**Winrock International**

**Rwanda Education Alternatives for Children in Tea-growing Areas (REACH-T) project**

**Labor law enforcement assessment, Phase 2**

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# LIST OF ACRONYMS

|  |  |
| --- | --- |
|   |  |
| CCP  | Code of Criminal Procedure  |
| DLIs  | District Labor Inspectors |
| ILO  | International Labor Organization  |
| MIFOTRA  | Ministry of Public Service and Labor |
| MINALOC  | Ministry of Administration and Local Government  |
| MINIJUST | Ministry of Justice  |
| MININTER | Ministry of Internal Security |
| NCC  | National Commission for Children |
| NCHR  | National Commission for Human Rights |
| NPECL  | National Policy on Elimination of Child Labor |
| OG  | Official Gazette |
| OSH | Occupational Safety and Health |
| RNP  | Rwanda National Police |

|  |  |
| --- | --- |
| RWF | Rwandan Franc |

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# EXECUTIVE SUMMARY

The present assessment is a second phase of the Labor Law Enforcement Assessment under the Rwanda Education Alternatives to Reduce Child Labor in Tea-growing Areas (REACH-T) project.

The purpose was to find out why, despite the existence of policies, ratification of key international conventions, laws and appropriate institutions, and good political will, child labor is still persistent in tea-growing areas of Rwanda and cases of enforcement are non-existent.

The first phase of the assessment shed light on gaps, ambiguity, and conflicts among laws enacted to combat the worst forms of child labor in Rwanda.

The second phase aimed at identifying enforcement organs and institutions and analyzing the effectivity of the enforcement system. The assessment was conducted in tea-growing areas of 12 districts across the country: Rulindo, Gicumbi, Burera, Nyabihu, Rubavu, Rutsiro, Ngororero, Karongi, Rusizi, Nyamasheke, Nyamagabe, and Nyaruguru.

Interview subjects were officials in charge of labor law compliance and enforcement in the matter of combating the worst forms of child labor. Those interviewed include officials in the Ministry of Public Service and Labor (MIFOTRA), district labor inspectors (DLIs), district-level judicial police officers in the Rwanda National Police (RNP), intermediate court-level public prosecutors, and board members of the National Commission for Human Rights (NCHR) and the National Commission for Children (NCC).

This document is structured into three (3) chapters: the first chapter, Introduction, is descriptive of the background, the objectives and the methodology of the assessment. The second chapter, General Presentation of the Findings of the Assessment, is related to the results of interviews whose synthesis makes up the third chapter, Discussion of the Findings. These three chapters are followed by Conclusions and Recommendations.

Key findings of the second phase of the assessment are the following:

* There is a lack of coordination among institutions in fighting child labor. Some institutions and organs do not know the role or the attributions and the contributions of other institutions in fighting child labor.
* There is a lack of understanding around the mere meaning of the terms “worst forms of child labor” and “hazardous work for children aged 16-17,” the criminal procedure, and the process for reporting violations.
* It is also worthy to mention that whatever the number or pertinence of policies and laws regarding child labor, without a strong and diligent system of enforcement, child labor shall persist at a worrying level.
* The assessment found that the persistence of child labor in tea-growing areas is attributed more to the weakness of enforcement organs and institutions than on laws and policies or similar instruments, and even they contain gaps and ambiguity.
* The enforcement organs and institutions need more training on child labor, in general, and the worst forms of child labor and hazardous child labor in particular, on criminal procedure, labor code and other instruments, on respective roles and responsibilities of each institution, and on networking of actors in combating child labor.

# I. INTRODUCTION

# 1.1. Background of the assessment

The Rwanda Education Alternatives for Children in Tea-growing Areas (REACH-T) project, which is funded by the US Department of Labor, aims to reduce the number of children involved in or at-risk of child labor in tea-growing areas and in the tea sector.

Regarding the tea industry, most child labor occurs in the informal sector and there is no system or process for monitoring this sector.

Major factors contributing to child labor in the Rwandan tea sector include weak law enforcement and limited systematic inspection in the informal sector, gaps in reporting child labor, lack of cohesive social compliance within the tea industry, and household poverty.

In addition, the low price of green leaves offered to the tea farmers leads many of them to use all family members in tea production, as they cannot afford external expensive manpower[[1]](#footnote-1).

Findings of REACH-T’s analysis of labor law enforcement activities related to child labor in Rwanda informs both the project and enforcement entities’ activities within Rwanda, and points out recommendations to bridge the gaps that exist within laws and policies in terms of child labor in Rwanda.

The assessment also points out law enforcement training needs and makes concrete recommendations on how this issue should be handled.

REACH-T noticed that despite conventions ratified, and laws, regulations and policies enacted and adopted, child labor abuses are still persistent.

Thus, the hypothesis is that child labor is not yet formally punished in the country due, among other reasons, to a poor monitoring process, weak law enforcement, and other related gaps.

# 1.2. Recapitulation

This assessment was to be conducted in three (3) phases. The first phase consisted of isolating findings on gaps in policy, administration and legal procedures for protecting children in the formal and informal sectors, with particular emphasis on the tea sector (small holder farms and plantations). This phase has enabled a clarification of Rwanda’s current legal framework protecting children from child labor and the formulation of recommendations and key actions to be undertaken in order to address the following concerns:

* How do Rwandan laws (Labor Law, the Penal Code, etc.) support the National Policy on Elimination of Child Labor (NPECL)?
* To what extent do labor laws and policies protect children (all children and children of legal working age) in the formal sector (i.e., cooperatives and factories)?
* To what extent do laws and policies protect children (all children and children under 18 years of legal working age) in the informal sector (i.e., smallholder farms)?
* In what ways do laws conflict with each other and/or with International Labor Organization’s (ILO) conventions?

Among others findings, the first phase of the assessment highlighted the following[[2]](#footnote-2):

* Law N° 13/2009 of 27/05/2009 regulating labor in Rwanda does not cover the informal sector which is the main employer of child laborers aged 16-17 in Rwanda’s small-holder tea sector.
* The labor regulation does not provide for effective punishment for the offence of employing children in work harmful to their safety, health, moral and education as long as the law does not clearly stipulate the wrongdoing and the correspondent punishment[[3]](#footnote-3).
* Many child laborers are employed in what is called “family labor” and there are no proper mechanisms to monitor, investigate and to punish the cases arising in the family sphere within the provisions of the Rwanda Labor Code as the families are not classic employers.
* Above all, the labor inspector, as the enforcer agent of the Law N° 13/2009 of 27/05/2009 regulating labor in Rwanda, does not have authority of a judicial police officer. This duty has been assigned to the NCHR which, unfortunately, does not have any mechanisms of control of work places.

Thus, the objectives of the second phase consist of isolating gaps and weaknesses in enforcement and enforcement training through observation and interviews, and to respond to the following concerns:

* Are there in place standard written guidelines and protocols in line with the National Policy of the Elimination of Child Labor and Labor Law for DLIs and RNP?
* How well do DLIs and RNP enforce the laws and guidelines in child labor matters?
* What obstacles do DLIs face during monitoring visits? When reporting cases of child labor or sanctioning the offenders?
* What trainings related to child labor are required for DLIs and RNP officers and other concerned organs?

# 1.3. Assessment methodology

# 1.3.1. Study population

In order to identify the study population, those institutions whose mandates include the implementation and the enforcement of child labor laws and other related laws were identified through examination of the Penal Code, the laws regulating labor and other related laws. The identified institutions are found in Table 1, below:

Table 1: Study population

| **POPULATION**  | **INSTITUTION**  | **LEVEL**  |
| --- | --- | --- |

|  |  |  |
| --- | --- | --- |
| Director of Labor Administration in the Ministry of Public Service and Labor | MIFOTRA | National level |
| National Labor Inspectors | MIFOTRA | National level  |
| Child Labor Coordinator  | MIFOTRA | National level |
| National Commission for Human Rights Official | NCHR | National level  |

|  |  |  |
| --- | --- | --- |
| National Commission for Children Official | NCC | National level |

|  |  |  |
| --- | --- | --- |
| District Judicial Police Officers  | District  | District level |
| Public Prosecutors at Intermediate Court Level | District | Inter Districts  |

Given the small size of the population of the assessment, sampling was not used but rather interviews of the whole population. Almost all the law enforcement-based institutions and organs, noted in Table 1, were visited and interviewed.

# 1.3.2. Study areas

The study was conducted in tea-growing areas across the country, especially in the following districts[[4]](#footnote-4):

Table 2: Study area

| **Province** | **District** | **Location tea plantation** |
| --- | --- | --- |
| North | Gicumbi | Mulindi |
| North | Nyabihu | Nyabihu |
| North | Rulindo/Burera | Cyohoha-Rukeri |
| South | Nyamagabe | Mata and kitabi |
| South | Nyaruguru | Nshili-kivu |
| West | Ngororero/Rutsiro | Rubaya |
| West | Nyamasheke | Shagasha |
| West | Rubavu | Pfunda |
| West | Karongi | Gisovu |
| West | Rusizi | Gisakura |

# 1.3.3. Tools for data collection

The chosen technique to obtain information from each key informant was face-to-face contact using specific interview guides tailored to each category of informant. The interview guides were developed and shared with REACH-T staff for comments and approval.

The interview guides, in a broad sense, are related to:

* The application of penalties to child labor laws transgressors and the role of labor inspectors, police agents, prosecution organs and other government agencies with law enforcement;
* The labor law training needs and potential beneficiaries;
* Any barrier to the enforcement of child labor laws;
* The collaboration and relationship between labor law enforcement organs.

# 1.4. Definition of terms

# 1.4.1. Child labor

Child labor refers to any type of work that is mentally, physically, spiritually, socially and/or morally harmful to children, and interferes with children’s education by denying them an opportunity to attend school, forcing them to leave school prematurely, or limiting their capacity to benefit from instruction.

The Global Report[[5]](#footnote-5) under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2002, identifies three categories of child labor as follows:

* Labor performed by a child who is under a minimum age specified in national legislation for the kind of work as defined by national legislation, in accordance with accepted international standards and that is likely to impede the child’s education and full development;
* Labor that jeopardizes the physical, mental or moral well-being of a child, known as hazardous work;
* The unconditional worst forms of child labor which are international defined as slavery, forced recruitment for use in armed conflict, prostitution and pornography and illicit activities.

# 1.4.2. Worst forms of child labor

According to article 3 of the Worst Forms of Child Labor Convention, 1999 (Nº 182), the worst forms of child labor comprise:

1. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;
2. the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
3. the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
4. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The form in (d) is also called “hazardous work”. The [United Nations Resources for Speakers on Global Issues](http://www.un.org/en/globalissues/briefingpapers/childlabour/intlconvs.shtml) stipulates that “worst forms of child labor” encompasses both hazardous work and other worst forms.

The difference is that while hazardous aspects can sometimes be removed through changes in the work environment or modifications of the work itself, the other worst forms can under no circumstance be considered acceptable”[[6]](#footnote-6).

Working age youth may be removed from the hazardous situation, or the risks may be reduced through improvement in working conditions such that the work is no longer likely to put their health at risk.

**Improvement of working conditions:**

Improving working conditions for both adults and working age youth requires a set of prevention strategies and aggressive advocacy of their adoption. These strategies include but are not limited to:

* Determine **the list of** **work to be prohibited** (the hazardous work list), establish sanctions, and put in place an effective system of monitoring and inspection which will have a powerful long-term deterrent effect when regulations are enforced. Once established and shared, this could stimulate policy change.
* **Regulate work hours.** A large proportion of hazardous work for youth is classified as such simply because of the excessive hours. Therefore, a first step to reduce rates of hazardous child labor is to ensure that labor laws are clear on maximum hours and acceptable times of work for children. A vigorous campaign should be undertaken to ensure that the working hours of children of working age are maintained at a safe level. This will require both awareness-raising and consistent monitoring.
* **Establish hazardous risks standards.** Engage in discussions with tea industry operators to define and set up standards that promote basic principles such as assessments of occupational risks or hazards; promotion of a culture of prevention that includes information, consultation and training that are valid for workers of all ages; and risk assessments to better understand these risks and identify safer solutions that could benefit working age youth.
* Guided by the Occupational Safety and Health (OSH) study being conducted by the REACH-T project, **develop a training manual on improving safety, health, and working conditions in plantations.** The manual will serve as a practical guide for the tea plantation sector, for young workers, family members, supervisors, tea cooperative management, employers and people living in the neighborhood of plantations. The manual should provide possible steps to improve safety, health and the work environment in the tea plantation sector and to eventually make the plantations entirely free of child labor.
* **Adopt safety measures.** This will consist of providing youth workers with safety gear to protect themselves from injures or other hazardous work-related accidents.
* **Extend labor inspector’s scope of work to include informal economy:** In this way, regular inspections of places where working age youth work should ensure that working youth are not exposed to hazardous working conditions.

The worst forms of child labor encompass the pure [intolerable] worst forms of child labor such as prostitution, bondage and slavery, and recruitment in armed conflict as well as hazardous work.

The latter is found in tea plantations, mining, and quarrying. It is a real concern when performed by children aged 16-17 even if they are allowed by the law to engage in such work as hazardous work is detrimental to the health and development of the children who perform it.

# 1.4.3. Hazardous Work[[7]](#footnote-7)

Hazardous work is work that may be dangerous to the health of the child [16-17] and which includes:

* Work that may affect the child’s health, either physically or psychologically;
* Work carried out using dangerous material that may affect the health of the child or that require lifting or heavy loads;
* Work that requires children to carry loads that are heavier than their physical capacity;
* Work performed and carried out over long hours and at night between 8:00 pm and 6:00 am for a salary or other direct wages;
* Construction work carried out using ropes and other materials;
* Construction and demolition work; heavy lifting machine and other dangerous machines;
* Work carried out in places with machines that are turned on or off automatically and other annexed machines that do not have guards to prevent free access.

# 1.4.4. Light work[[8]](#footnote-8)

Light work is work which is:

* Not likely to be harmful to their health or development; and
* Not such as to prejudice their attendance at school, their participation in vocational orientation or training programs approved by the competent authority or their capacity to benefit from the instruction received.

# 1.4.5. Labor initiation/work[[9]](#footnote-9)

The labor initiation/work is acceptable work aimed at socializing children to future economic and social life, and is performed in households with non-dangerous effects to the health of the child. Labor initiation therefore includes work done by children that is non-hazardous, that does not harm their health and personal development or interfere with their education and is considered as a positive learning experience and preparation for adulthood.

# 1.4.6. Informal sector

The informal sector may be broadly characterized by units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned. These units typically operate at a low level of organization, with little or no division between labor and capital as factors of production and on a small scale. Labor relations, where they exist, are based mostly on casual employment, kinship or personal and social relations rather than contractual arrangements with formal guarantees[[10]](#footnote-10).

**1.4.7. Informal sector worker**

An informal sector worker is the one who performs informal activities and who works for a company or an individual that is not registered as an employer in the commercial register or with authorities (Law Regulating Labor in Rwanda: art. 1(38)).

# 1.4.8. Law enforcement

The detection and punishment of violations of the law refers to police officers and other members of the executive branch of government charged with carrying out and enforcing the criminal law[[11]](#footnote-11).

# 1.4.9. Family labor

Work carried out by the husband or wife, ascendants, descendants and wards engaged in agricultural, breeding, commercial and industrial activities for the benefit of the family (Law Regulating Labor in Rwanda: art. 1(40)).

# 1.4.10. Penal Code

The Penal Code means in this report the Organic Law N° 01/2012/OL of 02/05/2012 instituting the Penal Code (O.G. Nº Special of 14 June 2012).

# II. GENERAL PRESENTATION OF THE FINDINGS OF THE ASSESSMENT

# 2.1. Reaffirmation of the ambiguity of the provisions of the Labor Code

The sanction against the offence of “work which is likely to harm the health, safety or morals of a child” which, obviously, applies to child labor in tea plantations for youth of 16-17, is supposed to be located within Law N° 13/2009 of 27/05/2009, Law Regulating Labor in Rwanda (O.G. N° special of 27/05/2009). Article 168 provides that “Subject to the provisions of the Penal Code of Rwanda, a person found guilty of the offence referred to in article 72 of this Law[[12]](#footnote-12), shall be liable to a term of imprisonment ranging from six (6) months to twenty (20) years and a fine of five hundred thousand (Rwf 500,000) to five million (Rwf[[13]](#footnote-13) 5,000,000) Rwandan francs or to one of these penalties”. However, as it is highlighted in the section “Recapitulation” (1.2.) of this report, the offence is too vague to be effectively punished.

The other worst forms of child labor constitute offences sanctioned by the Penal Code (Organic Law N° 01/2012/OL of 02/05/2012 instituting the Penal Code, in O.G. Nº Special of 14 June 2012) are as follows:

* Sharing the proceeds of prostitution by a child (Penal Code: art. 211 - 212);
* Engaging a child in narcotic drug and arms trafficking or in the trade of other illegal products (Penal Code: 220);
* Exploiting a child by involving him in armed conflicts (Penal Code: art. 221);
* Exploiting a child by involving him in sports activities harmful to his health (Penal Code: art. 222)
* Recording and disseminating a child’s pornographic picture or voice (Penal Code: art. 229-230);
* Penalties for a person who engages in child trafficking for the purpose of prostitution or indecent practices (Penal Code: art. 259-260).

So, the interviews of the study population focused on the following questions:

1. Which law is applicable to punish the worst forms of child labor[[14]](#footnote-14)?
2. Are offences related to child labor prosecuted and if not, what is the reason?

The discussion raised some concerns about the applicability of the article 168 N° 13/2009 of 27/05/2009 Law Regulating Labor in Rwanda.

Indeed, the Penal Code, in its articles 21, 22, 23 and 24 classifies offences according to their gravity: felonies, misdemeanors, and petty offences.

A felony is an offence punishable under the law by a main penalty of an imprisonment of more than five (5) years (Penal Code: art. 22).

A misdemeanor is an offence punishable under the law by a main penalty of an imprisonment of six (6) months to five (5) years (Penal Code: art. 23).

A petty offence is an offense punishable under the law by a main penalty of an imprisonment of less than six (6) months or punishable by a fine only. Offences against laws, orders, public service and security regulations in respect of which the law does not provide for specific sentences are also petty offences (Penal Code: art.24).

It was stressed during the discussions that the offences of theworst forms of child labor, punishable under article 168 of the Labor Law, are considered at the same time as a petty offence, a misdemeanor and a felony. The law provides for a term of imprisonment ranging from six (6) months (misdemeanor) to twenty (20) years (felony) and an alternative of a fine only instead of an imprisonment (petty offences) (Labor Law: art. 168).

This complexity within the same offence can lead to difficulty in identifying the right court to sanction the offence, thus to the problem of identification of appropriate investigating organs and the right public prosecutor. The same case may alternately be considered a petty offence, a felony, or a misdemeanor.

# 2.2. Investigators of offences of the worst forms of child labor and hazardous work

According Law Nº 30/2013 of 24/5/2013 relating to the Code of Criminal Procedure[[15]](#footnote-15) (CCP), the RNP is responsible for investigating crimes, receiving complaints and documents relating to the offences, gathering evidence for the prosecution and defense, and searching for perpetrators of the crimes, their accomplices and accessories so that they can be prosecuted by the prosecution (CCP: art. 18).

The judicial police office comprises the criminal investigation police officers, the criminal investigation military officers, and the civil servants empowered by the law or the Minister of Justice to act as judicial police officers.

Judicial police officers perform their functions only in particular offences assigned to them and within their jurisdictions. In discharging of their judicial police office functions, they work under the direction and supervision of the Public Prosecutor (CCP: art.19).

In general, the function of the judicial police officer, is performed by police agents, while other public institutions and organs with the law enforcement capabilities of the judicial police officers are vested with limited power in specific domains, such as labor, child violence, immigration and emigration, and the environment, among others.

However, the Labor Law does not indicate who will act as the judicial police officers to enforce the law despite the fact it should provide this information given the fact it is a special law. So, who should be the judicial police officer in labor law offences?

The answer could be found in the Law N° 19/2013 of determining the mission, organization and functioning of the NCHR[[16]](#footnote-16). Its article 9 provides that the Commission has permanent judicial police powers all over the territory of Rwanda when discharging its duty. The Commission has power of filing legal proceedings, amongst others, in labor law matters (art. 9).

The discussions held with public prosecutors, labor inspectors, public prosecutors, police officers, NCHR officers and NCC officers were held to learn:

* If they were aware of the public agent who should be vested with the power of judicial police officer in labor matters including child labor;
* If they have ever denounced, instructed, or prosecuted any offence in labor matters especially of offences of the worst forms of child labor and if not, why?
* If they aware of any case of collaboration to sanction offences against the worst forms of child labor between Labor Inspectorate, police, NCHR, and the NCC.

# 2.2.1. District Labor Inspectors

The Labor Inspection Convention No 81 adopted in 1947 (ratified by Rwanda), in article 3(a), provides that the primary functions of the system of labor inspection are to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions of the employment of children and young persons.

According to the Ministerial Order Nº 07 of 13/07/2010 determining modalities of the functioning of the labor inspector, the labor inspector is entitled among others to secure the enforcement of the legal provisions relating to the control of child labor and to bring to the competent authority defects or abuses contrary to existing legal provisions (art.3)[[17]](#footnote-17).

The Ministerial Order Nº 06 of 13/07/2010 determining the list of worst forms of child labor, their nature, categories of institutions that are not allowed to employ them and their prevention mechanisms, and in its article 8, provides that the labor inspector carries out regular inspections to see whether there are children below 16 years employed in institutions.

Law N° 13/2009 of 27/05/2009 regulating labor in Rwanda, in its article 160, allows the Director, having Labor Administration in his purview, to exercise the powers assigned to the labor inspector. The labor inspector at the national level shall have competence to carry out his functions in the whole country. The labor inspector at district level has competence to carry out his functions in the district to which he is posted.

However, the Labor Law does not provide for any authority vested with the power of judicial police officer to enforce it. Even the labor inspectors do not have this power despite the fact they have to initiate any control or investigation considered necessary to ensure that legal provisions are actually observed (Labor Law: art.158 (2)) and to draft a report on all such activities that are contrary to the provisions of the Labor Law and the social security (Labor Law: art. 157).

In the interviews with labor inspectors, they were unanimous that they do not have the power of a judicial police officer. Should an offence to the Labor Code arise, they are supposed to report the matter to MIFOTRA in conformity with article 157 of the Labor Code.

However, they do not do that because their superiors at MIFOTRA also do not have the power of judicial police and the Labor Code does not specify the format of the report, the competent authority to receive it, and its fate and appeal. Therefore, they prefer to deliver verbal warnings to offenders.

They denied having written standards or guidelines for implementing the National Policy on child labor above the Labor Code.

It was noticed that DLIs were not aware of power of judicial police officers held by NHRC’s commissaries in labor law offences. They think also that it would be incorrect to seek the collaboration of police for investigation of cases in labor matters in work places as the presence of police could hinder the social and advisory mission of the labor inspector.

Thus, in cases of the worst forms of child labor, DLIs did not seek collaboration of the RNP or the NHRC for administration of sanctions or other dissuasive measures. When cases occur, they deliver verbal warning to the offenders instead of taking any punitive measures.

Finally, the DLIs said that the budget for control of compliance with the Labor Law is too low to include activities of monitoring and preventing child labor as it is encountered in the family and informal sector (Cooperatives of tea). The budget is around three million Rwandan Francs a year (3,000,000 RWF) and it does not stipulate child labor monitoring activities.

# 2.2.2. Director of Labor and other officers of the Ministry of Public Service and Labor

The officers at national level in the Ministry of Public Service and Labor are the Director of Labor Administration, the National Labor Inspector and the National Child Labor Coordinator. Law N° 13/2009 of 27/05/2009 Regulating Labor in Rwanda, in article 160, stipulates that the Director, having Labor Administration in his purview, may exercise the powers assigned to the labor inspector. The labor inspector at the national level shall have competence to carry out his functions in the whole country.

Through discussions with officials at the national level, it was found out that they did not exercise any enforcement because, as with the Labor Inspector, they do not have the power of a judicial police officer. They also ignore cases if they could seek the collaboration of RNP and the NHRC.

# 2.2.3. Public prosecution organ

The Organic Law N° 04/2011/OL of 03/10/2011 determining the organization, functioning and competence of the National Public Prosecution Authority and the Military Prosecution Department, in its article 14, states that in Ordinary Courts, prosecution of offences are conducted by the Prosecutors of the Prosecutor General’s Office as well as the Public Prosecution at intermediate level and Public Prosecution at primary level.

The Public Prosecutors interviewed are aware of the power of judicial police officer vested in the NHRC. However, they said they did not receive any report from the Commission related to labor law matters.

# 2.2.4. Police agents

The Police at district level have a mandate and a quasi-monopoly of prime investigations of crime in all matters.

The district police officers interviewed said they did not have to deal with labor law offences, especially those related to the worst forms of child labor and hazardous work in tea plantations or in any other sector. According to them, if an offence occurs in labor matters it should be upon the Labor Inspector or another concerned organ to investigate it and not the judicial police officers of the RNP. Above all, they also said they do not know what the worst forms of child labor or hazardous work are.

# 2.2.5. National Human Rights Commission

According to Law N° 19/2013 of determining mission, organization and functioning of the NCHR, the Commission has permanent judicial police powers all over the territory of Rwanda when discharging its duty. The Commission has the power of filing legal proceedings in labor law matters (art. 9)[[18]](#footnote-18).

The NHRC operates only at the national level. It does not have representatives at province or district level. However, it has people who work in remote areas of the country, on a volontary basis, who report cases of injustice, violence, misuse of power by officals, etc.

Fundamentally, the Commssion does not have the mandate of replacing other official organs in exercising the judicial police office. It acts only on denunciation when the concerned officials have failed to report, investigate or prosecute a case.

Until now, the Commission has not investigated any case related to the the worst forms of child labor. This is due to the fact that the Commission has received no report from the Labor Inspector or other interested party of a case of child labor which the police failed to investigate or the a public prosecutor to prosecute.

# 2.2.6. National Commission for Children

The provisions of Law Nº 54/2000 of 14/12/2011 Relating to the Rights and the Protection of the Child includes the worst forms of child labor which are likely to harm the health, safety or morals of a child such as all forms of economic exploitation of a child by requiring him to accomplish a work that is likely to put him at risk or to compromise his education or to harm his or her health or his physical, mental, spiritual, moral or social development[[19]](#footnote-19). These forms of exploitation and incitation are prohibited and punishable by the law (art.3 (5)).

Any person, who commits what is forbidden by this law, shall be prosecuted and punished in accordance with the Penal Code (art.35). The NCC shall be responsible for compliance with and control of child’s rights by following up his education and development (art.66).

Through the interviews with NCC key informants, we noticed that the worst forms of child labor and child hazardous work were confused with violence against children in general such cases of rape, abandonment, etc.

# III. DISCUSSION OF THE FINDINGS

The interviews with different officials and officers focused on the application of laws, the role of each institution in enforcing laws related to child labor, especially child hazardous work in tea plantations, and the collaboration between institutions.

# 3.1. Complexity of laws sanctioning child labor

The Penal Code provided the following definition and principles:

* An offence is an act prohibited or an omission which manifests itself as a breach of the public order and which the law sanctions by a punishment (art.2).
* A person shall not be punished on account of an act or omission that did not constitute an offence at the time of commission under national or international law; an offence shall not be punishable by penalties which were not provided for by the law published before its commission (art.3).
* Criminal laws shall not be interpreted to extensively, they must be construed strictly; courts are not allowed to pronounce sentences by analogy (art.4).

These principles of the Penal Code are recognized worldwide. They are set to determine the boundaries of the penal provisions and prevent citizens from abuse of power and any arbitrary measure of the public power.

Considering the work of children in tea plantations in hazardous work for youth aged 16-17, this type of work is not clearly defined as an offence, neither by the Penal Code nor by the Law Regulating Labor in Rwanda and its implementing Ministerial Order Nº 06 of 13/07/2010 determining the list of worst forms of child labor, their nature, categories of institutions that are not allowed to employ children and prevention mechanisms.

The worst forms of child labor such as slavery, debt bondage, and forced labor, use of children in conflicts, prostitution, pornography and illicit activities are clearly stipulated in article 72 of the Law Regulating Labor in Rwanda and in the above said implementing ministerial order. The offence under the appellation of “work which is likely to harm the health, safety or morals of a child”, thus hazardous work, is also listed in these instruments but this term is too general and vague to be clear and enforceable for a penal provision. This vagueness could lead to non-punishment of a given offender.

Indeed, the interviewed Public Prosecutor insisted on the fact that, according to the Penal Code, the laws shall not be interpreted to extensively, they must be construed strictly. Thus, the offender will be released because courts are not allowed to pronounce sentences by analogy.

The vagueness of the article 168 is again stressed by these officers given its formulation because “the work which is likely to harm the health, safety or morals of a child” is likely a petty offence, a misdemeanor and a felony at the same time. The imprisonment of 6 months sets this offence in misdemeanors. The imprisonment from 6 months to 20 years ranges it in misdemeanors and felonies. The alternative of imposing a fine in lieu of a term of imprisonment ranges it in petty offences.

This combination of offences and sanctions for the same wrongdoing or omission could lead to an extensive interpretation of the law which could be in contradiction with the Penal Code, article 4.

Moreover, public prosecutors and police officers interviewed were divided on which law between the law Regulating Labor in Rwanda and the Penal Code is applicable in punitive system. For some of them, the spirit of the current Penal Code encompasses all possible infringements to laws and out of it no act or omission can be considered as an offence.

The others, while recognizing the gaps of the Penal Code in consideration of the spirit of its adoption, stated that a wrongdoing or an omission must be punished when it is provided by any given specific law still in force.

Practically, this vagueness could cause non-punishment of an infringement to the law. As an example, the labor inspector of Rulindo District noticed that two young children were employed to empty a pit of a toilet.

She called the police for investigation. The offender was arrested but two (2) days later, he was released because the police had not found punitive provisions of this case in the Penal Code. In different interviews, police officers said that their tool is the Penal Code which is the only reference to all the infringements of laws.

It is important to be reminded that the Penal Code does not refer anywhere to the term “worst forms of child labor” or “hazardous or dangerous work of children aged 16-17[[20]](#footnote-20).” However, implicitly it provides and punishes other types of worst forms of child labor such as child prostitution, slavery, trafficking, slavery and bondage, etc.

# 3.2. Ignorance of enforcing tools

Some interviewees do know the special penal characteristic of Law N° 13/2009 of 27/05/2009 Regulating Labor in Rwanda through in its article 168 which is the sole instrument for sanctions of “work which is likely to harm the health, safety or morals of a child” and child hazardous work.

Due to lack of enforcement, Rwandan Labor Law is considered by the interviewees as a “soft law” for which compliance is overseen by a “soft agent”, the labor inspector. They even completely ignore the punitive aspect of the Labor Code.

For example, the Council[[21]](#footnote-21) of Nyamasheke District adopted an instruction No 01/14 of 28/09/2014 forbidding the employment of a child domestic worker[[22]](#footnote-22) contrarily to the Ministerial Order Nº06 of 13/07/2010determining the list of worst forms of child labor, their nature, categories of institutions that are not allowed to employ children and their prevention mechanisms pursuant to Law N° 13/2009 of 27/05/2009 Regulating Labor in Rwanda, especially in articles 72 and 73[[23]](#footnote-23);

The above said district instruction provides a sanction of 10 000 Rwf for this offence but it is unconstitutional because it supersedes the law[[24]](#footnote-24). Indeed, the offence of the worst forms of child labor is sanctioned more heavily by the Labor Code[[25]](#footnote-25). This is an indicator that the district instruction did not comply with the provisions of the Labor Code. If they were aware of the Code, they would not provide for sanctions in their district decree but rather work for the compliance with the Labor Code because the law supersedes instructions and directives.

# 3.3. Lack of labor law enforcement organ

Neither the labor inspectors, the Director of Labor Administration nor the National labor inspector, in charge of monitoring compliance with the Labor Law and the provisions of collective conventions as well as social security laws, have the power of judicial police officer (Labor Law: art. 158).

This power is held by the NHRC whose officials do not have the prerogatives of controlling and freely accessing the workplace. Also, they are not represented at district level; they only operate at national level.

The police officers have the power of enforcing the Labor Law but they ignore it if they are concerned with the implementation and the enforcement of the Labor Law in workplace.

The labor inspector argued also that the worst forms of child labor and hazardous work are encountered in the informal sector, which is out of reach of action of any official according to the Labor Law. They refer to the scope of application of the Labor Law which stipulates that “the informal sector worker is not subjected to provisions of this law, except for issues relating to social security, trade union organization and those relating to health and safety at workplace” ( Labor law: art. 3 al.3).

The interviewees said that police agents are competent to monitor the enforcement of labor laws by investigating cases denounced to them by labor inspectors.

However, the labor inspectors were concerned with the joint action with police which shall deteriorate their image of advisers to employers and their credibility as officers holding public power.

They emphasized the fact that the frequent intrusion of police agents in the work place could embarrass and frighten employers and even investors.

# 3.4. Ignorance of the worst forms of child labor and child hazardous work

The interviews proved that the worst forms of child labor are confused with violence in general towards children. The reason would be that the Law Regulating Labor in Rwanda and its implementing decrees, especially the provisions related to child labor, are little known while cases of rape, beating, abandonment, etc. are aired on televisions and radios every day.

Also, some interviewees do not consider the work of children aged 16-17 in tea plantations as dangerous. They think that the sole reprehensible aspect of this work is that it could interfere with the schooling of children or deprive them of the opportunity of attending school.

They ignore that this work is performed in using dangerous material, lifting or carrying heavy loads or working during long hours, aspects which characterize dangerous child work as specified in the National Policy for Child Labor[[26]](#footnote-26).

For many of the interviewees, they consider the way of addressing “work which is likely to harm the health, safety or morals of a child” is to raise awareness, and to remove and to rehabilitate children affected. The punitive way of preventing this type of work is unfamiliar or unknown.

# 3.5. Lack of precedent in enforcing the Labor Code in child labor matters

For the time being, according to interviewees, no sanction has been yet imposed in the matter of worst forms of child labor and child hazardous work. The current fight against it is through a “soft way” such as issuing warnings, sensitization, appeal for collaboration[[27]](#footnote-27), setting up of official steering committees[[28]](#footnote-28) for discussion of strategies to tackle it and through the action of removal and rehabilitation of child victims through interventions of NGOs, etc.

# 3.6. Multiplicity of institutions in child labor matters

According to article 7 of the Law Regulating Labor in Rwanda, the labor inspector is in charge of the compliance regarding child labor. This officer is under the district authority (Ministry of Local Government) and gives copies of his reports to the Ministry of Public Service and Labor.

According to article 9 of Law N° 19/2013 of determining mission, organization and functioning of the NCHR, the Commission has permanent judicial police powers all over the territory of Rwanda when discharging its duty. The Commission has power of filing legal proceedings in labor law matters.

This means that the responsibility for the monitoring of the compliance with the law in child labor matters lies within the Ministry of Local Government (Districts and labor inspectors) and the Ministry of Public Service (labor inspectors) while the enforcing organ is the NCHR!

Under these circumstances, the child labor enforcement system is quite cumbersome. In case of infringements, the labor inspector would address his report to the Minister of Public Service and Labor through the district authority who would, in turn, address his request to the NCHR. The President of the Commission would plan the moment to descend into the workplace for an investigation and the opportunity of pursuing the case.

There is also a lack of a focus institution which can be held accountable for child labor issues. For example, the reports of DLIs are transmitted to the districts with a copy to the Ministry of Public Service and Labor.

The format of these reports does not indicate anywhere to mention statistics, law infringements and sanctions regarding child labor. Districts refer all strategies and plans regarding child labor to the Ministry of Public Service and Labor while this institution refers to the enforcement system at the district level where the labor inspector is based.

In conclusion, the interviews highlighted the lack of clarity of laws to be enforced and of the enforcement system, ignorance of enforcing laws and organs, and lack of mechanisms for streamlining collaboration between institutions concerned with child labor matters.

# 3.7. High minimum age for employment and lack of clear definition of hazardous work

The Law has provided that the minimum age for employment is 16 without any exception. In the previous Labor Code, the minimum age for employment was set at 14. So, the provision of the minimum age for employment set without exception, according to some of the interviewees, especially the labor inspectors, is seen as inaccurate as people perceived it as children being prevented from any kind of work at early age, including family work.

The minimum age for hazardous work is set at 18 but the work of a child aged 16-17 is not clearly defined so as to facilitate the law enforcers to distinguish acceptable aspects of child work from the hazardous ones.

According to the interviewees, above the problem of confusion and complexity of enforcing institutions and the above mentioned concerns leads also to a situation of non-compliance of provisions of the Labor Code and related laws.

# CONCLUSIONS AND RECOMMENDATIONS

The interviews showed that International Labor Conventions and recommendations, laws and regulations related to child labor exist. However, there is lack of their implementation and enforcement due to the ambiguity of laws and regulations and the weakness of enforcing organs. The following measures are proposed:

* **Goal 1: Effective penalties applied for dangerous work of children aged 16-17 in tea plantations, especially in small holder farms**
	+ **Challenges**
		- Ambiguity and lack of clarity of the Labor Law and the Penal Code in punishing dangerous work for children aged 16-17 in tea plantations;
		- Lack of guidelines and mechanisms for enforcing existent laws and conventions. Indeed, the Police officers are do not want to operate outside the Penal Code and find it embarrassing to employers and to themselves to intervene in the workplaces, whatever the matter arising.
		- Labor inspectors are saying they are not concerned with the implementation of the Law in the informal sector and in family work place;
		- Labor inspectors do not hold the power of Judicial Police officers and are not empowered with capacity and means (budget) to intervene in informal sector which is big and main employer of children. The power of Judicial Police officer is held by Police and the NCHR, which is a separate administration without any mechanisms set for collaboration with Labor Inspectorates;
		- The labor inspectors cannot brandish any sanctioning power so to deter or prevent infringements of the law. They feel discouraged by the fact they are in charge of monitoring compliance with the Labor Law while they are refused the power of enforcing it.
	+ **Proposed solutions**
		- To identify defects and abuses not covered in existing in Labor Law and the Penal Code;
		- To draft the Labor Code so as to include the informal sector in its scope, and to establish the Inspectorate’s authority to enforce the law in this sector;
		- To clarify ambiguous punitive provisions of the laws regulating labor;
		- To specify light and heavy child work by amending the existing laws and regulations;
		- To adopt a ministerial instructions which show the line between acceptable and unacceptable work in small holder tea plantations for children aged 16 -18;
		- To disseminate a booklet and pamphlets of child labor laws to local leaders at grass-root level so that child labor laws are understood at all levels;
		- To include in the Penal Code provisions related the punishment hazardous work and its definition;
		- To provide Police officers with clear guidelines to monitor child labor in all sectors, especially in tea growing areas;
		- To adopt a ministerial order (From the Ministry of Justice) vesting the Labor Inspector with the power of a Judicial Police officer;
		- If not, to train the Police officers and the NCHR administrators vested the power of Judicial Police officers in investigating and reporting issues related to child labor and hazardous child labor;
		- To train the labor inspectors in collaborating with the officers of the RNP and the NCHR vested with the Judicial Police power;
		- To revise the periodic reporting forms of the labor inspectors so as to include child labor issues.
	+ **Key institutions**: MIFOTRA, MINIJUST REACH-T
* **Goal 2: Ensuring coordination amongst the concerned stakeholders**
	+ **Challenges**
		- The responsibility on monitoring child labor is scattered in many institutions[[29]](#footnote-29);
		- The labor inspectors do not report or seek collaboration of those vested with the power of enforcing the Labor Law in matters of child labor;
		- The concerned institutions ignore each other’s roles and responsibilities in combating child labor.
	+ **Proposed solutions**
		- To revise the Law and the NPECL so as the overall responsibility for overseeing child labor related matters is assigned to MIFOTRA;
		- To establish formal and informal coordination and sharing of information among stakeholders by seminars and workshops;
		- To issue instructions and guidelines regarding collaboration between institutions towards combating child labor;
		- To organize meetings of labor inspectors, Officials of the Ministry of Public Service and Labor, the National Commission for Human Rights officials, National Police, Public Prosecution and the National Commission for Children. The discussion should focus on the collaboration, the applicability and the enforcement of laws in child labor matters;
		- To organize seminars and workshops on the enforcement of child labor laws and the related laws;
		- To include the fighting child labor issues in the contracts of performance of public officers concerned;
		- To establish a child labor desk in National Police as it is the case for gender based violence.
	+ **Key institutions**: MIFOTRA, MINIJUST, NCHR, Police, Public Prosecutions, NCC, REACH-T
* **Goal 3: Capacity building of key institutions in charge of combating child labor**
	+ **Challenges**
		- The National Police, the Public Prosecution and NCHR lack awareness of labor laws and the role of labor inspectors;
		- Limited skills for some organs in investigating and bringing a child labor case to trial;
		- The Labor inspectorates reports do not include cases of child labor;
		- The ignorance of stakeholders of the worst forms of child labor, the criminal procedure, the Penal Code, the Labor law enforcement procedure.
	+ **Proposed solutions**
		- To provide trainings to the stakeholders on child labor laws, regulations and mechanisms, to ensure labor inspection on child labor is effectively done;
		- To train National police officers, labor inspectors, public prosecutors and members of NCHR how to prepare a case related to child dangerous work for litigation and presentation to the court;
		- To revise The existing the existing reporting forms so as to include the number of inspections conducted and the number of violations found regarding children in dangerous works;
		- To improve the skills of stakeholders in receiving and processing complaints, collecting and reporting data on inspections in informal sector;
		- To provide labor inspectors with incentives and support;
		- To organize a special workshop on the applicability and the enforcement of laws related to child labor (gaps, challenges, complementarities, responsibilities, procedure of investigating, reporting and prosecuting, suggestions, etc.).
	+ **Key institutions:** MIFOTRA, REACH-T
* **Goal 4: Wide information on hazardous child labor in tea growing areas**
	+ **Challenge**
		- Through the interviews, it was noticed the general lack of information on issues related to worst forms of child labor and hazardous child labor, their report and law enforcement;
		- There is a lack of exchange of information and collaboration between the concerned organs and institutions.
	+ **Proposed solutions**
		- To disseminate manuals and leaflets concerning the laws and regulations related to fighting child labor at district and sector level;
		- To organize campaigns of sensitization on child labor via radio, television, newspaper and in public gatherings.

# REFERENCES

**Laws**

*Law N°22/2011 of 28/06/2011 establishing the National Commission for children and determining its mission, organization and functioning, In* O.G. n° Special of 12/07/2011

Law No 27/2001 OF 28/04/2001 Relating to Rights and Protection of the Child against Violence

Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code, *Official Gazette nº Special of 14 June 2012*

Law N° 13/2009 of 27/05/2009 regulating labor in Rwanda, In *O.G. n° special of 27/05/2009*

Law N°22/2011 of 28/06/2011 establishing the National Commission for children and determining its mission, organization and functioning*, In O.G. n° Special of 12/07/2011*

Law N°54/2011 of 14/12/2011 relating to the rights and the protection of the child, In *O.G. n*°*26 of 25/06/2012*

Ministerial Order Nº06 of 13/07/2010 determining the list of worst forms of child labor, their nature, categories of institutions that are not allowed to employ them and their prevention mechanisms, *In O. G. n*º *30 of 26/07/2010*

Ministerial Order Nº07 of 13/07/2010 determining the modalities of functioning of the labor inspector*, In O.G. n*º *30 of 26/07/2010*

Ministerial Order Nº 06 of 13/07/2010 Determining the List of Worst Forms of Child Labor, their Nature, Categories of Institutions that are not allowed to employ them and their prevention mechanisms, In *O. G. n*º *30 of 26/07/2010*

 ILO/IPEC 2011: Children in hazardous work: What we know, what we need to do:

**Others**

District of Nyamasheke, Amabwriza No 01/14 yo kuwa 28/09/2014 y’Inama Njyanama y’Akarere ka Nyamasheke yerekeye abakozi ba mu rugo

MIFOTRA, Ibaruwa No 2884/19.18 yo kwa 20/12/2013 ku bayobozi b’Akarere ibasaba gushyiraho urwego rushinzwe kurwanya imirimo mibi ikoreshwa abana (Steering Committee at District Level)

NCC, Ibaruwa No 022277/NCC/2014 yo kuwa 19/09/2014: Gusaba ubufatanye mu guhashya imirimo mibi ikoreshwa abana mu Karere mubereye umuyobozi

**ANNEX**

**ANNEX 1: INTERVIEW GUIDES**

**Interview with public prosecution**

* How do you know about the worst forms of child labor?
* Did you encounter any case of the worst forms of child labor?
* Has there been any landmark court decision on the worst forms of child labor?
* Do you have case report of Labor Law infringements from Labor Inspectors?
* What about the collaboration between the public prosecution organ and the labor inspectors and other institutions in enforcing labor laws?

**Interview at the National Commission for Children**

* How the National Commission for Children is enforcing the Law Nº 54/2000 of 14/12/2011 relating to the Rights and the Protection of the Child in cases of the worst forms of child labor?
* How the Commission does or has interacted with the Ministry of Public Service and Labor, National Police, Labor Inspectorates, National Public Prosecution in enforcement of the law related to the worst forms of child labor?

**Interview with police**

* What do you know about the worst forms of child labor?
* Did you ever have to deal with Labor Law infringements especially the worst forms of child labor? If yes, which category of worst forms of child labor did you encounter?
* What about the collaboration between Police and Labor Inspectorates, Ministry of Public Service and Labor, or other institutions in enforcing labor laws and combating the worst forms of child labor?

**Interview guide with district labor inspectors**

* Which mechanisms do you refer to in combating the worst forms of child labor?
* Is there any case in which your office has exercise power of Judicial Police officer in enforcing the labor laws? If not, why not?
* What obstacles do Labor Inspectors face during monitoring and reporting cases of the worst forms of child labor and enforcing the laws?
* To what extent companies or individuals both in formal and informal sectors are fined and punished in case of worst forms of child labor?
* Are there examples of administrative punitive measures taken by district or local authorities in case of worst forms of child labor?
* What are the existing obstacles/challenges to implement the punishments for the use of child labor? If any, how these obstacles/challenges can be addressed?
* How do you interact with Police, prosecution, district and local authority, NCHR or other concerned institutions in combating the worst forms of child labor and enforcing the laws?
* Do you think that child labor has been reduced in recent years? If yes, what measures and mechanisms do you think have been used?

**Interview at National Commission for Human Rights**

* Has the Commission, for the time being, exercised its prerogatives in Labor Law enforcement especially in combating the worst forms child labor? If yes, how and which examples of cases registered and submitted led to legal proceedings? If not, what were the causes or constraints and challenges?
* How the Commission does interact with the Ministry of Public Service and Labor, National Police, Labor Inspectorates, National Public Prosecution in enforcement laws related to worst forms of child labor (especially children working in dangerous conditions and environments such as in mines, industrial plantations, etc.)?
1. According to Jean Marie, Manager of ASOPTHE A person can pick an average of 30 kilos of tea green leaves per day sold to SORWATHE. Currently, the price of 1 kilogram is fixed at 120 Rwf/kg. However, the farmer earns 74 Rwf a kilo of green leaves, all deductions made (materials and services provided by SORWATHE) if he works on himself in picking tea. It means that he can get 74 Rwf x 30 = 2 220 Rwfs/day. If he employs a worker, his earnings will decrease to 46 Rwf a kilo of green leaves, all deduction made plus the wage of a worker. It means he will earn only 46 Rwf x 30= 1 380 Rwf/day. The difference in his earnings is 2 220 Rwfs – 1 380 Rwfs= 640 Rwfs/day (Source: Jean Marie, Manager of ASOPTHE- *C*ooperative for tea growers in Cyohoha swamp-Rukeri, Tel. + 250 788300437). That is why small farmer recourses to family labor including children for cheap labor. The daily wage of an adult picking tea is around 1 000 Rwfs. There is no legal minimum wage in Rwanda. [↑](#footnote-ref-1)
2. REACH-T, Labor Law Enforcement Assessment By Rwanda Education Alternatives For Children In Tea-

Growing Areas (REACH-T), Phase I, Summary [↑](#footnote-ref-2)
3. The Law N° 13/2009 of 27/05/2009 regulating labor in Rwanda, in its article 168, provides that subject to the provisions of the Penal Code of Rwanda, a person found guilty of the offence referred to in article 72 of this law, shall be liable to a term of imprisonment ranging from six (6) months to twenty (20) years and a fine of five hundred thousand (Rwf 500,000) to five million (Rwf 5,000,000) Rwandan francs or to one of these penalties.

Article 72(8) of the Law Regulating Labor in Rwanda stipulates that it shall be an offence to subject children aged under eighteen (18) years to “the work which is likely to harm the health, safety or morals of a child” [The term “hazardous work” is not used]. Given the fact that the Penal Code does not provide for this kind of work, this offence is supposed to be punished by the above said article 168.

Unfortunately, the offence called “the work which is likely to harm the health, safety or morals of a child” is too vague to be punished. The Law Regulating Labor in Rwanda could have defined this kind of work. Indeed, according to the Organic Law N° 01/2012/OL of 02/05/2012 instituting the Penal Code, no punishment without law: a person shall not be punished on account of an act or omission that did not constitute an offence at the time of commission under national or international law (art.3).

The Penal Code forbids the interpretation of criminal laws: criminal laws shall not be interpreted to extensively, they must be construed strictly and courts are not allowed to pronounce sentences by analogy (art.4). [↑](#footnote-ref-3)
4. Rwanda has 4 provinces and Kigali Ville. The [Provinces](http://en.wikipedia.org/wiki/Provinces_of_Rwanda) and Kigali Ville are subdivided into 30 [districts](http://en.wikipedia.org/wiki/District). According to Law Nº 87/2013 of 11/09/2013 determining the organization and functioning of decentralized administrative entities (O.G. *nº Special of 30/10/2013),* in its article 2-3,theDistricts are decentralized administrative entities. The decentralized administrative entities comprise the City of Kigali, Districts, Sectors, Cells and Villages. Decentralized administrative entities with legal personality are the City of Kigali and the District. They constitute the basis for community development and have administrative and financial autonomy. [↑](#footnote-ref-4)
5. ILO, A Future without child labor, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Conference, 90th Session 2002., See [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\_publ\_9221124169\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/%40dgreports/%40dcomm/%40publ/documents/publication/wcms_publ_9221124169_en.pdf) pox [↑](#footnote-ref-5)
6. [United Nations, Resources for Speakers on Global Issues](http://www.un.org/en/globalissues/briefingpapers/childlabour/intlconvs.shtml) of child labor., See http://www.un.org/en/globalissues/briefingpapers/childlabor/intlconvs.shtml [↑](#footnote-ref-6)
7. MIFOTRA: National Policy on the Elimination of Child Labor, 2008, P.10 [↑](#footnote-ref-7)
8. ILO, Convention No 138 concerning Minimum Age for Admission to Employment, art. 7 (1) [↑](#footnote-ref-8)
9. MIFOTRA: National Policy on the Elimination of Child Labor, 2008, P.10 [↑](#footnote-ref-9)
10. #  ILO, Measuring informality: A statistical manual on the informal sector and

informal employment, See <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_222979.pdf> [↑](#footnote-ref-10)
11. Bryan A. Garner, Black’s Law Dictionary, Second Pocket Edition, St Paul.,Minn.,2001, p. 401 [↑](#footnote-ref-11)
12. Article 72 of the Law N° 13/2009 of 27/05/2009 Law Regulating Labor in Rwanda (IN O.G. n° special of 27/05/2009) provides for the worst forms of child labor as they are set in article 3 of ILO Convention No 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labor [↑](#footnote-ref-12)
13. 1 USD: 660 Rwfs (November 2014) [↑](#footnote-ref-13)
14. According to article 72 the Law N° 13/2009 of 27/05/2009 regulating labor in Rwanda, the worst forms of child labor encompass the work which is likely to harm the health, safety or morals of a child, thus hazardous work in tea plantations for youth aged 16-17. [↑](#footnote-ref-14)
15. Law Nº 30/2013 of 24/5/2013 relating to the Code of Criminal Procedure, In O.G. nº 27 of 08/07/2013 [↑](#footnote-ref-15)
16. NCHR, Law No 19/2013 of determining mission, organization and functioning of National commission for human rights, O.G. No 14 bis of 08/04/2013, p.69 [↑](#footnote-ref-16)
17. According to the Ministerial Order Nº07 of 13/07/2010 determining Modalities of the Functioning of the Labor Inspector, in its article 4, there are 2 categories of labor inspector: The labor inspector at the national who carries out his/her functions in the whole Country and the labor inspector at the District level who carries out his/her functions in the District to which he is posted. [↑](#footnote-ref-17)
18. NCHR, Law No 19/2013 of determining mission, organization and functioning of National commission for human rights, O.G. No 14 bis of 08/04/2013, p.69 [↑](#footnote-ref-18)
19. Law N°22/2011 of 28/06/2011 Establishing the National Commission for Children and Determining its mission, organization and functioning [Http://Www.Ncc.Gov.Rw/Img/Pdf/Ncc\_Law\_No\_22-2011\_Of\_28\_June\_2011\_\_-\_\_O-G\_No\_Special\_Of\_12\_July\_2011\_.Pdf](http://Www.Ncc.Gov.Rw/Img/Pdf/Ncc_Law_No_22-2011_Of_28_June_2011__-__O-G_No_Special_Of_12_July_2011_.Pdf), page 9 [↑](#footnote-ref-19)
20. Hazardous work is defined as work performed using dangerous material, lifting or carrying heavy loads, working long hours, etc. Even if the work is performed in the household it should not harm the health and personal development of the child, interfere with his education and it must be undertaken in non-exploitative conditions. (MIFOTRA: *National Policy on the Elimination of Child Labor*, 2008, P.10 [↑](#footnote-ref-20)
21. Law Nº 87/2013 of 11/09/2013 determining the Organization and functioning of Decentralized Administrative Entities, art. 38-39, *IN* O.G. nº Special of 30/10/2013: “The management organs shall be the following:

1° the Council;

2° the Executive Committee;

3° the Executive Secretariat.

At the District level, these organs shall be assisted by the Security Committee and the Coordination Committee.

The Council shall have powers to establish instructions to be applied in the territorial limits of the City of Kigali and District. Such instructions must be consistent with the Constitution and other Laws”. [↑](#footnote-ref-21)
22. District of Nyamasheke, Amabwriza No 01/14 yo kuwa 28/09/2014 y’Inama Njyanama y’Akarere ka Nyamasheke yerekeye abakozi ba mu rugo [↑](#footnote-ref-22)
23. Ministerial Order Nº06 of 13/07/2010 determining the list of worst forms of child labor, their nature, categories of institutions that are not allowed to employ them and their prevention mechanisms*, IN* O.G. nº 30 of 26/07/2010 [↑](#footnote-ref-23)
24. The provisions of the Constitution of the Republic of Rwanda, as amended to date, in its article 93 which provides that “An organic law may not contradict the Constitution and neither may an ordinary law or decree-law contradict an organic law and a decree may not contradict an ordinary law (Constitution: art.90). [↑](#footnote-ref-24)
25. The Law N° 13/2009 of 27/05/2009 Regulating Labor in Rwanda in its art. 168, concerning penalties for worst forms of child labor: “Subject to the provisions of the Penal Code of Rwanda, a person found guilty of the offence referred to in article 72 of this Law, shall be liable to a term of imprisonment ranging from six (6) months to twenty (20) years and a fine of five hundred thousand (Rwf 500,000) to five million (Rwf 5,000,000) Rwandan francs or to one of these penalties” [↑](#footnote-ref-25)
26. MIFOTRA: *National Policy on the Elimination of Child Labor*, 2008, P.10 [↑](#footnote-ref-26)
27. NCC, Ibaruwa No 022277/NCC/2014 yo kuwa 19/09/2014: Gusaba ubufatanye mu guhashya imirimo mibi ikoreshwa abana mu Karere mubereye umuyobozi. In this Letter, the Executive Secretary of the National Commission for Children drew the attention of Districts with a copy to the Minister of Gender, Ministry of Public Service and Labor, the National Police and required from them more action towards child labor because it was still persistent. [↑](#footnote-ref-27)
28. MIFOTRA, Ibaruwa No 2884/19.18 yo kwa 20/12/2013 ku bayobozi b’Akarere ibasaba gushyiraho urwego rushinzwe kurwanya imirimo mibi ikoreshwa abana (Steering Committee at District Level) (In this Letter of 20th December 2014, in line with The National child labor policy, the Ministry of Public Service and Labor recommended to Districts the set up Steering Committees to tackle issue of child labor. Now, the Steering committees have been put in place in all 30 Districts of the Country. They comprise the Vice-Mayor in charge of social affairs, President, the officer in charge of education, the officer in charge of security matter (District Police Commandant), the officer in charge of gender, the officer in charge of good governance, an Executive Secretary of Sector representing the others and NGOs conducting interventions for child laborers in the District concerned. [↑](#footnote-ref-28)
29. The responsibility on monitoring child labor is scattered in many institutions:

	* + MIFOTRA is in charge of coordinating and guide the implementation of the programs and activities related to child labor elimination
		+ MINIJUST is in charge of ensuring consistent application of the child related laws and promote the development and application of protective legislation
		+ MININTER, the National Police and the National Public Prosecution Authority have the duty of taking leadership in law enforcement to eliminate child labor [↑](#footnote-ref-29)