra Fietta, *Class Action Filed in US Court Against Tech Companies for Benefitting from Human Rights Violations in Cobalt Mining*, Volterra Fietta, 2020. (Online). Available at: <https://www.volterrafieta.com/class-action-filed-in-us-court-against-tech-companies-for-benefitting-from-human-rights-violations-in-cobalt-mining/> [last accessed on 27/07/2022].

³⁶⁰ the complaint cites the existence of programs and financial contributions promoted by the Defendants to organizations and initiatives that directly work to end child labour in DRC mines. This shows that the Defendants were well aware of child Labour in their supply chain but failed to properly address it.

³⁶¹ They mine using primitive tools to dig and build tunnel without safety equipment and tunnels structural support. As a consequence, tunnels often collapse with miners inside, whose bodies are trapped inside and never recovered. Available at: International Rights Advocates, *JOHN DOE I, et al. v. APPLE INC., et al.*, US District Court for the District of Columbia, Washington, 2019, p.5-6.

³⁶² Ibid, p.52-53.

³⁶³ Ibid, p.11.

³⁶⁴ Volterra Fietta, *Class Action Filed in US Court Against Tech Companies for Benefitting from Human Rights Violations in Cobalt Mining*, Volterra Fietta, 2020. (Online). Available at: <https://www.volterrafieta.com/class-action-filed-in-us-court-against-tech-companies-for-benefitting-from-human-rights-violations-in-cobalt-mining/> [last accessed on 27/07/2022].

From this case some questions arise: can individuals be protected from harmful TNCs practices? Is Human Rights Due Diligence enough to prevent and counteract businesses' human rights violations? What are the implications for the victims and perpetrators?

In the next paragraphs we will address the above-mentioned questions by investigating this case's claims and decisions.

2.1 Claims

Plaintiffs brought several claims to the US Court, which are based on four arguments: violation of the "US Trafficking Victims Protection Reauthorization Act³⁶⁵" ("TVPRA") due to the use of and benefit from forced labour, Defendants' unjust enrichment, negligent supervision and infliction of emotional distress.

In order to bring the case to the US, Plaintiffs argued that the US Court has jurisdiction over the case³⁶⁶:

- the US issued a forum for human rights lawsuits under the 2013 TVPRA amendments³⁶⁷.
- the case was brought under the Section 1596 title 18 of the TVPRA for violations of "Peonage, obstructing enforcement"³⁶⁸, "Sale into involuntary servitude"³⁶⁹, "Forced labour"³⁷⁰, and "Trafficking with respect to peonage, slavery, involuntary servitude, or forced labour"³⁷¹. According to it, the US has extraterritorial jurisdiction over the above-mentioned offenses as the alleged violators are nationals of the US or present in the US³⁷².

³⁶⁵ TVPRA allows victims of human trafficking and other crimes, like forced labor to bring civil claims against those who consciously benefitted from them.

³⁶⁶ International Rights Advocates, *JOHN DOE I, et al. v. APPLE INC., et al.*, US District Court for the District of Columbia, Washington, 2019, p.18-19-20.

³⁶⁷ See 18 U.S.C. § 1596: (a) In General.—In addition to any domestic or extra-territorial jurisdiction otherwise provided by law, the courts of the United States have extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit an offense) under section [1581](#), [1583](#), [1584](#), [1589](#), [1590](#), or [1591](#) if— (...); or (2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender. Available at: Legal Information Institute, *18 U.S. Code § 1596 - Additional jurisdiction in certain trafficking offenses*, LII, n.d. (Online). Available at: <https://www.law.cornell.edu/uscode/text/18/1596> [last accessed on 27/07/2022].

³⁶⁸ 18 U.S.C. §§ 1581.

³⁶⁹ 18 U.S.C. §§ 1584.

³⁷⁰ 18 U.S.C. §§ 1589.

³⁷¹ 18 U.S.C. §§ 1590.

³⁷² *Ibid.*

- the Court has federal jurisdiction under Section 1331 title 28 of the US Code for all civil actions arising under the Constitution, laws and treaties of the US³⁷³.
- the Court has jurisdiction under Section 1332(a) title 28 of the US Code for all civil actions where the issue exceeds a total of \$75.000 and is between citizens of a State and citizens of a foreign State³⁷⁴.
- the Court has personal jurisdiction over the Defendants as their HQs are all based in the US and they work within the District of Columbia, as stated in the Code of the District of Columbia § 13-423(a)(1)³⁷⁵.

In addition, Plaintiffs stressed that their claims cannot be addressed in the DRC since there is no National law according to which they could seek civil damages for Human Rights violations against the TNCs operating outside of their country; the judicial system is corrupt, therefore would not provide any effective remedy; and the trial could put in danger the Plaintiffs and their attorneys³⁷⁶.

The first claim that is brought to the Court under TVPRA, section 1589 and 1595 title 18 of the US Code³⁷⁷ is that the Defendants employ and benefit from child labour, trafficking or forcing young children to work in hazardous conditions in those artisanal mines that supplied cobalt to the Defendants. The claim stress that the Defendants' cobalt supply chain form a "venture"³⁷⁸ in order to profit from a cheap product, as children are only payed \$2 or 3 per day. In addition, it is recalled that the Defendants had knowledge that the cobalt they bought was mined by children, as it is well documented at the international level, especially by Amnesty International and other IOs that tried to shed light on the matter, and the Defendants' implementation of policies, contractual requirements and financial contributions to organizations aimed to end child labour in DRC mines clearly

³⁷³ Legal Information Institute, *28 U.S. Code § 1331 – Federal Question*, LII, n.d. (Online). Available at: <https://www.law.cornell.edu/uscode/text/28/1331> [last accessed on 27/07/2022].

³⁷⁴ Legal Information Institute, *28 U.S. Code § 1332 – Diversity of citizenship, amount in controversy, costs*, LII, n.d. (Online). Available at: <https://www.law.cornell.edu/uscode/text/28/1332> [last accessed on 27/07/2022].

³⁷⁵ Council of the District of Columbia, *§ 13–423. Personal jurisdiction based upon conduct*, Council of the District of Columbia, USA, 2022.

³⁷⁶ International Rights Advocates, *JOHN DOE I, et al. v. APPLE INC., et al.*, US District Court for the District of Columbia, Washington, 2019, p.18-19.

³⁷⁷ Defendants are liable under title 1589 and 1595 of the TVPRA, if they participated in a venture, knowingly "received anything of value" from the venture, and knew that the venture had engaged in forced labor as defined by § 1589. Available at: International Rights Advocates, *JOHN DOE I, et al. v. APPLE INC., et al.*, US District Court for the District of Columbia, Washington, 2019, p.60.

³⁷⁸ Venture refers to "an undertaking involving chance, risk or danger, . . . esp[ecially]: a business enterprise of speculative nature," or "something at hazard in a speculative venture". Available at: US District Court for the District of Columbia, *JOHN DOE I, et al. v. APPLE INC., et al. Memorandum Opinion*, US District Court for the District of Columbia, USA, 2021, p.20.

demonstrate the Defendants awareness of problems in their supply chain. The complaint goes on claiming that in order to guarantee the Defendants' innocence, Umicore, Huayou Cobalt and other TNCs intentionally mix the cobalt mined by children with other cobalt in order to manipulate any evidence and compromise its traceability, therefore the methodologies used to trace the cobalt supply chains from the DRC and to guarantee due diligence are clearly ineffective³⁷⁹.

The second claim that is brought to the Court is the unjust enrichment of the Defendants to the detriment of the Plaintiffs. The claim stress that the Defendants are economically profiting from child labour in the cobalt supply chain and therefore ask the Court the full restitution of the gains and benefits that the Defendants acquired in their wrongful conduct³⁸⁰.

The third claim that is brought to the Court is the negligent supervision of the Defendants. In fact, it is stressed that they have both the authority and resources to control and regulate what happens in the cobalt supply chain, as well as an influence on the upstream companies from which cobalt was supplied. Moreover, if their influence over those companies was not enough, the Defendants also had the possibility of interrupting their relations with those suppliers in the DRC that do not respect human rights until such violations are stopped. As a consequence of such negligent supervision, the Plaintiffs and many other children have suffered and still suffer from injuries and premature death. Therefore, Plaintiffs claim for a monetary compensation³⁸¹.

The fourth and last claim brought to the Court is the intentional infliction of emotional distress. The complaint claims that through their actions and negligent conduct, the Defendants consciously caused emotional distress to the Plaintiffs. Therefore, they ask for a compensation³⁸².

The Plaintiffs ask for a jury trial and relief, in order to award them among others a monetary compensation, consequential damages³⁸³, damages for mental and physical pain, injunctive relief, and the creation of a fund for medical care³⁸⁴.

³⁷⁹ International Rights Advocates, *JOHN DOE I, et al. v. APPLE INC., et al.*, US District Court for the District of Columbia, Washington, 2019, p.58-73.

³⁸⁰ *Ibid*, p.73-74.

³⁸¹ *Ibid*, p.75-76.

³⁸² *Ibid*, p.76-77.

³⁸³ including the loss of assets, of educational and business opportunities.

³⁸⁴ *Ibid*, p.78-79.

2.2 The Decision

On the 2nd November 2021, the Court dismissed the lawsuit due to several factors. First of all, the Court dismissed the case under the “Federal Rule of Civil Procedure 12(b)(1)³⁸⁵”, which question the subject-matter jurisdiction claiming that Federal courts have limited jurisdiction and in order to prove so, the Plaintiffs must demonstrate it does through actual facts³⁸⁶. Then the Court dismissed the case under the “Federal Rule of Civil Procedure 12(b)(2)”³⁸⁷ which question the personal jurisdiction claiming that in order to prove that there is personal jurisdiction, plaintiffs should assert specific and proven facts that connect directly the defendants to it. In this case, Plaintiffs only brought allegations and conclusory statements, which according to the Court are not sufficient³⁸⁸. Lastly, the Court dismissed the case under the “Federal Rule of Civil Procedure 12(b)(6)”³⁸⁹, which alleges a failure to state a claim. In this case, Plaintiffs just listed general elements, labels and conclusions, which is not enough to claim for relief³⁹⁰.

Then the Court addresses the Plaintiffs’ lack of standing: according to the Court the Plaintiffs did not have standing to bring their claims since the harm that they denounced was not properly traceable directly to the Defendants. This means that the Plaintiffs didn’t clearly showed that the cause of their injuries could be directly linked to the conduct of the Defendants, for instance none of them was directly employed by the Defendants, which also didn’t own none of the cobalt mines where they worked. According to the Court, the Plaintiffs also lack standing to seek injunctive relief with the aim of stopping the cobalt venture from using forced child labour. In this case, the Plaintiffs do not possess enough proofs to demonstrate that the downstream companies are responsible for the conditions in which cobalt was mined³⁹¹.

³⁸⁵ “12 (b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (1) lack of subject-matter jurisdiction”. Available at: Crushendo, *Rule 12 – Defenses and Objections*, Crushendo, 2022. (Online). Available at: <https://crushendo.com/frcp-12/> [last accessed on 27/07/2022].

³⁸⁶ US District Court for the District of Columbia, *JOHN DOE I, et al. v. APPLE INC., et al. Memorandum Opinion*, US District Court for the District of Columbia, USA, 2021, p.8.

³⁸⁷ “12 (b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (2) lack of personal jurisdiction”. Available at: Crushendo, *Rule 12 – Defenses and Objections*, Crushendo, 2022. (Online). Available at: <https://crushendo.com/frcp-12/> [last accessed on 27/07/2022].

³⁸⁸ US District Court for the District of Columbia, *JOHN DOE I, et al. v. APPLE INC., et al. Memorandum Opinion*, US District Court for the District of Columbia, USA, 2021, p.9.

³⁸⁹ “12 (b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (6) failure to state a claim upon which relief can be granted”. Available at: Crushendo, *Rule 12 – Defenses and Objections*, Crushendo, 2022. (Online). Available at: <https://crushendo.com/frcp-12/> [last accessed on 27/07/2022].

³⁹⁰ US District Court for the District of Columbia, *JOHN DOE I, et al. v. APPLE INC., et al. Memorandum Opinion*, US District Court for the District of Columbia, USA, 2021, p.10.

³⁹¹ US District Court for the District of Columbia, *JOHN DOE I, et al. v. APPLE INC., et al. Memorandum Opinion*, US District Court for the District of Columbia, USA, 2021, p.15-16.

Then the Court goes on by addressing Plaintiffs' claims, stressing that even in case it had jurisdiction over the claims, Plaintiffs did not adequately asserted facts to demonstrate that the Defendants actually violated the TVPRA; and if so, this doesn't guarantee that the TVPRA applies for extraterritorial jurisdiction, since all the human rights violations occurred in another country. Therefore, the Court dismissed the case under the "Defendants' Joint Motion to Dismiss", proclaiming Plaintiffs' failure to claim for relief. For instance, their first claim for relief was brought under the 18 U.S.C. § 1595, which included a suit for violations of "Forced Labour" (1589) and "Trafficking with respect to peonage, slavery, involuntary servitude, or forced labour" (1590). The issue is that Section 1595 requires Plaintiffs to allege that Defendants knowingly benefitted from participating in a venture that violated Section 1589 and 1590, but according to the Court this alleged "venture" is nothing more than just the global cobalt supply chain³⁹². Further, the Court stressed that none of the Plaintiffs was actually forced into labour by the Defendants, in fact the decision to start a working in the mines was mainly linked to economic issues³⁹³. Finally, the Court underlined that the Plaintiffs' claims of unjust enrichment, negligent supervision, and intentional infliction of emotional distress fail to specify on what laws are based. Besides that, the Plaintiffs did not provide adequate proofs of that the Defendants are responsible for the Plaintiffs' physical and psychological injuries under general tort law principles³⁹⁴.

2.3 Implications for the victims and Transnational Corporations

The decision of the Court has several implications that mostly negative affect the victims and every child that faced the same situation. But first, it is important to recall that the decision has been made on the basis of internal US jurisprudence, which although has extraterritorial scope, did not recognized the jurisdiction in this case. Unfortunately, the plaintiffs could not bring their claims before the Court in the DRC because of its corruption, nor could bring claims against TNCs to the African Court on Human and Peoples' Rights, as the system allows only complaints against an African State. Therefore, since the US Court mentioned did not recognized its jurisdiction, the decision was a victory for the TNCs suited, that clearly took part in a cobalt supply chain which knowingly exploited children. This demonstrates the issues and difficulties that plaintiffs face while suing large corporations. Being able to make TNCs accountable for their actions is very difficult,

³⁹² Ibid, p.11-14.

³⁹³ Ibid, p.22-30.

³⁹⁴ Ibid, p.31-32.

and although many guidances have been written by IOs on the matter, loopholes and shortcuts are often used to escape and guarantee innocence. Unfortunately, it is likely that this case could represent a precedent in favor of TNCs' guiltless and could discourage many more victims of human rights violations to give up even before suing those in charge of respecting the law. Therefore, questions and doubts arise on whether Human Rights Due Diligence is actually enough to prevent and eliminate violations and on whether TNCs can actually be held responsible for harmful practices. Human Rights Due Diligence was designed exactly for the purpose of establishing internal and external practices in line with the local law, but also with the international human rights standards, in order to identify, prevent, mitigate, and communicate any risk related to human rights at every level of the supply chain. The fact that companies voluntarily do not implement such policies and additionally are able to escape any type of responsibility is a clear demonstration of the fact that the guidelines do not work properly, and money and power still matter more than strengthening and developing communities. Human rights are still one step below economic wealth, and many States still protect National companies and economies in order to profit from cheap products, that clearly come at a "human cost". Hopefully, this might change with a more direct engagement of local governments and regulations to implement the already existing legislation on the matter, because this might be the only option to guarantee the respect of human rights in the work place.

Chapter 5: National and International initiatives to eliminate all forms of Child Labour in the DRC cobalt mines

1. National Bodies that coordinate efforts to end Child Labour in the DRC

With the beginning of the 21st century and the adherence of the DRC to many international treaties on child labour, the government finally promoted several initiatives with the aim of supporting any effort to end child labour at the National level. For instance, some National bodies were issued in order to coordinate the attempts to counteract and eliminate the worst forms of child labour in the mining sectors, which include: the National Committee to Combat the Worst Forms of Child Labour, the Regulatory and Control Authority for Strategic Minerals, and the Inter-Ministerial Commission Responsible for Addressing the Issue of Child Labour in Mines and in Mine Sites in the DRC. These bodies play an essential role in promoting initiatives against child labour and in raising awareness of the issues and impacts that child labour has, both among the local and the international society. Unfortunately, those bodies still present a very limited reach mainly due to the lack of resources and low power, and as a consequence their successes are still poor³⁹⁵.

In the following paragraphs we will briefly analyze the three above mentioned National Bodies and we will then go on by investigating what the National Policies related to end Child Labour in the DRC are and what the international society is doing to counteract this problem by looking at the International Projects related to end Child Labour.

1.1 National Committee to Combat the Worst Forms of Child Labour

The National Committee to Combat the Worst Forms of Child Labour was issued in 2006 under the “Interministerial Order No. 12/MIN/TPS/AR/34/2006 of June 10, 2006 establishing and operating the National Committee to Combat the Worst Forms of Child Labour³⁹⁶”, with the aim of developing, monitoring and implementing the “National Strategy For The Elimination Of The Worst Forms Of

³⁹⁵ ILAB, *2020 Findings on the Worst Forms of Child Labor – Congo, Democratic Republic of the (DRC)*, Bureau of International Labor Affairs, USA, 2020.

³⁹⁶ Journal Officiel, *Arrêté interministériel n° 12/MIN/TPS/AR/34/2006 du 10 juin 2006 portant création et fonctionnement du Comité national de lutte contre les pires formes de travail des enfants*, Journal Officiel de la République Démocratique du Congo, DRC, 2006.

Child Labour”³⁹⁷. The Committee is led by the Ministry of Employment, Labour, and Social Welfare (MOL), and comprises members of local NGOs, civil society and other ministries³⁹⁸. Its mission and tasks, which are described in Art.2 of the above mentioned Interministerial Order, range from framing National action plans, raising awareness of workers and children, to training the public sectors, employers and workers on child labour, and monitoring those businesses that employ children and sanctioning them³⁹⁹. In particular, the Committee’s action plans have the aim of identifying the worst forms of child labour and denouncing them, identifying communities that put children at risk, preventing children from working in very dangerous activities, as well as rehabilitating the youngs by re-integrating them in the society through education and psycho-physical activities⁴⁰⁰. The National Committee has contributed to the improvement of the child labour situation, albeit to a very limited extent. For example, the National strategy developed by Committee presents important structural problems, such as a lack of resources and poor coordination, and as a consequence the Committee’s reach is very limited⁴⁰¹.

1.2 Inter-Ministerial Commission Responsible for Addressing the Issue of Child Labour in Mines and in Mine Sites in the DRC

The Inter-Ministerial Commission Responsible for Addressing the Issue of Child Labour in Mines and in Mine Sites in the DRC (CISTEMA) was first issued in 2012 following a dialogue with the UN on the matter. The Commission’s main aim is that of eradicating child labour in the mining sector of the DRC through monitoring and coordinating the implementation of the “National Strategy for the fight against child labour in artisanal mines in the DRC⁴⁰²” by both State and non-State actors⁴⁰³. In particular, the Commission has the duty to advise the competent ministries to coordinate the measures

³⁹⁷ IBCR, *État des lieux du système de protection de l’enfant et de la formation des policiers, du personnel judiciaire et des travailleurs sociaux en République démocratique du Congo*, Bureau international des droits des enfants, Montreal, 2016, p.38.

³⁹⁸ ILAB, *2020 Findings on the Worst Forms of Child Labor – Congo, Democratic Republic of the (DRC)*, Bureau of International Labor Affairs, USA, 2020.

³⁹⁹ Journal Officiel, *Arrêté interministériel n° 12/MIN/TPS/AR/34/2006 du 10 juin 2006 portant création et fonctionnement du Comité national de lutte contre les pires formes de travail des enfants*, Journal Officiel de la République Démocratique du Congo, DRC, 2006.

⁴⁰⁰ Ibid.

⁴⁰¹ ILO, *Individual Case (CAS) – Discussion Worst Forms of Child Labour Convention 1999 (No. 182) - Democratic Republic of the Congo*, 106th ILC session, Geneva, 2017.

⁴⁰² Mettere reference

⁴⁰³ DELVE, *Delve Country Profile: Democratic Republic Of Congo Artisanal And Small-Scale Mining Sector*, DELVE, n.d., p.24. (Online). Available at: <https://delvedatabase.org/uploads/resources/Delve-Country-Profile-DRC.pdf> [last accessed on 11/08/2022].

adopted, to develop initiatives and actions and to bring relevant issues of child labour to IOs, such as the OECD, the UNICEF and the ILO. For instance, the Commission has developed a plan of action⁴⁰⁴ for the triennial period of 2017–20 with the aim of ending the employment of children in mining activities⁴⁰⁵.

1.3 Regulatory and Control Authority for Strategic Minerals

The Regulatory and Control Authority for Strategic Minerals (ARECOMS) was created in 2019 under the “Decree No. 19/16 of November 05, 2019 establishing, organizing and operating the regulatory and control authority for the markets of strategic mineral substances”. Its aim is that of controlling the supply chains of the so called “strategic minerals⁴⁰⁶” in order to guarantee that vulnerable groups, such as children and pregnant women, are not employed in hazardous labour in the mining sites⁴⁰⁷. According to Art.4 and Art.6 of the above-mentioned Decree, ARECOMS exercises its power in all the DRC territory in order to regulate and control the mineral supply chain from production to export. In order to do so, ARECOMS carries out several tasks among which implementing and monitoring the “safeguarding measures” of the mineral sector, advising the Government on the issues and solutions, checking that the businesses’ activities comply with the regulations, and guaranteeing the implementation of the legal, regulatory and contractual provisions along the production and export chain of strategic minerals⁴⁰⁸.

2. National Policies related to end Child Labour in the DRC

With the turn of the new century, and in particular starting from the 2010s, the Government, the Ministries and the above-mentioned Committees have put together and developed several National Policies to end child labour. The aim of such Policies is to strengthen the civil society’s and third sectors’ compliance with the already existing legislation on child labour and to promote effective

⁴⁰⁴ It will be properly analyzed below.

⁴⁰⁵ ILO, *Individual Case (CAS) – Discussion Worst Forms of Child Labour Convention 1999 (No. 182) - Democratic Republic of the Congo*, 106th ILC session, Geneva, 2017.

⁴⁰⁶ Including cobalt.

⁴⁰⁷ ILAB, *2020 Findings on the Worst Forms of Child Labor – Congo, Democratic Republic of the (DRC)*, Bureau of International Labor Affairs, USA, 2020.

⁴⁰⁸ Droit Afrique, *Décret n°19/16 du 05 novembre 2019 portant création, organisation et fonctionnement de l’autorité de régulation et de contrôle des marchés des substances minérales stratégiques*, Droit Afrique, RDC, 2019, p.2.

projects on the ground. Some of the National Policies that were elaborated in the last ten years are the National Action Plan to Combat the Worst Forms of Child Labour (2012-2025), the Inter-Ministerial Commission's Triennial Action Plan (2017–2020), the National Sectoral Strategy to Combat Child Labour in Artisanal Mines and Artisanal Mining Sites (2017–2025), and the Kolwezi Declaration For Responsible And Ethical Artisanal Mining Without Child Labour By 2025. These policies have between three to thirteen years of duration, and all focus on a better coordination and implementation of the already existing efforts to end child labour. Although most of the above-mentioned plans and strategies have not ended yet, their impact has been so far very limited due to the existing gaps and negative impact of the pandemic, which almost jeopardized those efforts⁴⁰⁹.

2.1 National Action Plan to Combat the Worst Forms of Child Labour (2012-2025)

The National Action Plan to Combat the Worst Forms of Child Labour (NAP) was developed by the National Committee to Combat the Worst Forms of Child Labour (NCCL), together with the UNICEF⁴¹⁰. The aim is to eliminate child labour in its worst forms in the Congolese territory by the end of 2025 through a more coordinated framework. For instance, the framework aims at reinforcing the adherence of the government and the effective application of both the National and International legislation ratified by it and relevant to child labour, which include the Constitution, the Labour Code, the law protecting the child, the Penal Code, as well as the Convention n° 138 on the Minimum Age for Admission to Employment and the Convention n° 182 on the Worst Forms of Child Labour, through the establishment of standards, procedures and mechanisms. Moreover, the framework also aims at strengthening the economic and social development policies in line with the Millennium Development Goals (MDGs)⁴¹¹. Thanks to its multi sectoral approach, the planning framework includes the efforts of social partners, civil society, local and international communities and other State structures⁴¹². Among its efforts, there are the promotion and enforcement of specific laws that prohibit the worst forms of child labour; the achievement of universal primary education at the National level, in order to make it inclusive, accessible and attractive to all; the development of employment opportunities, in order to increase the household incomes and therefore reducing

⁴⁰⁹ ILAB, *2020 Findings on the Worst Forms of Child Labor – Congo, Democratic Republic of the (DRC)*, Bureau of International Labor Affairs, USA, 2020.

⁴¹⁰ Ibid.

⁴¹¹ Ministère de l'emploi, du travail et de la prévoyance sociale, *Plan d'Action National de Lutte Contre les Pires Formes de Travail des Enfants en République Démocratique du Congo*, Ministère de l'emploi, du travail et de la prévoyance sociale, DRC, 2011, p.18.

⁴¹² Ibid, p.6 and p.17.

poverty and children's vulnerability; the development of monitoring and evaluation strategies in coordination with stakeholders; the awareness raising of the worst forms of child labour within the community, in order to empower them to stop the vicious cycle; and the development of rehabilitation activities directed to the victims of child labour⁴¹³. In order to achieve these objectives, some relevant actions were identified and put in place. For instance they include reviewing the legal and regulatory framework in order to identify any breach in the prohibition and abolition of child labour, and propose recommendations⁴¹⁴; developing and implementing a program in order to give responsibility to State agents for monitoring the application of laws through proper training and equipment⁴¹⁵; implementing free primary education to all children by building new schools, organizing school transportation, school canteens and scholarships⁴¹⁶; developing specific employment and professional integration programs for disadvantaged groups by targeting families with child workers or with children that reached the minimum age for access to employment⁴¹⁷; developing and implementing a program to protect children, which includes guidance for psychosocial care, rehabilitation, reintegration and monitoring of children involved in labour activities⁴¹⁸.

Since the Plan played an essential role in contributing to limiting child labour in its worst forms, in 2020 it was extended for five more years, from 2020 to 2025⁴¹⁹.

The plan also envisages an assessment mechanism to monitor the implementation of its objectives and the assessment of its achievements, which for instance include the drafting of annual reports containing the percentage of provinces with active projects against child labor, which should increase by 100% by 2016; sociodemographic inquiries on the labour rate among children, which should decrease by 5% by 2020; and the revision and harmonization of national jurisprudence to strengthening protection mechanisms, which should include 75% of the official texts by 2020⁴²⁰.

⁴¹³ ILAB, *2020 Findings on the Worst Forms of Child Labor – Congo, Democratic Republic of the (DRC)*, Bureau of International Labor Affairs, USA, 2020.

⁴¹⁴ Ministère de l'emploi, du travail et de la prévoyance sociale, *Plan d'Action National de Lutte Contre les Pires Formes de Travail des Enfants en République Démocratique du Congo*, Ministère de l'emploi, du travail et de la prévoyance sociale, DRC, 2011, p.22.

⁴¹⁵ *Ibid*, p.23.

⁴¹⁶ *Ibid*, p.32-33.

⁴¹⁷ *Ibid*, p.41.

⁴¹⁸ *Ibid*, p.44.

⁴¹⁹ ILAB, *2020 Findings on the Worst Forms of Child Labor – Congo, Democratic Republic of the (DRC)*, Bureau of International Labor Affairs, USA, 2020.

⁴²⁰ Ministère de l'emploi, du travail et de la prévoyance sociale, *Plan d'Action National de Lutte Contre les Pires Formes de Travail des Enfants en République Démocratique du Congo*, Ministère de l'emploi, du travail et de la prévoyance sociale, DRC, 2011, p. 63-64.

2.2 Action Plans to Address Child Labour in Mining (2017-2025)

In 2017 specific actions plans to address child labour in the mining sector were designed and put in place by the Ministry of Mines; these include the “National Sectoral Strategy to Combat Child Labour in Artisanal Mines and Artisanal Mining Sites” (2017–2025), the “Inter-Ministerial Commission’s Triennial Action Plan’ (2017–2020) and the “Kolwezi Declaration For Responsible And Ethical Artisanal Mining Without Child Labour By 2025”. The main aim is to eradicate child labour in artisanal mining by strengthening and monitoring the already existing relevant laws, improving data collection on the presence of child labour in the mining sector, improving child protection measures with the aim of removing children from mining sites, and helping stakeholders and businesses to improve their capacity to address child labour within their supply chain. In order to do so, the government and the relevant ministries⁴²¹ are working in cooperation with other entities, such as the Public-Private Alliance for Responsible Minerals Trade to end child labour in the cobalt sector, the Mining Police and with local NGOs⁴²².

2.2.1 National Sectoral Strategy to Combat Child Labour in Artisanal Mines and Artisanal Mining Sites (2017–2025)

Among the Action Plans to Address Child Labour in Mining there is the National Sectoral Strategy to Combat Child Labour in Artisanal Mines and Artisanal Mining Sites, which runs from 2017 throughout 2025. Its main aim is that of ending child labour in artisanal and mining sites in the DRC and in particular in the provinces of Haut-Katanga and Lualaba, where most copper and cobalt ores can be found. In order to achieve its goal, the Strategy was built on 4 axes in line with all SDGs, and include the promotion of cooperatives and local businesses in order to increase the household’s wealth; the development of basic social services, in order to guarantee the family stability; and the fight against child labour in mines through awareness-raising activities among the community, local and transnational companies, in order to promote responsible supply chains⁴²³. The partners of the Strategy contribute to it through projects and investment programs that they directly finance. Among

⁴²¹ Such as the Ministry of Mines.

⁴²² ILAB, *2020 Findings on the Worst Forms of Child Labor – Congo, Democratic Republic of the (DRC)*, Bureau of International Labor Affairs, USA, 2020.

⁴²³ AFDB, *République Démocratique Du Congo – Projet D’appui Au Bien-Etre Alternatif Des Enfants Et Jeunes Impliqués Dans La Chaîne D’approvisionnement Du Cobalt (PABEA- COBALT) Rapport D’évaluation*, Groupe de la Banque Africaine de Développement, DRC, 2019, p.1.

the projects that were developed within the Strategy there is the “Project to support the alternative well-being of children and young people involved in the cobalt supply chain” (PABEA-COBALT). This is a particular interesting example because through its actions, it aims at improving the success of the Strategy by strengthening the legal framework on mining activities and child labour, mobilizing local actors to end child labour within their supply chains, and developing a protection system for children victims of child labour⁴²⁴.

2.2.2 Inter-Ministerial Commission’s Triennial Action Plan (2017–2020)

The Inter-Ministerial Commission’s Triennial Action Plan (2017–2020), which was developed by the Inter-Ministerial Commission Responsible for Addressing the Issue of Child Labour in Mines and in Mine Sites in the DRC, aims at coordinating the activities to end child labour in mining sites by 2020. In order to do so specific objectives were designed, among which monitoring and evaluating the implementation of specific actions to end child labour in mines; strengthening the application of measures to limit the presence of children in the mineral supply chains, and implementing the legal measures issued by the relevant ministries and legislative framework⁴²⁵.

2.2.3 Kolwezi Declaration For Responsible And Ethical Artisanal Mining Without Child Labour By 2025

On November 23rd and 24th of 2020, politicians, mining operators and NGOs gathered together to discuss about the elimination of child labour in the artisanal mining sector. All the participants contributed to develop a common declaration, called the “Kolwezi Declaration for Responsible and Ethical Artisanal Mining without Child Labour by 2025”, with the commitment of working for this objective under the coordination of the Ministry of Mines⁴²⁶. In order to achieve the end of child

⁴²⁴ Ibid, p.2.

⁴²⁵ ILO, *Observation (CEACR) Worst Forms of Child Labour Convention, 1999 (No. 182) - Democratic Republic of the Congo*, ILO 107th ILC session, Geneva, Switzerland, 2018.

⁴²⁶ Viva Lualaba, *Les partenaires impliqués dans la lutte contre le travail des enfants dans le secteur minier en RDC réunis à Kolwezi*, Viva Lualaba, RDC, 2020.

labour, the parties dedicated to implement the operational plan of the “National Sectoral Strategy To Combat Child Labour In Mines And On Artisanal Mining Sites 2017-2025”, in line with the Sustainable Development Goals (SDGs), the local⁴²⁷ and international⁴²⁸ legislation ratified by the Government and the already existing lines of intervention⁴²⁹. For this purpose, the Declaration stresses that the Government committed to the establishment of a technical and financial partnership called “For responsible and ethical artisanal mining without child labour”, that has the objective of coordinating the actions on the ground in order to limit the socio-economic vulnerability factors of local communities and families involved in mining activities. It will do so by strengthening the legal and regulatory framework on child labour, promoting responsible mineral supply chains among the local and international businesses, improving the capacity building of the stakeholders and mobilizing the community through communication and awareness-raising initiatives⁴³⁰. These actions aim at targeting the root causes of child labour in order to guarantee an adequate standard of living for the households located in the mining areas, developing child protection services and guaranteeing to all children a quality education and a vocational training⁴³¹.

Overall, the Plans and Strategies have contributed a lot to improve the situation of children in these areas and to raise awareness among the local communities and businesses on the issues that child labour causes. Nevertheless, overall it is very unlikely that they will reach their purpose to definitely end child labour by 2025. In fact, many more factors should be taken into account, and many more millions should be spent to develop the economic activity of the families involved in child labour, as well as the business interest and capacity to control and put an end to it.

⁴²⁷ The Constitution, the Mining Code, the Labor Code, the National legislation on the protection of the children.

⁴²⁸ The Convention on the Rights of the Child and the ILO Conventions on labor standards.

⁴²⁹N.d., *Déclaration De Kolwezi Pour Une Exploitation Minière Artisanale Responsable Et Éthique Sans Travail Des Enfants À L'horizon 2025*, Kolwezi, DRC, 2020, p.1. Available at: https://congomines.org/system/attachments/assets/000/002/013/original/Déclaration_de_Kolwezi_avec_tous_les_PTF_impliqués_dans_la_lutte_contre_le_travail_des_enfants_dans_les_mines_version_finale.pdf?1607016202 [last accessed on 11/08/2022].

⁴³⁰N.d., *Déclaration De Kolwezi Pour Une Exploitation Minière Artisanale Responsable Et Éthique Sans Travail Des Enfants À L'horizon 2025*, Kolwezi, DRC, 2020, p.2. Available at: https://congomines.org/system/attachments/assets/000/002/013/original/Déclaration_de_Kolwezi_avec_tous_les_PTF_impliqués_dans_la_lutte_contre_le_travail_des_enfants_dans_les_mines_version_finale.pdf?1607016202 [last accessed on 11/08/2022].

⁴³¹Ibid, p.3.

3. International Projects related to end Child Labour in the DRC

In order to address child labour in the DRC mines, the international community and several IOS, among which the ILO, have funded and developed many projects to be implemented on the ground in order to address, combat and finally eliminate child labour through raising awareness, monitoring and capacity building activities in cooperation with the government, local NGOs and relevant companies. Some of the projects, which will be briefly described below, include the Combatting Child Labour in the Democratic Republic of the Congo's Cobalt Industry Project, the Global Trace Protocol Project, the Measurement, Awareness-Raising, and Policy Engagement (MAP 16) Project on Child Labour and Forced Labour, and the Youth Apprenticeship Program. Some of these directly aim at eliminating child labour by targeting companies and their supply chains, while others target children and their professional development in order to avoid their employment in hazardous activities in the mines.

3.1 COTECCO Project

The “Combatting Child Labour in the Democratic Republic of the Congo's Cobalt Industry” Project (COTECCO), was granted in 2018 for a duration of four years by the ILO and implemented by PACT in Kinshasa and in the provinces of Lualaba⁴³² and Haut Katanga⁴³³ in order to reduce child labour in the cobalt supply chain⁴³⁴. The main subjects of the project are those whose activities are directly linked to the protection and relief of children engaged in mining activities, such as agencies of the government, the private sector, local NGOs, employers and employees⁴³⁵. It does so by supporting activities to raise awareness on the issue, building the capacity of government and other stakeholders to both address child labour and enforce the relevant regulations and action plans, improving the monitoring activities of the private sector and the effective access to remedy, with the final objective of assisting the DRC Government to develop a child labour monitoring system with a multi-stakeholder approach. The project overall has achieved several results: for example, it contributed to the creation of the Inter-ministerial Commission in charge of Monitoring Child Labour in Artisanal Mining; and trained more than a hundred of people, including representatives of the government,

⁴³² In Kolwezi and nearby mining sites.

⁴³³ In Likasi, Lubumbashi and Kipushi.

⁴³⁴ ILAB, *Final Evaluation - Combatting Child Labor In The Democratic Republic Of The Congo's Cobalt Industry (COTECCO)*, Bureau of International Labour Affairs, DRC, 2022, p.5 and p.13.

⁴³⁵ *Ibid*, p.15.

private sector and local community, on child labour and its worst forms to give specific tools for monitoring and remediation⁴³⁶.

3.2 Global Trace Protocol Project

The Global Trace Protocol Project, which started on 2020 for a duration of four years, was granted by ELEVATE. Its main objective is to increase transparency in the tracing of cobalt mined by children in the cobalt supply chains among the upstream companies. In order to achieve this goal, the project addresses the identified barriers linked to the mineral's traceability in the supply chain, in order to develop specific tools and protocols to provide traceability solutions with the aim of eliminating child and forced labour⁴³⁷. With this objective, the project has developed "The Global Trace Protocol" and "The Global Trace Platform" to provide standardized protocols, tools and practices that business should follow to identify and eliminate child labour at a deeper level⁴³⁸. In order to do so, several actions were developed: for example, the number of the tested tracing methodologies of supply chains were increased and the results shared in order to identify any gaps and provide for recommendations to address child labour, as well as new tracing tools were developed and disseminated among the relevant stakeholders, and awareness raising activities were promoted among the local communities in order to show the negative impacts of this phenomenon⁴³⁹.

3.3 Measurement, Awareness-Raising, and Policy Engagement (MAP 16) Project on Child Labour and Forced Labour

The Measurement, Awareness-Raising, and Policy Engagement (MAP 16) Project on Child Labour and Forced Labour, was granted by ILO in 2016 and for a duration of six year. Its main goal is to address and eradicate forced and child labour and human trafficking in the selected countries, among which the DRC, where the project is implemented. In order to do so, a set of objectives and actions

⁴³⁶ ILAB, *Combating Child Labor in the Democratic Republic of the Congo's Cobalt Industry (COTECCO)*, Bureau of International Labour Affairs, n.d. (Online). Available at: <https://www.dol.gov/agencies/ilab/combating-child-labor-democratic-republic-congos-cobalt-industry-cotecco> [last accessed on 11/08/2022].

⁴³⁷ ILAB, *Global Trace Protocol Project*, Bureau of International Labour Affairs, n.d. (Online). Available at: <https://www.dol.gov/agencies/ilab/global-trace-protocol-project> [last accessed on 11/08/2022].

⁴³⁸ Elevate, *Global Trace Protocol*, Elevate, n.d. (Online). Available at: <https://www.elevatelimited.com/gtp/> [last accessed on 11/08/2022].

⁴³⁹ Ibid.

were developed, such as using research and surveys to address knowledge gaps on child and forced labour as well as on human trafficking; using data-driven techniques to raise awareness; and addressing child labour through strengthening the already existing policies, improving the capacity of the government and stakeholders, and supporting partnerships. In addition, the project aims at supporting the local initiatives to eradicate child labour by engaging with local governments, businesses, and other stakeholders, as well as by supporting business networks to develop policies to address human trafficking, child and forced labour⁴⁴⁰.

3.4 Youth Apprenticeship program

Besides the development of projects to directly combat and eliminate child labour in the DRC mines, other related projects were implemented in the DRC thanks to the contribution of international funds. One example that can be made is the “Youth Apprenticeship Program”, which is implemented by Pact near the mining sites and targets adolescents between 15 and 17 years old engaged in the mining activities. Although the project includes raising awareness activities, strengthening of the local economy, and advocating for law enforcement, the final objective of the program is actually to take the youth out of the mines by offering a vocational training to develop specific skills to work on other sectors of the local economy. In order to do so, detailed market studies are done in each community in order to identify relevant economic sectors. Then the selected youngsters are involved in a six-month intensive training program in a sector chosen by them⁴⁴¹, and are supervised by a local mentor. After the program, these formed young workers have several job opportunities, including support for business start-up through equipment, fundings and trainings⁴⁴².

These projects have proven to be essentials in order to directly address and eliminate child labour in the cobalt mines. As demonstrated, in order to really make an impact there is the need to address all aspects of child labour, and not just the legal one. For instance, throughout this thesis we have demonstrated that child labour has many drivers and is influenced by many factors. Therefore, a

⁴⁴⁰ ILAB, *Measurement, Awareness-Raising, and Policy Engagement (MAP 16) Project on Child Labor and Forced Labor*, Bureau of International Labour Affairs, n.d. (Online). Available at: <https://www.dol.gov/agencies/ilab/projects/MAP16> [last accessed on 11/08/2022].

⁴⁴¹ The economic sectors among which to choose include computer science, mechanics, soldering and metalwork, small animal husbandry, barbering, and tailoring. Available at: PACT, *Youth Apprenticeship Program*, PACT, n.d. (Online). Available at: <https://www.pactworld.org/projects/youth-apprenticeship-program> [last accessed on 11/08/2022].

⁴⁴² Ibid.

multilevel approach is needed to combat it. The projects that we have mentioned are only a small proportion of the actual number of projects that have been and are implemented so far in the region. These, contribute to keep vivid the hope and the belief that by 2025 – or at worst by 2030 – child labour in the region will be really ended.

Conclusion

The Democratic Republic of the Congo has a huge source of minerals, essential for the development of new technologies. In particular, cobalt is one of the most coveted minerals in the world for its use in lithium-ion batteries and green energy, making the DRC a central exporting country. As analyzed in our thesis, its demand worldwide is predicted to rise by 60% by 2025 and even more in the next few decades⁴⁴³. This intensify the likelihood of human rights violations within the DRC borders, which already happen on a daily basis. In particular, our focus on children and child labour shows an increasingly worrying situation for the most vulnerable groups, which from an early age are obliged by the circumstances to work in very dangerous places and in hazardous conditions. This phenomenon exacerbates the likelihood of a “lost infancy”, which is characterized by the lost of opportunities to study, play, and develop in a healthy environment. This results in worsening their psychological and physical problems, as well as in the community’s economic poverty and unhealthy environment. As demonstrated by our analysis, the drivers of child labour are numerous, and entail issues rooted in very deep and intertwined factors that started in the past and still haunt the country in the present. These factors, which include poverty and unemployment, the presence of a weak national educational system, the lack of an effective National judicial system, and the cultural tradition of working at an early age all contribute to make the children even more vulnerable to the worst forms of child labour in mines.

Despite these clear and well analyzed worrying issues, there is hope that things can and will change. For instance, Conventions and Charters⁴⁴⁴ for the protection of the rights of the child were developed at the international and regional level, making their provisions binding for those States who ratified them. This clearly represents a huge step forward the equal and universal protection of children worldwide and in the geographical area of our interest. In fact, the DRC signed and ratified these Conventions in the early 2000s, hence engaging in the promotion and protection of human rights within its national borders. The analysis of the aforementioned Conventions and Charters shows the huge commitment of the international community to create an international human rights framework that should be followed by States in order to achieve the protection of human rights worldwide. Within this framework, provisions on State Responsibility were developed in order to

⁴⁴³ Azevedo, M et. Al., *Lithium and Cobalt: a tale of two commodities*, McKinsey & Company, 2018. (Online). Available at: <https://www.mckinsey.com/industries/metals-and-mining/our-insights/lithium-and-cobalt-a-tale-of-two-commodities> [last accessed on 07/02/2022].

⁴⁴⁴ These are: UN Convention on the Rights of the Child, International Covenant on the Economic, Social and Cultural Rights, ILO Minimum age Convention (n.138), ILO Worst forms of Child Labour Convention (no. 182), African Charter on Human and People Rights, African Charter on the Rights and Welfare of the Child.

ensure the signatory's States commitment and effective implementations of such provisions. Therefore, our analysis shows that the DRC can and should be held responsible for human rights violations concerning children within its national borders. It is true that since the 2000s the country has done big steps forward the promotion and protection of human rights within its National legal framework, including for instance children and labour rights in its Constitution, Mining Code and Labour Code, but this is not enough. There is a clear lack of will and resources to properly implement such provisions at the local level, giving free space to perpetrators of human rights. Therefore, it can be said that the DRC is not doing enough to protect children's rights and has a clear responsibility to correctly implement the rule of law in the context of child labour and punish the perpetrators of such crimes within its jurisdiction.

In addition, through our analysis we were able to show that the State is not the only actor with duties and responsibilities concerning children's rights. In fact, National and Transnational Companies are important actors that legally hold rights and duties. This is showed by looking at the DRC National law⁴⁴⁵, which clearly states rights, duties and responsibilities of businesses working in the DRC National territory. Nevertheless, such businesses that have a physical presence in the country are not the only ones involved in the cobalt supply chain. In fact the supply chain is composed of upstream and downstream companies. Our analysis, based on internationally recognised principles of Corporate Responsibility and Human Rights Due Diligence, shows that downstream companies, which are those who buy cobalt from those businesses that already refined it such as Apple, Tesla and Microsoft, hold duties and responsibilities for human rights violations too. In fact, all businesses within the supply chain have a corporate social responsibility to respect and protect human rights, including the downstream companies.

Therefore the conclusions that initially might be drawn are that these companies, both upstream and downstream, can be held responsible for human rights violations. Nevertheless, our analysis showed how complicated and controversial this issue can be when brought to the court. Can companies really be held responsible for human and children's rights violations? A recent case⁴⁴⁶ brought to a US Court showed that it is very difficult to held transnational companies responsible for such violations, and although clear provisions exist for checking their accountability, responsibility remain a controversial issue. For instance, loopholes and shortcuts are often used to escape and guarantee the TNC's innocence, raising doubts on whether Human Rights Due Diligence is actually enough to prevent and eliminate violations and held TNC's responsible for harmful practices,

⁴⁴⁵ Mining Code, the Mining Regulation, the Labor Code, the Ministerial order no. 12 on Child Labour conditions and the Law n ° 09/001 of January 10 2009 on the protection of the child.

⁴⁴⁶ International Rights Advocates, *JOHN DOE I, et al. v. APPLE INC., et al.*, US District Court for the District of Columbia, Washington, 2019.

because the fact that companies voluntarily do not implement such policies and are able to escape any type of responsibility clearly demonstrates that the guidelines do not work properly and are not enough to counteract child labour.

All these findings show that the mining sector is not well controlled by local authorities and that overall there is a huge lack of law enforcement in the country. Clearly the DRC is not capable of complying with its duties and obligations under the international, regional and human rights framework, and companies lack the will to fully implement the internationally recognized human rights standards and due diligence processes. However, we demonstrated that there is also place for improvement and will to develop both the monitoring mechanisms and the life of the communities that work in these mining sites. For instance, we argued that National Bodies, National Policies and Internationally funded projects were developed in order to coordinate the efforts to end child labour. In particular, these projects target the issue of child labour from a multiple level, therefore augmenting the likelihood of its success.

Lastly, it is important to stress that without the commitment of the international community and the Transnational Corporations that are indirectly linked to child labour in the DRC cobalt mines, it is very unlikely that these projects will fully succeed. In fact, human rights violations in the DRC mines are deeply linked with the TNCs' (un)willingness to fully implement their duties regarding the protection of children and the abolition of child labour within their supply chain. Therefore, things will really change when these companies will stop to close their eyes in front of such violations, and the State will properly enforce its National law through law enforcement measures and punishment: humanitarian projects cannot change rooted issues by themselves.

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