



“Investing in Africa’s future”

COLLEGE OF BUSINESS, PEACE, LEADERSHIP AND GOVERNANCE

NPPH511: THE RIGHTS OF WOMEN AND CHILDREN

SUPPLEMENTARY EXAMINATIONS AUGUST -2021

LECTURER: Advocate K JIRI

DURATION: 7 HOURS

INSTRUCTIONS

Answer **ONE Question**

Scores are awarded for:

- Organization, structure, and analysis of the issues (10 Marks)
- Use of facts and human rights principles (10 Marks)
- Use of authorities and citations (10 Marks)
- Persuasiveness, ingenuity, logic and reasoning (10 Marks)
- Grammar, style, and clarity (10 Marks)

Use the Elois c.s. vs Kamanga to answer questions 1 and 2.

Elois c.s. vs Kamanga

Elois is a 12-year old boy, who is a citizen of the Republic of Zinubia, a country that has been engaged in a bloody civil war for the past two decades. Due to the ongoing fights, there are no teachers in the schools in the area where Elois and his family live and therefore Elois and his siblings cannot attend school.

Kamanga, which is relatively safe, neighbors Zinubia and has taken in many refugees from the country. Kamanga has been blessed with vast natural resources including oil, gas and minerals. In particular, it has a thriving gold mining sector. The country is also known to be corrupt and partly controlled by rebel armed groups. In addition, it has a very weak judicial system.

Elois, who is looking for better opportunities, decides to flee his home in Zinubia to Kamanga to try to seek asylum there in the hope for a better life and to attend school. Unfortunately, on his way to Kamanga, he falls prey to a group of traffickers, who under false pretenses bring Elois to Kamanga's main gold mining region to work as a child laborer. This mining region is located in Lanimba, a region in the eastern part of Kamanga, which is a rebel-controlled area, rendering it largely ungovernable by the state government.

The mine and surrounding mine-site where Elois works, is owned by a powerful private mining company with more than 12,000 employees globally and its headquarters in Francia. The company has conducted an assessment of its human rights practices and has reported on it under the recently enacted due diligence law in Francia.

Together with a group of other young boys and girls, Elois is forced to dig shafts and work underground, pull up, carry and crush the ore, and pan it for gold, on an every day basis. He spends 10 hours or more a day in dark and narrow mines, risking fatal accidents due to falling rocks, explosions, collapse of mine walls and the use of equipment which is designed for adults. When panning for gold, he is exposed to chemicals including the highly toxic chemical mercury, which attacks the central nervous system and is particularly harmful to children.

The small mining town where Elois and the other child workers live is attracting a lot of people. People are looking for work in the mines and traders come to the town to buy and sell gold. Due to this influx of people who come to the town, children, especially the young girls, but also some boys who have been brought here by traffickers, are exposed to sexual exploitation and they are at risk of contracting sexually transmitted diseases, including HIV/Aids.

The district community development administrator of Lanimba, where the mine is located

acknowledges there are problems with working children in the mining sector, including a lack of educational opportunities for children and a surge in HIV/Aids cases in his district, including among children, but due to the presence of the rebels his office has not been able to undertake any actions in Lanimba. Also, according to the administrator, the State Directorate of Mines is to be blamed for issuing mining licenses to mining companies without properly scrutinizing the companies' human rights and child rights track records.

At the national level, in 2016, the Government of Kamanga adopted a National Plan of Action (2016-2020) to combat the worst forms of child labour. Kamanga, being aware of the issues in the mining sector is undertaking a large reform process on trafficking and child labour in the mining industry in the country and as part of this project is supporting a number of NGOs working on the issue nationwide. Kamanga is also signatory to the Palermo Protocol and has implemented national legislation on the issue of trafficking, including prosecution of traffickers. Lastly, Kamanga has also signed the Minamata Convention on Mercury.

A number of local child rights NGOs working in the area have concluded, however, that both the local authorities and the national government are not doing enough to prevent and address child labour in the gold mining sector in Lanimba region and the child rights issues associates with gold mining. Without the authorities' support the NGOs are not fully able to address the root causes of the child labour and other child rights abuses, including cross-border child trafficking. Due to the alleged lack of government efforts in Lanimba, the NGOs are trying to address the issues affecting the children working in the mines. They are giving awareness raising sessions to working children on health and safety and harmful effects of mercury, they try to get children out of the mines into schools and where possible they try to reunite trafficked children working in the mines with their parents.

One evening, during her outreach activities near one of the bars in the mining town, one of the NGO workers meets Elois. Elois tells her how he has been trafficked while he was traveling from his home in Zinubia, and how he has been working in the gold mines for over a year now, without getting paid and without having any days off. He has been injured many times while working in the mines, and he cannot see properly anymore due to the dust and darkness underground. As he is not getting paid by the mining company, he does not have any money and cannot return home. To earn money, he is forced to sell himself to traders that pass through the mining town in the evenings. Elois tells that more than a dozen other children, some as young as 10 years old, are living and working under similar circumstances. Shocked by what they are told, the NGO decides to take action and starts an operation to rescue the children working in the gold mine. Once the children are rescued by the NGO, they are brought to a shelter, where the living conditions are not much better than in Lanimba's mining towns. Dozens of rescued children sleep on mats on concrete floors, food is scarce, toilets are dirty and stories of physical and sexual abuse by the caretakers of the shelter are going around.

Elois is traumatized for life due to everything he has experienced and hopes no other children have to go through what he has gone through. He wants to take action at the highest level to raise international attention to the harsh conditions of working children in the gold mines of Lanimba and wants to submit a case against the government of Kamanga. Elois and his fellow former child workers, supported by the above-mentioned NGO, which is representing the children collectively, have decided to bring a case against Kamanga for violations of the rights of the child as recognized in the UN Convention on the Rights of the Child and related international legal standards and to demand remedies from Kamanga, including compensation under international law.

Due to the lack of an effective court system in Kamanga, there is a huge backlog of cases and it would take many years for the children to be heard. There is also a concern that bribes could be paid to judges and other persons within the judiciary in this case due to the role of powerful ministries and mining companies.

Kamanga has ratified the UN Convention on the Rights of the Child with no reservations. In 2013, Kamanga also ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, as one of the first countries in the world. Since 2011, the African Charter on the Rights and Welfare of the Child has also entered into force in Kamanga.

For the purposes of this exercise an International Court on the Rights of the Child has been given jurisdiction to adjudicate disputes under the Convention on the Rights of the Child. In assessing individual petitions under the Convention, the Court applies standard rules of international human rights law adjudication, such as the rule of exhaustion of domestic remedies before a party can bring a claim before an International Tribunal, and the accepted exceptions to those rules. It follows the procedural considerations reflected in the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (see in particular Article 7). The Court also follows the guidelines drawn up by the Committee on the Rights of the Child (see www.ohchr.org).

Question 1:

You are the applicant and you represent the children in this scenario, what case can you bring against Kamanga (the State) for violations of the rights of the child as recognized in the UN Convention on the Rights of the Child and related international legal standards and what remedies can be demanded from Kamanga (50 marks)

Question 2:

You are the defendant and you represent Kamanga (the State), what arguments can you bring up in defense of the actions by Kamanga? (50 marks)

Question 3:

During debates on the Marriage law consultations in Zimbabwe, several issues came up, including the following:

- (a) That the age of consent to sex must be equated with the age of consent to marriage;
- (b) That civil partnerships must not be recognized as marriages; and
- (c) That child marriages are void/voidable.

Discuss the pros and cons of each of these issues with regards to the rights of women and children (50 marks)

End of Paper