



Public Procurement and Child Labour in Ghana and Nigeria

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Abstract

Despite numerous domestic laws and treaties prohibiting child labour, the practice persists in many African countries, including in government supply chains. It is important to highlight the connection between public procurement and child labour in Africa because the continent hosts over 50% of the world's child labourers. Furthermore, tackling child labour through public procurement processes has not attracted much academic and policy attention. In order to shift this narrative, this article examines the public procurement frameworks of Ghana and Nigeria to reveal how they address child labour throughout the process of planning, tendering, contract award and contract management. It finds that the selected countries' legal frameworks are inadequate in addressing child labour and recommends measures to improve the identified limitations.

Keywords

public procurement – socially responsible procurement – sustainable procurement – child labour – human rights – supply chains – Ghana – Nigeria

1 Introduction

Africa hosts over 50% of the world's child labourers due to unresolved economic, cultural, legal and political issues.¹ With the highest number of global child labourers, African governments need innovative and multifaceted ways to eliminate child labour. This article argues that public procurement can be leveraged to address child labour.² It examines the extent to which the public procurement frameworks of Ghana and Nigeria address child labour. It also provides new insight into how the selected countries' public procurement frameworks should be effectively utilised to tackle this unethical practice.

The elimination of the worst forms of child labour has been an ongoing agenda of international organisations such as the United Nations (UN), the International Labour Organization (ILO) and the African Union (AU).³ For example, the UN Sustainable Development Goals (SDGs) encourage governments to adopt immediate and effective measures to “secure the prohibition and elimination of the worst forms of child labour including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.”⁴ As noted by Akanbombire, “child labour is not a problem that can be tackled by a single entity or sector alone.”⁵ This means that a comprehensive strategy covering all aspects of government activities, including public procurement, should be adopted to eliminate child labour.

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- 1 International Labour Organization (ILO), ‘Child Labour: Global Estimates’ (2020) <https://www.ilo.org/ipsec/ChildlabourstatisticsSIMPOC/WCMS_817699/lang--en/index.htm> accessed 8 August 2023.
 - 2 Sue Arrowsmith, *The Law of Public and Utilities Procurement Volume 1 & 2: Regulation in the EU and the UK* (Sweet and Maxwell, 2014).
 - 3 United Nations, ‘Theme: Social Justice for All. End Child Labour!’ (n.d.) (12 June 2023) <<https://www.un.org/en/observances/world-day-against-childlabour#:~:text=2022%20Theme%3A%20%22Universal%20Social%20Protection,protect%20children%20from%20child%20labour>> accessed 10 August 2023; UN Global Compact, ‘UN Global Compact Announces New Action Pledge to Help End Child Labour’ (2021) <<https://www.unglobalcompact.org/news/4683-01-21-2021>> accessed 10 August 2023; International Labour Organization (ILO), ‘ILO and the Committee on the Rights of the Child call for urgent action to protect children's rights and accelerate progress towards eliminating child labour by 2025’ (2021) <https://www.ilo.org/ipsec/news/WCMS_804244/lang--en/index.htm> accessed 10 August 2023.
 - 4 United Nations General Assembly, ‘*Transforming Our World: The 2030 Agenda for Sustainable Development*’ (25 October 2015) UN Doc. A/RES/70/1 (hereafter SDGs), Target 8.7.
 - 5 Olivia Baddoo and Emily Ewart, ‘The New Ghana Accelerated Action Plan Against Child Labour 2023–2027 is launched’ (12 June 2023) <<https://www.unicef.org/ghana/press-releases/new-ghana-accelerated-action-plan-against-child-labour-2023-2027-launched>> accessed 17 October 2023.

Governments can and should use their purchasing power to combat human rights violations perpetrated by their suppliers.⁶ This strategy has been adopted in national public procurement frameworks such as the United States of America (USA) Federal Acquisitions Regulations,⁷ the United Kingdom (UK) Procurement Act,⁸ and the New Zealand Government Procurement Charter.⁹ Under the New Zealand framework, procuring entities must engage with businesses with “integrity, transparency, accountability, and respect international standards relating to human and labour rights.”¹⁰ Similarly, the European Union (EU) public sector directives prohibit procuring entities from awarding contracts to suppliers convicted of human trafficking and child labour.¹¹ This means the EU and New Zealand procuring entities can address human rights violations in their supply chains. While the extent and effectiveness of their approach are outside the scope of this article, it does show that addressing child labour is not a revolutionary concept alien to national and regional public procurement frameworks.¹² However, this has not been well-researched in academic literature, especially in the south of the Sahara. This article contributes to the literature by using a doctrinal legal approach to examine how child labour is addressed in the public procurement frameworks of Ghana and Nigeria (‘the selected countries’). These countries are selected for three reasons.

6 Olga Martin-Ortega and Claire Methven O'Brien (eds), *Public Procurement and Human Rights: Opportunities, Risks and Dilemmas for the State as Buyer* (Edward Elgar, 2019); Organization for Security and Co-operation in Europe (OSCE), ‘Ending Exploitation – Ensuring that Businesses do not contribute to Trafficking in Human Beings: Duties of States and the Private Sector’ (2014); Claire Methven O'Brien and O Martin-Ortega, ‘The Role of the State as Buyer Under UN Guiding Principle 6’ (2018); UK Home Office, *Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains* (Joint statement, 24 September 2018) <<https://www.gov.uk/government/publications/trafficking-in-supply-chains-principles-for-government-action>> accessed 30 November 2023.

7 Tara Woods, ‘Utilizing Supply Chain Transparency Measures to Combat Trafficking in Persons: A Comparative Analysis of Swedish Systems’ [2019] *Public Contract Law Journal* 423.

8 UK Procurement Act 2023.

9 New Zealand Government, ‘New Zealand Procurement Charter’ (n.d) <<https://www.procurement.govt.nz/procurement/principles-charter-and-rules/government-procurement-charter/>> accessed 14 August 2023.

10 *ibid.*

11 Directive 2014/24/EU, Art 57.

12 John Bradbury, ‘Human Trafficking and Government Contractor Liability’ (2008) 37(4) *Public Contract Law Journal* 907–921; Iain Campbell and Manu Peeters, ‘Low pay, compressed schedules and high work intensity: a study of contract cleaners in Australia’ (2008) 11(1) *Australian Journal of Labour Economics* 27–46; Olga Martin-Ortega, ‘Human Rights Risks in Global Supply Chains: Applying the UK Modern Slavery Act to the Public Sector’ (2017) 8(4) *Global Policy* 512–521.

Firstly, they appear several times on the USA Department of Labour's lists of products produced or manufactured with child labour and forced or indentured child labour, which is a severe form of child labour.¹³ This list is significant because the USA prohibits federal entities from procuring listed goods tainted by forced or indentured child labour.¹⁴ For example, granite and gravel from Nigeria are used for construction.¹⁵ Thus, both their procurement and use in construction works contracts can be impacted by child labour. Secondly, the public procurement frameworks of the selected countries share a history discussed in this article. Lastly, both countries are in West Africa, have similar multiethnic and religious composition, and share a history of British colonialism. As the analysis of their public procurement frameworks shows, they serve as examples of countries with similar regulatory frameworks.

Underlining the article's research objective is this question: to what extent is child labour prohibited in the selected countries' public procurement frameworks, and how can public procurement be utilised to address child labour throughout the procurement process? The article argues that there are inadequate provisions addressing child labour in the selected countries' public procurement frameworks. Accordingly, it recommends measures for combatting this practice in the supply chains of Ghana and Nigeria.

The article begins in section 2 by providing an overview of the prohibition of child labour in international instruments and the selected countries' laws and policies. This is followed by section 3, which examines the public procurement frameworks of the selected countries to identify how child labour is addressed throughout the procurement process of planning, tendering, contract award, and contract management. In section 4, the article argues that there are missed opportunities to address child labour in the selected countries' frameworks and suggests ways to address the lacunae throughout the procurement process. The article concludes in section 5 with a discussion of

13 Department of Labor (USA), 'List of Products Produced by Forced or Indentured Child Labor' (2001) <<https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products>> accessed 10 August 2023. Department of Labour (USA), 'List of Products Produced by Child Labour or Forced Labor' (2022) <<https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>> accessed 27 November 2023.

14 Miriam Amanze and Ama Eyo, 'Strengthening the Prohibition of Forced or Indentured Child Labor in Government Contracts: A Critical Analysis of FAR Subpart 22.15' (2023) 52(3) *Public Contract Law Journal* 343–368.

15 Department of Labor (USA), 'List of Products Produced by Child Labor or Forced Labour' (2022) <<https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>> accessed 27 November 2023.

the significance of its findings for countries with the same or similar provisions as the selected countries.

2 Prohibition of Child Labour in International Instruments and the Legal Frameworks of Ghana and Nigeria

Child labour refers to work that harms children's health and safety or interferes with their education.¹⁶ While it is recognised that what constitutes childhood and child-appropriate activities varies across national borders due to social, cultural, political and economic perspectives, not all work carried out by a child is child labour.¹⁷ This applies to many African countries where children are expected to work as a means of social training and support to the family.¹⁸ From carrying out domestic work to working in a commercial setting, many African children start engaging in work as soon as they can run and speak coherently.¹⁹ Where such work meets the definition of child labour, governments must tackle it.

2.1 *An Outline on the Prohibition of Child Labour in International Instruments*

Child labour in Africa has continued to increase despite countries ratifying international conventions to eliminate it and protect children's rights. Examples of relevant Conventions include the UN Convention on the Rights of the Child (CRC),²⁰ the ILO Minimum Age Convention²¹ and the Worst Forms of Child Labour Convention.²² In addition to these international instruments, which

16 International Labour Organization (ILO), 'What is child labour' (8 June 2015) <<https://www.ilo.org/ippec/facts/lang--en/index.htm>> accessed 30 October 2023; International Labour Organization ILO, C182 Worst Forms of Child Labour Convention 1999 (No. 182), Article 3 (1999) <<https://www.ilo.org>> accessed 30 October 2023.

17 Tatek Abebe, and Sharon Bessell, 'Dominant Discourses, Debates and Silences on Child Labour in Africa and Asia' (2011) 32(4) *Third World Quarterly* 765–786.

18 Alice Boateng and Mavis Dako-Gyeke, 'Child Labor in Ghana: Current Policy, Research, and Practice Efforts' (2022) *Child Behavioural Health in Sub-Saharan Africa: Towards Evidence Generation and Policy Development*, 265–281; Fred M Ssewamala, Ozge Sensoy Bahar, and Mary M McKay (eds), *Child Behavioral Health in Sub-Saharan Africa* (Springer, Cham 2022) 265–281.

19 Per Miljeteig, 'Understanding child labour' (1999) 6(1) *Childhood* 5–12.

20 Pais Marta Santos, and Susan Bissell, 'Overview and implementation of the UN Convention on the Rights of the Child' (2006) 367.

21 La Hovary, Claire. 'ILO Convention 138 Minimum Age Convention', (1973) (No. 138). *International and European Labour Law*.

22 Noguchi, Yoshie. 'ILO Convention No. 182 on the worst forms of child labour and the Convention on the Rights of the Child' (2002) *Int'l J. Child. Rts.* 10:355.

have been ratified by many African countries, including Ghana and Nigeria, regional instruments such as the Constitutive Act of the African Union (AU),²³ the African Charter on Human and Peoples' Rights,²⁴ and the African Charter on the Rights and Welfare of the Child prohibit child labour.²⁵ For example, Article 15 of the African Charter on the Rights and Welfare of the Child requires member states to adopt "appropriate legislative and administrative measures" to protect children from child labour.²⁶ The ILO has argued that such legislative and administrative measures should include public procurement laws, policies, and guidance, as these can contribute to combatting child labour in Africa.²⁷ With significant influence on its member states' political, economic, legal, and socio-cultural decisions, the AU promotes unity, growth, and a community of practice between its member states. These ideologies impact the AU's priorities and policies, of which human rights and the empowerment of youths and children are among the goals identified in the AU Agenda 2063.²⁸

To achieve the AU agenda, which mirrors the UN SDGs, it is argued that the root causes of child labour, such as the increase in orphanhood, economic instability, the social construction of childhood, cultural influences, poverty, poor access to education and healthcare and government failings (e.g., poor governance, lack of enforcement and corruption) must be addressed.²⁹ This will require African governments to take "appropriate steps to prevent, investigate, punish and redress" abuse "through effective policies, legislation, regulations and adjudication."³⁰ This also means that African governments should "promote respect for human rights by business enterprises with which they

23 African Union, 'The Constitutive Act of the African Union' (1 July 2000) <https://au.int/en/member_states/countryprofiles2> accessed 14 June 2023; Article 3(h).

24 Organization of African Unity (OAU), 'African Charter on Human and Peoples' Rights' (27 June 1981) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982); Ebow Bondzie-Simpson, 'A Critique of the African Charter on Human and People's Rights' (1988) 31 *Howard Law Journal* 643–665.

25 *Supra* note 3.

26 *ibid*, Article 15.

27 International Labour Organization, 'Ending child labour by 2025: A review of policies and programmes' (Geneva 2018) <https://www.ilo.org/ipec/Informationresources/WCMS_653987/lang--en/index.htm> accessed 14 August 2023.

28 African Union, 'Goals & Priority Areas of Agenda 2063' (2015) <<https://au.int/en/agenda2063/goals>> accessed 10 August 2023.

29 Sonia Bhalotra, *Child Labour in Africa* (OECD Publishing, Paris, 2003); Emma Lubaale, 'The recognition of the right of children to freedom from child labour in Africa: is it enough?' (2015) 28(1) *Afrika focus* 23–43.

30 United Nations, 'Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework', (21 March 2011, adopted 16 June 2011) UN Doc A/HRC/17/31 <https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf> accessed 14 August 2023.

conduct commercial transactions.”³¹ Thus, where suppliers engaged in public contracts are using child labour in performing contracts, there is a duty on the procuring entity to protect and promote respect for children’s rights by those suppliers. Even where procuring entities are unaware that goods supplied to them are tainted by child labour, their suppliers must respect the rights of the child.³²

Additionally, African countries must look closely at their procurement activities to achieve the AU agenda and the UN SDGs (specifically Targets 8.7 and 12.7).³³ According to the ILO, establishing and enforcing an adequate regulatory procurement framework is critical to creating an enabling environment for addressing child labour in supply chains and, more broadly, ensuring sustainable supply chains.³⁴ Therefore, governments are called to “set a good example by taking extra steps to conduct due diligence against child labour and other labour rights abuses by business enterprises that are owned or controlled by the State and in their public procurement activities.”³⁵ This article extends the call to the selected countries and countries with similar procurement processes such as Ghana and Nigeria.

2.2 *Country Overview and Child Labour*

Ghana and Nigeria have ratified many of the international instruments discussed above. In this section, the article provides with an overview of their legislative frameworks and summarises their anti-child labour laws and policies. The analysis in this section will show that additional measures are needed to limit child labour, especially in issues pertaining to public procurement.

2.2.1 Ghana

Ghana is in West Africa. It has a population of over thirty-three million, which is projected to increase to 40 million in 2032.³⁶ The continuous increase in

31 *ibid*, UNGP 6.

32 UNICEF, ‘UNICEF implements sustainable procurement’, (September 2018) <<https://www.unicef.org/supply/sites/unicef.org/supply/files/2019-06/sustainable-procurement-information-note.pdf>> accessed 9 August 2023.

33 *Supra* note 4, Target 12.7 Promote public procurement practices that are sustainable, in accordance with national policies and priorities.

34 *Supra* note 27, p. 12.

35 *ibid*, p. 60.

36 World Bank, ‘Population, total – Ghana’, <<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=GH>> accessed 21 July 2023; World Population Review, ‘Ghana Population 2023 (Live)’, <<https://worldpopulationreview.com/countries/ghana-population>> accessed 21 July 2023.

Ghana's population raises sustainability issues concerning poverty reduction, quality of education, decent employment, and environmental concerns. Contributing to the escalation of these sustainability concerns are the macroeconomic challenges Ghana experiences, which have impacted the living standards of Ghanaians and exposed the most vulnerable in society, especially children.³⁷ With over 10 million children aged 0 to 14, economic instability in the country has severe implications for health, education, food security, and the growth of child labour.³⁸

According to the Ghana National Plan of Action, one in five children aged 5 to 17 are engaged in child labour, with over 1.9 million working in hazardous conditions.³⁹ Child labourers in Ghana are often found in the agriculture, service and construction sectors.⁴⁰ Within the Ghanaian agriculture and food sector, which accounts for 79% of the employment, children work in the production of coca, palm oil, cotton, fishing, and herding of livestock.⁴¹ In the Ghana construction sector, children are involved in mining natural resources, operating heavy machinery, and carrying heavy loads for construction.⁴²

The presence of child labour in these sectors resulted in the adoption of various national legal frameworks. For example, Article 16(2) of the Constitution of the Republic of Ghana protects "persons" (including children) from forced labour.⁴³ Additionally, Article 28(2) of the Constitution explicitly protects children from engaging in work that "constitutes a threat" to health, education or development.⁴⁴ The Ghanaian government has also implemented laws such as the Children's Act 1998, which contains provisions relating to the minimum

37 The World Bank, 'Ghana's Economy Expected to Recover Its Potential By 2025, says World Bank Report' (19 July 2023), <<https://www.worldbank.org/en/news/press-release/2023/07/19/ghana-economy-expected-to-recover-its-potential-by-2025-says-world-bank-report>> accessed 14 August 2023.

38 Ghana Statistical Service, 'Presentation on The General Report Volumes 3A, 3B And 3C' <<https://census2021.statsghana.gov.gh/presspage.php?readmorenews=MTY4OTA1MDkwNC4wOTY=&Presentation-on-the-General-Report-Volumes-3A-3B-and-3C>> accessed 23 July 2023.

39 Republic of Ghana, 'National Plan of Action 2017–2021', <<https://www.unicef.org/ghana/media/1836/file/National%20Plan%20of%20Action%20to%20Eliminate%20the%20Worst%20Forms%20of%20Child%20Labour.pdf>> accessed 14 August 2023.

40 U.S. Department of Labour, 'Findings on the Worst Forms of Child Labor: Ghana (2021)' <<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/ghana>> accessed 14 August 2023.

41 *ibid.*

42 *ibid.*

43 *The Constitution of the Republic of Ghana 1992.*

44 *ibid.* Article 28(2) states that "Every child has the right to be protected from engaging in work that constitutes a threat to his health, education or development."

work age and exposure to hazardous work.⁴⁵ Other anti-child labour laws enacted by the government include the Labour Regulations 2007, the Human Trafficking Act 2005, and the Human Trafficking Prohibition (Protection and Reintegration of Trafficked Persons) Regulations 2015.⁴⁶ While an exhaustive assessment of these laws is outside the scope of this research, it should be noted that they are inadequate for eliminating child labour. A significant shortcoming is the lack of enforcement due to collusion between enforcement authorities and perpetrators, as well as limited resources to monitor, investigate and prosecute natural and legal persons.⁴⁷

Similarly, policies for eliminating child labour are weak due to poor implementation and enforcement.⁴⁸ The inadequacies in the current laws and policies have resulted in the development of the Accelerated Action Plan Against Child Labour 2023–2027, aimed to supplement existing laws and “intensify efforts to end all forms of child labour in Ghana.”⁴⁹ Although there are legislative and policy measures to combat child labour, these are not explicitly linked to public procurement. Thus, in section 3.1 below, the article examines the Ghanaian public procurement framework to ascertain the extent to which it prevents or addresses child labour.

2.2.2 Nigeria

The Federal Republic of Nigeria (hereinafter Nigeria) is located in West Africa and has an estimated population of over 229 million.⁵⁰ Children between the ages of 0 to 14 years make up approximately 43% of the total population.⁵¹ Although there is free and compulsory education up to 3 years of secondary school, 10.5 million children in Nigeria are out of school and vulnerable

45 *The Children's Act 1998*.

46 *The Labour Regulations 2007*.

47 *Supra* note 40; see TE Amuzu, ‘Human Trafficking in Ghana: Some Critical Views on the Law’ (2022) *KNUST LJ*, 9, 23.

48 *ibid.* Examples of the policies identified by the U.S. DoL are National Plan of Action for the Elimination of Human Trafficking in Ghana (2017–2021), National Plan of Action Phase II on the Elimination of the Worse Forms of Child Labor (2017–2020), and the Minerals and Mining Policy of Ghana, Hazardous Child Labor Activity Frameworks.

49 United Nations International Children's Emergency Fund (Unicef), ‘The New Ghana Accelerated Action Plan Against Child Labour 2023–2027 is launched’ <<https://www.unicef.org/ghana/press-releases/new-ghana-accelerated-action-plan-against-child-labour-2023-2027-launched>> accessed 14 August 2023.

50 World Population Review, ‘Nigeria Population 2024’ <<https://worldpopulationreview.com/countries/nigeria-population/>> accessed 25 July 2024.

51 United Nations Population Fund, ‘World Population Dashboard: Nigeria’ <<https://www.unfpa.org/data/world-population/NG>> accessed 4 August 2023.

to child labour, child marriages and recruitment by criminal organisations.⁵² Concerning child labour, an estimated 39.2% of Nigerian children are engaged in this practice, mainly within the agriculture, construction and mining sectors, with 22.9% engaged in hazardous work.⁵³

Nigeria has enacted several laws and implemented policies to eliminate child labour. For example, section 28 of the Child's Rights Act prohibits forced or exploitative labour and exposure to hazardous environments that affect a child's physical, mental, spiritual, moral or social development.⁵⁴ Despite this explicit prohibition, two states have not adopted the Act in Nigeria, and the states that have adopted it lack efficient enforcement of its provisions.⁵⁵ Other legislative provisions addressing child labour include the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015, the Education Act 2004, and the Labour Act 1990.

The National Social Behavioural Change Communication Strategy for Elimination of Child Labour 2021–2023 is an example of a policy that tackles child labour by deploying awareness-raising activities in Nigerian communities.⁵⁶ However, reports have found no evidence to suggest the policy was implemented during the reporting period.⁵⁷ Nonetheless, Nigeria continues to adopt policies to eliminate child labour from the country.⁵⁸

Like Ghana, the laws and policies in Nigeria are inadequate as standalone instruments in eliminating child labour. This is due to a lack of enforcement or implementation across the country. In turn, lack of enforcement is worsened

52 *The Compulsory, Free Universal Basic Education Act 2004.*

53 U.S. Department of Labour, 'Findings on the Worst Forms of Child Labor: Nigeria (2021)' <https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/Nigeria.pdf> accessed 14 August 2023; ILO, 'Nigeria Child Labour Survey 2022' <<https://www.ilo.org/publications/nigeria-child-labour-survey-2022>> accessed 25 July 2024.

54 *The Children's Rights Act of 2003.*

55 *Supra* note 53; M Abdullahi, 'Child Rights Act now adopted in 34 states, says minister' (The Cable NG, 25 November 2022) <<https://www.thecable.ng/child-rights-act-now-adopted-in-34-states-says-minister/>> accessed 25 July 2024.

56 *ibid.* Implemented in Abuja in 2020 for the reporting period of 2021–2023, the Strategy for Elimination of Child Labour was supported by the International Labour Organization. The strategy is a grass root policy, which focuses on raising awareness of child labour in Nigerian households and communities. ILO, 'ILO Supports Nigeria's Response to Child Labour Emergency' <<https://www.ilo.org/resource/news/ilo-supports-nigerias-response-child-labour-emergency>> accessed 26 July 2024.

57 *Supra* note 53.

58 ILO, 'ILO Supports Nigeria's Response to Child Labour Emergency', (28 May 2021) <https://www.ilo.org/africa/about-us/offices/abuja/WCMS_803364/lang-en/index.htm> accessed 8 August 2023; Peter Olayiwola, 'They Just Have to Adopt These Conventions': Anti-child Trafficking Policies and Politics in Nigeria' (2022) *Journal of Human Trafficking*, 1–11.

by limited resources to effectively monitor compliance and implementation of the laws.⁵⁹ Arguably, it is also due to corruption, religious opposition, or cultural practices.⁶⁰ Thus, relying only on the laws and policies mentioned above to address child labour will not be sufficient. This article argues that public procurement should be utilised to contribute to the national fight against child labour. The selected countries' procurement frameworks are analysed in the next section to determine how they currently address child labour.

3 Analysis of Public Procurement Frameworks

Public procurement can contribute to national and global initiatives to eliminate child labour, in this instance, in the multi-tiered supply chains of Ghana and Nigeria. Public procurement regulations in these countries share a history, as they are based on the soft law of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement, which was first adopted in 1994 and revised in 2011.⁶¹ The Model Law provides a regulatory template that countries can incorporate into national law. It is accompanied by the Guide to Enactment, which provides a detailed explanation of the Model Law.⁶² Arguably, countries that have adopted the Model Law fall into three categories.

The first category is those that adopted the 1994 Model law and have not amended their national law despite the 2011 revision.⁶³ African countries such as Nigeria, Malawi and Mauritius fall into the first category. The second category consists of countries that initially adopted the 1994 law and have amended their national law based on the 2011 revision. African countries such as Ghana, Zambia, Kenya, and Uganda fall into this category. The final category

59 KON Onu, and OA Kolawole, 'Trafficking In Persons (Prohibition) Law Enforcement And Administration Act, 2015: An Old Wine In A New Bottle' (2020) *Journal of Law and Criminal Justice*, 8(1), 50–62.

60 Special thanks to the article's reviewers for this suggestion.

61 The UNCITRAL, 'Model Law on Procurement of Goods, Construction and Services 1994' <https://uncitral.un.org/en/texts/procurement/modellaw/procurement_of_goods_construction_and_services> accessed 4 August 2023; UNCITRAL, 'Model Law on Public Procurement' 2011 <https://uncitral.un.org/en/texts/procurement/modellaw/public_procurement> accessed 4 August 2023.

62 United Nations Commission on International Trade Law (UNCITRAL), 'Guide to Enactment of the UNCITRAL Model Law on Public Procurement' (2021) <https://uncitral.un.org/en/texts/procurement/modellaw/public_procurement/guide> accessed 4 August 2023.

63 *Supra* note 61.

includes countries that have implemented laws based solely on the 2011 Model law. Egypt falls under this category.

The category a country falls into is relevant to the subject matter of this article because the 1994 Model Law did not contain provisions encouraging governments to promote social policies such as prohibiting child labour in their laws.⁶⁴ Thus, it is likely that the public procurement framework of countries in the first category (Nigeria) will have fewer direct or indirect provisions that tackle child labour compared to countries in the second and third categories. This is because the 2011 Model Law contains provisions for enacting countries to pursue socio-economic policies through public procurement.⁶⁵ For example, the Guide to Enactment, which supplements the 2011 Model Law, explains that promoting ethical standards as part of the qualification of suppliers includes “employment conditions, human rights, child labour, and exploitation of labour.”⁶⁶ This provision explicitly addresses child labour through public procurement and would only be adopted by governments that mirror their national law based on the 2011 Model law. The article’s hypothesis is tested by comparing a category one country (Nigeria) and a category two country (Ghana). The rest of this section analyses the selected countries’ public procurement frameworks to discover how they address child labour.

3.1 *Ghana*

Ghana’s public procurement framework does not explicitly mention child labour. However, existing provisions could be interpreted to address child labour in the supply chain. The acquisition of goods, works, and services by Ghanaian procuring entities is primarily regulated by the Public Procurement Act 2003 as amended by the Public Procurement (Amendment) Act 2016.⁶⁷ The public procurement law applies to central authorities, ministries, agencies, and institutions established by the government.⁶⁸ With over fifteen thousand suppliers registered on the Ghanaian public procurement portal, the legislation can potentially address child labour across many of the government’s supply chains.⁶⁹ In addition to the Act, the Public Procurement Regulations 2022,

64 *ibid.*

65 *ibid.*, Articles 9 and 25.

66 *Supra* note 62, p. 19; C Nicholas, ‘The 2011 UNCITRAL Model Law on Public Procurement’ (2012) 3 Public Procurement Law Review. N111–123.

67 Public Procurement Act 2003 (Act 663) and Public Procurement (Amendment) Act 2016 (Act 914).

68 *ibid.*, Section 14(2).

69 Public Procurement Authority, ‘Welcome to the PPA’ <<https://ppa.gov.gh/>> last accessed 14 August 2023.

manuals, policies, and standard bidding documents guide procuring entities in awarding public contracts.⁷⁰

The Act aims to harmonise the public procurement process to ensure it is economical, effective, fair, transparent, non-discriminatory, and sustainable.⁷¹ The inclusion of sustainability in the public procurement objectives represents a clear and direct mandate for the government's environmental, economic, and social policies to be addressed through public procurement.⁷² Thus, it is argued that social policies such as eradicating child labour can be addressed through public procurement. However, it remains to be seen whether other provisions in the Act support this social policy.

Beginning with procurement planning, this stage of the procurement process is a strategic function that influences the effectiveness of public procurement.⁷³ It enables procuring entities to develop annual procurement plans, conduct thorough market research, perform due diligence, plan a timetable for the acquisition, draft solicitation documents, and carry out risk assessments. Therefore, the underlying aim of procurement planning is to be proactive and not reactive to problems arising during the tendering, contract award and contract management stages.⁷⁴ For Ghana, the focus of procurement planning under the law and regulation is to prepare procurement plans that indicate the procurement, estimated costs for each procurement, the processing steps, the timescale for the acquisition, and the procurement method approvals.⁷⁵ There are no relevant planning provisions that can be linked to the tackling of child labour.

In addition to procurement plans, procuring entities are expected to prepare standard bidding documents (SBDS) before soliciting bidders. The SBDS contain essential information that potential bidders must consider before submitting a bid. Examples of such information include instructions for bidders, conditions of contract, qualification and evaluation criteria, information

70 Public Procurement Authority, 'Standard Tender Documents – Revised' <<https://ppa.gov.gh/online-documents/standard-tender-documents-revised/#1590763685043-945cce48-0282>> accessed 14 August 2023.

71 *Supra* note 67, Section 2.

72 Dominic Dagbanja, 'Developments in sustainable public procurement law and policy in Ghana and Australia' (2020) 6 *Public Procurement Law Review* 359–379.

73 Ismail Changalima, Gift Mushi, & Samwell Mwaiseje, 'Procurement planning as a strategic tool for public procurement effectiveness: experience from selected public procuring entities in Dodoma city, Tanzania' (2021) 21(1) *Journal of Public Procurement* 37–52.

74 M Amanze, D Cahill, & C Evans, 'Tackling Human Trafficking in Governments Supply Chains: Legal Certainty and Effectiveness Issues Under the Australian Commonwealth Procurement Rules Model' (2022) 50(4) *Federal Law Review* 479–503.

75 *Supra* note 67, Section 21.

on tender security (where necessary), schedule of requirements, and contract forms. The qualification, evaluation criteria and contract conditions are relevant to the discussion of child labour.

The qualification of bidders is outlined under Section 22 of the Act.⁷⁶ An analysis of section 22(1) identifies several criteria procuring officers can use to exclude bidders engaging in child labour practices. First, section 22(1)(a) of the PPA states that bidders are to possess relevant qualifications, financial resources, equipment and facilities, personnel, experience, and reputation.⁷⁷ Relevant to the argument is the matter of reputation. Arguably, engaging in child labour taints the reputation of bidders as this practice is illegal under national and international law. Thus, credible evidence that a bidder engages in child labour should be sufficient to show that such a bidder does not have the appropriate reputation to contract with the government. This line of argument is not novel, as the Organisation for Security and Co-Operation in Europe has urged governments to cease doing business with “any entity which is found to tolerate trafficking in human beings or to use forced labour” without needing a criminal conviction but “credible allegations.”⁷⁸ Extending this to child labour, it is not irrational for procuring entities to exclude a bidder based on credible evidence that their reputation is tainted by child labour.

A second argument supporting the exclusion of bidders engaging in child labour is found under section 22(1) (ba) of the PPA.⁷⁹ According to the provision, bidders must “meet ethical and other standards applicable” in Ghana.⁸⁰ This is essential because the government should not directly or indirectly engage in commercial transactions with suppliers that do not conform to laws or ethical standards. As previously discussed, child labour has been explicitly prohibited in Ghana. Moreover, engaging in child labour is unethical because children’s vulnerability is exploited, often leading to irreversible and irreparable physical, psychological, and behavioural harm.⁸¹ Thus, bidders who adopt this practice do not have an ethical operation and must be excluded from the tendering exercise. In addition to the two provisions analysed above, Ghanaian

76 *ibid.*

77 *Supra* note 67, Section 22(1)(a).

78 *Supra* note 6, p. 44.

79 *Supra* note 67.

80 *ibid.*

81 Jennifer Isern, ‘Bittersweet Chocolate: The Legality and Ethics of Child Labor in Cocoa Production in Côte d’Ivoire’ (2006) 11(1) *Journal of Applied Management and Entrepreneurship* 115; Radfar, Amir, Seyed Ahmad Ahmadi Asgharzadeh, Fernando Quesada, and Irina Filip, ‘Challenges and perspectives of child labor’ (2018) 27(1) *Industrial Psychiatry Journal* 17–20.

procuring entities are permitted to include other criteria that “does not discriminate and is objectively justifiable.”⁸² This could mean that provisions tailored to exclude bidders that engage in child labour practice can be imposed under this catchall provision. Implementing these provisions as detailed above during the qualification or pre-qualification of bidders has the advantage of eliminating bidders with the reputation of engaging in child labour from the procurement exercise.⁸³ However, it does not mean that bidders who pass the qualification process cannot go on to perform a public contract using child labour. Other measures must be adopted to address this effectively, especially during contract award and contract management.

In contrast to the qualification criteria, which assess the bidder, the evaluation criteria are designed to assess the bid (also known as a tender) against the pre-determined criteria set out in the SBDS.⁸⁴ Section 59(2) of the PPA specifies several criteria that can be adopted to evaluate bids. Amongst the list of criteria permitted is the use of “environmental and other characteristics of the subject matter of the procurement.”⁸⁵ The vagueness of ‘other characteristics’ makes it difficult to assess if social criteria such as trading conditions and suppliers’ production processes can be used to evaluate tenders. On the one hand, it could be argued that social criteria are inclusive of ‘other characteristics’ as long as they relate to the subject matter of the procurement. Such interpretation would mean the Act permits criteria assessing suppliers’ workforce and labour conditions. This argument is supported by section 59(8)(c)(iii) of the PPA, which requires the consideration of local content, including manufacturer, labour, and materials of the supplier when determining the lowest evaluated tender.⁸⁶ Despite this interpretation of the provisions, it could be argued that the lack of explicit inclusion of social criteria could denote that they are not permitted in Ghanaian public procurement. Thus, an opportunity to address child labour in the operations of potential bidders is missed. Irrespective of the perspective adopted, clarity is required to ensure the adopted approach is as the law intended.

After evaluating tenders and identifying the successful bidder, the procuring entity can proceed to contract award and management. These later stages

82 *Supra* note 67, Section 22(1)(f).

83 *ibid*, the Section 22(1) qualification criteria can be adopted in the pre-qualification or pre-selection documents as detailed in Section 22(3).

84 Pedro Telles and Luke Butler, ‘Public Procurement Award Procedures in Directive 2014/24/EU’ in François Lichere, Roberto Caranta and Steen Treumer (eds), *Modernising Public Procurement: The New Directive* (Djof Publishing 2014) 178.

85 *Supra* note 67; section 59(2)(g).

86 *ibid*.

of the procurement process can be employed to address child labour during contract performance. However, the Public Procurement Act and regulations do not provide guidance on this. Therefore, procuring entities have the discretion to adopt appropriate contract management strategies to ensure public contracts are successfully completed. This discretion could lead to diverse strategies such as regular audits or certifications being employed to ensure that public contracts are not tainted with child labour. In contrast, discretion could mean that procuring entities do not actively consider appropriate anti-child labour management strategies. As discussed above, this is likely the case, since child labour is not explicitly mentioned in the qualification or evaluation criteria.

The public contract is another measure employed to address social or environmental issues through public procurement.⁸⁷ In Ghana, the SBDS set out the contract conditions and instructions to bidders.⁸⁸ The contract conditions signal to potential bidders what their contractual obligations will be if they are selected for contract award. They set out the general conditions of contract (GCC), which deal with issues such as notices, applicable law, subcontracting, payments and prohibited conducts and remedies for engaging in the conducts. A review of SBDS used in procuring goods and works contracts by Ghanaian procuring entities shows that the GCC only contains provisions for terminating contracts if the supplier engages in corrupt or fraudulent practices when executing the contract. Conduct such as child labour, human trafficking or other forms of modern slavery are not included in the GCC.⁸⁹ The omission in the GCC is a significant limitation in tackling child labour because no contractual obligations prevent suppliers from engaging in child labour during contract performance. Resolving the limitations identified in the Ghanaian public procurement framework is discussed in section 4 of this article.

3.2 *Nigeria*

Public procurement in Nigeria is governed by federal and state regulatory frameworks.⁹⁰ At the federal level, the Public Procurement Act (PPA) 2007 regulates the acquisition of goods, works and services by federal procuring

87 *Supra* note 70.

88 *ibid.* The SBD templates are accessible on the Public Procurement Authority website and depends on the procurement method used in procuring the goods, works or services.

89 *Supra* note 70. See the standard tender documents for the procurement of goods (NCT) and international competitive tendering (Goods).

90 Kingsley T Udeh and ML Ahmadu, 'The regulatory framework for public procurement in Nigeria' in Sue Arrowsmith, Geo Quinot (eds) *Public procurement regulation in Africa* (2013, Cambridge University Press) 141–161.

entities.⁹¹ The Public Procurement Regulations 2007, the BPP's procurement procedures manual, and public procurement guidelines supplement this. State public procurement legislation mirrors the 2007 Act and is applied by each state's procuring entities.⁹² As the federal public procurement framework is the subject of this article, only provisions that could be interpreted to enable federal procuring entities to address child labour in their procurement process are analysed.

The first provision is the fundamental principles underpinning all acquisitions governed by the Act.⁹³ Section 16 of the PPA specifies the principles of procurement, which include transparency, value for money, competition, economy and efficiency. Unlike Ghana's inclusion of sustainability in the procurement principles, the Nigerian procurement principles do not enable an interpretation that can be aligned to tackling child labour.

In addition to the principles, section 16 lays down the rules for the qualification of bidders. Like Ghana, the Act encourages procuring entities to exclude bidders whose directors have been convicted of fraud-related criminal offences.⁹⁴ The Act also grants procuring entities the discretion to exclude bidders that have "been validly sentenced for a crime in connection with a procurement proceeding, or any other crime committed to gain financial profit."⁹⁵ This provision could be interpreted in two ways. It could be argued that this exclusion is only directed at bidders convicted and sentenced for financial crimes such as corruption or fraud. Such interpretation would mean the provision cannot be widely interpreted to include other crimes. It could also be argued that this discretionary provision supports tackling child labour in the federal government's supply chain because child labour results in 'financial profit' for the perpetrator. This interpretation is commendable but weak because it has several limitations.

Firstly, relying on this provision to exclude bidders with child labour practices will only be valid if the bidder has been convicted and sentenced for this crime. Thus, this provision relies on the success of prosecutions, which is very poor compared to reports of this crime. An additional hurdle to exclude bidders tainted by child labour under section 16 lies in the discretionary authority

91 Sope Williams-Elegbe, 'The reform and regulation of public procurement in Nigeria', (2012) 41(2) Public Contract Law Journal 339–366; S Williams-Elegbe Sope, 'A Comparative Analysis of the Nigerian Public Procurement Act against International Best Practice' (2015) 59(1) Journal of African Law 85.

92 The Lagos State Public Procurement Law 2021 and the Abia State Public Procurement Law 2012.

93 Public Procurement Act 2007.

94 *ibid*, Section 16(6)(e).

95 *ibid*, Section 16(8)(e).

given to procuring entities. Essentially, the power to exclude is subject to the discretion of the procuring entity, which arguably means that bidders convicted of child labour and other profit-driven crimes may still be awarded federal contracts because their exclusion is not mandatory.⁹⁶ Therefore, there are significant limitations to tackling child labour and other violations of human rights during the qualification of bidders.

Another provision that can be employed to address child labour is section 53 of the PPA 2007. This contract management provision permits the investigation or review of the supplier's premises, books, records, accounts, or documents "if it considers that a criminal investigation is necessary or desirable to prevent or detect a contravention of this Act."⁹⁷ Although this Act arguably focuses on corruption, bribery, poor performance and similar economic misconduct, it could be extended to consider other crimes, such as child labour. This is because the audits or investigations may detect the use of child labourers, especially in construction contracts. Where such investigation shows a contravention of the Act, the BPP may (amongst other remedies) cancel the contract or pass information to the relevant authority to prosecute the crime.⁹⁸ Thus, relying on this provision to address child labour is advantageous as it gives the BPP the authority to investigate (or refer to a relevant authority) any allegation of child labour during contract performance. While it can be argued that child labour is a contravention of the Act as this is linked to the Section 16 exclusion on criminal grounds, it is not explicit and, as a result, a weak reason for investigating a supplier's operations and, if detected, will be accidental. To remedy this, the Act should explicitly prohibit child labour just as offences such as bid-rigging, fraud, collusive agreements, use of fake documents and access refusal.⁹⁹

4 Missed Opportunities to Address Child Labour through Public Procurement

Compared to Ghana's framework, the Nigerian public procurement framework contains fewer direct or indirect provisions that tackle child labour. The analysis above shows that the Ghanaian framework contains more indirect

96 *Supra* note 93. The discretionary power is particularly problematic as corruption continues to thrive in Nigerian public procurement.

97 *Supra* note 93, Section 53.

98 *ibid.* see also section 60 definition of relevant authorities which includes "Economic and Financial Crimes Commission and Independent Corrupt Practices Commission." The term 'includes' means that it is not limited to the specified authorities.

99 *ibid* at Section 58.

provisions that procuring entities can rely on to address this violation of human rights.¹⁰⁰ Despite the microscopic differences, both frameworks are inadequate in addressing child labour as several common limitations exist in the selected countries' public procurement frameworks. Overall, the analysis found that:

- a. There are no public policies explicitly prohibiting government suppliers from engaging in child labour.
- b. There is a lack of explicit provisions in the public procurement frameworks that address child labour.
- c. Where provisions in the public procurement frameworks indirectly impact the anti-child labour agenda, they are not adopted across the procurement process of planning, tendering, contract award and contract management.
- d. Where there are indirect provisions impacting this agenda, they are limiting. For example, the qualification or pre-qualification provisions can arguably be extended to exclude bidders tainted by child labour. However, such provisions require a conviction and are restricted to the procuring entity's discretion.

Based on these limitations, this section of the article offers recommendations on how public procurement frameworks can be effectively utilised to address child labour. This is done through the lens of the procurement process. While all recommendations below are crucial, it is recognised that procuring entities may not have the resources to adopt all the measures suggested. Thus, some measures may be prioritised above others.

4.1 *Planning*

The focus on procurement planning in the legal frameworks of Ghana and Nigeria lies in preparing annual budgets, needs identification, and market analysis. While these tasks are necessary to ensure the acquisition's success, there are missed opportunities to implement adequate planning provisions that address child labour. An example of a planning provision geared to address child labour is seen under subpart 22.15 of the USA Federal Acquisition Regulation.¹⁰¹ Under subpart 22.15, during the planning for the procurement

¹⁰⁰ See for example provisions related to procurement principles and the qualification of bidders. The Nigerian framework does not provide relevant provisions linked to the evaluation criteria whereas, Ghana's indirect provision could be widely interpreted to allow for anti-child labour intervention.

¹⁰¹ Federal Acquisition Regulations, Subpart 22.15 Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor. The Subpart was introduced by Executive Order 13126 (June 16, 1999).

of goods, federal procuring entities are required to carry out due diligence by checking the history of the product against the list of products produced by forced or indentured child labour.¹⁰² If the proposed acquisition appears on the list, it alerts the procuring entities that additional measures will be required during the rest of the procurement process. While subpart 22.15 is not without criticism, the provision that requires procuring officers to carry out due diligence before preparing the solicitation documents is advantageous because it may enable anti-child labour measures such as contract conditions to be adopted in the rest of the procurement process.

Similarly, the requirement for procuring entities to report on “its policies and due diligence processes in relation to forced labour and child labour” under the Canadian Fighting Against Forced Labour and Child Labour in Supply Chains Act means that an active investigation of child labour is needed to reduce the risk that the acquisition is tainted.¹⁰³ As advocated by Amanze et al., producing a national list similar to the USA list of products produced by child labour should offer a starting point for engaging in due diligence.¹⁰⁴ The underlying argument is that governments must carry out due diligence, especially when the acquisition is in a sector with a high risk of child labour.

In addition to the above, amendments should be made to the standard bidding documents (SBDs) before they are advertised to potential bidders. This article advocates for the inclusion of anti-child labour clauses in the general conditions of contracts in SBDs. The anti-child labour contract conditions should prohibit suppliers from engaging in this practice and be extended to subcontractors. An example of such a clause can be seen in the African Development Bank (AfDB) standard bidding document for the procurement of large works after pre-qualification.¹⁰⁵ Under this SBD, sub-clause 6.2.2 states that:

The Contractor, including its Subcontractors, shall not employ or engage a child between the minimum age and the age of 18 in a manner that is likely to be hazardous, or to interfere with the child’s education, or to

¹⁰² *ibid.*

¹⁰³ Fighting Against Forced Labour and Child Labour in Supply Chains Act (S.C. 2023, c. 9).

¹⁰⁴ *Supra* note 74.

¹⁰⁵ African Development Bank, ‘Standard Bidding Documents – Procurement for large works one envelope after pre-qualification’ <<https://www.afdb.org/en/projects-and-operations/procurement/new-procurement-policy>> accessed 20 July 2023; Miriam Amanze & Ama Eyo, ‘Financing infrastructure procurement and workers’ rights: the role of regional development banks’ in Olga Martin-Ortega and Laura Treviño-Lozano (eds), *Sustainable Public Procurement of Infrastructure and Human Rights* (Edward Elgar Publishing, 2023) 85–109.

be harmful to the child's health or physical, mental, spiritual, moral, or social development.¹⁰⁶

Including anti-child labour clauses in the SBD contracting conditions will create a legally binding obligation that applies throughout the contract performance duration and addresses child labour across the government's multi-layer supply chains. Therefore, the selected countries should, at the minimum, adopt this clause in their contract conditions. This may deter suppliers from engaging in child labour practices during contract performance and will not require enormous resources.

4.2 *Tendering (Qualification Criteria)*

Earlier, the analysis of the qualification criteria in the Ghana and Nigeria public procurement frameworks showed no explicit exclusion of bidders engaged in illegal activities such as child labour, human trafficking or other forms of modern slavery.¹⁰⁷ This lacuna may allow procuring officers to sideline criminal practices outside of fraud and corruption. This lack of clear and direct provisions relating to child labour and other criminal activities is a hindrance and should be remedied. Regional public procurement frameworks such as the EU public sector directives contain mandatory exclusion provisions for bidders convicted of various criminal offences, including child labour.¹⁰⁸ Similarly, mandatory exclusion provisions on the grounds of human rights violations are found in the UK Procurement Act.¹⁰⁹ These examples show that governments have taken a firm stand against child labour through their exclusion grounds. Therefore, the selected countries should learn from these examples and take a firm stand by mandatorily excluding suppliers convicted of child labour and other human rights violations.

In addition to the mandatory exclusion of bidders convicted of child labour, the selected countries' public procurement frameworks should contain provisions that grant discretionary power to procuring entities to exclude bidders where there is evidence to show such a bidder engages in child labour practices. This provision will not require a conviction or sentencing but "credible evidence" or reports such as audit or whistleblowing reports. An example of a discretionary provision is found under Rule 44 of the New Zealand

¹⁰⁶ *ibid.*

¹⁰⁷ See the analysis of public procurement frameworks section 3.1 and 3.2 above.

¹⁰⁸ *Supra* note 11, Article 57 provides a list of offences subject to mandatory exclusion.

¹⁰⁹ *Supra* note 8, Schedule 6 provides a list of offences subject to mandatory exclusion.

Government Procurement Rules.¹¹⁰ Rule 44 states that a procuring entity “may exclude a supplier from participating in a contract opportunity if there are ... human rights violations by the supplier or in the supplier’s supply chain.”¹¹¹ The Rule 44 exclusion must be supported by evidence, meaning any credible proof such as certified reports or whistleblower statements would suffice.¹¹² Mandatory and discretionary provisions geared towards excluding bidders engaged in child labour will strengthen the qualification provisions of the selected countries’ public procurement frameworks.

4.3 *Contract Award*

Another opportunity to address child labour through public procurement is during the contract award. During this stage, procuring entities must evaluate the tender(s) received against the evaluation criteria set out in the SBDS to determine the rank of the submissions and the successful bidder.¹¹³ This means that the evaluation criteria play a crucial part in determining who the contract is awarded to and, therefore, can be employed to mitigate the award of contracts to suppliers tainted by child labour. Using social criteria to evaluate tenders offers an opportunity for procuring entities to assess the operations and practices of potential bidders before contract award.¹¹⁴ For example, the EU public sector directives permit the use of social labels as an evaluation criterion if they are linked to the subject matter of the procurement.¹¹⁵ Also, the World Bank Procurement Regulations permit the use of social-label criteria appropriate to the acquisition’s nature and complexity.¹¹⁶ As these international public procurement frameworks have recognised the use of social

110 *Supra* note 9, Rule 44.

111 *ibid*, Rule 44(1)(j).

112 Albert Sanchez, ‘Public Procurement and “Core” Human Rights: A Sketch of the EU Legal Framework’ in O Martin-Ortega and CM O’Brien (eds), *Public Procurement and Human Rights: Towards legal and policy coherence in pursuit of sustainable market economies* (Edward Elgar Publishing 2019) 96–114.

113 Ama Eyo, ‘Evidence on use of dynamic purchasing systems in the United Kingdom’ (2017) 6 *Public Procurement Law Review* 237–248.

114 See generally A Semple, ‘Socially Responsible Public Procurement (SRPP) under EU Law and International Agreements: The GPA, CETA and the EU-Ukraine Deep and Comprehensive Free Trade Area’ (2017) 12(3) *European Procurement & Public Private Partnership Law Review* 293, 298–299.

115 *Supra* note 11, Art 67(2); Paula Faustino, ‘Award Criteria in the New Directive on Public Procurement’ (2014) 3 *Public Procurement Law Review* 124–133.

116 World Bank, *Procurement Regulations for IPF Borrowers: Procurement in Investment Project Financing Goods, Works, Non-Consulting and Consulting Services* (November 2020).

criteria to achieve an objective, the selected countries should also permit such usage as it will foster the use of appropriate criteria to address child labour. These criteria will enable governments to know their suppliers by revealing their workforce (including subcontractors) and labour conditions.

Child labour can also be addressed during the contract award through requests for anti-child labour certification or statements. This measure is adopted in the USA Federal Acquisitions Regulations, which require the successful supplier to submit a certification that it will not supply an end product on the list of products produced by forced or indentured child labour and that it has made a “good faith effort to determine whether” forced or indentured child labour was used in the production of the goods.¹¹⁷ While the effectiveness of the USA measure is outside the scope of this article, the usage is advantageous because it stipulates the government’s stance on child labour in public procurement and requires suppliers to take action by reviewing their operations and practices.¹¹⁸ The certification measure is not farfetched as procuring entities require bidders to submit an affidavit or additional documents to prove their suitability or capability of performing the contract.¹¹⁹

4.4 *Contract Management*

The contract management stage of the procurement cycle is as important as the tendering process when addressing child labour; however, it is underutilised and often left to the discretion of procurement officers due to the lack of regulation in the public procurement frameworks. This section of the article recommends the adoption of three contract management measures to address child labour. These measures may not be included in the public procurement laws of the countries, but they should be provided in policy or guidance supporting the law.

Firstly, it is recommended that procuring entities conduct regular audits and onsite visits, particularly for contracts with a high risk of child labour. Some of these inspections should be unannounced to ensure a more accurate assessment of the supplier’s operations and practices. If child labour is discovered during contract performance, the supplier or subcontractor should be required to implement corrective measures, which should be verified by the procuring entities. If the corrective measures are inadequate or the supplier fails to implement them, procuring entities may choose to terminate the contract.

¹¹⁷ *Supra* note 101, Subpart 22.1503(c)1–2.

¹¹⁸ *Supra* note 14.

¹¹⁹ Nigerian Public Procurement Act 2007.

Secondly, the prompt payment of suppliers could contribute to reducing child labour within the supplier's operations and supply chains. This is because when suppliers are promptly paid, it could lead to the prompt payment of workers and allow for the employment of adults instead of engaging child labourers.¹²⁰

Thirdly, a measure that can be implemented to reduce the likelihood of public procurement being tainted by child labour is the use of contract administration certifications. This measure is relevant to the procurement of goods and non-consultancy services. Essentially, suppliers should be required to submit an annual certification stating that they have not performed the contract using child labour. Suppliers who do not submit the certification may be subject to review with financial consequences following their lack of compliance.

In addition to these recommendations, the selected countries should invest resources to develop the competence of procurement professionals in implementing anti-child labour measures throughout the procurement process. Furthermore, guidance should be provided to suppliers to help them tackle child labour in their operations and supply chains.

5 Conclusion

The analysis of public procurement frameworks in Ghana and Nigeria has shown little policy focus on tackling child labour through public procurement. While the focus on eliminating fraud and corruption through public procurement is necessary due to the prevalence of these criminal activities, it is not the only rampant criminal activity that can be addressed through public procurement. Child labour should be explicitly addressed in the selected countries' public procurement frameworks to contribute to the reduction of the 86 million child labourers in Africa.¹²¹ By assessing the public procurement frameworks in Ghana and Nigeria, the article has provided significant insight into how countries can combat child labour throughout the procurement process. It has shown that child labour can be addressed at any stage of the procurement process and has provided a valuable template for Ghana and Nigeria to adopt.

Although the recommendations in the preceding section are directed at Ghana and Nigeria, other African countries with similar provisions can also

120 Paul Henty, 'Procurement for growth: A paper by the Cabinet Office' (2013) 5 Public Procurement Law Review NA142–NA145.

121 *Supra* note 1.

apply these recommendations to reform their public procurement legislation and policies. In doing so, states should take into account the three limitations outlined in this article. The first limitation relates to the number of public procurement frameworks it analysed. Restricting the analysis to two countries means the findings cannot be generalised to all African countries due to regulatory differences across the continent. Therefore, the article provides insights to encourage research into other African frameworks. Secondly, while the article examines the national procurement framework of Ghana and Nigeria, it does not provide a comprehensive analysis of their approach to combating child labour. This is because state or regional public procurement laws may contain provisions or guidance that are not included in the centralised framework. However, this is unlikely, as many state and regional frameworks will follow the approach of the central government. Thirdly, it is possible that procuring entities are addressing child labour even in the absence of explicit guidance within their public procurement frameworks. This uncertainty highlights the need for future empirical research on the subject.

Biographical Note

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