



# DIGGING IN THE DIRT:

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## CHILD MINERS IN SIERRA LEONE'S DIAMOND INDUSTRY

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# *“Digging in the Dirt”*

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## **Child Miners in Sierra Leone’s Diamond Industry**

**A REPORT BY**

**IHRC**

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INTERNATIONAL HUMAN  
RIGHTS CLINIC AT  
HARVARD LAW SCHOOL

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## EXECUTIVE SUMMARY

Seven years after the end of a civil war that targeted children for atrocities, hundreds of children and youth are exploited daily as they labour in open-pit diamond mines. This report describes how the Government of Sierra Leone's failure to address the widespread use of child miners violates its obligations under domestic and international law to protect and promote the rights of children, in particular the rights to health, education and welfare. Specifically, these legal frameworks prohibit children under 18 years of age from performing hazardous mining work that interferes with their education or that is harmful to their health. By failing to redress the ongoing use of child labour in mining activities, the Government of Sierra Leone is permitting violations to continue and allowing the development of deep socio-economic grievances that threaten future social stability. The Government of Sierra Leone must undertake immediate measures to address the widespread use of children for mining-related activities in the country's diamond mines.

The implications of the Government of Sierra Leone's failure to ensure the rights of the country's children are two-fold: First, the practice of child mining is driven by the Government's failure to enforce laws prohibiting child labour and to provide truly affordable and accessible primary education. Second, once working in the mines, children are deprived of an education and compromised in terms of their overall health and welfare. Sierra Leone has approved both domestic legislation and ratified treaties to guarantee children accessible primary and junior secondary education as well as the provision of adequate health care services. These legal protections oblige the Government of Sierra Leone to implement measures necessary to end the systemic exploitation of children by the country's diamond industry.

Based on the experiences of child miners interviewed in over two dozen artisanal diamond mining sites, the International Human Rights Clinic (IHRC) at Harvard Law School has prepared this report, which describes how the rights of child labourers are grossly violated while working in such mines. Drawing from over 200 interviews with diamond diggers, mining actors, local chiefs, mine union representatives, community leaders and members of mining communities, this report seeks to inform immediate responses that are necessary to help eliminate this deeply exploitative practice and the rights concerns surrounding the health, education and welfare of children.

### **Labouring Under Hazardous and Unhealthy Conditions**

Beginning as early as ten years of age, child miners perform back-breaking labour under poor conditions where they receive little compensation

for their efforts. The mean time spent mining by the children interviewed for this report was approximately two years, which confirms findings from earlier studies chronicling the practice. Child miners interviewed for this report appeared overwhelmed by the work they undertook from morning to evening – shovelling and washing gravel for six days of the week. They complained of body and headaches, worms, malaria and other disease; adult diggers described the dangers posed to child miners from collapsing mining pits. These conditions constitute hazardous work and violate prohibitions on child labour. The dire health impacts that child miners uniformly complained of violate their right to health as protected under domestic and international law.

### **Performing Hard Labour for Little Pay Fosters a Low Sense of Self-Worth**

Daily wages for child miners range from Le 500 to Le 2,000 (approximately US\$0.15-US\$0.60); while those digging on contract (i.e. who do not receive any percentage of their diamond finds) reported being paid Le 7,000 (approximately US\$2.10) per day. In an industry marked by exploitation, child miners reported being denied their share of diamond proceeds as compared to those given to adults. Performing physically exhausting labour for virtually no pay, IHRC interviewers observed that child miners displayed a low sense of self-worth and little hope for the future. The situation facing child miners puts the Government of Sierra Leone in direct violation of its obligations under the Convention on the Rights of the Child to ensure an environment that fosters self-respect and dignity of the child.

### **Depriving Child Miners of the Right to an Education**

Affordable and accessible education is an important factor in alleviating the financial pressures placed on Sierra Leonean families in caring for their children. Many children interviewed for this report explained how as elder siblings, they found themselves mining, in part, to cover the education costs for younger siblings. Although government-run primary schooling is legally mandated as “free,” parents explained that costs associated with school attendance, such as payments for books, uniforms and report cards, preclude their children from completing their primary and junior secondary education. The failure of the Government of Sierra Leone to ensure the universal provision of education violates children’s right to education as guaranteed under domestic and international law.

The lack of affordable and accessible basic education, coupled with the abject poverty faced by families in mining communities, leads parents to put children to work to supplement low household incomes. Once mining,

child miners run the risk of being permanently deprived of their rights to an adequate education and to earn a reasonable livelihood. Though most child miners cannot afford to go to school, the children interviewed for this report overwhelmingly expressed a strong desire to learn. Likewise, parents of child miners interviewed for this report uniformly expressed the desire to return their children to school. Ensuring that schooling is affordable and accessible can help enable families to prioritize education for their children over working in the diamond mines.

### **Ensuring a Reasonable Livelihood and Standard of Living for Mining Families**

Resulting from weak regulatory oversight of artisanal diamond mining, the meagre distribution of benefits to families and communities in diamond mining areas exacerbates the practice of child mining. Thus, eradicating the practice of child mining also requires broad regulatory changes to ameliorate structural and systemic problems associated with the exploitative practices that characterize artisanal mining. The informal nature of alluvial diamond mining presents particular regulatory challenges, however; artisanal diggers are usually unregistered, have no formal employment contracts, and often work on an itinerant or seasonal basis. Asymmetrical bargaining power and weak regulatory oversight also enable a small number of dealers and exporters to ultimately profit from mining revenues, little of which is enjoyed by artisanal diggers or mining communities. Along the chain of diamond actors, supporters – who serve as financial backers of mining sites – exert considerable control over mining licence holders, which lowers earnings for licence holders and subsequently squeezes the earning potential for diamond diggers. To overcome these power imbalances, the regulatory regime must be reworked so that the large base of actors at the bottom of the mining pyramid are better drawn into the formal diamond economy and protected from exploitation. The Government of Sierra Leone's failure to develop appropriate policy frameworks and laws that ensure just and favourable conditions of work, including a decent standard of living for artisanal diamond diggers and their families, stand in violation of rights guaranteed under international law, including the International Covenant on Economic, Social and Cultural Rights.

Ensuring that mining communities better benefit from artisanal diamond mining is essential to improving the quality of life of families who currently do not see alternatives to putting their children to work in diamond mining. Encouraging legitimate local ownership of artisanal mines can provide the impetus to reinvest diamond profits in mining communities. Reform of Sierra Leone's regulatory agencies at both the national and local levels is thus

needed to ensure that those with access to and control over diamond wealth are appropriately reinvesting that wealth in their communities.

### **Ensuring a Role for Industry in the Fight Against Child Labour**

Industry actors must also support efforts to eliminate child mining. A key component to the role of industry is ensuring the equitable redistribution of diamond proceeds to diggers, their families and mining communities. Some advocates have highlighted the Kimberley Process Certification Scheme, which regulates “conflict” diamonds, as a potential model through which to compel state and industry actors to directly participate in addressing human rights violations in relation to the diamond industry. The feasibility of whether a certification scheme for child-labour-free diamonds can help to achieve rights protections must be deeply considered. In particular, implementation at the local level and the effective development of external evaluative methods are crucial components to a successful certification initiative.

### **Failing to Address the Needs of War-Affected Children**

The best interests of the child must be a primary consideration while undertaking post-war reconstruction efforts. IHRC researchers discovered how certain factors attributable to the war – such as disruption to schooling, loss of parents and exposure to mining as a result of abduction by armed factions – help drive children to work in diamond mining. In addition to children, the diamond mines employ many war-affected youth between the ages of 18 – 25 years, whose childhood development was similarly disrupted. International instruments oblige states to provide for physical and psychological recovery, as well as the rehabilitation and social reintegration of children affected by armed conflict. The ongoing exploitative situation facing child and youth miners demonstrates how the Government of Sierra Leone must do more to fulfil the socio-economic rights of children and youth whose childhood development was disrupted by the country’s civil war.

### **Undertaking a Two-Pronged Approach to Eliminating Child Mining**

The impoverishment of adult miners, war-related factors and the failure of the Government of Sierra Leone to ensure universal access to a basic education together drive the practice of child mining in the country’s artisanal diamond mining industry. The elimination of the practice of child mining therefore requires a two-pronged approach. First, development programming that directly protects and realizes child rights – including and

especially ensuring affordable and accessible primary education – is urgently needed. Second, regulatory reforms must be implemented to ensure improved distribution of diamond proceeds to diggers, their families and mining communities, as well as better working conditions. The Government of Sierra Leone must respond to the situation or risk marginalizing a large segment of the country's post-war generation due to systemic failures to protect and promote their rights to education, health and welfare.

## RECOMMENDATIONS

### TO THE GOVERNMENT OF SIERRA LEONE

#### ILO Convention 182

- Immediately ratify ILO Convention 182, joining the commitment of 169 States to eliminate the worst forms of child labour.

#### Delivery of Education

- Undertake measures to ensure the provision of free education from primary to secondary school. Obligate the Government, through statutory instrument, to ensure that primary and junior secondary education must be made available free of any direct and ancillary cost, in accordance with § 3(3) of the Education Act. Eliminate exam fees, uniform fees, and report card fees, and ensure that basic school supplies are directly provided to children.
- Commit to ensuring access to primary and secondary education to children living in rural communities, including the rehabilitation and/or construction of schools outside of district capitals, with a particular focus on mining communities.
- Implement measures to ensure the delivery of quality schooling, including achieving reduced class sizes and improving teacher training. Ensure the placement of properly trained and qualified teachers in primary and secondary schools in rural areas, especially in diamond-mining communities.
- Provide accelerated learning programs for child and youth diamond diggers who do not possess a primary education. Ensure that accelerated learning programs are made accessible during off-work hours.

#### Health & Safety in Mining Communities

- Develop and implement targeted health interventions in mining communities, including the provision of medical treatment for children engaged in mining-related activities.
- Consider and implement measures to protect the occupational health and safety of diamond diggers, including strengthening legal obligations on industry actors to provide medical care for diggers when they become injured or sick as a result of their work.

### Mining Regulation

- To address the practice of child mining:
  - Implement programs targeting the rehabilitation of child miners, focusing on the delivery of a basic education and livelihoods support for mining families.
  - Ensure that programs targeting child miners are situated within broader community development programs, which address the underlying causes of child mining.
  - Strengthen mines monitoring to ensure oversight of compliance with diamond mining regulations, including reporting on the use of children for mining-related activities. Improve the training, logistical support and salaries of mines monitors.
  - Consider extending education and livelihoods programming to youths between 18 and 25 years of age who turned to diamond mining after the civil war devastated their childhood education and development.
- To improve the overall welfare of diamond diggers and their families:
  - Ensure transparency and access to information concerning diamond valuation, which can improve bargaining power among diggers, miners/supporters and exporters. Consider implementing a system of independent valuers to oversee sales between mining actors to ensure that sales reflect actual market value.
  - Adopt and enforce occupational health and safety standards that address exploitative working conditions for diamond diggers.
- To improve the overall welfare of mining communities:
  - Consider and implement measures to ensure the transparent distribution and use of monies in mining communities from the Diamond Area Community Development Fund (DACDF), including:
    - Publish the amount of monies released to chiefdoms and districts in mediums accessed by rural communities, including radio and local newspapers.
    - Establish reporting mechanisms to enable local communities and civil society to demand accountability for how DACDF monies are allocated and spent.
    - Implement spending guidelines that direct DACDF monies to education programming, including the

- rehabilitation of schools, supporting school feeding programs, etc.
  - Mandate participation by local civil society and local community members on committees that oversee disbursement of DACDF funds, which will be used in specific areas.
- Facilitate legitimate local ownership of artisanal mining licences to ensure that mining communities better benefit from diamond proceeds. Specifically, clarify property and inheritance laws; streamline the currently complex licencing scheme; and transparently oversee the exercise of power by Paramount Chiefs over surface rights.
- Consider and develop land reclamation projects in mining areas that are no longer producing significant diamond yields; and support agricultural projects.

#### **TO THE ANTI-CORRUPTION COMMISSION**

- Investigate any allegations that government officials, individually or through relatives, hold interests in diamond mining ventures, in contravention of domestic law.
- Work with mining regulators to ensure transparency in mining dealings at the central and community government levels, including eliminating corrupt practices by mining and other government officers, community leaders and industry actors.

#### **TO PARAMOUNT AND LOCAL CHIEFS, AS WELL AS DISTRICT COUNCILS**

- Lead community monitoring efforts of the use of children in mining areas, working with stakeholders to eliminate the practice of child mining.
- Ensure a transparent and participatory process concerning the disbursement of DACDF monies that includes civil society and community representatives.
- Support land reclamation processes and work towards ensuring sustainable agriculture initiatives at the community level.

#### **TO THE DIAMOND INDUSTRY**

- Commit to measures to eliminate the practice of child mining, including the development and implementation of education and livelihoods programs to rehabilitate child miners in mining communities based on donations from diamond revenues.
- Provide technical support and resources to regulators and mining

communities to implement measures to ensure fair transactions of diamond sales among all actors in the diamond mining industry.

#### **TO THE KIMBERLEY PROCESS**

- Formulate, through the recently established Working Group on Artisanal Alluvial Producers, standards for working conditions in artisanal mining countries like Sierra Leone.
- Through consultations with government, industry and civil society stakeholders, consider the feasibility of designing and implementing a certification scheme that would guarantee that diamonds were not produced through child labour.

#### **TO INTERNATIONAL ORGANIZATIONS AND INTERNATIONAL DONORS**

- To eliminate the practice of child mining, develop and fund programs targeting the rehabilitation of child labourers in mining communities, which address education and livelihoods issues:
  - Partner with local organizations working on child protection issues, with a focus on supporting community-based organizations operating outside of the capital of Freetown, to address the socio-economic needs of children living in mining communities.
  - Continue to incorporate the participation of children, parents, school teachers and other local stakeholders in the design and the implementation of programming.
- To improve the welfare of families living in mining communities, undertake feasibility studies to improve the capture of mining revenues for local mining communities, including further investigations into the feasibility of mining cooperatives such as those supported by USAID.

## I.

### INTRODUCTION: MINING FOR SURVIVAL

Under the glare of the West African sun, 15-year-old Ibrahim stands and stretches. Ibrahim and his younger brother Joseph, a 13-year-old, do not enjoy working in diamond mining. “We suffer,” says Ibrahim, as he describes painful headaches that result from carrying heavy buckets of gravel on his head. The two brothers came to the artisanal diamond mines in Kono District after their parents died during the country’s eleven-year civil war. Living with an uncle who struggles to feed his own four children, Joseph explains, “[It] here is not enough for all of us. I’m just his nephew.” Child labour in artisanal diamond mining is common. The exploitative working conditions that characterize artisanal diamond digging adversely affect the physical health of child miners and deprive many of a sense of self-worth.

Initiated by the International Human Rights Clinic (IHRC) at Harvard Law School, this report presents findings based on over 200 informant interviews with adult and child miners as well as consultations with community and civil society actors living and working in diamond mining communities. Over the course of two weeks in January 2008, IHRC researchers conducted 120 interviews with adult and child miners in mining communities throughout Kenema and Kono Districts of Sierra Leone. Interviewees were selected through a non-random targeted sampling; access to mining sites was gained through local community contacts, including community-based organizations and representatives of the United Mineworkers Union. Each qualitative interview was conducted through the same set of open-ended questions. Of the 120 interviews with individuals working in artisanal diamond mining, 30 were children (from 8 – 17 years), 45 were youths (from 18 – 25 years), and 40 were adults (26 years and older) – five interviewees were of an ‘unknown age.’ Focus groups were also conducted with chiefs, community leaders and members of diamond mining communities, in addition to individual interviews with members of civil society, teachers and other community actors living and/or working on issues related to mining communities.

This report explains how the prevailing impoverishment of adult diggers, war-related factors and the failure of the Government of Sierra Leone to ensure universal access to a basic education drive the practice of child labour in artisanal diamond mining. Chapter II of this report explains how the prevalence of child mining violates Sierra Leone’s obligations under domestic and international law, which are necessary to ensure the survival and development of children through the prohibition of their involvement in

hazardous labour as well as the protection of their rights to health, education and welfare. Chapter III describes the artisanal diamond mining industry, including the exploitative conditions under which adult diggers work, and which drive the practice of child mining by impoverishing families in mining communities. This report describes in detail the experience of children who work in artisanal diamond mining in Chapter IV; specifically, it examines how prevailing exploitative conditions detrimentally affect their physical and emotional well-being and therefore violate their fundamental rights. Chapter V identifies specific factors that drive children into mining that have directly resulted from the country's eleven-year civil war. Chapter VI highlights how shortcomings in the delivery of basic education by the Government of Sierra Leone also drive the practice of child mining, while Chapter VII highlights how weaknesses in the regulation of Sierra Leone's artisanal mining industry keep communities from profiting from the industry.

Development and regulatory shortcomings ensure that families in mining communities remain impoverished and unable to educate their children, leaving few options but to work in diamond mining. Based on the documentation of the causes and nature of the problems addressed, this report recommends an integrated two-prong approach that undertakes development programming to address the educational and economic needs of children and their families, in parallel with improving mining regulations and other initiatives to increase local ownership over mining activities that would better direct benefits to mining communities.

The exploitation of child labourers in artisanal mining stands to generate grievances amongst a large segment of the country's post-war generation. This situation must be considered against existing concerns with widespread youth unemployment and the potential impact on social stability. To avoid extinguishing the hopes and dreams of Joseph and Ibrahim, and many other boys and girls, Sierra Leone must comply with its obligations under domestic and international law and put an end to the practice of child labour in the country's artisanal diamond mines through measures that address the underlying societal inequities that force children to seek work in the mines.

## II.

### THE PROTECTION OF CHILDREN UNDER DOMESTIC AND INTERNATIONAL LAW

Children working in the diamond mines of Sierra Leone represent a cross-section of society's most vulnerable groups such as former child soldiers, street children, unaccompanied children and children from households in extreme poverty. The children endure physically punishing work and risk of injury or death from serious accidents and disease. Moreover, the work keeps them from attending school and receiving a basic education.

This chapter outlines the legal protections afforded children under international as well as domestic law that oblige the government of Sierra Leone to end the systemic exploitation of children by the country's diamond industry. Animated by the "best interests of the child" standard, international law and Sierra Leonean law aim to eliminate child labour, recognizing the potential harm it poses to the full development and well-being of children. Both legal frameworks share one overarching objective: to respect, protect, and fulfil the life, health and dignity of children. The practice of child mining grossly violates these standards.

With the Child Rights Act of 2007, Sierra Leone sought to bring its domestic law into compliance with the leading international instrument on child rights, the Convention on the Rights of the Child (CRC).<sup>1</sup> The three overarching CRC principles that direct the form and orientation of all measures affecting children are the best interests of the child (Article 3), non-discrimination (Article 2) and participation (Article 12). Of particular import to the CRC and the Child Rights Act is the "best interests of the child," which should be a primary consideration "in all actions concerning children" engaged in by a government.<sup>2</sup> The Child Rights Act and the CRC underscore children's right to life, survival and development as well as the state's responsibility to fulfil this right.<sup>3</sup> To achieve the survival and development of children, the CRC principles ought to be considered in every aspect of state action.

Beyond the primary CRC principles, three important dimensions of child rights are applicable to the context of child mining:

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<sup>1</sup> The Child Right Act, 2007, Supplement to the Sierra Leone Gazette Extraordinary Vol. CXXX-VIII, No. 43, pmb1 (2007) (Sierra Leone) [hereinafter Child Rights Act].

<sup>2</sup> See United Nations Convention on the Rights of the Child, art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

<sup>3</sup> Child Rights Act, *supra* note 1, §§ 3, 23-26. See CRC, *supra* note 2, art. 6.

- ❑ Minimum age requirements that protect children from the harms of physical labour;
- ❑ Rights to health and education, which are critical to the survival and development of children; and
- ❑ The prevailing need to connect and contextualize the protection of children's rights to their post-conflict environment.

### A. Minimum Age Requirements for Hazardous Work

Sierra Leonean law prohibits employing children under the age of eighteen in diamond mining. The Child Rights Act of 2007 establishes the minimum age for employment at fifteen for full-time employment; however, the minimum age is set at eighteen for hazardous work.<sup>4</sup> In recognition of the dangers inherent to mining labour, the Child Rights Act explicitly classifies mining as “hazardous work.”<sup>5</sup> To ensure compliance, the Act requires mining employers to maintain a register of the birth dates, or apparent ages (if the birth date is unknown) of all children and young people employed.<sup>6</sup> The Government of Sierra Leone is under an ongoing duty to enforce these provisions; district labour officers and district councils are charged with ensuring that mining operations are not employing children under the age of eighteen, and that mine operators maintain the required birth register.<sup>7</sup>

Sierra Leone is a State Party to the CRC as well as the African Charter on Human and Peoples' Rights. Both instruments prohibit the employment of children under eighteen in work that is likely to be hazardous or interfere with their development, and recognize mining work as such.<sup>8</sup> The CRC further prohibits children from performing work that interferes with their education

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<sup>4</sup> Child Rights Act, *supra* note 1, §§ 125, 128.

<sup>5</sup> *Id.* § 128.

<sup>6</sup> *Id.* § 130.

<sup>7</sup> *Id.* §§ 132-133.

<sup>8</sup> See CRC, *supra* note 2, art.32.1; African Union, African Charter on the Rights and Welfare of the Child, art. 15.1, July 11, 1990, OAU Doc. CAB/LEG/24.9/49 [hereinafter African Charter]. The International Labour Organisation also prohibits the employment of children under the age of eighteen from working in conditions that are “likely to harm their health, safety, or morals.” Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182), art. 3(d), June 17, 1999, 2133 U.N.T.S.161 [hereinafter ILO Convention 182]. The ILO defines hazardous work to include “work . . . which involves the manual handling or transport of heavy loads; work in an unhealthy environment . . . work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.” *International Labour Organization, Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (ILO R190), ¶ 3, ILO Gen. Cont., 87th sess. (June 17, 1999). Sierra Leone has not signed or ratified ILO Convention 182.

or that is harmful to their health.<sup>9</sup> As a State Party to these treaties, the Government of Sierra Leone is obligated to enforce minimum age requirements in practice.<sup>10</sup> Reviewing Sierra Leone's compliance with the CRC, the UN Committee on the Rights of the Child in 2008 specifically noted its concern with "the continuing existence of child labour [in Sierra Leone], including ... the widespread use of children for purposes of manual labour in mining areas."<sup>11</sup> The findings of IHRC researchers as presented in this report confirm this conclusion and detail the serious consequences of child mining for the well-being of many Sierra Leonean children.

## **B. The Relationship Between the Rights to Health and Education and the Practice of Child Mining**

The implications of the Government of Sierra Leone's failure to realize the survival and development of children are two-fold. First, the failure to provide accessible and affordable primary education, as well as the failure to enforce laws prohibiting child labour, together lead families to put their children to work rather than send them to school. Second, child labour deprives children of their education while compromising their health. Recognizing this critical relationship between education and child labour, the UN Committee on the Rights of the Child recently recommended that Sierra Leone combat child labour by "ensur[ing] that primary education is free of charge, and also of other (additional) costs, in order to facilitate the participation of all children in primary education."<sup>12</sup>

### 1. The Right to Basic Education for Sierra Leonean Children

Sierra Leone's Education Act of 2004 stipulates that every citizen has the right to a basic education, defined as six years of primary school and three years of junior secondary school. The Act requires the government to provide basic education free of charge in government-assisted schools.<sup>13</sup> Furthermore,

<sup>9</sup> CRC, *supra* note 2, art. 32.1. See also U.N. Committee on the Rights of the Child, *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, ¶ 18, U.N. Doc CRC/GC/2003/4 (July 1, 2003) [hereinafter CRC General Comment No. 4].

<sup>10</sup> See CRC, *supra* note 2, art 32.2; African Charter, *supra* note 8, art. 15.2.

<sup>11</sup> U.N. Committee on the Rights of the Child, Concluding Observations, Sierra Leone, ¶ 68, U.N. Doc. CRC/C/SLE/CO/2 (June 20, 2008) [hereinafter CRC Concluding Observations].

<sup>12</sup> *Id.*, ¶¶ 65, 68.

<sup>13</sup> The Education Act, 2004, Supplement to the Sierra Leone Gazette Vol. CXXXV, No. 19 (2004) (Sierra Leone), § 3. The Government of Sierra Leone unfortunately qualified this provision by saying that education would be free in government-assisted primary and junior secondary

the Child Rights Act prohibits the involvement of children in any form of exploitative labour, defined as labour that “deprives the child of its health, education or development.”<sup>14</sup>

Under the International Covenant on Economic Social and Cultural Rights (ICESCR) and the CRC, the Government of Sierra Leone is obligated to realize the right to education, in particular, the provision of primary education.<sup>15</sup> The ICESCR and the CRC require States Parties to realize the right to education progressively<sup>16</sup> by making primary education compulsory and available at no cost to all<sup>17</sup> and by making secondary education – both general and vocational education – available and accessible to all, including through financial assistance when necessary.<sup>18</sup> In addition, ILO Convention 182 recognizes “the importance of education in eliminating child labour” and calls upon states to ensure access to free basic education and vocational training.<sup>19</sup> The Committee on the Rights of the Child has noted the special importance of free primary education and accessible secondary education for adolescents.<sup>20</sup>

The Committee on the Rights of the Child applauded the Government of Sierra Leone’s enactment of the Education Act and the Child Rights Act, as well as the draft National Policy on Child Well-being.<sup>21</sup> However, in 2008 the Committee noted that the Government of Sierra Leone had not yet fully implemented much of this legislation and, furthermore, that basic health

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schools “to the extent specified by the Minister by statutory instrument.” *Id.* § 3(3).

<sup>14</sup> Child Rights Act, *supra* note 1, § 32.

<sup>15</sup> United Nations International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR], art. 13; CRC, *supra* note 2, art. 28.

<sup>16</sup> The concept of “progressive realization” reflects a recognition that resource limitations constrain state action. However, progressive realization of a particular right imposes upon states an “obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.” Committee on Economic, Social, and Cultural Rights, *General Comment No. 3: The Nature of States Parties’ Obligations*, ¶ 9, U.N. Doc. E/1991/23 (Dec 14, 1990).

<sup>17</sup> See ICESCR, *supra* note 15, art. 13(2)(a) (“Primary education shall be compulsory and available free to all.”); CRC, *supra* note 2, art. 28(1)(a) (“Make primary education compulsory and available free to all.”).

<sup>18</sup> See ICESCR, *supra* note 15, art. 13(2)(b) (“Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.”); CRC, *supra* note 2, art. 28(1)(b) (“Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.”).

<sup>19</sup> ILO Convention 182, *supra* note 8, art. 7(2).

<sup>20</sup> CRC General Comment No. 4, *supra* note 9, ¶ 17.

<sup>21</sup> CRC Concluding Observations, *supra* note 11, ¶¶ 3, 12.

services and educational opportunities remained out of reach for many of Sierra Leone's children.<sup>22</sup> The Committee also noted that the Ministry of Social Welfare, which oversees the Government's children's rights portfolio, lacks the necessary resources to carry out its tasks and recommended that the Government of Sierra Leone increase the Ministry's budget.<sup>23</sup>

## 2. The Right to Health for Sierra Leonean Children

The Child Rights Act recognizes children's "right to life and maximum survival and development," of which health is an integral component.<sup>24</sup> Children's right to health is explicitly protected under international law. The ICESCR's recognition of the right to the highest attainable standard of health has been interpreted by the Committee on Economic, Social and Cultural Rights to include specific guarantees for children's health.<sup>25</sup> The Committee identifies the provision of health care for children as a core priority for States Parties, and directs them to "ensure access to essential health services for the child and his or her family."<sup>26</sup> Such services include, according to the Committee, "adequate nutrition, safe environments, and physical as well as mental health services."<sup>27</sup>

Affirming these principles, the CRC also recognizes "the right of the child to the enjoyment of the highest attainable standard of health...."<sup>28</sup> States must take measures under the CRC "[t]o ensure the provision of necessary medical assistance and health care to all children"<sup>29</sup> and "[t]o combat disease and malnutrition."<sup>30</sup> The Committee on the Rights of the Child has identified adolescent health as an area deserving of special attention, calling on States Parties to provide "material assistance and support with regard to nutrition, clothing and housing" as needed to the families of adolescents.<sup>31</sup> While the

<sup>22</sup> *Id.* ¶¶ 51-52, 64.

<sup>23</sup> *Id.* ¶¶ 16, 18.

<sup>24</sup> Child Rights Act, *supra* note 1, § 2.

<sup>25</sup> ICESCR, *supra* note 15, art. 12(1) ("The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."). See also Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, ¶ 44(a), U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter ESCR General Comment No. 14]. The Child Rights Act includes numerous duties to parents, the community and the government (including through the provision of basic social services) to ensure the health of the child.

<sup>26</sup> ESCR General Comment No. 14, *supra* note 25, ¶ 22.

<sup>27</sup> *Id.*

<sup>28</sup> CRC, *supra* note 2, art. 24(1).

<sup>29</sup> *Id.* art. 24(2)(b).

<sup>30</sup> *Id.* art. 24(2)(c).

<sup>31</sup> CRC General Comment No. 4, *supra* note 9, ¶ 16.

Committee on the Rights of the Child's 2008 review of Sierra Leone took note of the improvements made in the provision of basic health services, it remained concerned by the continuing lack of access to health care in some areas of the country, and by the absence of adolescent-specific health policies.<sup>32</sup> The African Charter also provides for children's right to health<sup>33</sup> and obligates States Parties to take a range of actions to support realization of this right, including maintaining a focus on developing primary healthcare and integrating basic health services into national development plans.<sup>34</sup>

### C. Protecting Children's Rights in Post-conflict Sierra Leone

Engaging in responsible post-conflict rebuilding requires foregrounding the needs and vulnerabilities of children. As highlighted in the groundbreaking Machel Report on the Impact of Armed Conflict on Children:

Apart from direct violence, children are also deeply affected by other distressing experiences. Armed conflict destroys homes, splinters communities and breaks down trust among people, undermining the very foundations of children's lives. The impact of being let down and betrayed by adults is measureless in that it shatters the child's world view.<sup>35</sup>

The CRC calls on States Parties to consider the needs of children and undertake measures to promote the "physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse... or armed conflicts" through measures that "take place in an environment which fosters the health, self-respect and dignity of the child."<sup>36</sup> The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, to which Sierra Leone is a State Party, identifies further obligations of states vis-à-vis children who have been involved in hostilities, including child soldiers and also those recruited to serve in other roles of support to an armed force.<sup>37</sup> Specifically, States Parties must provide appropriate assistance

<sup>32</sup> CRC Concluding Observations, *supra* note 11, ¶¶ 51-56.

<sup>33</sup> African Charter, *supra* note 8, art. 14(1).

<sup>34</sup> *Id.* art. 14(2)(b),(g).

<sup>35</sup> Graça Machel, Expert of the Secretary-General of the United Nations, *Impact of Armed Conflict on Children*, ¶ 167, submitted pursuant to General Assembly resolution 48/157, UN Doc. A/51/306 (Aug. 26, 1996) [hereinafter Machel Report 1996].

<sup>36</sup> CRC, *supra* note 2, art. 39. In addition, ILO Convention 182 calls on states to take measures to "reintegrate and rehabilitate" former child labourers, reach out to "children at risk" and "take into account the special situation of girls." ILO Convention 182, *supra* note 8, art. 7(2)(b),(d),(e).

<sup>37</sup> United Nations Optional Protocol to the Convention on the Rights of the Child on the Involvement

for the “physical and psychological recovery” and the “rehabilitation and social reintegration” of children involved in armed conflict.<sup>38</sup>

These provisions reflect the centrality of understanding the context within which children are situated in order to protect their rights and incorporating these circumstances into post-conflict rebuilding efforts. According to findings of IHRC researchers, the children working in the mines of Sierra Leone find themselves in difficult socio-economic circumstances that are a legacy of the country's ten-year civil war. Their families and communities continue to struggle to recover from the destruction of infrastructure, dissolution of familial and social networks, disruption of education and the loss of livelihoods that have resulted from the country's civil war.

Despite the many development and governance challenges that exist in Sierra Leone, international and domestic law requires the pursuit of a reconstruction and development strategy that does not neglect the rights of children. As provided in the Machel Report, “The task of rebuilding war-torn societies is a huge one that must take place not only at the physical, economic, cultural and political, but also at the psychosocial level. Reconstruction must relate to the child, the family, the community and the country.”<sup>39</sup>

Programs implemented during reconstruction can lay the foundation for the survival and development of children, particularly in relation to their rights to health and education. The realization of children's rights does not appear to have been given adequate consideration in post-conflict reconstruction plans or peace agreements, yet their generation will inherit the post-reconstruction nation, including its successes and failures. A child rights perspective should ensure social stability following post-conflict reconstruction; meeting international and domestic obligations to protect and promote the rights of children is a key component to these efforts.

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ment of Children in Armed Conflict, May 25, 2000, U.N. Doc. A/RES/54/263 [hereinafter CRC Optional Protocol].

<sup>38</sup> *Id.* ¶¶ 6-7.

<sup>39</sup> Machel Report 1996, *supra* note 35, ¶ 241.



### III.

## AN OVERVIEW OF ARTISANAL DIAMOND MINING

*“People make nothing, though they dig forever.”<sup>40</sup>*  
 – Adult digger, Kenema District

In Sierra Leone’s “one-crop” economy, [where] the ‘crop’ is diamonds,<sup>41</sup> the diamond sector is the largest contributor to the Gross Domestic Product (GDP) and export earnings.<sup>42</sup> In 2007, Sierra Leone exported US\$141 million of diamonds, of which US\$100 million came from artisanal mining. In a country with a population of 6.3 million,<sup>43</sup> around 120,000 people are directly involved in artisanal mining.<sup>44</sup> Artisanal diamond mining is a major source of employment for many Sierra Leoneans, many of whom survive on roughly one dollar a day.<sup>45</sup> Studies on child mining estimate up to 10,000 children working at diamond mining sites,<sup>46</sup> up to 80 percent of these children have been reported to work for their parents or relatives.<sup>47</sup>

Most artisanal diamond mining is alluvial,<sup>48</sup> meaning that the diamonds are located on the surface of thousands of small mining sites scattered across 20,000 square kilometres – approximately a quarter of the

<sup>40</sup> IHRC Interview #22, adult digger, Tongo Fields, Kenema District (14 Jan. 2008).

<sup>41</sup> PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, RICH MAN, POOR MAN, DEVELOPMENT DIAMONDS AND POVERTY DIAMONDS: THE POTENTIAL FOR CHANGE IN THE ARTISANAL ALLUVIAL DIAMOND FIELDS OF AFRICA 8 (2004).

<sup>42</sup> See U.S. DEPARTMENT OF STATE, BUREAU OF AFRICAN AFFAIRS, BACKGROUND NOTE: REPUBLIC OF SIERRA LEONE (2008), available at <http://www.state.gov/r/pa/ei/bgn/5475.htm> (“Sierra Leone has relied on the mining sector in general, and diamonds in particular, for its economic base.”).

<sup>43</sup> The U.S. Central Intelligence Agency World Fact Book’s July 2008 estimate is 6,294,774. UNITED STATES CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK: SIERRA LEONE (2008), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sl.html#People>.

<sup>44</sup> DIAMOND DEVELOPMENT INITIATIVE INTERNATIONAL, STANDARDS & GUIDELINES FOR SIERRA LEONE’S ARTISANAL DIAMOND MINING SECTOR 7 (2008) [hereinafter DDI INTERNATIONAL]

<sup>45</sup> See *id.* at 2; PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 9.

<sup>46</sup> See NETWORK MOVEMENT FOR JUSTICE AND DEVELOPMENT SIERRA LEONE, REPORT ON THE SITUATION OF CHILD MINERS IN SIERRA LEONE: CASE STUDY OF FOUR DISTRICTS (2006) (interviewing over 200 child miners); WORLD VISION SIERRA LEONE, REPORT ON CHILDREN IN MINING ACTIVITIES (CIMA), ASSESSMENT SURVEY, KONO DISTRICT (2002) (interviewing 497 child miners).

<sup>47</sup> WORLD VISION SIERRA LEONE, *supra* note 46, at 13. See also DDI INTERNATIONAL, *supra* note 44, at 5.

<sup>48</sup> Over 90 percent of Sierra Leone’s official diamond exports come from alluvial mining. DDI INTERNATIONAL, *supra* note 44, at 14.

country's total area.<sup>49</sup> Artisanal sites are worked by diggers who use simple tools and labour-intensive techniques. The informal nature of alluvial mining work presents regulatory challenges;<sup>50</sup> “outside much of the legal and regulatory framework,”<sup>51</sup> artisanal diggers are usually unregistered, have no formal employment contracts, and often work on an itinerant or seasonal basis.

### **A. The Artisanal Diamond Mining Hierarchy: Mining for the Benefit of Few**

Although the mining industry produces considerable export revenue, artisanal diggers receive little compensation for their labour. The diamond supply chain resembles a pyramid, with a large number of diggers at the bottom. Asymmetrical bargaining power allows a “concentration of profits” to go to a small number of dealers and exporters at the top of the mining pyramid, most of whom reportedly reinvest very little in the industry or the country.<sup>52</sup> Indeed, in 2005, seven major diamond exporters each reaped a gross profit of US\$1.5 million from their Sierra Leone operations, while the estimated 120,000 diggers earned on average US\$195 each.<sup>53</sup> Serving pre-war patronage systems, the system of supply funnels diamond profits to a powerful group of elites. The sequence of exchange up the pyramid, from digger to licence holder to diamond dealer to exporter, involves frequent transactions between various agents who possess greater bargaining power than those below them.

#### 1. Diggers

“Diggers” perform arduous tasks including digging and washing gravel with simple tools. There are two types of compensation arrangements that they may enter into in exchange for their labour. Under a tributor system, where diggers receive a bargained percentage of earnings from diamonds found, they earn approximately Le 500-1,500 (US\$0.15-\$0.45) per day, in addition to one

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<sup>49</sup> Victor A. B. Davies, *Diamonds, Poverty and War in Sierra Leone*, in SMALL-SCALE MINING, RURAL SUBSISTENCE AND POVERTY IN WEST AFRICA 168 (Gavin M. Hilson ed., 2006).

<sup>50</sup> For a comparison of regulatory difficulties in Sierra Leone to what are considered to be stronger regulatory frameworks in Botswana and Canada, see PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 3 (“The geological nature of diamonds creates special situations. The Kimberlite mines of Botswana, Canada and Russia can be fenced and protected. Alluvial diamonds, however, scattered over hundreds of square miles, present a very difficult regulatory problem.”).

<sup>51</sup> PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 8.

<sup>52</sup> *Id.* at 6.

<sup>53</sup> ESTELLE A. LEVIN & LANSANA GBERIE, DDI INTERNATIONAL, DEALING FOR DEVELOPMENT? THE DYNAMICS OF DIAMOND MARKETING AND PRICING IN SIERRA LEONE 13 (2006).

or two cups of rice.<sup>54</sup> This lottery system appears increasingly exploitative of diggers since IHRC researchers found that major diamond discoveries that would bring a sizable profit to diggers are becoming less frequent in certain over-mined areas such as Tongo.<sup>55</sup> Second, under a contract labour system, some diggers receive no percentage from their diamond finds but are paid a higher daily wage of approximately Le 7,000 (US\$2.10).<sup>56</sup>

## 2. Licence Holders

The actors that follow the diggers in the mining hierarchy are “miners” or “licence holders.” These actors “organize and manage the mining of diamonds,” including applying for the mining licence from the government through “traditional authorities” (the chiefdom system).<sup>57</sup> Officially, only indigenous Sierra Leoneans can hold artisanal diamond mining licences;<sup>58</sup> however many foreigners appear able to obtain control over such licences through Sierra Leonean nationals.<sup>59</sup> In practice, domestic licence holders often lack the funds needed to independently purchase mining licences and undertake operations. Instead, licence holders enter into agreements with “supporters,” who provide the necessary capital in exchange for terms that enable them to profit maximally from related diamond finds. As a principal

<sup>54</sup> *Id.* at 2. See also IHRC Interview #105, 21-year-old digger, Small Sefadu, Kono District (21 Jan. 2008) (given Le 1,500 (US\$0.45) and two cups of rice a day); IHRC Interview #102, 19-year-old digger, Small Sefadu, Kono District (21 Jan. 2008) (generally given Le 500 (US\$0.15) in the morning, Le 1,000 in the evening); IHRC Interview #113, 19-year-old digger, Yoradu Village, Kono District (22 Jan. 2008) (receives Le 2,000 (US\$0.60) per day and no cups of rice); IHRC Interview #114, 24-year-old digger, Yoradu Village, Kono District (22 Jan. 2008) (receives Le 2,000 (US\$0.60) a day); IHRC Interview #90, adult digger, Yormandu Village, Kono District (19 Jan. 2008) (given Le 1,500 (US\$0.45) a day with no additional food); IHRC Interview #44, adult digger, Paiama Village, Kenema District (16 Jan. 2008) (given one cup of rice and Le 250 (US\$0.08) in the morning; two cups of rice and Le 500 in the evening).

<sup>55</sup> See, e.g., IHRC Interview #105, 21-year-old digger, Small Sefadu (21 Jan. 2008) (since the beginning of the last dry season, he has only found a few small diamonds that sold for less than Le 100,000 (US\$30.00)); IHRC Interview #96, 23-year-old digger, Bumpeh Village (21 Jan. 2008) (been three months without any diamond finds, and “even if we do find a diamond, the supporter buys it at his own price.”)

<sup>56</sup> E.g., IHRC Interview #78, 16-year-old child miner, Peyima Village, Kono District (19 Jan. 2008) (paid Le 7,000 (US\$2.10) a day for eight hours of work and receives nothing if he finds a diamond; strictly contract work); IHRC Interview #81, 15-year-old child miner, Peyima Village, Kono District (19 Jan. 2008) (receives Le 7,000 (\$2.10) for eight hours of work); IHRC Interview #46, adult digger, Paiama Village, Kenema District (16 Jan. 2008) (given Le 7,000 (\$2.10) a day, no additional rice and it is his own responsibility if he gets sick). For a full discussion of typical diggers’ wages, see *infra* Ch. IV(E) (“Poor Compensation for Child Labourers”).

<sup>57</sup> PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 15.

<sup>58</sup> DDI INTERNATIONAL, *supra* note 44, at 4.

<sup>59</sup> *Id.* at 14.

source of capital, supporters enjoy considerable bargaining power over licence holders, who find themselves obligated to sell their finds to their supporter without room to negotiate fair rates. Thus compromised, licence holders become relegated to the role of mine supervisors and have little means available to provide properly for diggers working on the site.

### 3. Diamond Dealers

“Diamond dealers,” largely consisting of foreign nationals, follow. Although not perfectly coterminous with supporters, they often appear to hold both roles in practice,<sup>60</sup> purchasing diamonds from the licence holder and selling them to exporters.<sup>61</sup> Dealers have “real expertise in valuation in the diamond chain, allowing them to pay undervalued prices for gems.”<sup>62</sup> Since they are usually also supporters, they possess additional leverage over the licensee and can negotiate lower percentages of proceeds. As explained by one digger, “The miners only get a small percentage from the diamonds because they work for supporters.... Whenever we do tripping [digging], the landowner comes to the area and spies on us.... If he sees something he likes, he will buy it from you there and take his percentage and give you less than your percentage. Miners need help working against the dealers. The dealers never buy with good prices.”<sup>63</sup>

### 4. Exporters

“Exporters” sit at the top level of the diamond-mining pyramid. Exporters purchase diamonds from diamond dealers for export to the foreign market and are comprised of a small cadre of mostly foreign actors who control industry profits. In 2003, for example, five foreign individuals and/or companies accounted for 74 percent of diamond exports; the following year, four entities handled 91 percent of exports.<sup>64</sup>

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<sup>60</sup> See PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 15 (“Supporters’ are the financial backers for most artisanal diamond mining. They are generally businessmen living in the diamond areas, and by far the majority are also dealers, or diamond buyers and sellers.”).

<sup>61</sup> *Id.* at 16.

<sup>62</sup> *Id.* This conclusion was confirmed in IHRC interviews. *E.g.*, IHRC Interview #126, licence holder/supporter, Tongo, Kenema District (14 Jan. 2008); IHRC Interview #92, Deputy Town Chief Mohammed Matthias, Yormandu Village, Kono District (19 Jan. 2008).

<sup>63</sup> IHRC Interview #94, adult digger, Yormandu Village, Kono District (19 Jan. 2008).

<sup>64</sup> DDI INTERNATIONAL, *supra* note 44, at 26.

## 5. Diamond Industry

In order to eliminate the practice of child digging, broad regulatory changes are needed to draw the large base of actors at the bottom of the mining pyramid into the formal economy and enforce more equitable wages and improved labour conditions.

### **B. Regulatory Agencies: Failed Oversight, Accountability, and Enforcement**

Multiple stakeholders and industry commentators have observed that artisanal diamond mining lacks robust regulatory implementation and oversight at the national and local level.

#### **Principal Policies and Laws Governing the Diamond-Mining Sector**

- The *Mines and Mineral Act of 1994* (and subsequent amendments) is the primary legislative instrument governing the mining sector.
- The national *Core Mineral Policy*, enacted in 2003, aims to create an investor-friendly mining environment with preferential treatment for Sierra Leoneans, as well ensuring that mining is conducted in a "transparent, open, and accountable manner."
- *The Kimberley Process* administers a certificate system for all diamond exports, aiming at guaranteeing that no diamonds are used to fund conflict. Sierra Leone administers this system through *The Diamond Cutting and Polishing Act (2007)*.
- *The Local Government Act of 2004* seeks to loosen the Freetown-centered control over diamond concessions that led to corruption in the pre-war era.<sup>65</sup> Local councils and chiefs share power, as councils disburse funds for development and set tax rates while chiefdoms control access to land and mineral revenue and are responsible for collecting taxes.<sup>66</sup>

### 1. National Agencies

The Ministry of Mineral Resources administers regulations for the mining sector through two agencies: the Mines Department and the Geological

<sup>65</sup> Paul Jackson, *Reshuffling an Old Deck of Cards? The Politics of Local Government Reform in Sierra Leone*, 106/422 AFR. AFF. 95, 102 (2006).

<sup>66</sup> *Id.* at 104-5.

Surveys Division.<sup>67</sup> Diamond dealers and exporters report their monthly purchases and sales to the Ministry through Mines Monitoring Officers, who oversee all of the major mining and trading centres.<sup>68</sup> The mines monitoring program is intended to ensure the fair sale of diamond proceeds, monitor the practice of child labour and oversee the reporting of sales by diamond dealers and exporters. However, mines monitoring officers reportedly lack adequate compensation, training and equipment required to be effective regulators.<sup>69</sup>

The Anti-Corruption Commission – a national-level partner in regulatory enforcement – seeks to prevent and enforce sanctions for the commission of corrupt acts at all levels of government in Sierra Leone. The Commission ought to be more active in this important sector of the Sierra Leonean economy, but it possesses limited institutional capacity.<sup>70</sup> Its work to date has reportedly failed to keep government officials from illegally maintaining a stake in mining activity.<sup>71</sup> However, there have been a few successful prosecutions of public officials for diamond smuggling and illegal possession.<sup>72</sup>

## 2. Local Agencies

Local Paramount Chiefs administer Chiefdom Mining Allocation Committees (CMACs). The committees conduct dispute settlement and conflict prevention whilst adjudicating over landholding claims.<sup>73</sup>

The Ministry of Local Government and Community Development also administers land tenure and arbitrates property rights disputes at the local level.<sup>74</sup>

The Local Government Act's mandate to grant greater local control

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<sup>67</sup> DDI INTERNATIONAL, *supra* note 44, at 4.

<sup>68</sup> *Id.* at 15.

<sup>69</sup> BRIAN THOMSON, CHATHAM HOUSE REPORT, SIERRA LEONE: REFORM OR RELAPSE? CONFLICT AND GOVERNANCE REFORM 14-17 (2007). *See also* PARTNERSHIP AFRICA CANADA & NETWORK MOVEMENT FOR JUSTICE AND DEVELOPMENT, DIAMOND INDUSTRY ANNUAL REVIEW: SIERRA LEONE 2006 6 (2006) [hereinafter 2006 DIAMOND INDUSTRY REVIEW]. While problems mark much of the oversight of the diamond industry, one assessment found that the Gold and Diamond Department, which administers the Kimberley Process, operates “with a level of transparency and professionalism unmatched by other institutions in Sierra Leone.” PARTNERSHIP AFRICA CANADA, DIAMOND INDUSTRY ANNUAL REVIEW: SIERRA LEONE 2005 1 (2005).

<sup>70</sup> Sierra Leone ranked 150<sup>th</sup> out of 179 countries on Transparency International's Perception of Corruption Table, 2007. Transparency International, 2007 Corruption Perceptions Index, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2007](http://www.transparency.org/policy_research/surveys_indices/cpi/2007) (last visited Feb. 6, 2009).

<sup>71</sup> DDI INTERNATIONAL, *supra* note 44, at 11.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 6-7.

<sup>74</sup> *Id.* at 4.

over diamond revenues is reportedly ineffective for the diamond sector. Underfunded local councils lack the means to enforce necessary accountability mechanisms such as effective auditing.

### C. Failures to Adequately Capture Diamond Revenues

The Government of Sierra Leone has failed to implement measures to control its diamond revenue stream effectively at the local, national and export levels. Diamond revenues are collected through licencing, exploration and prospecting fees; a 3 percent tax on all diamond exports;<sup>75</sup> and a corporate income tax of 30 percent.<sup>76</sup> These monies represent a significant amount of Sierra Leone's annual budget revenues.<sup>77</sup> However, the Government of Sierra Leone has been spending a significant portion of the diamond-mining revenue on independent valuers, management and monitoring of the licencing system, and regulatory mechanisms necessary for compliance with the Kimberley Process, a voluntary international diamond certification scheme crucial to Sierra Leone's ability to trade in the international diamond market.<sup>78</sup>

The involvement of political elites in private diamond dealings can pose problems for maintaining transparent regulatory oversight and control of the flow of diamond revenues. For example, while it is forbidden for government officials to hold licences, sources suggest that "some have covertly invested in the diamond sector, compromising the implementation of official policy" and creating a conflict of interest.<sup>79</sup> These practices preclude opportunities for

<sup>75</sup> DDI INTERNATIONAL, *supra* note 44, at 6.

<sup>76</sup> *Id.* at 16. In addition, some towns also apply an additional council tax. *Id.*

<sup>77</sup> In 2007 the export total was about US\$142 million, resulting in an export fee alone to the government of about \$5 million. While it is true that "artisanal alluvial diamond mining will never generate large amounts of revenue for the governments in question," PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 6, diamond revenues are still *relatively* important to Sierra Leone. As one expert on the Sierra Leone diamond industry stated: "If you look at those figures alone, they do not look extremely significant, but when you combine them they are very important to Sierra Leone ... [Last year's revenue] may seem small, but it's not." IHRC Interview #146, Lansana Gberie, Monrovia, Liberia (15 July 2008).

<sup>78</sup> PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 10.

<sup>79</sup> DDI INTERNATIONAL, *supra* note 44, at 11. See also DIAMOND INTELLIGENCE, "Sierra Leone Diamond Exports Down 31%" (Jan. 18, 2009), <https://www.diamondintelligence.com/magazine/magazine.aspx?id=7516> (noting that despite a 2008 review of all mining agreements and other mineral rights in the country that covered technical, legal, financial and social issues, "no final recommendations or decisions have been made on any specific mining lease or agreement" following the delivery of a progress report to the President). See also "Sierra Leone: Government is not the Solution to the Country's Problems; Government is the Problem," CONCORD TIMES (Jan. 27, 2009) (reporting that Vice President Sam Sumana "has been associated with the Mexivada Diamond Mining Company (SL) Limited ("MGD"), [in an] alluvial diamond mining deal in the Gbense Chiefdom where Mexivada is pursuing small scale rapid gold and diamond mining op-

greater local ownership of diamond mines.

In addition, the failure to stem diamond smuggling and to curb corrupt practices has reportedly enabled potential revenue to flow out of the country entirely.<sup>80</sup> Failure to control smuggling leads to the loss of diamond revenue each year, although smuggling has decreased in recent years. In 2005, smuggling was estimated to account for 50 percent or more of diamonds sold.<sup>81</sup> More recent estimates approximate smuggling to account for only 10 percent of diamond exports.<sup>82</sup> Continued vigilance is necessary to combat the work of smuggling networks; efforts to redress the endemic poverty in the mines can do much to reduce smuggling practices.

## CONCLUSION

At the base of the diamond mining pyramid sits a large number of artisanal diamond diggers who work outside the formal economy under exploitative conditions. Profits from diamond finds are enjoyed mostly by the exporters, who sit at the top the pyramid; percentages received from finds decrease as they move down the pyramid from diamond dealers to licence holders and finally, diggers – who receive the lowest share despite having laboured for the finds. In addition to failing to address poor working conditions and unfair sharing of diamond proceeds, weaknesses in regulatory oversight preclude adequate sharing of diamond revenues to mining communities and have not been maximally capturing national diamond revenues. Proposals for reform of the artisanal mining industry, which seeks to improve profit-sharing amongst diggers and their communities, are presented in Chapter VII (“Addressing Regulatory Shortcomings”).

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portunities.”).

<sup>80</sup> LEVIN & GBERIE, *supra* note 53, at 15.

<sup>81</sup> PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 10 (“Unofficial government estimates place the level of smuggling at 50 per cent and one recent study suggests that it is much higher.”). *See also* U.S. DEPARTMENT OF STATE, *supra* note 42 (stating that annual estimates for diamond mining production range between \$250-300 million, but official exports in 2005 totalled only about US\$142 million).

<sup>82</sup> DDI INTERNATIONAL, *supra* note 44, at 24.

## IV.

### THE PRACTICE OF CHILD MINING

*"I mine diamonds to survive."* – 15-year-old digger<sup>83</sup>

This chapter outlines the prevalence and average age of child miners, the nature of mining activities undertaken by children, their meagre compensation and poor treatment, and finally, the impact of mining on children's health and schooling. Taken together, the impacts of mining on the lives of children combined with state complicity place the Government of Sierra Leone in violation of its obligations under domestic and international law. While a return to full-scale conflict on the level of the recent civil war is unlikely, "[t]he poverty, the hundreds of thousands of ... exploited adults and children, and the volatility of the diamond fields make for a highly flammable social cocktail, one that has ignited several times in recent years, with tragic results."<sup>84</sup>

#### A. The Prevalence of Child Mining

*"Child mining is rampant. It is a common, well-known business."*<sup>85</sup>  
- Town Chief Amara Sonjo Vangahun

IHRC researchers visited over a dozen artisanal diamond mining sites in the two principal diamond-producing regions of Sierra Leone, Kenema and Kono Districts, where they observed the widespread prevalence of child miners. Diggers in every mining village and town confirmed IHRC's observations that many children work in the artisanal diamond mines. One child digger explained: "*boku* (many) people my size come to work at the mine."<sup>86</sup> Youth and adult diggers in mining areas throughout Kenema and Kono Districts described the prevalence of child miners in their respective

<sup>83</sup> IHRC Interview #54, 15-year-old child miner, Paiama Village, Kenema District (16 Jan. 2008).

<sup>84</sup> PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 6. See also IHRC Interview #146, Lansana Gberie, expert on Sierra Leone's diamond industry, Monrovia, Liberia (22 July 2008) ("Violence as a result of diamond mining issues is not only possible but happening and will continue to happen. There are clashes and people get killed, and that is bound to continue happening.").

<sup>85</sup> IHRC Interview #33, Town Chief Amara Sonjo Vangahun, Hangha Village, Kenema District (15 Jan. 2008).

<sup>86</sup> IHRC Interview #81, 15-year-old child miner, Peyima Village, Kono District (19 Jan. 2008).

mining communities.<sup>87</sup> In Paiama Village, located in Kenema District, a digger explained that “there are up to 100 child miners here on most days;”<sup>88</sup> while in Ngaiya Junction, in Kono District, a local digger told IHRC researchers that “there are *boku* children in the mines.”<sup>89</sup>

These observations are consistent with recent studies documenting the prevalence of child mining in Sierra Leone:

- In August 2002, World Vision Sierra Leone examined the practice of child mining in Kono District and found that “there is a sizeable proportion of children between the ages of 6 – 18 years in Kono that are involved in mining activities.”<sup>90</sup> World Vision interviewed 497 child miners, crew bosses, parents and guardians, in the six major diamond-producing chiefdoms of Kono District.<sup>91</sup>
- In April 2005, Morten Bøås and Anne Hatløy of Fafo (a Norwegian research foundation) interviewed 616 children in four diamond mining sites in Kono District who were working directly and indirectly in diamond mining.<sup>92</sup>
- In February 2006, the Network Movement for Justice and Development (NMJD) found that “poverty and a continued lack or non-implementation of proper policies” had pushed many children into mining.<sup>93</sup> NMJD interviewed 267 children “directly and indirectly

<sup>87</sup> See, e.g., IHRC Interview #102, 19-year-old digger, Small Sefadu, Kono District (21 Jan. 2008) (“There are a lot of children who work here.”); IHRC Interview #7, adult digger, Tongo Fields, Kenema District (14 Jan. 2008) (“Yes, there are lots of children working in this mine; they come for the same reason we all come, because they do not have any other opportunities.”); IHRC Interview #119, adult digger, Tongo Fields, Kenema District (14 Jan. 2008) (“Any day we see plenty of [child miners].”); IHRC Interview #133, Augustine Bangalay, teacher, Hangha Village, Kenema District (15 Jan. 2008) (“Child mining is common.”); IHRC Interview #144, Town Chief Sahr Burah, Peyima Village, Kono District (16 Jan. 2008) (“The current population [of diggers] is 50 percent school drop-outs; many are 15, 17 18 [years old].”).

<sup>88</sup> IHRC Interview #51 youth digger, Paiama Village, Kenema District (16 Jan. 2008). On the day of the IHRC visit to the diamond mining pits near Paiama, there were several hundred diggers working in total.

<sup>89</sup> IHRC Interview #101, adult digger, Ngaiya Junction, Kono District (21 Jan. 2008).

<sup>90</sup> WORLD VISION SIERRA LEONE, *supra* note 46, at 36. The report noted that although child mining dates back at least to the 1960s and 1970s in Sierra Leone, the practice has grown considerably as the country’s economy deteriorated and, more importantly, as a consequence of the war. *Id.* at 6.

<sup>91</sup> *Id.* at 9. The six chiefdoms studied were Tankoro, Nimiya, Kamara, Nimikoro, Gbense and Sandor.

<sup>92</sup> MORTEN BØÅS & ANNE HATLØY, LIVING IN A MATERIAL WORLD: CHILDREN AND YOUTH IN ALLUVIAL DIAMOND MINING IN KONO DISTRICT, SIERRA LEONE 32 (2006), available at <http://www.fafo.no/pub/rapp/515/515.pdf>.

<sup>93</sup> NETWORK MOVEMENT FOR JUSTICE AND DEVELOPMENT, *supra* note 46, at 5.

facilitating various mining activities” in four diamond mining districts of Sierra Leone.<sup>94</sup>

## B. Age of Child Miners

The child miners interviewed for this report ranged primarily from 10 to 17 years of age; there were few child miners observed to be under the age of 10. A majority of the 40 adult diggers interviewed by IHRC researchers confirmed that child miners fall within this age range. In Yormandu Village, for example, one adult digger reported, “I have seen children as young as 8 in the mines here. There are lots of small boys who engage in mining.”<sup>95</sup> In Ngaiya Junction, an adult digger explained how he worked with children as young as 11 years old, although a majority of the child miners were school drop-outs aged 14 years or older.<sup>96</sup>

Prior studies on child labour in the diamond mines have found comparable age distributions<sup>97</sup> among child miners:

- In a 2002 study performed in Kono District: 36.9 percent of children involved in mining-related activities were between 16 and 17 years old, 56.9 percent were between 10 and 15 years old, and 6.2 percent were between 7 and 9 years old.<sup>98</sup>
- In research performed in 2005 in Kono District: 41 percent of children involved in mining-related activities were between 14 and 17 years of age, 44 percent were between 10 and 13 years of age, and 15 percent were under 10 years of age.<sup>99</sup>

<sup>94</sup> *Id.* at 7. The four districts studied were Kono, Kenema, Bo and Bombali.

<sup>95</sup> IHRC Interview #91, adult digger, Yormandu Village, Kono District (19 Jan. 2008).

<sup>96</sup> IHRC Interview #101, adult digger, Ngaiya Junction, Kono District (21 Jan. 2008). *See also* IHRC Interview #102, 19-year-old digger, Small Sefadu, Kono District (21 Jan. 2008) (relating that he saw children as young as 12 or 13 in the mines).

<sup>97</sup> The differences between these prior studies and the research undertaken by IHRC include: First, recent studies have generally documented the presence of all children working in the mining areas, which includes children below the age of 10 years who undertake related activities; IHRC researchers focused specifically on child diggers and amongst those interviewed for this report, none fell below 10 years of age. Second, prior studies surveyed a large sample size of children, while IHRC research focussed on deeper qualitative field interviews. Also, over time, the understanding that child labour is not an acceptable practice appears to have reached certain mining areas; IHRC researchers observed child miners being driven away in some mining areas that were visited.

<sup>98</sup> WORLD VISION SIERRA LEONE, *supra* note 46, at 12. The study also included 18-year-olds (who are not considered children under international or domestic law), who comprised 18.3 percent of the 497 miners interviewed. These figures representing individuals of 18 years of age were not included in the figures presented above.

<sup>99</sup> BØÅS & HATLØY, *supra* note 92, at 50 (Table 5.1). The higher percentage of extremely young

- In a 2006 study performed in four major diamond mining districts of Sierra Leone: 36 percent of children involved in mining-related activities were between 16 and 17 years old, 60 percent were between 10 and 15 years old, and four percent were under 10 years old.<sup>100</sup>

### C. The Length of Time Children Spend as Miners

For many child miners, labouring in the diamond mining pits is neither a new nor a temporary activity. Many adult diggers reported to IHRC researchers that they had begun working in the mines as children; child miners also reported having mined for extended periods of time.<sup>101</sup>

According to IHRC research, the average time spent by individuals working in mining, or in the case of children, mining-related activities, grows with the respective age of the digger:

- According to 20 of the 30 children interviewed by IHRC researchers, the mean time they spent working on mining-related activities was 1.95 years while the median reported was 1.5 years. An earlier study similarly reported child miners having been involved in mining activities for approximately two years.<sup>102</sup>
- According to 34 of the 45 youth (aged 18 – 25 years) interviewed by IHRC researchers who reported the time they spent working in diamond-mining, the mean time was 4.07 years; the median time reported was three years.<sup>103</sup>

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children reported in comparison to the other studies is likely attributed to the large number of children interviewed by researchers who were performing support activities. Only 31 percent of respondents were involved in digging, or what the researchers termed “direct work.” Moreover, 38 percent of respondents were involved in “support functions,” while 31 percent were involved in “petty trading” around the mines. Of those respondents who reported being involved in “direct work,” 84 percent were between 14 and 17 years old, 14 percent were between 10 and 13 years old, and 2 percent were between 5 and 9 years old. *Id.*

<sup>100</sup> NETWORK MOVEMENT FOR JUSTICE AND DEVELOPMENT, *supra* note 46, at 11.

<sup>101</sup> See, e.g. IHRC Interview #36, 14-year-old child miner, Pandieu Village, Kenema District (15 Jan. 2008) (mining for three years); IHRC Interview #42, 13-year-old child miner, Paiama Village, Kenema District (16 Jan. 2008) (mining for two years).

<sup>102</sup> Network Movement for Justice and Development’s 2006 study, which covered four diamond mining districts, reported that 68 percent of child miners interviewed had been involved in mining for two or more years (i.e., 32 percent of child miners had worked in the mines for a year; 29 percent for two years; 15 percent for three years; 10 percent for four years; 3 percent for five years; and 11 percent for six or more years). NETWORK MOVEMENT FOR JUSTICE AND DEVELOPMENT, *supra* note 46, at 15.

<sup>103</sup> See, e.g. IHRC Interview #28, 25-year-old digger, Hangha Village, Kenema District (15 Jan. 2008) (mining for nine years); IHRC Interview #30, 25-year-old digger, Hangha Village, Ken-

- Finally, of the remaining 40 adult diggers who reported their time spent working in the mines, the mean time involved in diamond mining was 9.15 years and the median time reported was nine years.

#### D. Working Conditions for Child Miners

*“If there’s a way for me to get out of the mines, I’ll be very happy, because this is a man’s job.”* – Child miner<sup>104</sup>

IHCR researchers observed mining work to be overwhelming for a majority of the children they interviewed. Aiah, a child miner, explained, “When you are shovelling, your body will just feel like fire.”<sup>105</sup> The work performed by child miners varies according to their age. The youngest children, those below 13 years of age, carry loads and bring food or water to diggers.<sup>106</sup> In Tongo Fields, for example, two young boys aged 11<sup>107</sup> and 12 years<sup>108</sup> described to IHRC researchers how they fetched and carried water for the diggers; both children were under the care of an adult digger at the mine who could not afford their school fees. Our researchers also observed three girls, who appeared to be between 7 and 10 years of age, selling fruit in and around the pits of Tongo Fields.<sup>109</sup> The crew boss or supporter determines when a child labourer is strong enough to dig.<sup>110</sup>

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ema District (15 Jan. 2008) (mining for eleven years); IHRC Interview #38, 21-year-old digger, Pandieu Village, Kenema District (15 Jan. 2008) (mining for seven years); IHRC Interview #47, 25-year-old digger, Paiama Village, Kenema District (16 Jan. 2008) (mining for twelve-thirteen years); IHRC Interview #79, 23-year-old digger, Peyima Village, Kono District (19 Jan. 2008) (mining for eight years).

<sup>104</sup> IHRC Interview #54, 17-year-old child miner, Paiama Village, Kenema District (16 Jan. 2008).

<sup>105</sup> IHRC Interview #139, 15-year-old child miner, Tongo Fields, Kenema District (16 Jan. 2008).

<sup>106</sup> See, e.g., IHRC Interview #120, Shoa Sheriff, diamond mining supporter, Tongo Fields, Kenema District (16 Jan. 2008) (“The small boys come with chop [food] and water. We use them to run errands. I do not pay them; I take care of their responsibilities such as feeding.”).

<sup>107</sup> IHRC Interview #15, 11-year-old child miner, Tongo Fields, Kenema District (14 Jan. 2008).

<sup>108</sup> IHRC Interview #15, 12-year-old child miner, Tongo Fields, Kenema District (14 Jan. 2008).

<sup>109</sup> IHRC Researcher Observation, Tongo Fields, Kenema District (14 Jan. 2008).

<sup>110</sup> Earlier studies have confirmed the widespread use of young children for menial tasks and older children for adult-like digging tasks. For example, 83 percent of the children interviewed in the World Vision study “were actually involved in the mining activities, 8.6% went to the mining sites to prepare food for the miners ... [and] [a]bout 8% were there to run errands for the miners.” WORLD VISION SIERRA LEONE, *supra* note 46, at 16. Of the children that Bøås and Hatløy interviewed, fewer were directly involved in mining; the principal reason for the difference, however, is that 59 percent of their respondents were below the age of 14. The age breakdown according to the type of work was similar to findings of IHRC researchers: 84 percent of those involved in “direct work” were between 14 and 17 years old, whereas 78 percent of those in “support functions” and 80 percent of those in “petty trading” were younger than 14. BØÅS & HATLØY,

The average day of a child digger looks more or less identical to that of an adult. Each morning between 7 and 8 a.m. and each evening between 5 and 6 p.m., child and adult diggers can be seen walking to and from the mines, their shovels and “shakers” in hand. In the mining pits, child and adult diggers work side-by-side: shovelling sand in the mining pits, transporting bags of gravel that weigh up to 50 to 60 kilograms (110 to 130 lbs.) to the washing site, and leaning over in shallow waters to wash the gravel. A 14-year-old who had been digging for three years described his tasks: “I transport the gravel for washing. I put the bucket over my head and take it to the washing area. The work is so hard; I do not have the chance to go to school.”<sup>111</sup>

### **E. Poor Compensation for Child Labourers**

*“The problem is that I am a small boy and can not get more food or more payment when I find diamonds.”*<sup>112</sup> – Child Miner

*“After working in the mines, I go to a cookery shop and get a plate of rice. It is the only thing I eat all day.”*<sup>113</sup> – Youth digger

*“Sometimes I cannot study because I am so hungry.”*<sup>114</sup> – Youth digger

Child miners receive low daily wages and are routinely cheated of their share of diamond finds when compared to their adult counterparts. Child miners reported to IHRC researchers that their daily wages ranged from Le 500 to Le 2,000 (approximately US\$0.15-US\$0.60). Child miners who were digging on contract (i.e. who do not receive any percentage of their diamond finds) reported being paid Le 7,000 (approximately US\$2.10) per day.

Some child diggers are brought by a parent or guardian to assist in digging; these children do not appear to be paid at all. A 13-year-old child miner explained that he works in the mines with his father “to help increase the odds of finding a diamond,” though the supporter only pays the father.<sup>115</sup> This finding by IHRC researchers supports earlier conclusions that children brought to the mines by a parent or guardian to assist with mining efforts follows out of

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*supra* note 92, at 50 (Table 5.1).

<sup>111</sup> IHRC Interview #36, 14-year-old child miner, Pandieu Village, Kenema District (15 Jan. 2008).

<sup>112</sup> IHRC Interview #136, 16-year-old child miner, Pandieu Village, Kenema District (15 Jan. 2008).

<sup>113</sup> IHRC Interview #110, 20-year-old digger, Tombodu Village, Kono District (18 Jan. 2008).

<sup>114</sup> IHRC Interview #63, 16-year-old digger, Koidu Town, Kono District (18 Jan. 2008).

<sup>115</sup> IHRC Interview #42, 13-year-old child miner, Paiama Village, Kenema District (16 Jan. 2008).

“a sense that the boys are ‘miners in the making.’”<sup>116</sup>

IHRC researchers interviewed children who live with their supporter who receive little more than one or two meals a day. For example, Sheiku, a 15-year-old miner, is given Le 500 (US\$0.15) in the morning, from which he must obtain food to eat before dinner, while his pit boss's wife later prepares dinner for the young diggers living in their house.<sup>117</sup>

Beyond daily wages, many child diggers reported being denied the same share of diamond proceeds accorded to adults. An 18-year-old digger explained, even if he were to “get good proceeds [i.e. diamond finds], the older and bigger ones take the finds and get higher rates – they are bigger and we are smaller than them.”<sup>118</sup>

Under these circumstances, the child miners interviewed for this report regularly complained of being unable to afford a proper diet and of consequently suffering from hunger. For example, one 14-year-old digger showed IHRC researchers a piece of raw cassava that was to be the only thing that he and his father would eat until dinner, which usually constitutes a single plate of rice.<sup>119</sup>

## F. The Impact of Mining on Children's Health

*“Right now I would rather do anything else. It hurts now, it hurts. The work is very tedious at times. If you are unfortunate, you experience a lot of pain.”*<sup>120</sup> – Youth digger

Artisanal diamond mining constitutes hazardous work that seriously jeopardizes the health and safety of child miners. First, repeated shovelling, transporting and washing of large amounts of gravel produces severe physical pain for child miners. Second, routine accidents cause major injuries and

<sup>116</sup> Morten Bøås & Anne Hatløy, *Child Labor in West Africa – Different Vulnerabilities*, 46 INT'L MIGRATION 13 (2008). See also BØÅS & HATLØY, *supra* note 92, at 50 (finding that 84 percent of those in “support functions” and 77 percent of those in “petty trading” were supervised in their work by parents or relatives).

<sup>117</sup> IHRC Interview #65, 15-year-old child miner, Koidu Town, Kono District (18 Jan. 2008).

<sup>118</sup> IHRC Interview #124, 18-year-old digger, Tongo Fields, Kenema District (14 Jan. 2008). See also IHRC Interview #131, 16-year-old child miner, Hangha Village, Kenema District (15 Jan. 2008) (“Elders take away the big diamond finds and I do not get my share.”); IHRC Interview #137, Samuel Gbundor, Head Teacher of a primary school, Tongo Fields, Kenema District (16 Jan. 2008) (“The sale of the diamond will not reach the child, just a pittance is given. The child does not stand to gain [even when a diamond is found] because of the supporter relationship.”); IHRC Interview #142, 20-year-old digger, Tongo Fields, Kenema District (16 Jan. 2008) (“The smaller diggers do not get as much as adults [when a diamond is found].”).

<sup>119</sup> IHRC Interview #95, 14-year-old child miner, Bumpeh Village, Kono District (21 Jan. 2008).

<sup>120</sup> IHRC Interview #70, 18-year-old digger, Koidu Town, Kono District (18 Jan. 2008).

occasionally death in the pits. Children, given their smaller size and weaker strength, are at an even greater risk than adults. Third, the pit areas – shallow, still waters – are breeding grounds for diseases. An already-high risk of illness is intensified by children’s physical weakness, leaving them particularly vulnerable to contracting disease. Compounding the severe impact on health, supporters offer woefully inadequate care when their diggers fall ill.

While the work is difficult for all diggers,<sup>121</sup> it takes an especially heavy toll on child miners. Forced to wield a shovel or hunch over to wash gravel eight to ten hours a day, six days a week, children told our researchers that they routinely experience physical pain – especially back pain. As one child miner who “feels real pain,” especially in his sides, explained, “If I can get [other] work, then my body – my life – will no longer suffer.”<sup>122</sup> Child miners commonly complained of headaches to IHRC researchers; indeed, almost all child miners interviewed for this report attributed medical problems to their arduous digging activities.<sup>123</sup>

*“The work it is strong and I am still a boy.”*<sup>124</sup> – Youth digger

*“The labour, like ‘tripping’ and carrying bags of gravel (50-60 kg) is very dangerous and risky; it affects their health - their general well-being and feeling of dignity.”*<sup>125</sup> – Head teacher in Tongo Fields

*“When I am sick the supporter only buys tablets; it is not sufficient and sometimes I stay sick for a long time.”*<sup>126</sup> – Youth digger

<sup>121</sup> An overwhelming majority of adult and youth diggers interviewed reported physical and psychological harm from digging. See, e.g., IHRC Interview #102, 19-year-old digger, Small Sefadu, Kono District (21 Jan. 2008) (“The work is so hard, it gives me serious pain in my sides.”); IHRC Interview #89, adult digger, Yormandu Village, Kono District (19 Jan. 2008) (“I have had swelling of my feet for three years, but the boss has not done anything for me.”); IHRC Interview #7, adult digger, Tongo Fields, Kenema District (14 Jan. 2008) (“The suffering is overwhelming; I do not enjoy anything about this work. I live in total deprivation; I have been deprived of all – all social activities, money. All I am doing is struggling for my survival.”); IHRC Interview #37, 18-year-old digger, Pandieu Village, Kenema District (15 Jan. 2008) (“I have a lot of pain from shovelling.”); IHRC Interview #142, 20-year-old digger, Tongo Fields, Kenema District (14 Jan. 2008) (“I do not feel well. Since I’ve started this work, my body has not felt well.”).

<sup>122</sup> IHRC Interview #139, 15- to 16-year-old child miner, Tongo Fields, Kenema District (14 Jan. 2008). See also IHRC Interview #136, 16-year-old child miner, Pandieu Village, Kenema District (15 Jan. 2008) (describing weekly headaches and constant pain in his sides).

<sup>123</sup> See also BØÅS & HATLØY, *supra* note 92, at 51 (“[M]any of the [child] miners complained of muscle cramps and constant pain in their back and chest.”).

<sup>124</sup> IHRC Interview #124, 18-year-old digger, Tongo Fields, Kenema District (14 Jan. 2008).

<sup>125</sup> IHRC Interview #137, Samuel Gbundor, Head teacher of a primary school, Tongo Fields, Kenema District (16 Jan. 2008).

<sup>126</sup> IHRC Interview #110, 20-year-old digger, Tomبود Village, Kono District (22 Jan. 2008).

As diamonds become harder to find near the surface, supporters are pushing their diggers to dig deeper and deeper. IHRC researchers were told that pits are becoming increasingly unstable and more prone to collapsing. In Ngaiya Junction, one youth digger explained that “The sand covers people up; most deaths are caused by the sand covering people,” and that two people had recently died from a pit collapsing at his worksite.<sup>127</sup> As emphasized by the Town Chief of Peyima Village, “This mining area is dangerous – children may fall and die, dirt may fall on them.... Precautions are not taken for them.”<sup>128</sup>

“Alluvial mining areas are more vulnerable than others to infectious diseases. They are over-crowded and lack basic housing, sanitation, water and health facilities.”<sup>129</sup> The shallow waters of the pits are breeding grounds for mosquitoes and result in widespread incidence of malaria.<sup>130</sup> Moreover, many child miners complained to IHRC researchers of significant stomach pain, which appeared to be attributable to gastrointestinal parasites.<sup>131</sup> A youth digger explained, “Till now, I feel like an old person when I sit down; my toilet has blood.”<sup>132</sup>

Despite the considerable health problems reported by the child and adult diggers, IHRC researchers learned that overseers routinely fail to provide diggers with proper medical care. Mohamed Kamara, a representative from the United Mineworkers Union office in Tongo Fields, explained how his office receives complaints from diggers of supporters simply providing painkillers, such as paracetamol tablets, when the diggers fell sick; in some cases, these were reportedly “expired” tablets.<sup>133</sup> Child and adult diggers were frustrated with

<sup>127</sup> IHRC Interview #148, 23-year-old digger, Ngaiya Junction, Kono District (21 Jan. 2008).

<sup>128</sup> IHRC Interview #144, Sahr S.M. Burah, Town Chief, Peyima Village, Kono District (19 Jan. 2008).

<sup>129</sup> DIAMOND DEVELOPMENT INITIATIVE, *supra* note 44, at 8.

<sup>130</sup> *Id.* at 8. Prior research found that over 40 percent of children involved in digging were prevented from performing their normal duties at some point during the previous month as a result of fever. BØÅS & HATLØY, *supra* note 92, at 61.

<sup>131</sup> Prior research has found that over 40 percent of children involved in digging were prevented from performing their normal duties at some point as a result of abdominal pain. BØÅS & HATLØY, *supra* note 92, at 61 (Figure 5.4).

<sup>132</sup> IHRC Interview #140, youth digger, Tongo Fields, Kenema District (14 Jan. 2008). *See also* IHRC Interview #142, 20-year-old digger, Tongo Fields, Kenema District (14 Jan. 2008) (“I have had diarrhea, blood is in my toilet because I am not used to the work.”); IHRC Interview #116, 25-year-old digger, Ngaiya Junction, Kono District (21 Jan. 2008) (“I have worms in my system which are really affecting me.”); IHRC Interview #93, Aiah Janga, human rights promoter, Yormandu Village, Kono District (19 Jan. 2008) (“The licence holders are not told to have good drinking water and toilet facilities at the mines, so there is lots of disease. The workers have lots of health problems, like worms.”).

<sup>133</sup> IHRC Interview #149, Mohamed Kamara, United Mineworkers Union representative, Tongo Fields, Kenema District (14 July 2008).

the lack of medical care provided by their supporters.<sup>134</sup> In some cases, diggers reported having been given a small sum of money by their supporter (usually, Le 500-1,000, or less than US\$0.50), which was insufficient to cover basic medical expenses such as a visit to a doctor and/or medication. Of concern, one youth digger reported that should an illness become severe enough to affect a digger's work, his supporter simply "abandons" the digger.<sup>135</sup> Working through pain and sickness, however extreme, thus appears to be standard practice.

According to these findings, the negative impact of digging on the health of child miners clearly constitutes work that is both "hazardous,"<sup>136</sup> and "likely to jeopardize their health [and] safety,"<sup>137</sup> as defined under domestic law<sup>138</sup> and prohibited under international human rights law.

### G. How Elder Sibling Responsibilities Drive Children into Mining

*"I'm trying to pay for my younger siblings' school fees by working in the mines."*<sup>139</sup>  
 – Youth digger.

IHRC researchers observed many child miners who were the oldest male sibling in their family, sent to the diamond mines to contribute to their household earnings. As explained by Abdulai, a youth digger, "I came to the mines because this year I did not have the money to pay my school fees. There are six children in total in my family, and my mother and I are trying to pay for the younger siblings."<sup>140</sup> For some families, IHRC researchers learned that poverty may force them to bring additional children into mining. The father of a 14-year-old digger for whom he could not afford schooling explained, "If we continue to lack success in the mines, the younger son's schooling will stop as

<sup>134</sup> See, e.g., IHRC Interview #95, 14-year-old child miner, Bumpah Village, Kono District (21 Jan. 2008) ("The supporter gives me tablets [painkillers] for minor illnesses, but for severe sickness the supporter does not take charge of that."); IHRC Interview #47, 25-year-old digger, Paiama Village, Kenema District (16 Jan. 2008) ("The medicine supplied is not always right. The supporter gives us tablets that are not meant for what is bothering us").

<sup>135</sup> IHRC Interview #89, 27-year-old digger, Yormandu Village, Kono District (19 Jan. 2008).

<sup>136</sup> CRC, *supra* note 2, art. 32.1.

<sup>137</sup> ILO Convention 182, *supra* note 8, art. 3(d).

<sup>138</sup> Child Rights Act, *supra* note 1, § 128.

<sup>139</sup> IHRC Interview #60, 19-year-old digger, Koidu Town, Kono District, (18 Jan. 2008).

<sup>140</sup> IHRC Interview #114, 23-year-old digger, Yoradu Village, Kono District (22 Jan. 2008). See also IHRC Interview #42, 13-year-old child miner, Paiama Village, Kenema District (16 Jan. 2008) (He joined his father in the mines after his mother died because his father could not afford the school fees for him and his four siblings.).

well, because we are barely managing right now.”<sup>141</sup>

## H. The Exploitation of Girls Involved in Mining Areas

*“The ‘girl child’ is not exempted from the mining industry.”*<sup>142</sup> -  
Tom Sandy, Member of Civil Society and Human Rights Advocate

The impact of mining on children is not limited to boys; girls are both directly and indirectly affected by diamond mining activities. Many girls work in and around the mines, though they appear to be involved in support activities, such as carrying water or tools and selling food. IHRC researchers also received reports of girls engaging in commercial sex work.

Throughout the mining areas, IHRC researchers observed small groups of young girls carrying food and water and selling items.<sup>143</sup> A prior study by World Vision found 9.9 percent of 497 children involved in mining activities to be female.<sup>144</sup> These female respondents “spent all day at the mining sites,”<sup>145</sup> preparing food or performing other tasks. In another study, 168 of the 618 interviewees (27.2 percent) were girls;<sup>146</sup> a majority of whom were under 14 years of age<sup>147</sup> and involved in petty trading around the mines.<sup>148</sup> Finally, the local non-governmental organization Network Movement for Justice and Development interviewed 267 children engaging in activities in and around the diamond mines, 13.9 percent were female;<sup>149</sup> most girls were reported to perform “less strenuous jobs like fetching water, cooking and carrying tools.”<sup>150</sup> Though not directly involved in mining, engaging in these activities appears to

<sup>141</sup> IHRC Interview #95, adult digger, Bumpeh Village, Kono District (21 Jan. 2008).

<sup>142</sup> IHRC Interview #117, Tom Sandy, Head of Campaign for Just Mining, Bo Town, Bo District (12 Jan. 2008).

<sup>143</sup> See, e.g., IHRC Researcher Notes, Small Sefadu, Kono District (21 Jan. 2008) (“Girls were on the far side of a mining pit from where we entered and began interviews. They were very small, but because of the distance I could not determine an approximate age. By the time we moved to that side of the pit, they had left.”); IHRC Researcher Notes, Tongo Fields, Kenema District (14 Jan. 2008) (“Three girls seen, they look around 7 – 10 years old. They sell fruit while their parents work in the mines. Their mother digs gold in Tongo, but she was not around so we could not obtain permission to speak with them.”)

<sup>144</sup> WORLD VISION SIERRA LEONE, *supra* note 46, at 12.

<sup>145</sup> *Id.* at 16.

<sup>146</sup> BØÅS & HATLØY, *supra* note 92, at 35 (Table. 4.1)

<sup>147</sup> *Id.* (finding that 18 percent of females involved in and around the diamond mines were between 5 and 9 years old, 55 percent were between 10 and 13 years old, and 26 percent were between 14 and 17 years old; in comparison, 46 percent of the boys interviewed were 14 or older).

<sup>148</sup> *Id.* at 50 (finding that 1 percent of “direct workers” were female, 21 percent of those in “support functions” were female, and 62 percent of those in “petty trading” were female).

<sup>149</sup> NETWORK MOVEMENT FOR JUSTICE AND DEVELOPMENT, *supra* note 46, at 9.

<sup>150</sup> *Id.* at 16.

affect negatively school enrolment for girls.<sup>151</sup>

IHRC researchers also confirmed the practice of commercial sex work in major mining areas. As reported by Mohamed Kamara of the United Mineworkers Union, “Girls who do selling at the mines are often encouraged to enter prostitution.”<sup>152</sup> Two commercial sex workers in Tongo also confirmed that the majority of their customers are diggers and miners.<sup>153</sup> According to the head teacher of a school associated through the International Rescue Committee’s CYCLE program (described below), which rehabilitates child labourers and reintegrates them into schooling, most sex workers are between 15 and 17 years old and many of them are child mothers who do not have the means to care for their own children.<sup>154</sup> Commercial sex workers in Tongo reported being poorly paid – if at all – and regularly suffering physical abuse by their clients.<sup>155</sup> While the commercial sex workers IHRC researchers interviewed in Tongo reported being from the area, IHRC also received reports of women and girls being trafficked from other parts of the country to mining areas.<sup>156</sup> Sex workers in Tongo told us that they “want to come off the streets,” but lack alternative employment opportunities to do so.<sup>157</sup>

Finally, IHRC researchers also received anecdotal information from civil society and humanitarian aid workers concerning the prevalence of gender-based violence (GBV) in mining communities. The U.N. Committee on the Elimination of Discrimination Against Women has called upon the Government of Sierra Leone to respond with immediate interventions to combat the widespread commission of gender-based violence.<sup>158</sup> In response,

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<sup>151</sup> In the Bøås and Hatløy study, for example, only 46 percent of females interviewed were currently enrolled in school; 47 percent had never attended and 7 percent formerly attended. BØÅS & HATLØY, *supra* note 92, at 45 (Table 4.7).

<sup>152</sup> IHRC Interview #149, Mohammed Kamara, United Mineworkers Union representative, Tongo Fields, Kenema District (16 Jan. 2008).

<sup>153</sup> IHRC Interview #138, youth sex workers, Tongo Fields, Kenema District (16 Jan. 2008).

<sup>154</sup> IHRC Interview #137, Samuel Gbundor, Head Teacher of a primary school, Tongo Fields, Kenema District (16 Jan. 2008) (reporting that 20 percent of the children in the IRC CYCLE program at his school were removed from sexually exploitative situations).

<sup>155</sup> IHRC Interview #138, youth sex workers, Tongo Fields, Kenema District (16 Jan. 2008). See also IHRC Interview #137, Samuel Gbundor, Head Teacher of a primary school, Tongo Fields, Kenema District (16 Jan. 2008) (relating that sex workers receive between Le 2,500 and 5,000 – or between \$0.75 and \$1.50).

<sup>156</sup> IHRC Interview #137, Samuel Gbundor, Head Teacher of a primary school, Tongo Fields, Kenema District (16 Jan. 2008).

<sup>157</sup> IHRC Interview #138, youth sex workers, Tongo Fields, Kenema District (16 Jan. 2008).

<sup>158</sup> For discussion of gender-based violence problems in Sierra Leone, see, e.g., U.N. Comm. on the Elimination of Discrimination Against Women (CEDAW), *UN Committee on the Elimination of Discrimination, against Women: Combined Initial, Second, Third, Fourth and Fifth Periodic Reports of States Parties, Sierra Leone*, ¶ 12.13.4-5, U.N. Doc. CEDAW/C/SLE/5 (14 Dec. 2006) (noting that gender-based violence rose sharply during and after the war and that there is an op-

the Government of Sierra Leone ought to consider addressing GBV issues in mining communities in partnership with existing initiatives such as the sexual assault services provided by the International Rescue Committee through its “Rainbow Centres.”

### I. The Emotional Consequences of Mining on Children

*“I really have a lot of potential. When you meet me in the mining pit, you cannot know my value.”*<sup>159</sup> – Adult digger

Many child miners interviewed for this report described a life of deprivation and physical hardship. These children correspondingly displayed an overwhelming sense of fatalism and/or despair with this prevailing lack of opportunity. Echoing the sentiments of many children, one 15-year-old digger explained: “I mine diamonds to survive.”<sup>160</sup> According to another youth digger, “I am just doing this because there are no other alternatives. I do not have anything at the end of the day, but it is my only way to survive.”<sup>161</sup>

IHRC researchers observed that child and youth miners struggle with the belief that their dire economic circumstances will never improve and display a loss of self-esteem and self-identity. Aiah, a child digger, lamented, “I have had no achievement, nothing really good has come in my life – I make just enough for survival, for some food.”<sup>162</sup> Likewise, a 25-year-old who had been mining since he was approximately 16 years of age, explained:

I am the first son in my family, and I am totally confused because I have not been engaged in gainful employment to assist my family. My father did not achieve any status – did not provide good housing or have a good job – so as the eldest it is my responsibility to improve the economic status of the family. My father has gotten old, so the burden is on my head. I am hurting because I have not been able to do so.<sup>163</sup>

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pressive “culture of silence”).

<sup>159</sup> IHRC Interview #86, adult digger, Yormandu Village, Kono District (19 Jan. 2008).

<sup>160</sup> IHRC Interview #54, 15-year-old child miner, Paiama Village, Kenema District (16 Jan. 2008).

<sup>161</sup> IHRC Interview #109, 25-year-old digger, Foudu Village, Kono District (22 Jan. 2008).

<sup>162</sup> IHRC Interview #139, 15-year-old child miner, Tongo Fields, Kenema District (16 Jan. 2008).

<sup>163</sup> IHRC Interview #116, 25-year-old digger, Ngaiya Junction, Kono District (21 Jan. 2008).

## CONCLUSION

A considerable number of children work in the artisanal diamond mines in Sierra Leone, performing strenuous tasks that detrimentally affect their physical health and overall development. Rather than obtaining an education, children are driven into the highly exploitative situation in the diamond mines. The result is that many child miners become frustrated and despondent. Without immediate action from the Government of Sierra Leone, the deplorable conditions under which children and youth work in the diamond mines are likely to create a generation of marginalized post-war children and youth.

## V.

## THE IMPACT OF THE WAR ON CHILD MINING

*“While children were used as labour in the diamond-mining industry even before the war, there has been a noticeable growth in the use of children in the mines both during and after the conflict.”* - 2004 Report of the Sierra Leone Truth and Reconciliation Commission<sup>164</sup>

The present hardships borne by children and youth in the diamond sector reflect patterns of exploitation that reach back to Sierra Leone's ten-year civil war.<sup>165</sup> Children and youth diggers interviewed for this report overwhelmingly identified war-related factors as among the reasons why they now work in mining. Facing economic destitution, many children and youth have turned to diamond mining to survive.

In many ways, child miners remain almost as vulnerable as they were during the war, finding themselves in a harmful and exploitative situation where their rights are not protected. IHRC research identifies the following factors related to the war that drive children and youth to mining:

- ❑ **Loss or disruption of schooling:** Deprived of an education during the war, children and youth who have since passed the age of attending primary school have limited access to educational opportunities. Many turn to diamond mining because they lack a basic education;
- ❑ **Loss of family members, especially parents and siblings:** Orphaned children and youth have been driven to support themselves and their families during and after the war; and
- ❑ **Abductions and forced recruitment/labour:** Children associated with the fighting forces were forced to mine or were exposed to diamond mining. With limited livelihood options after the war, many of these

<sup>164</sup> WITNESS TO THE TRUTH: REPORT OF THE SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION vol. 3b, ch. 4, ¶ 335 (2004) [hereinafter TRC REPORT]. In its fieldwork conducted soon after the conflict, World Vision also found that the “war aggravated the involvement of children in mining activities.” WORLD VISION SIERRA LEONE, *supra* note 46, at 6.

<sup>165</sup> For a detailed history of Sierra Leone's civil war that lasted from 1991 to 2002, see LANSANA GBERIE, *A DIRTY WAR IN WEST AFRICA: THE RUF AND THE DESTRUCTION OF SIERRA LEONE* (2006); GREG CAMPBELL, *BLOOD DIAMONDS: TRACING THE DEADLY PATH OF THE WORLD'S MOST PRECIOUS STONES* (2004); IBRAHIM ABDULLAH, *BETWEEN DEMOCRACY AND TERROR: THE SIERRA LEONE CIVIL WAR* (2000); HUMAN RIGHTS WATCH, *YOUTH, POVERTY AND BLOOD: THE LETHAL LEGACY OF WEST AFRICA'S REGIONAL WARRIORS* (2005) [hereinafter HRW, *YOUTH, POVERTY AND BLOOD*].

children have returned to the mines seeking a livelihood.

### A. The Loss of an Education

*“I stopped school at class 2 because of poverty and because the war came; the war destroyed everything and I could not go to school anymore.”<sup>166</sup>*  
– Youth digger

A primary experience of children during Sierra Leone’s civil war that has driven children and youth into mining was the disruption of their schooling. The loss of education resulting from war has dire consequences for children and youth:

[t]he destruction of educational infrastructures represents one of the greatest developmental setbacks for countries affected by conflict. Years of lost schooling and vocational skills will take equivalent years to replace and their absence imposes a greater vulnerability on the ability of societies to recover after war.<sup>167</sup>

In Sierra Leone, the conflict seriously disrupted child and youth development. Displacement of children and their families was widespread following the systemic destruction of their communities. Many child and youth diggers interviewed for this report described being forced to abandon their schooling; for example, a 19-year-old digger was in Class 4 when the war “found him and his family” in Kono. He told IHRC researchers, “My father died and there was no one to pay my school fees.”<sup>168</sup> For Jibri, a 27-year-old digger, an armed group forcibly recruited him when he was in his third year of Arabic studies; he eventually fled to Liberia and lacked the means to continue his studies once the war ended.<sup>169</sup>

Many of the younger children interviewed explained that the war prevented them from commencing their formal education. Unable to read or write, a 14-year-old child digger explained, “the war cut me off from starting schooling when I was supposed to.”<sup>170</sup> Another child digger was about to start school when his father was killed by the rebels; since his mother could not afford to pay his school fees, he never attended school.<sup>171</sup>

“[Education] gives shape and structure to children’s lives and can

<sup>166</sup> IHRC Interview #113, 19-year-old digger, Yoradu Village, Kono District (22 Jan. 2008).

<sup>167</sup> Machel Report 1996, *supra* note 35, ¶ 186.

<sup>168</sup> IHRC Interview #43, 19-year-old digger, Paiama Village, Kenema District (16 Jan. 2008).

<sup>169</sup> IHRC Interview #46, adult digger, Paiama Village, Kenema District (16 Jan. 2008).

<sup>170</sup> IHRC Interview #61, 14-year-old child miner, Koidu Town, Kono District (18 Jan. 2008).

<sup>171</sup> IHRC Interview #65, 15-year-old child miner, Koidu Town, Kono District (18 Jan. 2008).

instil community values, promote justice and respect for human rights and enhance peace, stability and interdependence.<sup>172</sup> The full extent to which the deprivation of a basic education during Sierra Leone's civil war has affected the lives of children and youth is unclear. However, the child and youth miners interviewed for this report commonly attributed their mining work to the disruption of their schooling during the war, and their subsequent inability to pursue an education after the war ended due to their advanced age or insufficient means.

## **B. The Forced Labour and Recruitment of Children by the Fighting Forces**

The conflict in Sierra Leone included the widespread abduction of children by the fighting factions that resulted in their forced recruitment and/or forced labour. Children associated with the fighting forces were frequently exposed to mining operations. Many children and youth diggers reported having worked in the mines during the civil war.<sup>173</sup> Since armed factions controlled virtually all of the major diamond mines in the final years of the conflict,<sup>174</sup> these children would have been mining under the command of armed groups. As explained by a youth digger, "I was just a slave to the rebels. I was their manpower."<sup>175</sup> The Sierra Leone TRC found:

[M]any children were captured and conscripted into the RUF [Revolutionary United Front] and AFRC [Armed Forces Revolutionary Council] fighting forces. Those children captured ... were forced to engage in mining activities, where they were used to provide slave labour. These child combatants and other abducted children were ultimately seeking fortunes for their commandos. Many of the children and youth who escaped capture by the RUF were later recruited by the CDF ...

<sup>172</sup> Machel Report 1996, *supra* note 35, ¶ 184.

<sup>173</sup> See, e.g., IHRC Interview #29, adult digger, Hangha Village, Kenema District (15 Jan. 2008) (27-year-old who had worked in the mines for ten years); IHRC Interview #98, 23-year-old digger, Bumpah Village, Kono District (21 Jan. 2008) (explained that the war forced him to leave school and enter mining in 1999); IHRC Interview #30, 25-year-old digger, Hangha Village, Kenema District (15 Jan. 2008) (worked in the diamond mines for eleven years); IHRC Interview #109, 25-year-old digger, Foudu Village, Kono District (22 Jan. 2008) (worked in the mines since he was so small that all he could do was fetch water, including working around Koidu Town during the war).

<sup>174</sup> TRC REPORT, *supra* note 164, vol. 3b, ch. 1, ¶¶ 86-147.

<sup>175</sup> IHRC Interview #75, adult digger, Koidu Town, Kono District (18 Jan. 2008).

[and] were later to become miners too.<sup>176</sup>

The mining experiences of children during the war appear to have contributed to their post-war participation in diamond mining in two principal ways. First, children witnessed the windfalls associated with diamond mining: Finds were accumulated by the top command to gain weapons and other benefits for their respective fighting forces; children and youth were thus exposed to the potential wealth that the mines could generate. Years later they remain in the industry, having never been able to generate enough income from diamond proceeds to leave mining.<sup>177</sup>

The second factor concerns former lower-ranking commanders who, with few viable employment options available after the end of the conflict, returned to diamond mining.<sup>178</sup> IHRC researchers were unable to determine conclusively the extent to which lower-ranking commanders influenced the participation of their colleagues, including children and youth, who were formerly associated with the fighting forces.<sup>179</sup> However, anecdotal evidence from industry actors, including diggers, confirmed a general understanding that lower-ranking commanders may have recruited their fellow former combatants, including children and youth, to work with them in the mines. Preliminary evidence from a 2002 World Vision study more convincingly found that of the 454 crew bosses interviewed, 80 (17.6 percent) said that they acquired children to mine for them through their combatant networks.<sup>180</sup> Deeper research is required to determine the extent to which networks of former fighters were absorbed by the diamond mining industry.

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<sup>176</sup> TRC REPORT, *supra* note 164, vol. 3b, ch. 4, ¶ 335.

<sup>177</sup> MACARTAN HUMPHREYS & JEREMY M. WEINSTEIN, WHAT THE FIGHTERS SAY: A SURVEY OF EX-COMBATANTS IN SIERRA LEONE, JUNE –AUGUST 2003, INTERIM REPORT 27-28 (2004), available at [http://www.columbia.edu/~mh2245/Report1\\_BW.pdf](http://www.columbia.edu/~mh2245/Report1_BW.pdf). See also TRC REPORT, *supra* note 164, vol. 3b, ch. 1, ¶¶ 86-147. For a further discussion of the expectation of money in the mines, see *infra* Chapter VI.A and B.

<sup>178</sup> See TRC REPORT, *supra* note 164, vol. 3b, ch. 1, ¶¶ 86-147.

<sup>179</sup> Considerable confidence-building and deep referral networks are required to enable this kind of research with children formerly associated with the fighting forces. The passage of time since the end of the war and the precarious situation within which these children now find themselves compound the difficulties in determining the extent to which they were influenced by combatant networks into working in the diamond mines.

<sup>180</sup> WORLD VISION SIERRA LEONE, *supra* note 46, at 27. Interestingly, child miners overwhelmingly characterized their crew bosses as “friends” as opposed to a “former commander.” *Id.* at 13.

### C. Loss of Family Members and the Corresponding Economic Burdens for Children

*"I went to Form 1 in school, but then my father was killed by the rebels during the war so I had to stop school."*<sup>181</sup> – Youth digger

*"I was in class four when the war came to Kono. My pa died by the rebels and there was no one to pay my school fees."*<sup>182</sup> – Youth digger

An overwhelming majority of child miners interviewed for this report described having suffered economic deprivation in part because they had lost their parents during the war.<sup>183</sup> The report of Sierra Leone's Truth and Reconciliation Commission found that "[t]he conflict has led to the loss of breadwinners through death, disability or sickness, so children have been forced to become economic contributors and in some cases providers for their families."<sup>184</sup> Without direct familial support, it appears that many children and youth have turned to diamond mining and thus, abandoned their education. A 15-year-old digger, who had lost his father during the war and had to stop school because his mother could not afford the fees, explained: "[I came to the diamond mines] because it was the only way to get my daily bread."<sup>185</sup> Indeed, the deaths of family members during the war appear to have brought about the end of childhood for many of the child and youth miners that IHRC researchers interviewed. A 17-year-old digger explained: "I lost my pa and ma in the war, [and] my uncle is not too caring, so I decided to fend for myself."<sup>186</sup>

### D. Associating DDR's Shortcomings with Mining

In considering the legacies of Sierra Leone's armed conflict, IHRC

<sup>181</sup> IHRC Interview #79, 23-year-old digger, Peyima Village, Kono District, (19 Jan. 2008).

<sup>182</sup> IHRC Interview #43, 18-year-old digger, Paiama Villeage, Kenema District (16 Jan. 2008).

<sup>183</sup> See, e.g., IHRC Interview #124, 18-year-old digger, Tongo Fields, Kenema District (14 Jan. 2008) (father "died in the war when they met the rebels."); IHRC Interview #96, 23-year-old digger, Bumpeh Village, Kono District (21 Jan. 2008) (was in Form 2 when the war found his family and his father was killed; he has been working in the mines for six years); IHRC Interview #101, adult digger, Ngaiya Junction, Kono District (21 Jan. 2008) (father was killed when the war found his family in Makeni).

<sup>184</sup> TRC REPORT, *supra* note 164, vol. 3b, ch. 4, ¶ 329. Human Rights Watch similarly found that the killing, raping and maiming of thousands of civilians "shattered the bonds of family and community needed to shield such fighters from their already precarious economic situation and at the same time made them more vulnerable to exploitation...." HRW, YOUTH, POVERTY AND BLOOD, *supra* note 165, at 33-34.

<sup>185</sup> IHRC Interview #65, 15-year-old child miner, Koidu Town, Kono District (18 Jan. 2008).

<sup>186</sup> IHRC Interview #55, 17-year-old child miner, Paiama Village, Kenema District (16 Jan. 2008).

researchers found that some youth and adult miners who were associated with the fighting forces during the war attributed their poor socio-economic situation as diamond diggers to the shortcomings of disarmament, demobilization and reintegration programs (DDR):

“DDR failed [me] because they asked what I wanted to learn – which was to be a mechanic – but I was never given a chance to do so. I don’t know why I was never called for skills training.”<sup>187</sup> – A 21-year-old digger who received a lump-sum payment (Le 40,000, or US\$12) through the DDR process and ultimately became a diamond digger

“I soon discovered that tailoring would not provide for me and my brothers and sister, so I went to the diamond mines. DDR failed because they promised to get us workshops and shelter facilities, but they failed to do so. The work was not sufficient to sustain my family.”<sup>188</sup> – Adult digger who was trained in tailoring and given a sewing machine as a result of participating in the DDR process

“I was taught carpentering, but the tools were not enough to actually start a business. The training was also inadequate. I need to learn more in order to engage in carpentering as a job. I did not get the full skill training, so I am back here in the mines.”<sup>189</sup> – Adult digger

“They just gave us a little money, and that was it. I had nothing, and since there was no other thing for me to do after DDR, I had to engage in mining.”<sup>190</sup> – Adult digger who received a payment of Le 150,000 (US\$45) during the DDR process

“I did not go through DDR because you can only be disarmed if you have access to a gun, and I never had a gun. So I could not do much else. That is why I jumped into mining. It’s the only work that I feel I have a chance to make enough money to

<sup>187</sup> IHRC Interview #48, 20-year-old digger, Paiama Village, Kenema District (16 Jan. 2008).

<sup>188</sup> IHRC Interview #50, adult digger, Paiama Village, Kenema District (16 Jan. 2008).

<sup>189</sup> IHRC Interview #29, adult digger, Hangha Village, Kenema District (15 Jan. 2008).

<sup>190</sup> IHRC Interview #44, adult digger, Paiama Village, Kenema District (16 Jan. 2008).

return home.”<sup>191</sup> – Adult digger

*Considering DDR's Skills-Building Programs – Lessons Learned*

An overwhelming majority of the child miners interviewed for this report requested educational opportunities while older child and youth miners requested education and/or vocational training. A major component of the DDR process undertaken in Sierra Leone consisted of skills-training programs; lessons learned from these programs ought to be considered when designing potential interventions for child miners. A major criticism of DDR's skills-training programs, for example, was how former fighters found it difficult to transfer their skills-training into viable employment; specifically, there was an increase in the supply of labour in the training areas without a corresponding increase in demand for such services.<sup>192</sup> Sierra Leone's Truth and Reconciliation Commission noted, “the sustainability of [skills training] initiatives must be given greater consideration. There is a need to locate skills training in the wider context of improving the economy. Skills training should be accompanied by carefully planned follow-up mechanisms, which would allow [those] successfully trained to utilise their skills to their own economic advancement and the collective benefit of the nation.”<sup>193</sup> Moreover, maintaining realistic expectations for stakeholders is important in such interventions. In its evaluation of DDR experiences in West Africa, Human Rights Watch noted that such programs “should not be expected to bear the entire burden of creating social stability following an armed conflict. Far reaching efforts must also be made to provide for parallel community development programs assisting the general population whose lives, communities, and villages were destroyed during armed conflict.”<sup>194</sup>

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<sup>191</sup> IHRC Interview #75, adult digger, Koidu Town, Kono District (18 Jan. 2008). Consider the findings of HUMPHREYS & WEINSTEIN, *supra* note 177, at 9 (DDR programs “discriminated against women, children, and others who participated in the conflict primarily as forced labour or sex slaves, and who may have participated in active conflict when defending their bases or villages from attack.”); HRW, YOUTH, POVERTY, AND BLOOD, *supra* note 165, at 3-4 (finding that a majority of DDR participants “were kept out of skills training aspects of the program, or did not receive any benefits at all.”).

<sup>192</sup> See e.g., TRC REPORT, *supra* note 164, vol. 3b, ch. 4, ¶ 469.

<sup>193</sup> *Id.* ¶ 471.

<sup>194</sup> HRW, YOUTH, POVERTY, AND BLOOD, *supra* note 165, at 48. See also *Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, U.N. Doc. A/62/228, part II, ¶ 99 (Aug. 13, 2007) [hereinafter Special Representative Report] (“Increased support for child and youth livelihoods is essential; however, broader economic recovery and investment allowing small businesses to survive is equally vital. The education and livelihood aspects of reintegration programming require greater investment and identification of effective models.”).

## CONCLUSION

The experience of Sierra Leone's civil war on today's children and youth – the loss of their caregivers, the deprivation of an education as well as the experience of forced recruitment and/or labour – not only violated their basic rights but drove them into circumstances that continue to violate their social and economic rights.<sup>195</sup> The Government, with assistance from the international community, has an ongoing obligation to address the needs of children and youth effectively and in a manner that realizes their social and economic rights and enables them to become a productive and self-fulfilled post-war generation.<sup>196</sup>

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<sup>195</sup> See *supra* Ch. II.

<sup>196</sup> TRC REPORT, *supra* note 164, vol. 3b, ch. 4, ¶ 363 (emphasis added).

## VI.

## CHILD MINING AND GAPS IN THE PROVISION OF EDUCATION

*“My biggest problem is that I am unable to go to school.”* – Child miner<sup>197</sup>

In addition to the legacies of the war described in Chapter V, the prevalence of child mining in Sierra Leone is related to widespread poverty and gaps in basic living standards experienced by most Sierra Leoneans.<sup>198</sup> The primary development gap in this regard is the widespread failure to universally provide a basic education to the children of Sierra Leone. Affordable and accessible education is an important factor in alleviating the financial pressures placed on Sierra Leonean families in caring for their children.<sup>199</sup> According to the findings of this chapter, it appears that parents of children in mining communities are currently unable to meet the costs associated with schooling and instead put their children to work.<sup>200</sup>

In responding to the prevailing gaps in the provision of education, the United Nations Development Programme (UNDP) has called for educational funding programs as a potential mechanism through which to make education an economically viable choice for families.<sup>201</sup> Children and parents in mining

<sup>197</sup> IHRC Interview #42, 13-year-old child miner, Paiama Village, Kenema District (16 Jan. 2008).

<sup>198</sup> According to the United Nations 2008 Human Development Index, Sierra Leone is the least developed country in the world. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT: SIERRA LEONE (2008), available at [http://hdrstats.undp.org/2008/countries/country\\_fact\\_sheets/cty\\_fs\\_SLE.html](http://hdrstats.undp.org/2008/countries/country_fact_sheets/cty_fs_SLE.html) [hereinafter UNDP].

<sup>199</sup> The International Labour Office (ILO) has proposed a two-pronged approach to ending child labour, which includes the enforcement of anti-child labour legislation and compulsory education up through secondary school age. The ILO strongly recommends free education as a tool for combating child labour because evidence suggests that moving away from free education impacts marginalized groups and the poor, primary suppliers of child labour. Further, a lack of free education may help perpetuate the cycle of poverty that is the primary motivation for child labour. As children are forced to work to pay school fees or begin to work after dropping out of schools that they cannot afford, their future employment opportunities are impeded since they are not currently receiving the education that they will need to compete in labour markets as young adults. INTERNATIONAL LABOUR OFFICE, *THE END OF CHILD LABOUR: WITHIN REACH* xi, 21-22, 59 (2006), available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-i-b.pdf> [hereinafter *THE END OF CHILD LABOUR*].

<sup>200</sup> See *id.* at 21-22, 59, 62. See also IHRC Interview #95, 14-year-old child miner, Bumpeh Village, Kono District (21 Jan. 2008); IHRC Interview #3, 14-year-old child miner, Tongo Fields, Kenema District (14 Jan. 2008).

<sup>201</sup> See, e.g., International Poverty Centre, *Conditional Cash Transfers in African Countries* (UNDP Working Paper No. 9, 2005), available at <http://www.undp-povertycentre.org/pub/IPCWorking->

communities told IHRC that they would prioritize education over child mining if schooling was more financially accessible. Eliminating child mining requires ensuring the delivery of universal education in conjunction with high-impact measures that address the exploitative underpinnings of artisanal mining, as described in Chapters III and VII of this report.

### A. Missing School to Mine

The practice of child mining puts child miners at risk of losing an adequate education and the opportunity to earn a reasonable livelihood. While most child miners cannot afford to go to school, many possess an overwhelming desire to learn: “I like school more than anything else in my life,” Usman, a 14-year-old digger, told IHRC researchers. “I want to go back to school, but I do not have the chance.”<sup>202</sup>

Parents of child miners expressed the desire to return their children to school. As a parent in Hangha explained, “On behalf of my child, I want free education.”<sup>203</sup> Earlier research has established through surveys of children and parents that the practice of child mining has arisen out of the need of many families for supplemental income.<sup>204</sup> Of these surveys, an overwhelming majority of children preferred to attend school or be given skills training over mining;<sup>205</sup> moreover, many parents want their children to return to school, but

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<sup>202</sup> IHRC Interview #36, 14-year-old child miner, Pandieu Village, Kenema District (15 Jan. 2008). See also IHRC Interview #60, 18-year-old digger, Koidu Town, Kono District (18 Jan. 2008) (“I would really prefer to go to school; I would like to get educated, but because of a lack of money I could not continue school and came here [to the mines] in search of money.”); IHRC Interview #2, 15-year-old child miner, Tongo Fields, Kenema District (14 Jan. 2008) (“I want to be in school but my family is too poor and could not pay my school fees. My father said that he had seven children and cannot pay for the school fees for all of us.”); IHRC Interview #128, child miner, Hangha Village, Kenema District, (15 Jan. 2008) (“I am not glad to have been pulled away from school.”).

<sup>203</sup> IHRC Interview #25, adult digger, Hangha Village, Kenema District (15 Jan. 2008).

<sup>204</sup> See WORLD VISION SIERRA LEONE, *supra* note 46, at 33. Of child miners interviewed, 75 percent stated that they were involved in mining in order to make money; another 15.2 percent said that they did not have any alternative. Only 4 percent of child miners said that they were sent to the mines by their parents. Of parents interviewed, 58.2 percent said that their children mined to bring in money; another 30.5 percent said it was to help towards the schooling of siblings. *Id.* See also NETWORK MOVEMENT FOR JUSTICE AND DEVELOPMENT, *supra* note 46, at 17 (“All of the children who were interviewed said that they were at the mines to raise money to feed themselves; over three-fourth [sic] of them said they were using the proceeds from the mines to help take care of their homes.”).

<sup>205</sup> Of the 497 children interviewed by World Vision, only 14 – or 2.8 percent – expressed a desire to continue mining. In comparison, 44.1 percent indicated a preference to go to school, 39.6 percent wanted skills training, 7.8 percent wanted to farm, and 5.6 percent preferred petty trad-

are unable to manage without their assistance as child labourers.<sup>206</sup>

IHRC researchers found that many adolescents between 14 and 17 years of age were mining to earn money to cover their secondary school fees, or as described earlier, to earn money for their siblings' school fees. Mohammed, a 16-year-old digger, passed Form 1 but could not collect his report card (which will force him to repeat his grade) because he was unable to complete the payment of his school fees; he explained to IHRC researchers how he went to work in the diamond mines in hopes of obtaining "quick money" that would allow him to pay his school fees.<sup>207</sup>

## B. Ensuring Affordable Education

*"I want an education instead of mining."*<sup>208</sup> – Youth digger

*"If education is free, I am ready to go back."*<sup>209</sup> – Youth digger

*"I left [school] only because of financial constraints."*<sup>210</sup> – Youth digger

*"Yes, there are some children younger than me that work in the mine here. They are here for the same reason that I am - they cannot pay school fees and there is no other gainful employment."*<sup>211</sup> – Youth digger

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ing. WORLD VISION SIERRA LEONE, *supra* note 46, at 19. Only 3 percent of the children directly involved in mining in the Bòàs and Hatløy study wanted to continue their work. Instead, the children expressed a desire to "go to school" (31 percent), "get a better job" (27 percent) and "go abroad" (20 percent). For those involved in "support functions" and "petty trading," 3 percent and 0 percent of respondents, respectively, wanted to continue their current work. BÒÀS & HATLØY, *supra* note 92, at 74 (Table 7.2).

<sup>206</sup> WORLD VISION SIERRA LEONE, *supra* note 46, at 34. 42.8 percent of parents wanted their children to return to school, 41.4 percent wanted their children to learn vocational skills, and 12.7 percent said that they had no plans for their children. For a qualitative discussion of the economics of child labour more generally, see THE END OF CHILD LABOUR, *supra* note 199, at 60 ("Parents will send their children to school if it is acceptable quality, free, accessible and particularly if there are incentives such as a midday meal."); Kaushik Basu & Van Hoang Pham, *The Economics of Child Labor*, 88 AM. ECON. REV. 412, 413, 415 (1998) (stating that child labour "reflects stark poverty and not necessarily the failure of will of parents.... This is supported by evidence that parents withdraw children from the work force as soon as they are able to do so, so that nonwork of children is a luxury good that poor households simply cannot afford.").

<sup>207</sup> IHRC Interview #63, 16-year-old child miner, Koidu Town, Kono District (18 Jan. 2008).

<sup>208</sup> IHRC Interview #147, 18-year-old digger, Farandu Village, Kono District (22 Jan. 2008). See also IHRC Interview #3, 14-year-old child miner, Tongo Fields, Kenema District (14 Jan. 2008); IHRC Interview #87, 19-year-old digger, Yormandu Village, Kono District (19 Jan. 2008).

<sup>209</sup> IHRC Interview #97, 22-year-old digger, Bumpeh Village, Kono District (21 Jan. 2008).

<sup>210</sup> IHRC Interview #28, 25-year-old digger, Hangha Village, Kenema District (15 Jan. 2008).

<sup>211</sup> IHRC Interview #150, 19-year-old digger, Yoradu Village, Kono District (22 Jan. 2008).

Sierra Leone's Education Act of 2004 provides that every child has the right to a basic education, which is defined as six years of primary school and three years of junior secondary school.<sup>212</sup> Despite being stipulated as compulsory and free, the meaning of "free" under the Education Act<sup>213</sup> remains subject to interpretation and application by the Minister of Education, and direct and ancillary costs remain. Prevailing costs associated with school attendance include payments for books, uniforms and report cards.<sup>214</sup> Meanwhile, for older children, secondary school fees in Sierra Leone amount to roughly US\$66 while the average annual income is only US\$240.<sup>215</sup>

Thus, although government-run primary schooling has been characterized as "free" in Sierra Leone since 2001,<sup>216</sup> these remaining costs for basic primary education, as well as school fees associated with secondary school education,<sup>217</sup> prevent many children from completing their schooling. A range of educational initiatives have been instituted, including the Community School Initiative, which seeks to provide primary education to children in poor and remote areas, and the Caritas Project for Girls, which targets ex-combatant girls left out of DDR skills training programs.<sup>218</sup>

In mining communities, as the Town Chief in one village told us, "[t]he main reason children go to mines is poverty. School charges [are high];

<sup>212</sup> The Education Act, 2004, *supra* note 13, § 3.

<sup>213</sup> *Id.* at § 3(3) ("Basic education shall be, to the extent specified by the Minister by statutory instrument, free in government assisted primary and junior secondary schools.") (emphasis added).

<sup>214</sup> See, e.g., IHRC Interview #80, adult digger, Peyima Village, Kono District (19 Jan. 2008); IHRC Interview #33, Town Chief Amara Sonjo Vangahun, Hangha Village, Kenema District (15 Jan. 2008).

<sup>215</sup> WOMEN'S COMMISSION FOR REFUGEE WOMEN & CHILDREN, COUNTRY AT A CROSSROADS: CHALLENGES FACING YOUNG PEOPLE IN SIERRA LEONE SIX YEARS AFTER THE WAR 2 (2008), available at [http://www.womenscommission.org/pdf/sl\\_youth.pdf](http://www.womenscommission.org/pdf/sl_youth.pdf) [hereinafter COUNTRY AT A CROSSROADS].

<sup>216</sup> DDI INTERNATIONAL, *supra* note 44, at 8; WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN, PRECIOUS RESOURCES: ADOLESCENTS IN THE RECONSTRUCTION OF SIERRA LEONE 16-17 (2002) [hereinafter PRECIOUS RESOURCES], available at [http://www.womenscommission.org/pdf/sl\\_adol.pdf](http://www.womenscommission.org/pdf/sl_adol.pdf).

<sup>217</sup> Statistics show that Sierra Leonean students are not likely to continue their education beyond primary school. UNICEF reports that 69 percent of males and 69 percent of females attend primary school while only 22 percent of males and 17 percent of females attend secondary school. UNICEF, At a Glance: Sierra Leone, Statistics, at [http://www.unicef.org/infobycountry/sierraleone\\_statistics.html](http://www.unicef.org/infobycountry/sierraleone_statistics.html). UNESCO reports that 73 percent of males and 67 percent of females are enrolled in primary school, while 27 percent of males and 23 percent of females are enrolled in secondary school. UNESCO Institute for Statistics, UIS Statistics in Brief: Education in Sierra Leone, at [http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF\\_Language=eng&BR\\_Country=6940&BR\\_Region=40540](http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF_Language=eng&BR_Country=6940&BR_Region=40540).

<sup>218</sup> Alison Parker & Alusine Savage, UNICEF, *Executive Director Says Stability is Bringing Progress for Children in Sierra Leone*, Feb. 29, 2008, at [http://www.unicef.org/infobycountry/sierraleone\\_43047.html](http://www.unicef.org/infobycountry/sierraleone_43047.html).

then there are extra charges like admissions fees, school uniforms... If these areas were addressed, it would discourage children from mining.<sup>219</sup> A father of thirteen children from Peyima reported that he found it difficult to pay for the education of each child since basic school fees alone were expensive, independent of supplemental expenses.<sup>220</sup>

Community members in diamond mining areas, including children interviewed for this report, voiced their desire for government-sponsored initiatives that focus on education.<sup>221</sup> Patrick, a child digger, voiced a deep desire for an education and echoed the voices of most of children interviewed: "I want the government to provide free education and to open more schools. I would prefer to go to school . . . but because of a lack of money I could not continue school and came here [to the mines] in search of money."<sup>222</sup>

The removal of primary school tuition may have already enabled an increase in primary school attendance in Sierra Leone, where school enrolment is twice as high as it was before the war.<sup>223</sup> Because children tend to leave schooling after primary school, often because they cannot pay secondary school costs, a reduction of fees associated with secondary school would assist considerably in precluding children from entering the mines once they reach the pivotal age of fifteen.<sup>224</sup> The elimination of school fees has facilitated enrolment increases in several countries that are similarly undergoing post-conflict reconstruction.<sup>225</sup> Deeper research is needed on how mining communities in Sierra Leone could benefit from widespread implementation of school funding programs. Conditional cash transfers (CCTs), for example, give cash to families and are contingent on compliance with certain behaviour, such

<sup>219</sup> IHRC Interview #33, Town Chief Amara Sonjo Vangahun, Hangha Village, Kenema District (15 Jan. 2008).

<sup>220</sup> IHRC Interview #80, adult digger, Peyima Village, Kono District (19 Jan. 2008).

<sup>221</sup> Consider the sentiments of an adult digger that characterized the desire of many parents interviewed: "I want the government to provide free education so that my children can learn; that is the main thing that I need." IHRC Interview #32, adult digger, Hangha Village, Kenema District (15 Jan. 2008). A child digger similarly stated, "If there was free education, I would go right away." IHRC Interview #95, 14-year-old child miner, Bumpeh Village, Kono District (21 Jan. 2008). See also IHRC Interview #14, 20-year-old digger, Tongo Fields, Kono District (14 Jan. 2008) ("I want the government to provide free education; that is the number one thing that I want the government to do").

<sup>222</sup> IHRC Interview #3, 14-year-old child miner, Tongo Fields, Kenema District (14 Jan. 2008).

<sup>223</sup> DDI INTERNATIONAL, *supra* note 44, at 8. UNDP also reports increases in primary school enrolment following passage of the Education Act of 2004, which requires all children to complete primary school. United Nations Development Programme, Sierra Leone: MDG Goal 2 – Achieve Universal Primary Education, at <http://www.sl.undp.org/Goal2.htm> [hereinafter MDG Goal 2].

<sup>224</sup> See UNICEF, *At a Glance*, *supra* note 217. Because of statistics like these, the Women's Commission has declared that fifteen is the "pivotal" dropout age in Sierra Leone. PRECIOUS RESOURCES, *supra* note 216, at 15-17.

<sup>225</sup> Special Representative Report, *supra* note 194, ¶ 84.

as school enrolment or attendance. These initiatives have proven successful in middle-income countries in Latin America.<sup>226</sup> The International Rescue Committee's CYCLE program, described below, similarly provides educational support for school fees, uniforms, stationery and textbooks to encourage student retention.<sup>227</sup> It should be noted, however, that the CYCLE project will be phased out in September 2009. Finally, many community members voiced their interest in complementing programs to strengthen primary and secondary schooling with alternate programs, such as accelerated learning programs and skills building.<sup>228</sup>

### **THE CYCLE PROGRAM: KEEPING CHILDREN OUT OF THE MINES AND IN SCHOOL**

The International Rescue Committee's Countering Youth and Child Labor through Education (CYCLE) Program has met with success in helping children obtain access to education and avoiding mining work. The object of the program is to reduce the prevalence of child labour in Sierra Leone and Liberia by offering educational and vocational training programs to children.

CYCLE works with communities to identify children and youth who are either at risk of leaving school to enter exploitative labour, or who are already engaged in such labour. If a determination is made that no other means of support is available to the child, community partners and the IRC undertake to provide whatever school fees are necessary, in addition to uniforms, stationery and textbooks, so that the child can enrol (or remain) in school. Older children and youth are offered subsidies for vocational training programs, which include instruction in a trade,

<sup>226</sup> See generally International Poverty Centre, *supra* note 201.

<sup>227</sup> IHRC Interview #151, Annalisa Brusati, Child and Youth Protection Development Coordinator, International Rescue Committee, Freetown (18 Nov. 2008).

<sup>228</sup> IHRC Interview #33, Town Chief Amara Sonjo Vangahun, Hangha Village, Kenema District (15 Jan. 2008). The Special Representative of the Secretary-General for Children and Armed Conflict confirms this, stating that alternative forms of education and livelihood support systems are desirable in post-conflict countries like Sierra Leone, especially if these programs are tailored to the age of individual students. Special Representative Report, *supra* note 194, ¶ 98. Skills-training programs, however, require careful consideration and do not necessarily always deliver in terms of ensuring viable livelihoods. One town chief, for example, expressed his concern that if there are no markets to sell goods produced by newly skilled labourers, then workers will be drawn back to the mines. IHRC Interview #33, Town Chief Amara Sonjo Vangahun, Hangha Village, Kenema District (15 Jan. 2008).

business skills training and a starter kit designed to assist with setting up a business.<sup>229</sup> Teachers receive training in order to provide needed educational and psychosocial support to children enrolled in school through CYCLE, and the program also trains community representatives to conduct child labour monitoring.<sup>230</sup> As of March 2007, CYCLE had trained 243 representatives in Sierra Leone.<sup>231</sup>

Since its inception in October 2005, CYCLE had reached 14,600 children and youth across Sierra Leone. By the end of 2007, CYCLE had enrolled 285 children from Tongo Fields and 180 children from Kono District. However, CYCLE was intended only to be a four-year program, planned to phase out in September 2009. When families are faced with having to pay the costs of education by themselves, it will be very difficult for some to avoid sending at least some of their children back into exploitative labour. With this in mind, the IRC is working on several initiatives aimed at helping CYCLE beneficiaries stay in school. Children formed clubs to support each other, and the IRC is working with several government ministries to explore the possibility of scholarship programs or fee subsidies for children previously assisted by CYCLE. The IRC also works with local child welfare committees and mining committees in Tongo Fields on potential strategies to keep children out of the mines and in schools, and talks to families of CYCLE beneficiaries about budgeting household income in a way that would allow children to stay in school.<sup>232</sup>

While a good short-term solution should involve continued donor support for programs such as these, which can continue to pay school fees and provide school supplies to children, donor funding is not a sustainable, long-term solution to the problem of access to education. Poverty reduction and a strong system of compulsory, free education are key components to any long-term strategy aimed at keeping children and youth out of Sierra Leone's mines. The Ministries of Education, Labour

<sup>229</sup> IHRC Interview #151, Annalisa Brusati, Child and Youth Protection Development Coordinator, International Rescue Committee, Freetown (18 Nov. 2008).

<sup>230</sup> INTERNATIONAL RESCUE COMMITTEE, SIERRA LEONE PROGRAM BRIEFING SHEET 3-4 (2007), available at [http://www.daco-sl.org/encyclopedia/5\\_part/5\\_5/irc\\_program.pdf](http://www.daco-sl.org/encyclopedia/5_part/5_5/irc_program.pdf).

<sup>231</sup> United States Department of Labor, Bureau of International Labor Affairs, Child Labor Education Initiative Technical Assistance Program, at <http://www.dol.gov/ilab/programs/ocft/armed-liberia.htm>.

<sup>232</sup> IHRC Interview #151, Annalisa Brusati, Child and Youth Protection Development Coordinator, International Rescue Committee, Freetown (18 Nov. 2008).

and Social Welfare should together develop a strategy to reduce barriers to accessing education, with a focus on making education as low-cost as possible, and developing new income-generation programs for families.

### C. Ensuring That Education is Accessible and Adequately Delivered

Poor access to education and its inadequacy compound the challenges facing families in mining communities in ensuring the proper development of their children. Adolescents in some mining communities must travel to neighbouring areas to attend secondary school, such as in Peyima<sup>233</sup> and Lowoma<sup>234</sup> for example. Usman, a student from Pandieu, expressed a desire for a nearby secondary school to stay close to his family: “I want to continue my education in this town. My parents are old and I do not want to go far from here.”<sup>235</sup> Attending school in another community invariably adds to existing obstacles for mining families to send their children to school.

Members of mining communities in Sierra Leone also complained of overcrowding in schools that resulted from school shortages. A section chief underscored the problem: “The population is too much for the schools we have – we have reported this to the district council, asking them to build more structures, but nothing has happened...”<sup>236</sup>

The problem of school shortages is compounded by the overall weak capacity of the educational system, including the infrastructure and teaching pool. Several communities have schools with inadequate structures or no structures at all, as many were destroyed during the war.<sup>237</sup> In Lowoma for example, the Town Chief indicated that students attending primary school sat outside in the open air.<sup>238</sup> A chief’s wife in Yengema explained how the structure for the community’s primary school was destroyed during the war

<sup>233</sup> IHRC Interview #144, Town Chief S.M. Burah, Peyima Village, Kono District (19 Jan. 2008).

<sup>234</sup> IHRC Interview #41, Town Chief, Lowoma Village, Kenema District (16 Jan. 2008).

<sup>235</sup> IHRC Interview #36, 14-year-old child miner, Pandieu Village, Kenema District (15 Jan. 2008).

<sup>236</sup> IHRC Interview #39, Section Chief, Pandieu Village, Kenema District (15 Jan. 2008).

<sup>237</sup> See, e.g., IHRC Interview #36, 14-year-old child miner, Pandieu Village, Kenema District (15 Jan. 2008). In fact, the destruction of educational facilities is a phenomenon that has been highlighted as one of the greatest developmental setbacks for conflict-affected nations. Years of lost schooling and vocational skills may take the same amount of time to replace. Further, their absence imposes a greater vulnerability on the ability of societies to recover after war. See Machel Report 1996, *supra* note 35, ¶ 186.

<sup>238</sup> IHRC Interview #41, Town Chief, Lowoma Village, Kenema District (16 Jan. 2008).

and remains to be rebuilt.<sup>239</sup> In another area, a chief stated that although his town had five primary schools and one secondary school, there was nothing left because of destruction and vandalism during the conflict.<sup>240</sup> Children were left to learn in old buildings formerly used by mining companies – buildings that were lacking windows and occasionally roofs, leading to difficulties during the May - September rainy season.<sup>241</sup> In addition to infrastructure, community members reported a shortage of qualified teachers. One deputy town chief emphasized that his community needed more qualified teachers, especially those who taught preschool and secondary school.<sup>242</sup> If educational quality is improved, families are more likely to sacrifice the short-term gains of sending children to work in the mines for the long-term gains that come with a quality education.<sup>243</sup>

The Sierra Leonean government has been building and rehabilitating primary and secondary schools since 2003;<sup>244</sup> however, as confirmed by those interviewed for this report, diamond mining communities remain underserved.<sup>245</sup> Efforts to rehabilitate educational facilities should be coordinated with educational programs to reduce the cost of schooling. Such a strategy has proven effective in Latin America, where various countries have coupled demand-side educational funding programs with increasing the supply of quality schools.<sup>246</sup>

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<sup>239</sup> IHRC Interview #108, wife of Yengema Town Chief, Yengema Village, Kono District (21 Jan. 2008).

<sup>240</sup> IHRC Interview #99, Town Chief, Bumpeh Village, Kono District (21 Jan. 2008).

<sup>241</sup> IHRC Interview #99, Town Chief, Bumpeh Village, Kono District (21 Jan. 2008).

<sup>242</sup> IHRC Interview #92, Deputy Town Chief Mohammed Matthias, Yormandu Village, Kono District (19 Jan. 2008).

<sup>243</sup> For example, UNICEF has reported that increased school quality has resulted in higher school enrolment for girls. See Richard Lee, UNICEF, *Improved Child-Friendly Schools Offer Girls a Better Future in Sierra Leone*, June 11, 2007, at [http://www.unicef.org/infobycountry/sierraleone\\_39962.html](http://www.unicef.org/infobycountry/sierraleone_39962.html).

<sup>244</sup> DDI INTERNATIONAL, *supra* note 44, at 8.

<sup>245</sup> *Id.*

<sup>246</sup> THE END OF CHILD LABOUR, *supra* note 199, at 60.



## VII.

### ADDRESSING REGULATORY SHORTCOMINGS

*“It is very difficult to find diamonds now except with great capital. As a result, we have to cater to the investor; we are dependent on the investor.”*<sup>247</sup> – Town Chief S.M. Burah, Peyima Village, Kono District

Regulatory failures play a direct role in the inability of the diamond industry to bring many Sierra Leoneans, including and especially children and youth, out of poverty. Post-war reforms have succeeded in creating a viable investment environment in the sector and promoted the expansion of the legal diamond trade. Specifically, regulatory reforms such as the implementation of the Kimberley Process certification scheme and overall improvements in security have resulted in the increase of official diamond exports.<sup>248</sup> However, as of 2005, an estimated 15<sup>249</sup> to 50<sup>250</sup> percent of diamond mining in the country remained unlicensed. While recent increases in industry revenue have benefited investors, many people interviewed for this report – from community members who have yet to see diamond-funded development projects come to fruition to diggers who struggle to support their families – reported having failed to benefit from post-war regulatory developments.<sup>251</sup>

The laws, licencing schemes, regulatory bodies and modes of revenue collection that govern diamond mining are presented in Chapter III. This chapter discusses more deeply the shortcomings in Sierra Leone’s post-war regulatory reforms in the diamond sector, which can be divided into three areas:

- ❑ Failure to restructure the sector to promote the redistribution of mining concessions and mining profits;
- ❑ Failure to design, administer and fund accountability mechanisms properly to prevent graft, corruption, smuggling and embezzlement;

<sup>247</sup> IHRC Interview #144, Town Chief S.M. Burah, Peyima Village, Kono District (19 Jan. 2008).

<sup>248</sup> U.S. DEPARTMENT OF STATE, *supra* note 42 (noting that “formal exports have dramatically improved since the days of civil war.”). See also THOMSON, *supra* note 69, at 14-17.

<sup>249</sup> THOMSON, *supra* note 69, at 15 (citing a submission by the Government of Sierra Leone to the Kimberley Process).

<sup>250</sup> *Twenty-Seventh Report of the Secretary General on the United Nations Mission in Sierra Leone*, ¶ 38, U.N. Doc. S/2005/777 (Dec. 12, 2005).

<sup>251</sup> One digger reported: “As a married man with children, I cannot make it on two cups of rice and Le 500 a day.... From the small amount of money from this mining I have to feed my family, pay school fees, for uniforms, for medicine; the money is not sufficient.” IHRC Interview #32, adult digger, Hangha Village, Kenema District (15 Jan. 2008).

- ❑ Failure to redress the deep bargaining inequities among industry actors or to remedy deplorable working conditions in the mines.

As discussed in Chapter III, diamond revenues continue to fund pre-war patronage systems that funnel diamond profits to a group of elites, which precludes the implementation of serious reforms that can improve working conditions for diggers.<sup>252</sup> Unfortunately, prior initiatives aimed at improving the distribution of diamond profits have been characterized by inadequate oversight and accountability. At the same time, failure to stem remaining diamond smuggling and to curb corrupt practices has enabled potential revenue to flow out of the country entirely.<sup>253</sup> Comprehensive approaches and support are needed to ensure that necessary regulatory reforms are considered and implemented in the three areas identified above.

### A. Removing Barriers to Legitimate Local Ownership

Encouraging legitimate local ownership of artisanal mines can enable investment of diamond profits back into mining communities, potentially resulting in better working conditions for adult diggers, and ultimately reducing familial dependence on child labour.<sup>254</sup> Enabling legitimate local ownership of mining licences requires reforming the currently complex licencing scheme and clarifying property and inheritance laws. Immediate action is needed, for example, towards enacting draft legislation prepared by the country's Law Reform Commission to rationalize property laws,<sup>255</sup> as well as a proposed land survey ("cadastre") system that would accurately map property boundaries.<sup>256</sup>

At present, the mining licencing scheme can involve up to fifteen separate administrative steps, which include formal and hidden costs that effectively put mining licences out of reach for most Sierra Leoneans.<sup>257</sup> Indeed, licencees applying to the local Chiefdom Mining Allocation Committee for a licence must negotiate separately with the local presiding Paramount Chief for surface rights,<sup>258</sup> who reportedly expect an additional "handshake"

<sup>252</sup> THOMSON, *supra* note 69, at 14-17.

<sup>253</sup> LEVIN & GBERIE, *supra* note 53, at 15.

<sup>254</sup> DDI INTERNATIONAL, *supra* note 44, at 17-18.

<sup>255</sup> *See id.* at 17.

<sup>256</sup> As of 2006, a pilot "cadastre" system – a comprehensive register of the metes and bounds of real property including details of ownership, tenure, location, dimensions, cultivations and value of individual parcels of land – was being implemented in Kono District. GOVERNMENT OF SIERRA LEONE, ANNUAL PROGRESS REPORT – POVERTY REDUCTION STRATEGY PAPER 44, 47 (2006).

<sup>257</sup> PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 14.

<sup>258</sup> DDI INTERNATIONAL, *supra* note 44, at 17.

of approximately Le 100,000 (US\$30).<sup>259</sup> The cost of this step in the process alone is prohibitive in Sierra Leone, where the income per capita is US\$260 per year.<sup>260</sup> To lower these barriers to licencing, there is a current call to adjust licencing fees to more favourable rates for average Sierra Leoneans.<sup>261</sup> Without such initiatives, the present licencing scheme restricts licences and their corresponding profits to a few investors with the resources to negotiate (or guide proxy licencees) through this process.

These barriers to legitimate local ownership and control over artisanal mining areas are compounded by gaps in the Mines and Mineral Act and the Core Mineral Policy, which concern specific property rights issues in relation to the allotment of mining licences. For example, conflicts between commercial interests and communities holding traditional land rights arise where the Mines Department issues artisanal licences for the same locations where leases have been issued for prospecting and exploration.<sup>262</sup> Moreover, the Mines and Mineral Act's failure to distinguish fully the requirements for granting industrial as opposed to artisanal mining licences has resulted in overcharging of licencees, who can pay up to "four times more in licence fees than industrial-scale miners for the same plot-size of mining land."<sup>263</sup>

## **B. Injecting Information and Agency into the "Supporter Structure"**

The inequitable distribution of diamond proceeds can be corrected by improving access to information about diamond valuation and giving lower-level actors direct access to valuers. Diggers interviewed for this report overwhelmingly cited unfair pricing as a core injustice that required a remedy.<sup>264</sup> One digger reported, "We get diamonds but we don't know the price

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<sup>259</sup> *Id.* at 20.

<sup>260</sup> The World Bank Group, *Sierra Leone at a Glance* (Sept. 24, 2008), available at [http://devdata.worldbank.org/AAG/sle\\_aag.pdf](http://devdata.worldbank.org/AAG/sle_aag.pdf).

<sup>261</sup> For a chart of licencing fees under the Mines and Minerals Act, see DDI INTERNATIONAL *supra* note 44, at 36.

<sup>262</sup> *Id.* at 17.

<sup>263</sup> *Id.* at 6.

<sup>264</sup> See, e.g., IHRC Interview #106, adult digger, Small Sefadu, Kono District (21 Jan. 2008) ("If a person buying the diamond refuses to pay more, you just have to accept their price..."); IHRC Interview #109, 25-year-old digger, Foudu Village, Kono District (22 Jan. 2008) ("When I get a diamond, they do not buy it at a fair price..."); IHRC Interview #115, Brima Levi, Pit Boss, Yoradu Village, Kono District (22 Jan. 2008) ("We need training in the pricing of diamonds. The government should provide or train objective valuing experts. Right now diamonds are not bought at the proper price."); IHRC Interview #113, 19-year-old digger, Yoradu Village, Kono District (22 Jan. 2008) ("When we get a diamond, we do not receive a fair price..."); IHRC Interview #37, 18-year-old digger, Pandieu Village, Kenema District (15 Jan. 2008) ("Whatever diamond comes

so the supporter pays us what he wants.... Even if we get a big stone it is sold for far less than it is worth. We need someone to help.”<sup>265</sup> A system of independent valuers ensuring that diamond prices are set closer to actual market value, for example, which includes direct valuation support to diggers and licencees, could shift control over prices away from supporters and dealers. Fostering increased local ownership of mines could shorten the transactional chain and increase the profit available at each exchange from mine to market. As one digger emphasized, “We want a [community association] to empower the community, so that we can dig on our own land.”<sup>266</sup>

### **C. Designing and Implementing Development Initiatives: Two Case Studies**

In recent years, both Sierra Leone and foreign donor agencies have developed initiatives to combat persistent accountability and corruption problems in the diamond sector. Unfortunately, these initiatives have been characterized by flawed design and weak implementation that has hampered their ability to redress these problems. The two case studies below exemplify the types of problems that have beset efforts to redirect benefits from diamond mining to local communities.

#### 1. The Story of the Diamond Area Community Development Fund

A key component – and corresponding failure – of the Government’s post-war reform program was the Diamond Area Community Development Fund (DACDF), established in 2001 to facilitate reinvestment of diamond profits into local communities.

The DACDF was charged with collecting and disbursing one-quarter of the three percent export tax to local Chiefs for use in community improvement projects.<sup>267</sup> Chiefdom Development Committees, whose members were selected by the local Chief, allocated DACDF funds to projects. Although the program initially appeared to be an effective means of returning proceeds to diamond communities – for example, the DACDF returned US\$850,000 to diamond mining communities in 2004 – charges of corruption and mismanagement later arose. Disbursement of funds has now been suspended

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up, the supporter prices it himself whether we like the price or not...”).

<sup>265</sup> IHRC Interview #111, adult digger, Tombodu Village, Kono District (22 Jan. 2008).

<sup>266</sup> IHRC Interview #144, Town Chief S.M. Burah, Peyima Village, Kono District (19 Jan. 2008).

<sup>267</sup> Jackson, *supra* note 65, at 100. See also PARTNERSHIP AFRICA CANADA & GLOBAL WITNESS, *supra* note 41, at 10.

indefinitely.<sup>268</sup>

The failings of the DACDF exemplify the lack of sufficient oversight and accountability mechanisms within the regulatory framework, especially in light of the prevailing reports of corruption in its operation.<sup>269</sup> For example, one town chief reported to our research team that, despite being a hub of mining activity for many years, his town had received relatively small sums of money through the Fund and had not received anything at all since the Fund had begun to distribute the money to local councils instead of to the paramount chief.<sup>270</sup>

Another problem inherent in the Fund's procedures was that members of the Chiefdom Development Committee were handpicked by Paramount chiefs with very little oversight despite the considerable disbursement powers they enjoyed. It was reported that some Chiefdom Development Committees were unable to account for Fund money.<sup>271</sup> Over the course of IHRC research, one community member reported that the local chief and community authorities had used development funds from diamond revenues for their self-enrichment: a market structure that the Chief claimed to have been built by these funds was reported by community members actually to have been built by an international aid agency.<sup>272</sup> As explained by an individual in another community, "proceeds [from diamonds] are put into a fund, but we never see anything. We have been discussing this with the paramount chief; we brought him gifts, but all went in vain."<sup>273</sup> Compounding the accountability issues at the local level, mistrust of government bureaucracy in Freetown pushed donors and NGOs to reject a plan for a central oversight body that would have monitored the disbursement of funds to chiefs.<sup>274</sup>

## 2. USAID's Diamond Mining Cooperatives: Good Idea, Poor Execution

In 2005, the United States Agency for International Development (USAID) launched a program to organize diamond mining cooperatives in

<sup>268</sup> DDI INTERNATIONAL, *supra* note 44, at 29. See also 2006 DIAMOND INDUSTRY REVIEW, *supra* note 69, at 11-12.

<sup>269</sup> Roy Maconachie, *Diamond Mining, Governance Initiatives and Post-Conflict Development in Sierra Leone* 12-13 (The University of Manchester Brooks World Poverty Institute, Working Paper No. 50, 2008), available at [http://www.bwpi.manchester.ac.uk/resources/Working-Papers/50\\_maconachie\\_sierraleone.pdf](http://www.bwpi.manchester.ac.uk/resources/Working-Papers/50_maconachie_sierraleone.pdf).

<sup>270</sup> IHRC Interview #41, Town Chief, Lowoma Village, Kenema District (16 Jan. 2008).

<sup>271</sup> Maconachie, *supra* note 269, at 12-13.

<sup>272</sup> IHRC Interview #145, community member, Peyima Village, Kono District (19 Jan. 2008).

<sup>273</sup> IHRC Interview #39, Section Chief, Pandieu Village, Kenema District (15 Jan. 2008).

<sup>274</sup> 2006 DIAMOND INDUSTRY REVIEW, *supra* note 69, at 12.

Kono District.<sup>275</sup> The goal of the program was to enable diggers and their communities to receive a greater percentage of diamond proceeds by bypassing the supporter system and selling directly to reputable international buyers.<sup>276</sup> The cooperatives were organized in groups of 50-70 members who mined as a team, carefully cataloguing any diamonds found and storing them in a local bank for safekeeping until they were sold.<sup>277</sup> Members of a cooperative expected daily wages of approximately US\$1-2, as well as food and basic health care.<sup>278</sup>

The program was short-lived due to problems securing the seed money for the cooperative, misallocation of funds, a below-expected profit yield in the first year and a poorly-designed scheme for financing and managing the cooperative.<sup>279</sup> However, even within a short timeframe, the program generated: new employment for members and women providing support services; access to basic medical care; and additional household income, some of which was used to pay for children's education.<sup>280</sup> Some cooperatives even managed to become self-sustaining by supplementing the cooperative's funds with farming activities. As of late 2007, a few cooperatives were still in operation and were engaging in community projects such as building a school, implementing a new revolving loan program, and providing skills training for women.<sup>281</sup>

While the USAID-funded cooperative program failed, its failure should be taken as the result of poor planning and implementation, rather than as a signal that cooperative schemes cannot work in Sierra Leone. A 2008 evaluation of the USAID cooperatives scheme made several recommendations that will be useful to future projects of this type: Adopting a longer timeframe for financial self-sustainability, providing better training for cooperative members and leaders in the skills needed to operate this type of scheme, taking more care in selecting mining sites, and ensuring better monitoring of the program would likely lead to a more successful diamond cooperative than

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<sup>275</sup> ESTELLE A. LEVIN & ANSUMANA B. TURAY, ARTISANAL DIAMOND MINING COOPERATIVES IN SIERRA LEONE: SUCCESS OR FAILURE? 1 (2008), available at [http://www.pacweb.org/e/images/stories/documents/sierra\\_leone\\_cooperatives\\_study\\_2008.pdf](http://www.pacweb.org/e/images/stories/documents/sierra_leone_cooperatives_study_2008.pdf).

<sup>276</sup> JEAN P. TUTUSAUS ET AL., AMEX INTERNATIONAL, USAID/SIERRA LEONE DIAMOND SECTOR PROGRAM EVALUATION REPORT 20 (2007), available at [http://www.usaid.gov/sl/contracting/mis-sion/refmaterials/USAID\\_SierraLeoneDiamondProgramEvaluationreport\\_final.pdf](http://www.usaid.gov/sl/contracting/mis-sion/refmaterials/USAID_SierraLeoneDiamondProgramEvaluationreport_final.pdf); LEVIN AND TURAY, *supra* note 275, at 3.

<sup>277</sup> LEVIN AND TURAY, *supra* note 275, at 3.

<sup>278</sup> *Id.* at 4.

<sup>279</sup> *Id.* at 1-8; TUTUSAUS ET AL., *supra* note 276, at vii-viii.

<sup>280</sup> LEVIN AND TURAY, *supra* note 275, at 4.

<sup>281</sup> *Id.* at 5.

USAID's pilot.<sup>282</sup>

Finally, as noted by USAID and Global Witness, government monitoring of mining operations is generally poor. Regardless of whether a new cooperative scheme is attempted, effective monitoring is equally applicable to reducing child labour in diamond mines. Frequent, regular monitoring of mining sites could serve as a deterrent to using children for mining operations.

Both the DACDF and USAID programs show how developmental initiatives aimed at redirecting revenue from diamonds to local communities cannot be effective without adequate planning as well as comprehensive oversight and accountability mechanisms. Subsequent initiatives must carefully examine the shortcomings of these programs to ensure that they do not succumb to the same difficulties. Ultimately, however, well-designed and implemented programs can and should take centre stage in the effort to redress endemic poverty among mining communities and stop the practice of child mining.

#### **D. Considering a Child-Labour-Free Certification Scheme Akin to the Kimberley Process**

A central component of recent industry reform is Sierra Leone's participation in, and compliance with, the Kimberley Process Certification System. (For a full exposition of the Kimberley Process Certification Scheme, see Annex B.) Launched in 2003 in response to diamond-fuelled civil conflicts, the Kimberley Process is a voluntary international regulatory scheme that seeks to maintain the legitimate circulation of diamonds through the issuance of "conflict-free" certificates for diamond exports.

The internal control system required by the Kimberley certification process remains hampered by the same sets of challenges that limit national oversight of the industry, such as: lack of capacity to monitor the industry and collect accurate data; inadequate government oversight of mining transactions; and under-resourced domestic and cross-border law enforcement coordination to prevent illicit and unlicensed mining.<sup>283</sup> Nonetheless, the Kimberley Process represents an important international initiative that brings together actors

<sup>282</sup> TUTUSAUS ET AL., *supra* note 276, at 22. See generally GLOBAL WITNESS, MONITORING ARTISANAL DIAMOND MINES: A WORKSHOP REPORT (2006).

<sup>283</sup> See GLOBAL WITNESS & PARTNERSHIP AFRICA CANADA, THE KEY TO KIMBERLEY: INTERNAL DIAMOND CONTROLS – SEVEN CASE STUDIES 2 (2004) [hereinafter GW & PAC]. See also PAMELA WEXLER, AN INDEPENDENT COMMISSIONED REVIEW EVALUATING THE EFFECTIVENESS OF THE KIMBERLEY PROCESS 9 (2006) ("It comes as no surprise that the most problematic area for internal controls is in countries where alluvial diamonds are produced by artisanal miners, outside the formal sector. Countries vulnerable to conflict diamonds ... are the least able to adopt or enforce strong control measures.").

from government, the diamond industry and non-governmental organizations to develop and implement a standards system to mitigate the trade of illicit diamonds.

For the child and adult diggers in Sierra Leone's artisanal diamond mines, however, the Kimberley Process does little to improve working conditions in the mines directly.<sup>284</sup> Building on the momentum generated through its widespread participation among diamond-exporting states and industry actors, Amnesty International has encouraged the Kimberley Process "to start considering moving beyond conflict diamonds and including in the certification system other human rights implications of the trade in diamonds."<sup>285</sup> Addressing human rights violations in relation to the diamond industry – such as eliminating the practice of child mining – in states with artisanal diamond mining merits consideration. Specifically, conflict-free diamonds could be evaluated for certification as "child-labour-free."

The successful implementation of a "child-labour-free" diamond label requires a deeper feasibility study that is beyond the scope of this report. However, flaws in the Kimberley Process' conflict-free certification scheme ought to be considered to ensure more effective design of any parallel child-labour-free certification. For example, the Kimberley Process presently depends on the capacity of participating states to comply with the requisite standards;<sup>286</sup> external technical support and monitoring are thus necessary to ensure adequate implementation. Though the artisanal diamond mining industry poses particular regulatory difficulties because it is conducted largely outside the formal sector, child-labour-free schemes already exist in varying

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<sup>284</sup> GLOBAL WITNESS, *THE TRUTH ABOUT DIAMONDS* 3 (2006) ("Little benefit goes to those that need it most, including the million or more artisanal diamond miners and their communities [who] often live in conditions of dire poverty.").

<sup>285</sup> AMNESTY INTERNATIONAL, *RECOMMENDATIONS TO THE KIMBERLEY PROCESS (KP) PARTICIPANTS IN ORDER TO EFFECTIVELY STRENGTHEN THE KIMBERLEY PROCESS CERTIFICATION SCHEME (KPCS)* (2006).

<sup>286</sup> Of note, during a Moscow plenary meeting in November 2005, a declaration was adopted by Kimberley Process participants regarding the improvement of internal controls in alluvial mining countries; though helpful, these recommendations were not binding and were generally quite vague, leaving broad implementation authority to national governments. KIMBERLEY PROCESS, *IMPROVING INTERNAL CONTROLS OVER ALLUVIAL DIAMOND PRODUCTION: DECLARATION ADOPTED BY THE MOSCOW PLENARY MEETING OF THE KIMBERLEY PROCESS* (2005), available at [http://www.kimberleyprocess.com/structure/working\\_group\\_en.html](http://www.kimberleyprocess.com/structure/working_group_en.html). Later, in November 2007, Kimberley Process participants created the Working Group on Artisanal Alluvial Producers (WGAAP). KIMBERLEY PROCESS CERTIFICATION SCHEME WORKING GROUP ON ARTISANAL ALLUVIAL PRODUCERS, *TERMS OF REFERENCE* (2007), available at [http://www.kimberleyprocess.com/structure/working\\_group\\_en.html](http://www.kimberleyprocess.com/structure/working_group_en.html).

degrees<sup>287</sup> for other industries including chocolate,<sup>288</sup> rug-making<sup>289</sup> and sports equipment.<sup>290</sup> Finally, any oversight body established to monitor a “child-labour-free” scheme would require technical and funding support, as well as an independent and professional staff including child protection specialists.

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<sup>287</sup> For a discussion of these types of measures, see generally UNICEF, CHILD LABOUR RESOURCE GUIDE, APPENDIX 3 – TRADE ASSOCIATIONS: RESPONDING TO CHILD LABOUR, available at [http://www.unicef.org.uk/campaigns/publications/clrg/pdf/appendix3\\_C.pdf](http://www.unicef.org.uk/campaigns/publications/clrg/pdf/appendix3_C.pdf).

<sup>288</sup> See e.g., Equal Exchange, Child Labor in the Cocoa Industry, at <http://www.equalexchange.coop/child-labor-in-the-cocoa-industry>.

<sup>289</sup> See e.g., RugMark Foundation, Campaign to End Child Labour, at <http://www.rugmark.org/campaign.php?cid=2>.

<sup>290</sup> See e.g., Fairtrade Labelling Organizations International, Sports Balls, at [http://www.fairtrade.net/sports\\_balls.html](http://www.fairtrade.net/sports_balls.html).



## CONCLUSIONS

The survival and development of children living in Sierra Leone's mining communities – a large segment of the country's post-war generation – is seriously threatened by the widespread practice of child mining. The situation stands in gross violation of Sierra Leone's obligations under domestic and international law. To eliminate the practice of child mining, this report advocates a two-pronged approach – one that undertakes regulatory reforms in tandem with development programming, including and especially in the area of education.

As outlined in Chapters VI and VII, child mining cannot be eliminated without addressing its primary causes: poverty among diggers and their communities and the failure to ensure basic education for all children living in mining communities. Effective diamond sector regulatory reform must aim to improve the lives of adult diggers – and their families – in relation to working conditions, the supporter structure, diamond valuation and the distribution of proceeds. The creation of meaningful accountability mechanisms to curb corrupt practices is also required. Improved avenues to ensure local mine ownership with strong ties to mining communities and the transparent implementation of programs designed to redistribute diamond wealth to diamond-mining communities are critical. The provision of accessible, affordable and adequate primary and secondary education is also crucial to keeping children out of diamond mining and must be undertaken in parallel with industry reforms.

Ultimately, reforms must redress the basic inequities that impoverish diggers and their families. By closing the gap in bargaining power between actors in the transactional chain and strengthening the provision of education to children in mining communities, Sierra Leone can avoid the marginalization of a large segment of its post-war generation.

## ANNEX A

### COMMUNITY VOICES – EXPRESSING LOCAL DEVELOPMENT NEEDS

Eliminating the practice of child mining requires responses that correspond with development initiatives that are undertaken by national and international actors. This annex describes local development needs as voiced by community leaders and members such as chiefs, parents, children, diggers and educators living in mining communities. IHRC researchers received information concerning i) livelihoods, ii) infrastructure development and iii) the broader provision of basic services such as housing, food, and water. These needs represent a long and broad list of development needs whose detailed consideration falls outside the scope of this report. This annex aims at providing a space for the development concerns of local leaders and stakeholders in light of the strong sense of urgency with which they were expressed and serves as a locally-expressed call to action to the Government of Sierra Leone, as well as to the international community and local community members.

#### A. A Call for Improved Wages and/or Decent Livelihoods

Many of the young diggers and families in mining communities interviewed for this report lamented their present working conditions and wages; they expressed a preference for job opportunities outside of the mining industry, including the development of alternative employment and skills training programs.<sup>291</sup> As one digger explained:

I do not want to do mining, but I have no other option....  
There is no other work. I have to be patient and work  
in the mines and accept what I get in the mines. God  
willing, I will find a big diamond and get skills training

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<sup>291</sup> An overwhelming number of interviewees expressed their desire for skills training or employment assistance. *See, e.g.*, IHRC Interview #106, adult digger, Small Sedafu, Kono District (21 Jan. 2008); IHRC Interview #98, 25-year-old digger, Bumpeh Village, Kono District (21 Jan. 2008); IHRC Interview #101, adult digger, Ngaiya Junction, Kono District (21 Jan. 2008); IHRC Interview #73, adult digger, Koidu Town, Kono District (18 Jan. 2008) (all stating that they believed other employers or skills programs should be brought in to their communities). The Women's Commission also recommends skills training as an alternative to traditional education. *See generally* COUNTRY AT A CROSSROADS, *supra* note 215.

so that I can leave the mines.<sup>292</sup>

The diggers interviewed for this report universally desired a decent living wage from their mining activities. One adult miner explained, “I am mining and seeing diamonds, but I am not profiting.”<sup>293</sup> Adult diggers also complained of limited employment options that render it difficult to leave mining work. For example, a father of three who occasionally received contracts to do brick moulding indicated that he returned to the mines in hopes of securing a better income to support his family. Although he preferred to work in brick moulding, he could not sustain his family because there was a lack of available employment in that field.<sup>294</sup>

*“The number one thing I want the government to do is create jobs.”*<sup>295</sup> – Adult digger

*“I was expecting more from mining, but I have not got any benefit from it; I want skill training.”*<sup>296</sup> – Youth digger

*“I want the government to bring jobs other than mining; if they did I would leave the mines immediately.”*<sup>297</sup> – Adult digger

Facing poor wages in mining and a dearth of employment options, many diggers – adults and children – expressed a desire for alternative employment training; “I want to learn skills to do skilled work,” emphasized Mustafa. “I want to be an electrician.”<sup>298</sup> Other livelihoods that were mentioned by diggers included carpentry, tailoring,<sup>299</sup> driving,<sup>300</sup> mechanized agriculture,<sup>301</sup> masonry,<sup>302</sup> teaching,<sup>303</sup> and mechanics.<sup>304</sup> Community members reported that they were unable to afford the tools, facilities, and professional training.<sup>305</sup>

<sup>292</sup> IHRC Interview #106, adult digger, Small Sedafu, Kono District (21 Jan. 2008).

<sup>293</sup> IHRC Interview #11, adult digger, Tongo Fields, Kenema District (14 Jan. 2008).

<sup>294</sup> IHRC Interview #7, adult digger, Tongo Fields, Kono District (14 Jan. 2008).

<sup>295</sup> IHRC Interview #4, adult digger, Tongo Fields, Kono District (14 Jan. 2008).

<sup>296</sup> IHRC Interview #60, 18-year-old digger, Koidu Town, Kono District (18 Jan. 2008).

<sup>297</sup> IHRC Interview #31, adult digger, Hangha Village, Kenema District (15 Jan. 2008).

<sup>298</sup> IHRC Interview #52, 20-year-old digger, Paiama Village, Kenema District (16 Jan. 2008).

<sup>299</sup> IHRC Interview #87, 19-year-old digger, Yormandu Village, Kono District (19 Jan. 2008).

<sup>300</sup> IHRC Interview #98, 25-year-old digger, Bumpeh Village, Kono District (21 Jan. 2008).

<sup>301</sup> IHRC Interview #100, 15-year-old child miner, Koila Village, Kono District (21 Jan. 2008).

<sup>302</sup> IHRC Interview #113, 19-year-old digger, Yoradu Village, Kono District (22 Jan. 2008).

<sup>303</sup> IHRC Interview #147, 18-year-old digger, Farandu Village, Kono District (22 Jan. 2008).

<sup>304</sup> IHRC Interview #44, adult digger, Paiama Village, Kenema District (16 Jan. 2008).

<sup>305</sup> See IHRC Interview #11, adult digger, Tongo Fields, Kenema District (14 Jan. 2008) (“I want mechanic learning, but because I do not have any money, I came here to the mines.”). See also

While it is beyond the scope of this report to assess the feasibility of providing such programs – especially considering the mixed success of previous skills-building initiatives in Sierra Leone<sup>306</sup> – it is important to note the broad interest in skills development programs expressed by the diggers.

Many community leaders emphasized that their communities should focus on agriculture as an alternate source of livelihood to mining.<sup>307</sup> For example, one chief stated that agriculture, if properly utilized, could provide the village with money to build schools and water pumps.<sup>308</sup> However, town chiefs explained that they did not have the machinery, seeds and financial support to encourage agriculture as an alternative to mining.<sup>309</sup> One particularly important undertaking for mining communities in Sierra Leone is land reclamation, which restores mined-out pits to suitable farming land. The Lowoma Town Chief explained:

We need machines in order to make the land suitable for farming again. We are hopeful that land reclamation will spread – it would also be a way to employ youths and get them engaged in their communities. We would prefer to be involved in agriculture, but people come from outside and [tear up the land through engaging in

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IHRC Interview #56, 17-year-old child miner, Paiama Village, Kenema District (16 Jan. 2008); IHRC Interview #50, adult digger, Paiama Village, Kenema District (16 Jan. 2008) (“I want the government to support employment facilities for the [tailoring] skills that I have learned. I also want it to supply building supplies or to at least lower the cost of the supplies.”).

<sup>306</sup> The Special Representative of the Secretary-General for Children and Armed Conflict has reported that alternative forms of education and livelihood support systems are desirable in post-conflict countries like Sierra Leone, especially if these programs are tailored to the age of individual students. Special Representative Report, *supra* note 194, ¶ 98. However, the skills-training programs initiated in Sierra Leone after the civil war have enjoyed mixed success. See HRW, *YOUTH, POVERTY AND BLOOD*, *supra* note 165, at 67. Indeed, as one digger from Tongo Fields who had gone through such training explained: “I want the government to bring in more work; I have learned a trade but there is nothing for me to do. I still have the masonry tools, and am still ready to work, but there are no jobs.” IHRC Interview #5, adult digger, Tongo Fields, Kenema District (Jan. 14, 2008).

<sup>307</sup> IHRC Interview #152, Suleman Turi, diamond mining supporter, Bumpeh Village, Kono District (21 Jan. 2008); IHRC Interview #99, Town Chief, Bumpeh Village, Kono District (21 Jan. 2008); IHRC Interview #92, Deputy Town Chief Mohammed Matthias, Yormandu Village, Kono District (19 Jan. 2008).

<sup>308</sup> IHRC Interview #112, Paramount Chief of Kamara Chiefdom, Tombodu Village, Kono District (22 Jan. 2008).

<sup>309</sup> IHRC Interview #99, Town Chief, Bumpeh Village, Kono District (21 Jan. 2008); IHRC Interview #92, Deputy Town Chief Mohammed Matthias, Yormandu Village, Kono District (19 Jan. 2008); IHRC Interview #41, Town Chief, Lowoma Village, Kenema District (16 Jan. 2008).

diamond mining].<sup>310</sup>

The Chief referred to a land reclamation program that was initiated by an international group in a nearby area that has since been discontinued. He urged the government to sponsor similar initiatives across the diamond mining regions of the country.<sup>311</sup>

*"I want the government to improve the medical facilities in this village. My niece fell sick and we had to rush her to the hospital all the way in Kenema. She died. We need an improved hospital here."*<sup>312</sup> – Youth digger

*"There are inadequate accommodations. I have to use my shirt as my bedsheets."*<sup>313</sup>  
– Child Miner

*"I also have no place to sleep. I frequently sleep in marketplaces."*<sup>314</sup> – Adult digger

## **B. Overall Community Needs**

Community members interviewed for this report expressed a widespread desire for improved living standards and community infrastructure. Chiefs and diggers alike reported that their communities suffered from shortages of medical care, food and adequate housing. Improvements in the delivery of basic services should be considered as a means of supporting families in mining communities that can prevent the practice of child mining.

### 1. Rehabilitating Basic Infrastructure

Despite the passage of years since the end of the country's civil war, community leaders uniformly urged rehabilitation of basic infrastructure in their villages. Community members and town chiefs interviewed expressed the need for improved roads in mining communities,<sup>315</sup> especially during the rainy

<sup>310</sup> IHRC Interview #41, Town Chief, Lowoma Village, Kenema District (16 Jan. 2008).

<sup>311</sup> IHRC Interview #41, Town Chief, Lowoma Village, Kenema District (16 Jan. 2008).

<sup>312</sup> IHRC Interview #37, 18-year-old digger, Pandieu Village, Kenema District (15 Jan. 2008).

<sup>313</sup> IHRC Interview #3, 14-year-old child miner, Tongo Fields, Kenema District (14 Jan. 2008).

<sup>314</sup> IHRC Interview #12, adult digger, Tongo Fields, Kenema District (14 Jan. 2008).

<sup>315</sup> IHRC Interview #65, 15-year-old child miner, Koidu Town, Kono District (18 Jan. 2008);

IHRC Interview #144, Town Chief S.M. Burah, Peyima Village, Kono District (19 Jan. 2008);

IHRC Interview #112, Paramount Chief of Kamara Chiefdom, Tombodu Village, Kono District

(22 Jan. 2008); IHRC Interview #41, Town Chief, Lowoma Village, Kenema District (16 Jan. 2008).

season.<sup>316</sup> One youth digger suggested that revenues from diamond mining ought to be directed to road improvements in mining communities.<sup>317</sup> In addition to road improvements, community members also expressed the need for improved markets, town centres and the delivery of electricity in mining areas.<sup>318</sup>

## 2. Improving Access to Water and Sanitation Facilities

Many community members expressed the need for better water and sanitation facilities in mining areas.<sup>319</sup> One youth digger from the village of Bumpeh lamented how his town lacks clean drinking water; he explained that even when the rainy season (from approximately May – September) provided a fresh supply of water, by March the wells reportedly dry up.<sup>320</sup> Mining areas also lack proper toilets.<sup>321</sup>

## 3. Improving Access to and Delivery of Primary Health Care

Members of diamond mining communities also complained of poor access to and adequacy of health care.<sup>322</sup> Specific access problems included an insufficient supply of pharmaceutical drugs,<sup>323</sup> as well as the overall absence of available health clinics.<sup>324</sup> While the Government of Sierra Leone has reportedly taken preliminary steps to improve the country's weak system of

<sup>316</sup> IHRC Interview #87, 19-year-old digger, Yormandu Village, Kono District (19 Jan. 2008).

<sup>317</sup> IHRC Interview #79, 23-year-old digger, Peyima Village, Kono District (19 Jan. 2008).

<sup>318</sup> IHRC Interview #98, 25-year-old digger, Bumpeh Village, Kono District (21 Jan. 2008); IHRC Interview #144, Sahr S.M. Burah, Chief, Peyima, Kono, Sierra Leone (19 Jan. 2008); IHRC Interview #41, Town Chief, Lowoma Village, Kenema District (16 Jan. 2008).

<sup>319</sup> See, e.g., IHRC Interview #97, 22-year-old digger, Bumpeh Village, Kono District (21 Jan. 2008); IHRC Interview #41, Town Chief, Lowoma Village, Kenema District (16 Jan. 2008); IHRC Interview #87, 19-year-old digger, Yormandu Village, Kono District (19 Jan. 2008); IHRC Interview #144, Town Chief S.M. Burah, Peyima Village, Kono District (19 Jan. 2008); IHRC Interview #87, 19-year-old digger, Yormandu Village, Kono District (19 Jan. 2008).

<sup>320</sup> IHRC Interview #98, 25-year-old digger, Bumpeh Village, Kono District (21 Jan. 2008).

<sup>321</sup> IHRC Interview #144, Town Chief S.M. Burah, Peyima Village, Kono District (19 Jan. 2008).

<sup>322</sup> IHRC Interview #144, Town Chief S.M. Burah, Peyima Village, Kono District (19 Jan. 2008). A Deputy Town Chief explained how social services are lacking for those disabled and widowed by the war. IHRC Interview #92, Deputy Town Chief Mohammed Matthias, Yormandu Village, Kono District (19 Jan. 2008). According to the Women's Commission, disabled youth – many of whom were forcefully amputated during the war – have reported being treated like they are sub-human or have been left without opportunities because of their disabilities. PRECIOUS RESOURCES, *supra* note 216, at 30.

<sup>323</sup> IHRC Interview #99, Town Chief, Bumpeh Village, Kono District (21 Jan. 2008).

<sup>324</sup> See, e.g., IHRC Interview #37, 18-year-old digger, Pandieu Village, Kenema District (15 Jan. 2008) (explaining how his niece died while being rushed to a health facility in another town).

health care delivery,<sup>325</sup> mining areas remain underserved.<sup>326</sup>

#### 4. Alleviating Chronic Food Shortages

Food security remains a critical issue cited by many members of diamond mining communities. One Town Chief reported that many mining communities in Kono District did not have enough food to sustain workers;<sup>327</sup> indeed, in his opinion, negative community attitudes towards farming push many to concentrate on mining as a livelihood.<sup>328</sup> It should be noted that some diggers interviewed for this report expressed a desire to farm but explained that they lacked the means.<sup>329</sup>

#### 5. Insufficient Affordable and Adequate Housing

Finally, members of mining communities lamented the inadequacy of their current forms of shelter.<sup>330</sup> A youth digger explained: “Where I live, there is only a plastic roof, so when it rains it falls on us. I have no bed. I sleep on the ground.”<sup>331</sup> The Section Chief for Pandieu, Kenema District reported: “Houses are overcrowded – many were burned down [during the civil war], but we have had no assistance in rebuilding them.”<sup>332</sup> The widespread nature of the situation was confirmed by a Deputy Town Chief in Kono District: “Most houses were destroyed by the war, and people do not have the means to rebuild them.”<sup>333</sup> Like the lack of health care and food, lack of shelter is both a reflection of the severe poverty of many Sierra Leonean communities and a contribution

<sup>325</sup> DDI INTERNATIONAL, *supra* note 44, at 8.

<sup>326</sup> *Id.*

<sup>327</sup> IHRC Interview #107, Paramount Chief, Small Sedafu, Kono District (21 Jan. 2008). *See also*, IHRC Interview #92, Deputy Town Chief Mohammed Matthias, Yormandu Village, Kono District (19 Jan. 2008) (“We need food for working because an empty belly cannot work.”).

<sup>328</sup> IHRC Interview #107, Paramount Chief, Small Sedafu, Kono District (21 Jan. 2008).

<sup>329</sup> *See, e.g.*, IHRC Interview #94, adult digger, Yormandu Village, Kono District (19 Jan. 2008); IHRC Interview #3, 14-year-old child miner, Tongo Fields, Kenema District (14 Jan. 2008); IHRC Interview #48, 20-year-old digger, Paiama Village, Kenema District (16 Jan. 2008).

<sup>330</sup> *See, e.g.*, IHRC Interview #102, 19-year-old digger, Small Sefadu, Kono District (21 Jan. 2008); IHRC Interview #92, Deputy Town Chief Mohammed Matthias, Yormandu Village, Kono District (19 Jan. 2008); IHRC Interview #39, Section Chief, Pandieu Village, Kenema District (15 Jan. 2008); IHRC Interview #3, 14-year-old child miner, Tongo Fields, Kenema District (14 Jan. 2008); IHRC Interview #12, adult digger, Tongo Fields, Kenema District (14 Jan. 2008); IHRC Interview #93, Aiah Janga, human rights promoter, Tombodu Village, Kono District (22 Jan. 2008).

<sup>331</sup> IHRC Interview #102, 19-year-old digger, Small Sefadu, Kono District (21 Jan. 2008).

<sup>332</sup> IHRC Interview #39, Section Chief, Pandieu Village, Kenema District (15 Jan. 2008).

<sup>333</sup> IHRC Interview #92, Deputy Town Chief Mohammed Matthias, Yormandu Village, Kono District (19 Jan. 2008).

to the financial pressures that currently overwhelm families living in mining communities.

## ANNEX B

### AN OVERVIEW OF THE KIMBERLEY PROCESS

The Kimberley Process represents a voluntary initiative to combat the smuggling of conflict diamonds. This Annex explains the operation of the Kimberley Process, outlines its achievements and identifies its weaknesses.

#### A. A History and Overview of the Kimberley Process

At the height of the civil wars in Sierra Leone, Angola and Liberia in the 1990s, “blood diamonds” – diamonds mined by fighting forces to fuel conflict – comprised as much as 15 percent of the world’s total diamond circulation.<sup>334</sup> In December 2000, the U.N. General Assembly unanimously passed a resolution in support of an international certification scheme for the trade of diamonds.<sup>335</sup> After continued “pressure on governments and the diamond industry from NGOs,”<sup>336</sup> as well as the threat of a consumer boycott, the Kimberley Process was launched at a meeting of southern African diamond producing states held in Kimberley, South Africa, in December 2000. Subsequent international negotiations on ways to stem the illegal trade in diamonds from conflict zones led to the Kimberley Process Certification Scheme (KPCS), which took effect in 2003 as a voluntary agreement among the diamond industry, governments and civil society organizations.

The central premise of KPCS is that “any shipment of rough diamonds to or from a participating state [must be] accompanied by a Kimberley Process certificate guaranteeing that the rough diamonds are ‘conflict-free.’”<sup>337</sup> The certification scheme tracks traded diamonds from their origin to their final destination in retail jewellery stores or industrial production. Participating states are “only allowed to trade rough diamonds with other participants,”<sup>338</sup> keeping conflict diamonds entirely outside of legitimate circulation. There are

<sup>334</sup> GLOBAL WITNESS, *THE TRUTH*, *supra* note 284, at 2. For a history of conflict diamonds, specifically in Sierra Leone, see generally IAN SMILLIE ET AL., *PARTNERSHIP AFRICA CANADA, THE HEART OF THE MATTER: SIERRA LEONE, DIAMONDS AND HUMAN SECURITY* (2000); GREG CAMPBELL, *supra* note 165.

<sup>335</sup> G.A. Res. 55/56, ¶ 3-5, U.N. Doc. A/RES/55/56 (Dec. 1, 2000). *See also* G.A. Res. 56/263, U.N. Doc. A/RES/56/263 (Apr. 9, 2002).

<sup>336</sup> AMNESTY INTERNATIONAL, *UPDATE ON THE KIMBERLEY PROCESS PLENARY MEETING OF NOVEMBER 2006 AND RECOMMENDATIONS TO KIMBERLEY PROCESS PARTICIPANTS 1* (2006) (“Background”), available at <http://www.amnesty.org/en/library/info/POL30/057/2006>.

<sup>337</sup> *Id.*

<sup>338</sup> GLOBAL WITNESS, *THE KIMBERLEY PROCESS AT RISK 1* (2006) [hereinafter *KP AT RISK*].

currently 49 participants, representing 75 countries,<sup>339</sup> which, according to the Kimberley Process's website, "account for approximately 99.8% of the global production of rough diamonds."<sup>340</sup>

The responsibilities of the three principal actors in the Kimberley Process – governments, industry actors and civil society – are summarized below:

### 1. Governments

To become a KPCS participant, governments must:

- Enact legislation that implements and enforces the scheme;
- Guarantee the security of containers used for the import and export of rough diamonds;
- Compile and exchange accurate records on their production and trade; and
- Create and use a certificate that meets the scheme's requirements.<sup>341</sup>

### 2. Diamond Industry

The diamond industry is "committed to a system of self-regulation" which includes requirements to:

- Create a code of conduct related to conflict diamonds;
- Implement a system of warranties guaranteeing that diamonds sold are conflict-free;
- Keep records of warranty invoices for auditing; and
- Inform employees of domestic regulations and industry policies.<sup>342</sup>

### 3. Civil Society

Led by Global Witness, Amnesty International and Partnership Africa Canada, civil society organizations were central to the establishment of the

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<sup>339</sup> For the most updated information on participating nations, see Kimberley Process, What is the Kimberley Process?, at [www.kimberleyprocess.com](http://www.kimberleyprocess.com). The European Union counts as one participant.

<sup>340</sup> Kimberley Process, Background, at [http://www.kimberleyprocess.com/background/index\\_en.html](http://www.kimberleyprocess.com/background/index_en.html).

<sup>341</sup> GLOBAL WITNESS, MAKING IT WORK: WHY THE KIMBERLEY PROCESS MUST DO MORE TO STOP CONFLICT DIAMONDS 4-5 (2005). See also Kimberley Process Certification Scheme, at [http://www.kimberleyprocess.com/documents/basic\\_core\\_documents\\_en.html](http://www.kimberleyprocess.com/documents/basic_core_documents_en.html).

<sup>342</sup> AMNESTY INTERNATIONAL, UPDATE, *supra* note 336, at 1 ("Background"). See also Kimberley Process Certification Scheme, *supra* note 341, at § IV ("Principles of Industry Self-Regulation"); GLOBAL WITNESS, MAKING IT WORK, *supra* note 341, at 5.

KPCS and continue to play an important role in monitoring compliance. Along with participating governments, industry and civil society representatives are present at the yearly plenary meetings.

## B. Achievements of the Kimberley Process

The most practical achievement of Kimberley has been a reduction in the circulation of conflict diamonds. Compared to the mid-1990s, when conflict diamonds were estimated to have comprised up to 15 percent of the worldwide circulation, estimates now place conflict diamonds at less than one percent of total market volume.<sup>343</sup> These estimates are somewhat unreliable, however, as a diamond is presumed to be automatically conflict-free if it is Kimberley certified<sup>344</sup> – a presumption that does not always stand up to scrutiny, as explained below. Moreover, it is difficult to determine the exact contribution of KPCS as opposed to other factors that might account for fewer conflict diamonds. For example, there may simply be greater stability in diamond-producing countries, since the conflicts in Sierra Leone, Angola and Liberia have come to an end. While one cannot determine the precise impact of Kimberley on reducing conflict diamonds, there is widespread consensus that the Kimberley Process has had positive effects. As stated by Global Witness, the “scheme makes it more difficult for diamonds from rebel-held areas to reach international markets.”<sup>345</sup>

The Kimberley Process has also helped to establish an international norm against the trade of conflict diamonds. Regardless of the effectiveness of governments' internal controls or self-regulation by the diamond industry, the mere existence of the norm provides a powerful incentive to reduce the practice,<sup>346</sup> which corresponds to consumer demand for higher accountability from the diamond industry.

Finally, the Kimberley Process reflects a “high degree of collaboration among nations, industry, and NGOs.”<sup>347</sup> Given the different interests of these actors and the fact that “the scheme was not mandated by an international

<sup>343</sup> EC CHAIRMANSHIP OF THE KIMBERLEY PROCESS, FROM CONFLICT DIAMONDS TO PROSPERITY DIAMONDS (2007), available at [http://ec.europa.eu/external\\_relations/kimb/docs/handout07\\_en.pdf](http://ec.europa.eu/external_relations/kimb/docs/handout07_en.pdf) (“Overall, it is estimated that over 99% of today’s diamonds are conflict-free.”).

<sup>344</sup> See, e.g., World Diamond Council, Eliminating Conflict Diamonds, at [http://diamondfacts.org/conflict/eliminating\\_conflict\\_diamonds.html](http://diamondfacts.org/conflict/eliminating_conflict_diamonds.html) (maintaining that “over 99% of all diamonds are certified through the Kimberley Process to be from conflict free sources.”).

<sup>345</sup> GLOBAL WITNESS, THE TRUTH, *supra* note 284, at 2.

<sup>346</sup> For a discussion on norm diffusion, see generally Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT’L ORG. 887 (1998).

<sup>347</sup> WEXLER, *supra* note 283, at 5.

body,”<sup>348</sup> this collaboration is noteworthy. It demonstrates that it is possible to bring actors with divergent agendas together for a common, humanitarian purpose. If the failings of the Kimberley Process described below can be properly addressed, the process could serve as a model to improve practices in other extractive industries, many of which have likewise fuelled conflict and gross human rights abuses.<sup>349</sup>

### C. Key Shortcomings of the Kimberley Process

Despite the successes of the Kimberley Process, “blood diamonds still exist and are entering the legitimate trade” because of “significant weaknesses in the scheme that undermine its effectiveness...”<sup>350</sup> Five major shortcomings identified with the Kimberley Process include:

1. Weak internal control systems in participant States;
2. Ineffective statistical reporting;
3. Lack of funding;
4. Self-regulation by the diamond industry; and
5. The limited mandate of the Kimberley Process.

#### 1. Weak Internal Control Systems

At the core of the Kimberley Process is the requirement that governments must “develop and implement [a system of internal controls] to track the origin of diamonds and ensure that no conflict diamonds are being exported or entering the formal trade.”<sup>351</sup> Rather than outlining mandatory policies – or even baselines of necessary internal controls – the Kimberley Process leaves the design and implementation at the discretion of participating governments. Although in theory this allows governments to devise standards related to the specific circumstances and problems of the country, the reality is that “[t]his discretion results in uneven standards of control between participating states and opens the way for conflict diamonds to infiltrate the legitimate diamond trade via the states which have the weakest internal control

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<sup>348</sup> *Id.*

<sup>349</sup> See, e.g., GLOBAL WITNESS, HOT CHOCOLATE: HOW COCOA FUELLED THE CONFLICT IN CÔTE D’IVOIRE (2007); GLOBAL WITNESS, UNDER-MINING PEACE – TIN: THE EXPLOSIVE TRADE IN CASSITERITE IN EASTERN DRC (2005); HUMAN RIGHTS WATCH, SUDAN, OIL, AND HUMAN RIGHTS (2003); GLOBAL WITNESS, LOGGING OFF: HOW THE LIBERIAN TIMBER INDUSTRY FUELS LIBERIA’S HUMANITARIAN DISASTER AND THREATENS SIERRA LEONE (2002).

<sup>350</sup> KP AT RISK, *supra* note 338, at 2.

<sup>351</sup> WEXLER, *supra* note 283, at 8.

measures.”<sup>352</sup> Moreover, “[e]ven where controls appear adequate on paper, there are substantial deficiencies with implementation and enforcement” in many countries.<sup>353</sup>

Weak or non-existent controls as well as uneven enforcement can be attributed to an over-arching lack of capacity, technological shortcomings and corrupt practices by state actors. Moreover, borders are porous and there exists little regional cooperation to stop illicit trading. Global Witness maintains that “[t]he (Kimberley) process will be neither credible nor effective and diamonds will continue to be exploited and used to fund conflict” so long as there exist participant States without reliable control systems.<sup>354</sup>

### A Case Study of Kimberley: Côte d’Ivoire\*

Diamonds mined in northern Côte d’Ivoire reportedly funded the operations of the Forces Nouvelles, a rebel army that once controlled the northern part of the country. As a result, the U.N. implemented an embargo on diamonds from Cote d’Ivoire in December 2005; nonetheless, an estimated US\$23 million worth of diamonds managed to reach the international diamond market the following year. Diamond traders smuggled diamonds from Côte d’Ivoire into four neighbouring countries: Ghana, Guinea, Mali, and, once sanctions were lifted, Liberia. Because of weak internal controls in Ghana and Guinea, both Kimberley Process participants, the conflict diamonds from Cote d’Ivoire entered the circulation of legitimate rough stones and thus were certified as “conflict-free.” At the same time, rough diamonds from Cote d’Ivoire were smuggled into Mali, which is not a Kimberley Process participant, from which they reached the international market through illegal deals. Conflict diamonds from Côte d’Ivoire reached the international market due to the prevailing lack of transparency in the diamond industry, which enabled their purchase (and sale) without consequence. The case of Cote d’Ivoire demonstrates the need to address weak internal controls in the diamond industry.

\*Global Witness, *Loopholes in the Kimberley Process: Summary of Results of Diamond Trade Statistics Review* (2007); Amnesty International, *Update on the Kimberley Process Plenary Meeting of November 2006 and Recommendations to Kimberley Process Participants 1* (2006) (“Background”), available at <http://www.amnesty.org/en/library/info/POL30/057/2006>. Global Witness, *Making it Work: Why the Kimberley Process Must Do More to Stop Conflict Diamonds* 4-5 (2005).

<sup>352</sup> AMNESTY INTERNATIONAL, *UPDATE*, *supra* note 336, at § 2 (“Minimum Internal Controls”). See also WEXLER, *supra* note 283, at 8.

<sup>353</sup> WEXLER, *supra* note 283, at 8. See also KP AT RISK, *supra* note 338, at 3.

<sup>354</sup> GLOBAL WITNESS, *IMPLEMENTING THE KIMBERLEY PROCESS: 5 YEARS ON – HOW EFFECTIVE IS THE KIMBERLEY PROCESS AND WHAT MORE NEEDS TO BE DONE 2* (2005). See also GLOBAL WITNESS, *MONITORING ARTISANAL DIAMOND MINES*, *supra* note 282, at 7 (“... [w]eak, ineffective or non-existent internal controls are the Achilles heel of the Kimberley Process.”)

## 2. Substandard Statistical Reporting and Analysis of the Rough Diamond Trade

Difficulties remain for participating states to accurately report on the import and export of rough diamonds. Poor reporting is a major cause for concern since “reliable and comparable data on the production and the international trade in rough diamonds are an essential tool ... for identifying any irregularities or anomalies which could indicate that conflict diamonds are entering the legitimate trade.”<sup>355</sup>

According to Global Witness, these problems include the failure to submit statistics in a timely manner, poor quality or comparability of data, and the “lack of regular analysis of statistics that is needed in order to identify illicit trade.”<sup>356</sup> The first two issues appear to relate to the will and/or capacity of governments, while the latter concern the structure of the Kimberley Process as a whole.<sup>357</sup> Strong statistical analysis is a critical tool to detecting conflict diamonds; problems with statistical reporting “threaten[] to undermine the effectiveness of the entire Scheme.”<sup>358</sup>

## 3. Funding the Implementation of the Kimberley Process

An overall lack of available funding for the implementation of the Scheme in participating states threatens to undermine the Kimberley Process in two ways. First, participating states may lack the capacity to implement the procedures necessary to ensure compliance. Second, the Kimberley Process is not formally funded per se and instead is “run by those that volunteer time and resources.”<sup>359</sup> Although volunteers have provided the foundation for a successful scheme, the system as presently constituted “is not sustainable and places an undue burden on those who volunteer.”<sup>360</sup>

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<sup>355</sup> Kimberley Process Certification Scheme, *supra* note 341, at Annex III (“Statistics”). See also WEXLER, *supra* note 283, at 8.

<sup>356</sup> GLOBAL WITNESS, IMPLEMENTING THE KIMBERLEY PROCESS, *supra* note 354, at 4.

<sup>357</sup> WEXLER, *supra* note 283, at 16 (noting that the Working Group on Statistics, like other bodies of the Kimberley Process, is an all-volunteer unit that simply does not have the time or expertise to adequately review all of the incoming statistics).

<sup>358</sup> GLOBAL WITNESS, IMPLEMENTING THE KIMBERLEY PROCESS, *supra* note 354, at 3.

<sup>359</sup> KP AT RISK, *supra* note 338, at 4.

<sup>360</sup> *Id.*

#### 4. Self-Regulation Resulting in Weak Compliance by Industry Actors

As with participating states, the diamond industry is almost entirely self-regulated under the KPCS. Industry actors are expected to articulate applicable rules and enforce their compliance. However, this structure has been reported to result in weak regulations and widespread non-compliance amongst industry actors.

Global Witness has reported that “[o]nly a minority of diamond jewellery retailers ... have effective measures in place” to implement the requisite regulations to combat conflict diamonds.<sup>361</sup> U.S. and U.K. jewellery companies have been found to frequently fail to respond to inquiries about their policies on conflict diamonds; of those that do, only a few are able to provide information on their system of warranties.<sup>362</sup> A 2004 retail survey of jewellery stores demonstrated a lack of knowledge and assurances about whether diamonds were in fact conflict-free.<sup>363</sup> Ultimately, these investigations have demonstrated “the flaws in the self-regulation and its implementation,” a considerable problem for the KPCS’s effectiveness and legitimacy.<sup>364</sup>

Global Witness suggests that participating states should take a more active role in ensuring industry compliance, “requir[ing] that the diamond industry put meaningful systems in place” that provide for a “comprehensive, auditable system to track diamonds from mine to point of sale...”<sup>365</sup> It further advocates annual, independent audits of each diamond company’s system of warranties and greater cooperation with law enforcement.<sup>366</sup>

#### 5. A Mandate Limited to Conflict Diamonds

Finally, in addition to the problems outlined above, as currently constituted, the mandate of the Kimberley Process is narrowly confined to conflict diamonds and does not address other human rights violations that are associated with diamond mining.

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<sup>361</sup> GLOBAL WITNESS, DÉJÀ VU: DIAMOND INDUSTRY STILL FAILING TO DELIVER ON PROMISES – SUMMARY OF UK AND US RESULTS OF GLOBAL WITNESS AND AMNESTY INTERNATIONAL SURVEY 3 (2004). See generally GLOBAL WITNESS, BROKEN VOWS: THE DIAMOND INDUSTRY’S FAILURE TO DELIVER ON COMBATING BLOOD DIAMONDS (2006).

<sup>362</sup> GLOBAL WITNESS, DÉJÀ VU, *supra* note 361, at 3.

<sup>363</sup> *Id.*

<sup>364</sup> GLOBAL WITNESS, MAKING IT WORK, *supra* note 341, at 7.

<sup>365</sup> GLOBAL WITNESS, BROKEN VOWS, *supra* note 361, at 3.

<sup>366</sup> *Id.*

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## **DIGGING IN THE DIRT: CHILD MINERS IN SIERRA LEONE'S DIAMOND INDUSTRY:**

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Seven years after the end of a civil war that targeted children for atrocities, hundreds of children and youth are exploited daily as they labour in open-pit diamond mines. This report describes how the Government of Sierra Leone's failure to address the widespread use of child miners violates its obligations under domestic and international law to protect and promote the rights of children. By failing to redress the situation, the Government of Sierra Leone is allowing the development of deep socio-economic grievances, which could threaten future social stability amongst a large segment of the country's post-war generation.

Based on the experiences of child miners interviewed in over two dozen artisanal diamond mining sites, the International Human Rights Clinic (IHRC) at Harvard Law School has prepared this report, which describes how the rights of child labourers are grossly violated while working in artisanal diamond mines. Drawing from over 200 interviews with diamond diggers, mining actors, local chiefs, mine union representatives, community leaders and members of mining communities, this report seeks to deepen understandings of the practice of child mining and inform immediate responses that are necessary to eliminate this deeply exploitative practice.

### **THE INTERNATIONAL HUMAN RIGHTS CLINIC @ HARVARD LAW SCHOOL**

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The International Human Rights Clinic at Harvard Law School is a center for critical thought and active engagement in human rights. Each year, the Clinic undertakes several dozen projects focusing on fact-finding, litigation, legal and policy analysis, report drafting for international oversight bodies, and the development of advocacy strategies in partnership with organizations around the world.

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