

Cocoa Research

Briefing 2: Major Concerns and Recommendations - Ghana

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List of abbreviations

Cocobod	Ghana Cocoa Board
EPA	Environmental Protection Agency
FC	Forestry Commission
FERCs	Forests and Ecosystem Risk Commodities
GCFRP	Ghana Cocoa Forest REDD+ Programme
GoG	Government of Ghana
GCSCPS	Ghana Climate-Smart Cocoa Production Standard
HFZ	High Forest Zone
ICCO	International Cocoa Organization
LBCs	Licensed Buying Companies
LID	Living Income Differential
LUSP	Land Use and Spatial Planning Authority
MESTI	Ministry of Environment, Science, Technology and Innovation
MLNR	Ministry of Lands and Natural Resources
MOFA	Ministry of Food and Agriculture
PBC	Produce Buying Company
PPRC	Producer Price Review Committee

Chapter 1 – Introduction

Cocoa is a very important commodity to Ghana. It is a multi-billion industry and a crucial sector in Ghana's economy.¹ In 2019, Ghana exported about USD 2.29 billion in cocoa products, which accounted for more than 14 per cent of its overall exports.² Ghana is the second largest producer of cocoa in the world, second to Cote d'Ivoire. Together, both countries produce about 60 per cent of the cocoa that sustains the USD 130 billion global chocolate industry.³ Cocoa production also provides a source of income to over 800,000 smallholder farm families who make up about 60 percent of Ghana's agricultural force.⁴ Ghana's cocoa industry is heavily controlled by Government. The industry is mainly run by a government agency called Ghana Cocoa Board (Cocobod). Cocobod is involved in all steps of cocoa production, from providing inputs to farmers, to regulating who can purchase and export cocoa.⁵

Although cocoa is essential to Ghana's economy there are challenges and grave threats to its sustainability. Many of the farmers and cocoa workers live in abject poverty. Less than 9% of cocoa farming households earn a living income.⁶ At the heart of this is the pricing of cocoa beans. In Ghana, the price that farmers receive for their cocoa is determined by a multistakeholder platform known as the Producer Price Review Committee (PPRC).⁷ The PPRC fixes producer prices annually at the start of the cocoa harvesting season in October. It has been recently estimated that for farmers to earn a living wage, the farm-gate price as at 2020-21 must double from a price of USD 1,837 to USD 3,116 per metric tonne.⁸ This challenge is exacerbated by the recent low prices of the commodity and the recent COVID pandemic that has reduced global demand.

The labour-intensive nature of cocoa production perpetuates the cycle of poverty. Because of the low earnings of cocoa farmers, they are unable to employ the required labour. This then leads to them relying on their children for support on their farms.⁹ The result has been high statistics of child labour despite Ghana's several international and legislative commitments to the eradication of child labour. In October

¹ Barima Akwasi Amankwaah, Glen Asomaning, Raymond A. Atuguba, Emmanuel Ayifah, Allie Brudney, Brian Citro, Charity Ryerson, Sandra Kwabea Sarkwah & Alexandra Tarzikhan, Cocobod's Unrealised Potential: Promoting Human Rights, Welfare, and the Environment in Ghana's Cocoa-Growing Communities, Northwestern Pritzker School of Law Center for International Human Rights, University of Ghana School of Law, Corporate Accountability Lab & SEND Ghana (June 2021).

² Bank of Ghana. Annual Report 2019. Bank of Ghana, 2019, p. 17, <https://www.bog.gov.gh/wp-content/uploads/2020/06/AnnRep-2019.pdf>.

³ ICCO (2020): Quarterly Bulletin of Cocoa Statistics, Volume XLVI No.3, Cocoa Year 2019/20; Bhutada, Govind. "Cocoa's Bittersweet Supply Chain in One Visualization." World Economic Forum, 4 Nov. 2020, <https://www.weforum.org/agenda/2020/11/cocoa-chocolate-supply-chain-business-bar-afri-ca-exports/>.

⁴ Barima Akwasi Amankwaah, *op.cit.*, p.18.

⁵ *Ibidem*

⁶ ICCO (2020): Quarterly Bulletin of Cocoa Statistics, Volume XLVI No.3, Cocoa Year 2019/20.

⁷ <http://mofa.gov.gh/site/media-centre/press-briefing/372-review-of-the-producer-price-of-cocoa-for-the-2021-22-cocoa-season>

⁸ Necessary Farm Gate Prices for a Living Income: Existing Living Income Reference Prices Are Too Low. Consultation Paper for the 2020 Cocoa Barometer, Voice Network, Jan. 2020, p. 2, <https://www.voicenetwork.eu/wp-content/uploads/2020/01/200113-Necessary-Farm-Gate-Prices-for-a-Living-Income-Definitive.pdf>; Reuters Staff. "UPDATE 1-Ghana Raises 2020/21 Cocoa Farmgate Price by 28%." Reuters, 24 Sept. 2020, <https://www.reuters.com/article/cocoa-ghana/update-1-ghana-raises-2020-21-cocoa-farmgate-price-by-28-idUSL5N2GL5J1>

⁹ Luckstead, Jeff, et al. "Estimating the Economic Incentives Necessary for Eliminating Child Labor in Ghanaian Cocoa Production." PLoS ONE, vol. 14, no. 6, June 2019, p. 2, <https://doi.org/10.1371/journal.pone.0217230>; Final Report: 2013/14 Survey Research on Child Labor in West African Cocoa Growing Areas. Payson Center for International Development, Tulane University School of Public Health, July 2015, p.73, https://www.dol.gov/sites/dolgov/files/ILAB/research_file_attachment/Tulane%20University%20-%20Survey%20Research%20Cocoa%20Sector%20-%202030%20July%202015.pdf.

2020, the United States Department of Labor released a study that found that 770,000 children were engaged in cocoa production in Ghana, 710,000 or 92 per cent of whom were exposed to at least one form of hazardous child labour.¹⁰

Further, Ghana's cocoa forest landscape (approximately 5.9 million Ha) has been identified as contributing about a third of land deforested for agriculture with the rate of deforestation estimated to be proceeding at an alarming rate of 3.2% per annum.¹¹ Cocoa farming degrades the soil, and this leads farmers to repeatedly cut further into the forest to obtain new land for cocoa farms. Owing to poor income and lack of capital, farmers are unable to afford and incorporate inputs and technology into their farming. They therefore tend to cultivate forested lands for better yields. If the government does not act, deforestation could destroy all the forests remaining outside of Ghana's national parks within the next decade.¹²

To deal with these challenges several initiatives and programmes have been introduced. To address the low income of cocoa farmers, Ghana and Cote d'Ivoire together introduced a Living Income Differential (LID) of USD 400 per tonne added to the price of cocoa for the 2020-21 cocoa season.¹³ According to the Cocoa Barometer, the LID increased Ghana's guaranteed cocoa farm gate price to by 28% to \$1,837 per tonne, and Côte d'Ivoire's by 21% to \$1,840.¹⁴ However, there have been suggestions by farmer associations that these prices are still too low; for farmers to make enough money for their livelihood, the price must reach at least \$3,166 per metric tonne.¹⁵ Further, there have been challenges in the implementation of this scheme. The COVID-19 pandemic led to a decrease in chocolate sales and an oversupply of cocoa driving prices down. Also, some cocoa companies have refused to pay the LID and rather will source cocoa from the futures market. Despite cocoa farmers and producers being primary stakeholders and beneficiaries of the scheme, the development and management of the LID has been government-led with little producer or civil society involvement.¹⁶

To address the wanton deforestation on cocoa landscapes, Ghana also introduced the Ghana Cocoa Forest REDD+ Programme (GCFRP) in 2017. The GCFRP is a sub-national programme developed under the Ghana REDD+ Strategy. The programme uses a landscape approach for forest protection and climate smart cocoa production. Participating farmers, community members and traditional authorities are encouraged to adopt shaded and climate-smart cocoa production, and forest protection in their livelihood

¹⁰ NORC Final Report: Assessing Progress in Reducing Child Labor in Cocoa Production in Cocoa Growing Areas of Côte d'Ivoire and Ghana. NORC at the University of Chicago, Oct. 2020, p. 10, https://www.norc.org/PDFs/Cocoa%20Report/NORC%202020%20Cocoa%20Report_English.pdf.

¹¹ Ghana's Cocoa Forest REDD+ Programme, 2017

¹² Higonet, Etelle, et al., "Chocolate's Dark Secret: How the Cocoa Industry Destroys National Parks", MightyEarth, 2017, p.4, https://www.mightyearth.org/wpcontent/uploads/2017/09/chocolates_dark_secret_english_web.pdf.

¹³ Angel, Maytaal, et al. "Ivory Coast, Ghana Strike First Cocoa Deals with Living Income Premium", Reuters, 13 Sept. 2019, <https://www.reuters.com/article/cocoa-west-africa-pricepremium/ivory-coast-ghana-strike-first-cocoa-deals-with-living-income-premium-idUSL5N-2644FR>.

¹⁴ Fountain, Antonie C. and Hütz-Adams, Friedel (2020): 2020 Cocoa Barometer

¹⁵ Berger T. & Blackmore, E. (2022) *Civil society perspectives on the living income differential for cocoa producers*. IIED. Accessed 19th September 2022. URL: <https://www.iied.org/civil-society-perspectives-living-income-differential-for-cocoa-producers>

¹⁶ Ibidem

activities. The direct outcome of their activities is a decrease in deforestation and forest degradation in the programme area which ultimately will result in Emission Reductions. The promotion of appropriate climate-smart cocoa production systems is expected to both increase cocoa yields and improve rural livelihoods and economies, and with the potential to attract USD 50 million in payment for Emission Reductions.¹⁷

Notwithstanding these creative initiatives, the challenges in the sector remain. The impact of the LID has yet to be felt and evaluated, and there is little information on its operations raising concerns on accountability and transparency. Also, the GCFRP appears to be only functional in a few hotspot Intervention Areas out of six hotspot Intervention Areas earmarked for the programme.

At the European level, two new regulations are being introduced that will impact cocoa production and trade with the EU and the UK. In November 2021, the European Commission published a proposed Regulation¹⁸ that seeks to create an EU legal framework, based on mandatory due diligence, to regulate the placing on and the export from the EU market of Forest-Risk Commodities (FRCs) including cocoa. The Regulation seeks to curb EU-driven deforestation and forest degradation, by minimising EU consumption of products coming from supply chains associated with deforestation or forest degradation. Also in 2021, the UK passed an Environment Act which acts as the UK's new framework of environmental protection. Among other things, the Act prohibits the use of illegally produced FRCs brought into the UK. Subsidiary legislation that fleshes out the Act in terms of the scope of commodities, threshold of use of quantities to be exempted, details of due diligence requirements, public reporting and enforcement measures has yet to be passed.

This analysis will focus on identifying the weaknesses in the existing legal and institutional frameworks in Ghana, and on proposing possible solutions and/or improvements in the form of recommendations. Chapter 2 will consider the environmental concerns with cocoa production while Chapters 3 and 4 will look at the price concerns and challenges with child labour in the sector. Chapter 5 will conclude the briefing with some overarching recommendations to address the challenges in the cocoa sector.

¹⁷ Forestry Commission (2017) Ghana Cocoa Forest REDD+ Programme Document

¹⁸ Proposal for a regulation of the European Parliament and of the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (COM (2021)

Chapter 2 – Environmental concerns

1. Issues of concern

Ghana's cocoa forest landscape has one of the highest deforestation rates in Africa, at 3.2% per annum.¹⁹ The clearing of and degradation of forest in the agro-forest mosaic covering over 5.9 million of Ghana's High Forest Zone (HFZ) continues to be driven by low-yielding and expansive agriculture particularly cocoa farming. The situation is compounded by illegal mining and illegal logging.

Concurrent with steady degradation and deforestation, the national output of cocoa had seen a decline since the mid-nineties. The cocoa sector responded with the introduction of a high-tech programme to infuse more technology into the sector between 2000-2010 neglecting the environmental impacts from cocoa production. This led to more farm expansion and intensive farm practices at the expense of the forests and biodiversity. In the period of 2005-2014, HFZ lost an average of 138,624 ha of forest each year producing over 45.1 million tCO₂e emissions on an annual basis.²⁰ Conversion of forests to agricultural land has been identified as the primary driver of deforestation and degradation (app. 114,915 ha of forests per annum was converted to agriculture between 2005-2014).²¹ Over a quarter (27%) of agriculture conversion resulted from cocoa expansion. This makes cocoa the single most important commodity driving deforestation in Ghana.

Forests are relevant for ecosystem services to maintain rainfall, soil, and water quality. Consequently, the loss of forests results in a vicious cycle of low yields in cocoa farms which then translates into clearing more forests in search of productive areas to farm. Generally, in the past, national cocoa policies were oriented towards increasing production and not long-term sustainability. Policies are mainly focused on increasing production targets, which - in the absence of higher productivity - encourages farm expansion. The increase in production from 300,000 tons in 1990 to 800,000 tons in 2016 is attributed to an increase in ha farmed from 0.6 to 1.6 million.

In response to this development, Government of Ghana (GoG) in 2017 launched the Ghana Cocoa Forest REDD+ Programme (GCFRP) to promote a climate-smart cocoa production system and standard. Several tools and standards such as the Accountability Framework (AF) and Landscale(LS) have also emerged to address corporate commitments on responsible production and sustainability. The **Ghana Climate-Smart Cocoa Production Standard (GCSCPS)** led by Cocobod with the Forestry Commission (FC) is also being piloted in few production areas to encourage uptake of climate-smart techniques in cocoa farming. These commendable initiatives, however, remain voluntary and there exists no legal consequences for non-compliance or failure.

¹⁹ Forestry Commission (2017) Ghana Cocoa Forest REDD+ Programme Document

²⁰ *Ibidem*

²¹ *Ibidem*

Several factors in Ghana's legal and institutional framework have been identified as creating a conducive environment for deforestation through cocoa farming. They include (i) unclear laws on forest conversion, which make enforcement ineffective and inefficient; (ii) current tree and land tenure arrangements, creating disincentives for conservation of trees; (iii) lack of accountability for downstream actors in the production chain, which results in no consequences for those sourcing cocoa from illegal production areas; and (iv) weak enforcement of laws and regulations. These factors and recommendations for addressing them have been considered in depth below.

2. Gaps and recommendations

2.1 *Unclear Laws on Forest Conversion*

Ghana's primary legislation regulating forest reserves are unclear on forest conversion. Forest reserves are protected areas of forest, which require government approval to access. The laws mainly set out the purposes for which forest reserves can be established, including protecting forests, protecting water sources, and safeguarding the supply of forest produce.²² Though these purposes can be read as incompatible with clearing forest reserves for mining or agriculture, the laws do not explicitly exclude conversion. Government policy documents on forest conversion are also not helpful. Some provisions seem to contradict on the issue. For example, whereas the National Land Policy²³ bans mining in forest reserves, the Environmental Guidelines²⁴ and Forest and Wildlife Policy²⁵ imply that mining is permitted in forest reserves, within limits. The resulting uncertainty has encouraged mining and agricultural activities taking place in forest reserves. The situation is exacerbated by FC's grants of entry to forest reserves on a case-by-case basis. The ad hoc regulation risks opening the system to further inconsistency and is not a good alternative to clear laws.

Further, the state of land use and allocation is presently disordered. The risk of Ghana's remaining forests being cleared for another land use is increased by the different ways to acquire land and rights to forest resources in Ghana, through different ministries and traditional authorities. The law does not require these different actors to coordinate and so these multiple 'entry points' to land create opportunities for conflicting land uses. The unclear laws on forest conversion create some confusion and make it difficult to enforce the law coherently.

²² Section 2 of the Forests Act 1927 (Cap 157)

²³ National Land Policy 1999: "All lands declared as forest reserves [...] are "fully protected" for ecosystem maintenance, biodiversity conservation and sustainable timber production"¹²; "Land categories outside Ghana's permanent forest and wildlife estates are available for such uses as agriculture, timber, mining and other extractive industries..."¹³ and "...no land with primary forest cover will be cleared for the purpose of establishing a [...] mining activity".

²⁴ Environmental Guidelines for Mining in Production Forest Reserves 2001 state that protected areas of forest reserves such as Globally Significant Biodiversity Areas (GSBAs), Hill Sanctuaries and special protection areas are exempt from mining exploration.

²⁵ Forest and Wildlife Policy 2012 includes an aim "to reduce, as much as possible, the prospecting and mining of mineral resources in forest reserves".

Recommendation

a. Clarify the Conservation and Management of Forest Reserves

In line with Ghana's commitment in the Cocoa Forest Initiative (CFI) to "prohibit and prevent activities that cause or contribute to any further deforestation or forest degradation in the cocoa sector", the management and conservation of forest reserves in Ghana's law should be clarified. Clear forest laws are needed to confirm whether mining and agriculture may take place in forest reserves. Where conversion is permitted in forest reserves, laws to regulate conditions for this should be introduced. For example, conversion could be limited to areas of minimal forest cover and regeneration, to protect Ghana's few undisturbed natural forests. Presently, mining companies are already required to rehabilitate forest reserves harmed during operations and to pay a reclamation bond. Such laws should be complemented by requirements for public disclosure of the location and conditions of approved projects. Further, coherence across mining, forestry, agricultural and land laws, and regulations would be a significant step in protecting Ghana's forest reserves.

2.2 Challenges with Tree Tenure

The lack of tree tenure and inability for cocoa farmers to capture economic benefits from (non-cocoa) trees is a major driver of tree loss and disincentivizes farmer's adoption of agroforestry i.e. a system of cocoa farming whereby farmers cultivate their cocoa farms in addition to planting timber shade trees in their farms. Presently, ownership of all "naturally occurring" trees, including on land privately held under customary title, is vested in the state and the benefits of harvesting naturally occurring trees are shared between loggers, traditional authorities, and the government - but landowners are excluded.

Prior to the 1950s, traditional cocoa farms retained large shade trees which preserved many economically and environmentally important trees within the landscape. However, since the late 1950s the GoG inserted itself into the timber market and claimed rights to naturally occurring trees on cocoa farms. This led to increased timber harvesting from cocoa farms. This was exacerbated in the 1980s, when Cocobod changed its policy and advocated removing shade trees to increase cocoa productivity. The new Cocobod policy produced short-term yield gains, but also increased susceptibility to diseases and shortened cocoa trees' productive life.

The combined pressures from timber and cocoa led to deforestation and fragmentation of forest landscapes in Ghana's HFZ and widespread removal of shade trees from cocoa farms. An average of 138,000 hectares of forest was lost per year from 2000 to 2015 and in 2007 it was estimated that 72 percent of cocoa farms across Ghana had "no-to-light" levels of shade.²⁶

²⁶ Fischer, J. E. , O'Sullivan, R. , Antwi, Y . A. , & Freudenberger , M. (2021). Rooted in the ground: Reforming Ghana's forest laws to incentivize cocoa-based agroforestry. Washington, DC: USAID Integrated Land and Resource Governance Task Order under the Strengthening Tenure and Resource Rights II (STARR II) IDIQ.

State ownership of naturally occurring trees is widely considered a strong disincentive for landowners and smallholders, regardless of land tenure, to nurture trees on their cocoa farms. Since they are not entitled to any direct revenues from trees growing naturally on their land, they are discouraged from expending resources and effort to prevent illegal logging (from which they may receive some informal financial benefits from illegal loggers). Further, smallholders are often not compensated for damages and yield losses when mature timber trees are harvested legally or illegally from their farms.

Recommendations

a. Align Land Ownership with Tree Ownership in Off-Reserves

Government could divest all tree rights (off-reserve) to the appropriate landowners.²⁷ The law should be clear that all rights to all trees flow with rights to the land and this applies to customary rights holders. This option comes with some risks. The devolution of tree tenure may result in a loss of revenue to the FC and GoG. This can be mitigated by improving the implementation and enforcement of existing timber permit regimes to reduce leakages in revenue generation. This should lessen the expected revenue shortfall.

b. Reform Benefit-Sharing Arrangements to Include Farmers who tend to Off-Reserve Trees

Another option would be the creation of express rights of farmers or landowners to obtain direct monetary benefits from harvesting off-reserve naturally occurring trees on their farms. An option under this arrangement is for farmers or landowners to receive a payment directly from the timber operator for naturally occurring trees that are harvested. The Ministry of Lands and Natural Resources and FC are currently considering the option of a “tending toll” as an alternative to splitting the stumpage fee currently paid by the timber operator. The aim is to make the tending toll high enough to encourage farmers to tend for timber on their farms. This policy option has been deliberated since 1994 when it was first proposed by the Forestry Department to control illegal timber harvesting outside forest reserves.

c. Implement a Tree Register Framework and Encourage agroforestry in Off-Reserves

Agro-Forestry using fast growing shade trees on off-reserve lands should be encouraged. This should be accompanied with a national tree registry where farmers can register title to trees planted on their land as proof of ownership. The policy should allow farmers to register both planted and naturally occurring trees to avoid disputes over ownership in the future. With this option, farmers will have an incentive to nurture shade tree species on their farm till maturity and would have the option to harvest mature trees for economic benefit later. This option comes with considerable risks. Farmers may fail to register planted trees and the default determination may be that planted trees were naturally occurring and owned by the state. Administratively, it will be difficult to successfully establish and maintain a national tree registry.

²⁷ Forest reserves are fully managed and administered by the Forestry Commission on behalf of the State.

Further, registration will come at an additional cost and there will be a need to determine whether GoG or farmers will bear this cost.

2.3 Challenges with Land Tenure

Weak ownership rights of most smallholder cocoa farmers over land is another challenge requiring intervention. Presently, most smallholder cocoa farmers are migrant farmers. Their right to farm a certain piece of land is often a temporary, customary permission by the local traditional chief. The land access right given to farmers by the chief is generally based on the condition that cocoa trees remain planted on the farm (*Abunu* and *Abusa* arrangements). This disincentivises farmers from replacing aging and unproductive cocoa trees with new varieties, as this would allow the chief to reclaim the land or change the terms of the original agreement. Migrant farmers are more inclined to seek to cultivate new areas whilst keeping the old unproductive farms. Again, since the migrant farmer does not have tenure rights, they are not entitled to receive any benefits when timber trees are harvested from their farms.

Another challenge with this area is that most of these customary land tenure arrangements are not documented. The processes and procedures for registering customary land rights and interests through the formal land administration system are tedious and very expensive and hence prohibitive for most smallholder farmers. Consequently, most of these farmers lack land security or a formal means of transferring any ‘interest’ they have over the farm. They are also unable to access credit facilities as they lack documentation for collateral where they could rely on their cocoa farms. This could also penalise them when the new EU and UK deforestation laws come into force as farmers might not be able to establish the legality of their land use rights, which seems to be required in both laws.

Recommendation

a. Cocobod should collaborate with the Lands Commission/Customary Land Secretariat to improve land registration for farmers.

Cocobod, as the main responsible government agency, should design a simple, sustainable, and affordable land administration system for customary land registration in collaboration with the Lands Commission and the Customary Land Secretariat, to facilitate land tenure security to cocoa farmers. Given that an estimated 80% of land in Ghana is under the control of customary authorities and that most of Ghana’s land is used for agricultural production, this system should be linked to the various Customary Land Secretariats.

Where *abunu* and *abusa* arrangements specify that land automatically reverts to the owner upon the felling of trees, one approach might be to consider an arrangement with different levels of sharing of proceeds during the “renovation and rehabilitation phase” of a farm and a different level of proceed sharing across the productive life of the new farms. This effort could also begin to lay the foundation for using registered

land title as loan collateral against which farmers could present their titles and deeds to receive much needed credit to purchase improved inputs and access other professional farm services such as spray service provision and pruning services, among others.

2.4 Lack of Accountability for Down Stream Actors

There are generally no sanctions for government agencies or private actors that provide resources to illegal cocoa farms. There are also no consequences for Licensed Buying Companies (LBCs) and Terminal Buyers that source their cocoa from illegal production sites. Although there are relatively well-enforced quality assurance systems for the cocoa beans themselves, there is no national-level monitoring system to check the sustainability of practices and legality of the source of the cocoa. The current traceability system focuses on quality and not source and only reaches the buying company level – not the farm nor the plot of land where the cocoa was produced. Furthermore, this system is not mandated by law. It is implemented because of private sector efforts to maintain standards and is wholly voluntary. The system is also predominantly paper-based, which poses challenges as the records are subject to loss through fire, flood, destruction, or manipulation. There is also no proper verification system in place to ascertain the accuracy of information that is passed on from the farmer through to the purchasing clerk and to the final consumer. As such, the current system makes it difficult to trace whether cocoa was produced legally or not as the focus of the system is the quality of the cocoa and not its source. Again, a cocoa bag may contain cocoa sourced from different farms. This is because cocoa bags are packed according to weight as opposed to source. So where cocoa beans from one farm do not meet the weight requirements of a bag, they are supplemented with cocoa beans from other farms. As a result, it is possible for cocoa beans grown legally to be mixed with cocoa beans that are grown illegally.

Consequently, the current traceability system and lack of legislative compulsion encourage irresponsible and illegal cocoa farming across the forest landscape because of a lack of accountability. There are several cocoa certification schemes on-going: UTZ/Rainforest Alliance and Fair Trade, e.g., which attempt to guarantee sustainability along specific supply chains. Some chocolate companies have also commenced programmes to ensure that their supply chains are sustainable and equitable. Yet, these schemes are voluntary and tend to focus on individual or limited supply chains.

Without the force of law, there will be leakages and these certification schemes cannot address landscape-level sustainability and or halt deforestation and forest degradation. The present approach – with a multitude of different strategies and hundreds of projects – will not be successful, especially as there are almost no efforts to challenge the underlying issues around power and the political economy. Voluntary

compliance is not expected to yield significant impacts, as confirmed by recent reports on these initiatives.²⁸

Additionally, the EU's proposed Regulation requires operators and large traders to identify where the products they seek to import or export from the EU market come from. Indeed, one of the fundamental requirements of supply chain due diligence is the ability to trace products back through the supply chain to their point of origin. This is a key element of the European Commission's proposal.

EU operators will be required to identify the geo-location coordinates of the land parcels where the commodities and products in their supply chain were produced, and the date or period of production (Article 9(1)(d)). This will allow EU operators to use available satellite imagery tools to check the land-use history of the relevant area for deforestation. The proposed Regulation also includes important checks on the reliability of the supply chain information that EU operators receive from their suppliers. Operators must consider the complexity of their supply chains, the difficulties in connecting commodities to the land where they were produced, and the risk that products of unknown origin or from deforestation areas have been mixed with the commodities in their supply chain, as part of their risk assessment (Art. 10(2)(f) and (g)). These requirements are central to the integrity of the due diligence procedure that sits at the heart of the Commission's proposal.

It is true that the European Commission does not directly impose obligations on producer countries or producers, as it addresses operators and large traders. However, in practice, Ghana would do well to put in place a reliable centralised traceability system, if Ghana still desires exporting to the EU market. This would be preferable to a piecemeal approach by individual companies, as we have seen from the analysis above that this has not resulted in any real change in deforestation rates. The question arises as to whether the political will exists to meet the criteria set out by the European Union in its proposed Regulation. In our opinion, whether there is a European requirement, for the reasons set out above, the implementation of a traceability system is essential, and the proposed European Regulation is precisely an opportunity to work towards the concretisation of this control mechanism. It is also an opportunity to request technical and financial support from the European Union and from the large operators in the sector, in the form of concrete measures to help small operators meet these requirements. In setting up such a traceability system, several elements should be considered to ensure its effectiveness and avoid opportunities for stakeholders to circumvent it.

For example, post-harvest blending. Typically, cocoa beans are fermented on the plantation and then taken to the farmer's house where they are cleaned and dried before being bagged in official jute bags. Often, they are bagged at the cooperative's warehouse. During this process, farmers often mix production from several plots. In some cases, they must do this to be able to sell beans of an acceptable quality.

²⁸ The NGO-led Cocoa Barometer concluded in 2018.

Cocoa beans are in fact often blended at several stages down the value chain: at the cooperative, local trader, wholesaler, exporter, or processor level. Blending of beans homogenises or improves quality, compensates for weight losses, and conditions distinct product qualities.

Recommendations

a. Create Legality Standard with Independent Monitoring Using Lessons From FLEGT VPA.

The cocoa sector could adopt the lessons from the Forest Legality Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) process to create a national legality standard for cocoa beans. A legality definition would be developed by a multi-stakeholder group and set out what laws and standards are to be met for cocoa to be considered “legal” in Ghana. This calls for a revision of the current Ghana Cocoa Board Act 1984 (PNDCL 81) to expand its focus from production and quality assurance to include legality and sustainability standards for cocoa production. This will reconcile the production of cocoa with climate change, human rights, and livelihoods.

Currently, there are several standards and certification schemes emerging to address corporate commitments. This includes tools such as the Accountability Framework Initiative (AF), which is focused on fostering accountability of ethical supply commitments in the agriculture and forestry sectors; LandScale (LS) which aims to drive landscape sustainability in any rural landscape dominated by natural resource-based industries and supply chains including agribusiness, forestry extractions and infrastructure and the Ghana Climate-Smart Cocoa Production Standard (GCSCPS) led by Cocobod with the FC. The GCSCPS is a standard for climate-smart cocoa production and expands the focus of certification from farm-level efforts to include landscape-level actions. Cocobod and FC agreed to work together since 2017 towards the adoption of good practices for enhanced productivity, adaptation, and mitigation of the adverse effects of climate change on cocoa and forest landscapes. GCSCPS aims to facilitate the adoption of site-specific sustainable practices that ensure higher yields, conservation, protection, management, and use of cocoa landscape resources for better living standards. The standard also contains best management practice criteria and metrics for climate-smart landscapes.

Further, Côte d'Ivoire and Ghana – within the framework of the African Regional Standards Organization (ARSO) – have also been working towards the establishment of an African Regional Standard for sustainable cocoa (ARS 1000). ARS 1000 has yet to be implemented. The objective of ARS 1000 is to establish a common standard for sustainable cocoa production, applicable to all cocoa value chain actors, that can act as an alternative to the existing proliferation of voluntary sustainability programmes and third-party certification schemes. According to the two producing countries, these voluntary programmes have not had a tangible impact on farmers' revenues or living standards. It is expected that voluntary initiatives

will not be eliminated but will have to meet the requirements set by the ARS 1000 and obtain approval from the regulator when establishing criteria that go beyond ARS 1000.

Despite these promising initiatives, they mainly remain voluntary standards and there are no consequences for non-compliance. Also, voluntary certification schemes and sustainability programmes have not achieved their stated objectives due to the absence of proper coordination by a regulator. **There is a need to transition from voluntary commitments to mandatory systems** that put responsibility on both producer and consumer countries to ensure responsible production and sourcing respectively, with consequences for non-compliance. National policies and laws on cocoa production should go beyond production and sustainability standards to include legality standards for effectiveness.

The GCSCPS should be transformed into a mandatory certification and licensing scheme for all cocoa beans produced and exported from Ghana. This will entail producing a legality definition for cocoa to encompass auditing processes, assurance, claims and chain of custody to be followed through. Finally, these should be accompanied by a national traceability system, accessible database information, and independent monitoring mechanisms.

b. Give the Cocoa Management System (CMS) legal backing

To address the traceability issues, Cocobod is currently in the process of developing a Cocoa Management System (CMS) that – when fully operational – will provide an integrated digital cocoa farmer database aimed at managing internal trading operations. The system intends to collect data on every transaction within the local industry. If successfully implemented, the CMS will make it possible to detect illegal sourcing based on the location of a farm. If, throughout a season, a farmer located just outside an area at risk of deforestation is selling significantly more than his forecasted yield output, there is a risk that much of the cocoa he is selling is illegal. This can be flagged in the system, and remediation measures can be taken. We recommend that the CMS be given legal backing. Amendment to existing legislation mandating that only cocoa from farmers captured in the CMS will ensure that optimised use of the CMS and its attendant benefits.

2.5 Weak Enforcement of Forest Laws and Regulations

There is a generally a weak regulation of environmental impacts caused by cocoa production. Currently the only legal constraint limiting land clearing for cocoa is the prohibition of land clearing within National Parks and Forest Reserves. Evidence from these sites show that the enforcement of the prohibition is weak and the clearance of land within these sites for cocoa farms is progressing steadily.

Enforcement of this prohibition is the primary responsibility of the FC, yet insufficient resources and lack of will has resulted in ineffective enforcement. This situation is exacerbated by another regulator, Cocobod, which is driven by cocoa production targets, providing infrastructure and extension services to farmers that

have illegally encroached forest reserves and protected areas. This encourages more illegal farms. There are also reports of Cocobod actively resisting efforts of the FC to cut down cocoa trees in Forest Reserves, as it would reduce national production levels. The fact that cocoa is still coming from Forest Reserves and National Parks is partly explained by the lack of legal accountability for downstream actors for buying cocoa from illegal sources.

Related to this is the challenge of pesticide regulation. Pesticides²⁹ must be registered³⁰ before they can be imported, exported, manufactured, distributed, advertised, sold or used in Ghana.³¹ A person also requires a license to deal in pesticides.³² EPA must be satisfied that the pesticide does not present any toxicology risk to people, crops, animals and the environment before it approves and registers the pesticide.³³ EPA is required to appoint inspectors at the district assembly level to ensure compliance with the requirements.³⁴ In practice, there is weak enforcement of these requirements at the borders. Another challenge is the mixing of certified pesticides with illegal, inferior and dangerous ones. There is also a lack of supervision and monitoring of pesticides sold at the marketplace.

In addition to the lack of strict enforcement, there is no requirement for an Environmental impact assessment (EIA) for the use of pesticides on a large scale, which is needed to address the possibility of toxicity. There is no express provision in legislation or regulation that takes into regard the impact of chemical/pesticide/herbicides on the ability of pollinating organisms (mainly insects but also birds, bats and other organisms) to perform their function. Finally, the penalty of a maximum fine of GHC 3,000 and imprisonment for a maximum period of two years for flouting the requirements do not provide a sufficient deterrent.

Recommendations

a. Legal Framework for CREMAs to improve effectiveness, resilience, and transparency

Strengthen the use of Community Resource Management Areas (CREMAs) to encourage adoption of climate-smart techniques and to discourage irresponsible cocoa farm expansions. CREMA is a community based natural resource management (CBNRM) scheme where communities, landowners, and users have the right to govern and manage their lands, including the natural resources and farming systems, for socio-

²⁹ Section 63 of the Environmental Protection Agency Act, 1994 (Act 490); Section 1 of the Pesticides Control and Management Act, 1996 (Act 528)

³⁰ Section 28 of the Environmental Protection Agency Act, 1994 (Act 490): In determining whether or not to approve the registration of a pesticide and the classification of a registered pesticide, the Board shall consider (a) the characteristics of the pesticide formulation, such as the acute dermal, oral or inhalation toxicity; (b) the persistence, mobility and susceptibility to biological concentration of the pesticide; (c) the experience gained from the use of the pesticide, such as the likelihood of its misuse and any good safety record which is contrary to available laboratory toxicological information; the relative hazards of its patterns of use, such as granular soil applications, ultralow volume or dust aerial applications or air blast sprayer applications; the extent of the intended use; the supporting data and any other technical information that the Agency may request from the applicant or from a public institution; and any other matter relevant to the control or management of pesticides.

³¹ Section 28 of the Environmental Protection Agency Act, 1994 (Act 490)

³² Section 40 of the Environmental Protection Agency Act, 1994 (Act 490)

³³ Section 9 of the Pesticides Control and Management Act, 1996 (Act 528)

³⁴ Section 54 of the Environmental Protection Agency Act, 1994 (Act 490)

cultural, economic, and ecological benefits and sustainability. CREMAs are expected to promote sustainable utilisation and conservation of forests and biodiversity because rural communities that live with natural resources will be motivated to exploit them sustainably for continuous benefits if they were able to obtain guaranteed and long-term direct tangible benefits from the resources. The aim is to encourage members of fringe communities to incorporate sustainable natural resource use into their livelihood strategies. Further, the forest and wildlife provides economic opportunities for the development of rural communities and CREMA enables achievement of this within a conservation and sustainability framework.

By devolving authority to rural communities, CREMA is an effective tool to set and locally enforce rules on where people can and cannot farm, to set rules on trees on farms and encourage their nurturing, to prohibit expansion into forest reserves and parks, to create and enforce by-laws with warnings and fines, to assist authorities (FC) to monitor and arrest illegal loggers and forest encroachers, to protect wildlife, regulate hunting and to help locally monitor impacts on forest ecosystems of all uses. Further, the use of CREMAs as governance mechanisms for forest and wildlife resources for off-reserve and outside protected areas resources will serve as a buffer to resist encroachment into the forest reserves and protected areas.

The current tenure arrangement, where ownership of land is vested in stools/skins or private persons but where the state is given the right to manage the naturally occurring resources for economic gain, creates a negative incentive and this drives illegal resource use, like poaching, illegal logging, and illegal farming in forest reserves. CREMAs can therefore provide cost effective means of ensuring the conservation of forests and biodiversity by incentivising local communities to protect and ensure responsible use of forest resources by community members and migrant farmers.

CREMAs have been identified as one of the implementing mechanisms for the Ghana Cocoa Forest REDD+ Programme (GCFRP) and a legal framework for its establishment, management, participation, transparency, accountability, and impact evaluation should be enacted. The governance structure established for the GCFRP has the CREMA as its basic block. A group of CREMAs coalesce to form a Sub-Hot Spot Intervention Area (Sub-HIA) and a group of Sub-HIAs coalesce together to form a Hot Spot Intervention Area (HIA). Whereas the geographical boundaries of the CREMA correspond to traditional area boundaries, the boundaries of the HIA correspond to the Local Government District Boundaries.

There is presently a Wildlife Bill, 2022 before Parliament. Although the Bill establishes the legal status of CREMAs, the objectives prescribed for CREMA focuses only on wildlife conservation and management and the role of traditional authorities. It fails to provide for the CREMA's use as a tool for emission reduction activities and climate-smart agriculture. This will require giving recognition to the superimposing governance structures that accompany the CREMA, such as the Sub-HIA and HIAs to approach emission reduction activities from the landscape level. The Bill also does not elaborate on safeguards for accountability and transparency in the operation of the CREMA and leaves the details on prescriptions for

its management to Regulations (secondary legislation) to be made by the Minister of Lands and Natural Resources.

The new Wildlife Bill should therefore be amended to provide for a comprehensive legal framework for CREMAs and (1) specify standard template constitutions for the CREMA organisations, (2) provide for regular impact assessments, (3) increase the objects of CREMAs to include forest conservation and adoption of climate smart techniques in farming and use of forest resources, (4) provide recognition for super-imposed jurisdictional structures on the CREMAs to permit a landscape approach to emission reduction activities, and (5) provide for benefit-sharing arrangements for households in the community. There should also be mechanisms for regular audits of accounts and formal reporting of activities undertaken by the CREMA executives for transparency and accountability.

b. Amend Legislation to provide for a Licence for the Use of Pesticides in Large quantities

The law should be amended to create a requirement for a licence for the use of pesticides in significantly large quantities. The license should require an EIA to assess the effect on the environment. Also, the threshold of pesticide use that constitutes ‘large quantity’ should be specified in law. Further legislation should provide some ecological parameters/criteria to be used in making the decision whether to register a pesticide. Finally, the law should be amended to provide for fines and terms of imprisonment that are adequately deterrent.

c. Reform Criminal Justice System to permit citizens to sponsor or conduct prosecution of Environmental Offences

Under the current criminal justice regime, the commencement and conduct of all criminal prosecutions, including forestry offences, are to be initiated by the Attorney-General (AG).³⁵ Owing to resource constraints, the AG has delegated the mandate to conduct prosecution³⁶ of some environmental offences to some officials of the FC, not below the rank of technical officer. Ghana’s criminal justice regime does not permit the initiation and conduct of criminal prosecution by private individuals; it is solely the responsibility of the state through government agencies. This arrangement comes with a risk of elite capture and absence of political will to prosecute errant officers and offenders who are politically exposed or wealthy.

It is expected that enforcement of forest laws and regulations will improve if prosecution of environmental offences is made collaborative and participatory by permitting private persons to, in addition to the State, also commence and conduct criminal prosecutions of environmental offences. Owing to the key roles played by CSOs and NGOs in cocoa landscapes, reforming the criminal justice regime to permit private

³⁵ Article 88 of 1992 Constitution of the Republic of Ghana

³⁶ Public Prosecutors Instrument 1976 (EI 4)

citizens as well as CSOs/NGOs to conduct criminal prosecution of environmental offences enhance accountability and free up the scarce resources of environmental regulators to focus on systemic and serious crimes. This will enhance compliance with environmental laws and regulations. A comparable system is the Gambia where private persons, in addition to the state, are permitted to commence and conduct prosecution of certain offences (mainly misdemeanors).³⁷

d. Improve Access to Information on Activities in Forest Reserves and Agriculture

Implementation and enforcement of forest laws could also be enhanced if access to information on environmental issues is made readily available and accessible to citizens, communities, and civil society.

Chapter 3 – Price concerns

1. Issues of concern

The disparity between the pricing of cocoa beans on the international market and the revenue that is earned by cocoa farmers is a major concern in the supply chain. West Africa remains the largest producer of cocoa but receives proportionally less in revenue from the cocoa industry each year. The 2019-20 cocoa season recorded that, out of global production of 5 million tonnes, 3.4 million tonnes were harvested from West Africa. The International Cocoa Organization (ICCO), however, reports that Africa's cocoa-producing countries captured just 3% of global chocolate industry revenue in the same year.

In Ghana, the price that farmers receive for their cocoa is determined by a multistakeholder platform known as the Producer Price Review Committee (PPRC). Membership of the PPRC includes representatives of farmers, Cocobod and the Ministries of Finance and Agriculture. The committee is chaired by the Minister of Agriculture. The PPRC fixes producer prices annually at the start of the cocoa harvesting season in October. These prices are expected to be maintained for the period of one year. Fixed producer prices mean there is no room for farmers to negotiate prices. Premium prices are paid where the beans are differentiated based on quality. Fixed prices can be advantageous for Ghanaian cocoa farmers when the world market price is falling during the season. On the other hand, in a bullish market, Ghanaian cocoa farmers do not benefit from price increases within a season.

In the 1990s, reforms by the GoG did allow for some competition in internal marketing, through the introduction of Licensed Buying Companies (LBCs). Private LBCs act as competitors to the state-owned Produce Buying Company (PBC), which provide buying services for Cocobod for which they receive a fixed margin of the 'Free on Board' (FoB) price for the cocoa beans. PBC employs a district manager on

³⁷ Section 69 of the Criminal Procedure Code of the Gambia; Article 85 of the 1997 Constitution of the Gambia.

a commission basis who, in turn, hires several purchasing clerks on commission to purchase cocoa beans from cocoa growing communities

The use of a 'net' FoB price is somewhat controversial because it implies that certain costs are deducted before allocating a share of the price to the producer. To arrive at the net FoB price, the PPRC first deducts an amount from the gross FoB for disease and pest control, fertiliser application (hi-tech), operational input costs, and rehabilitation (nurseries and seedlings). A small amount of the gross FoB price is also deducted for a scholarship fund and child education support. In Ghana, LBCs are permitted to act as competitors to the state-owned PBC for internal marketing purposes only. LBCs provide buying services for which they receive a fixed margin of the FoB price.

On average, the farmgate price – the price paid the farmers – accounts for about 70 percent of the world market price. The price paid to farmers is also determined by the harvest. The light crop harvest season is significantly shorter compared to the main crop harvest season and the volume is smaller. The harvest of the main-crop season is mainly exported, while the price for the light-crop harvest is reduced for local grinders by the light-crop discount (approx. 15% less than the world market price).

In 2019, the governments of Ghana and Cote d'Ivoire introduced the Living Income Differential (LID) where a premium of USD 400 per metric tonne was charged on the export price of cocoa from the 2020-21 crop. This additional revenue was intended to increase the incomes of farming families to help them achieve a living income. This increase was also aimed at enabling both countries to set up a stabilization fund and guarantee a fixed price of USD 1,820 per metric tonne to farmers. There are already reports of some challenges in implementing the LID. Key amongst these challenges is the issue of transparency surrounding the collection and use of the LID and the potential of buyers shifting to other producing countries.

Paying higher prices for farmers is one of the avenues through which the problems of deforestation linked to agricultural production may be addressed. Higher prices have a tendency of increasing returns to farmers from farming a smaller area and increases their ability to invest in improvements in productivity, thus reducing the need to expand their farms at the expense of the surrounding forest. Nonetheless, there is also the potential for farmers to further expand their farms into the surrounding forest, using their increased revenues to produce more.³⁸

There have been calls for reforms to Cocobod's institutional arrangements and policy framework surrounding the determination of farmgate prices and LID.

³⁸ Duncan Brack (2021) *Securing higher prices for cocoa Price mechanisms in international trade*.
<https://www.clientearth.org/media/un1bznfi/cocoa-price-and-trade-paper-duncan-brack.pdf>

2. Gaps and Recommendations

There is the need for a coherent and holistic strategy which takes into consideration the important link between the price paid to farmers and the environmental and social implications of the cocoa industry. These price interventions should be part of a coherent strategy to respect the human rights of farmers, to protect forests, and to transform the production and export of cocoa at the national, sub-regional and international level. Addressing price concerns without recourse to the other concerns, such as human rights and environmental concerns, may not have the desired positive impact – and vice versa. There are several ways in which the price paid to farmers could be increased through government action and the below recommendations are drawn from a ClientEarth commissioned report into this issue in 2021.³⁹

Recommendations

a. Producer-Country Intervention on Price Concerns - Export Price Regimes

The introduction of the LID by Ghana and Ivory Coast is testament of how this option works: producer-country governments set the price of their cocoa exports and raise it to meet the objectives outlined above. This option calls for greater transparency and accountability in the collection and disbursement of the funds to ensure that farmers are the real beneficiaries of the intervention. Presently, there is no accessible policy document on the LID; how its collected, disbursed and audited. This option also comes with the risk of losing markets due to an increased price for stock.

There will also be the need for further assessment of these options within the context of the WTO trading rules. Article XVII of the GATT deals with state trading enterprises, which it defines as: ‘governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports’. The article, together with a subsequent ‘WTO Understanding on the Interpretation of Article XVII’, sets out that such enterprises are to act in accordance with the general WTO principles of non-discrimination, and that commercial considerations only are to guide their decisions on imports and exports.

b. Partnership Agreements

An effective export price regime set up through bilateral arrangements which take into consideration other concerns such as environmental and human rights should be able to deliver improved prices in return for “healthy cocoa”. Bilateral agreements between the EU, or UK, and cocoa-producing countries are one mechanism to improve the sustainability of cocoa production on the ground, in exchange for capacity-building support and, possibly, improved market access in the EU or UK. Partnership agreements,

³⁹ *Ibidem*

modelled on the VPAs negotiated between the EU and timber-exporting developing countries under the FLEGT initiative can be a template for modification.

c. Consumer-country intervention on Price

Consumer countries may also intervene in ensuring that fair prices are paid to farmers by introducing import taxes to raise revenue from trade in cocoa so as to be able to reward producer countries for exporting them. Consumption taxes may be introduced to also raise revenue. These measures also have their disadvantages for consuming countries.

d. International commodity agreements.

There have been proposals for an OPEC-like arrangement at the international level for the trade in cocoa. Although attractive at first sight, OPEC is not without issues. Any arrangement at the international level for the trade in cocoa should be framed more around how to reduce the environmental concerns, with price being one of the interventions.

While the producer-country options can be undertaken by producer countries unilaterally, they are likely to be more effective if taken in concert with other producer countries and, with the concurrence of buyers as well. The consumer-country options require cooperation between consumer and producer countries, at least at the bilateral level, and the final option, of international commodity agreements, assumes a wider buy-in from producer and, possibly, consumer countries too.

Chapter 4 – Human rights concerns – child labour

1. Issues of concern

Cocoa farming is labour-intensive. Therefore, it is common for the family of a farmer, including young children, to be involved in the process to reduce the costs of labour. The participation of the children in cocoa farming raises human rights concerns specifically child labour and exploitation. Children working on cocoa farms may be exposed to physical and chemical hazards. They may be asked to use sharp tools without proper training and personal protective equipment. They may also inhale chemicals from fertilisers. These hazards portend long-term adverse health consequences.

Ghana has made several international and legislative commitments to the eradication of child labour. Nonetheless, most recent statistics provide that child labour remains rife in its agricultural sector, particularly in the production of cocoa. According to the 2018 Global Slavery Index in Ghana, there were 668,000 children in child labour (including 632,000 performing hazardous tasks) in the cocoa industry.

Only 1.98% of children were required to work by non-family members. The rest were obliged to work by parents.

Ghana's Labour Act, 2003, Act 65 makes it illegal to engage children below the age of 18 in work that is hazardous. Children over 15 can be engaged in light work that is not harmful to their development or well-being. The Act also criminalizes forced labour. Forced labour in this context means work or service that is exacted from a person under threat of a penalty and for which that person has not voluntarily offered to work.

These statutory definitions are used as the benchmarks for assessing child labour in the cocoa sector in Ghana. The definitions provided are general in nature. They do not account for the peculiarities of the cocoa sector: "A broad spectrum of experiences exists, from the culturally enriching exposure of children to longstanding farming traditions to the harmful forced labour of young children who do not otherwise attend school"⁴⁰. The generalization of the definition of child labour is a contributory factor in the high statistics of child labour in the cocoa sector. These can be remedied through legislative reform. Some recommendations are explored below.

2. Gaps and Recommendations

The high incidents of child labour can partially be attributed to the legislative definition. The definition attributed to child labour and the lack of consideration of sector-specific peculiarities are causal factors that can be easily remedied. It is expected that legislative intervention to cure these challenges will lead to a decline in the child labour numbers in the cocoa sector.

Recommendations

The legislative interventions can take the form of:

1. An amendment of the definition of child labour to include sector-specific exceptions particularly in the cocoa sector. The recommendation is for the definition of child labour to anticipate and accept exceptions that are sector-specific and acknowledge the large range of experiences existing that make up the current definition of child labour. These could include non-hazardous tasks, such as picking up cocoa pods or drying of cocoa beans outside of school hours. The intended effect is that some of activities that children are currently engaged in the cocoa farming will not be counted as child labour activities, thereby taking out common practices among cocoa farmers that act rather as training opportunities for the next generation, than as forced child labour. This would also ensure more targeted measures to tackle harmful forms of child labour.

⁴⁰ Barima Akwasi Amankwaah, *op.cit*, p.1.

2. Legal categorization of what constitutes hazardous work. There exists a Hazardous Activity Framework (HAF) in Ghana that articulates the scope of permissible and non-permissible work amongst children in various sectors, including cocoa. However, this HAF is not captured in legislation and remains a guideline document. The absence of legislative backing takes away from the efficacy of this document. It is believed that by integrating this document into legislation, some activities that are currently considered as child labour would no longer be considered as such resulting in a decrease in the numbers. This can be achieved by amending the Children's Act, 1998 (Act 560).

Beyond legislative intervention, there are other measures that should be adopted to curb the incidence of child labour in the cocoa sector. The measures include:

3. Ratification of Ghana's treaty obligations. Ghana is a signatory to several treaties that are aimed at protection of children and prevention of abuse. It is necessary that these treaty obligations are ratified and expressed in domestic legislation to ensure that there is not a shift from well-regulated sectors to non-regulated sectors. The UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography is an example of a treaty that needs to be ratified.
4. Effective monitoring and enforcement of legislation. As noted above, there is a comprehensive legislative framework for the prevention of child labour. The institutions responsible for the enforcement of this framework need to be strengthened to carry out their mandate. The first institution is the Labour Department. The officers of the department need to be trained and equipped with the necessary logistics to effectively monitor compliance with the legislative framework to complement the efforts of the Police. Another institution that requires capacity building is the Ghana Police. The Police are the primary authority tasked with investigation and prosecution of child labour offences. As such they need to be educated to appreciate that some activities that children are expected to help their family with constitute child labour.
5. Awareness creation and public education. Public awareness creation and education on child labour is important. This is because activities that constitute child labour have traditionally been accepted as part of the family set-up. Therefore, public education and sensitization on the need to stop engaging children in such activities is important to ensure the eradication of child labour. The public education and sensitization should have special focus on farming communities where child labour is prevalent.
6. Adopting an integrated approach. The approach to eradicating child labour must integrate the view points of the children and their families. As the principal actors, it is important that their views are taken into consideration, and they are made to understand the underlying issues. If this is not done then there may be a shift from one type of activity to another that is detrimental to the child. Further, an

integrated approach that also addresses pricing of cocoa beans will ensure good and equitable earnings for cocoa farmers. This will support farmers ability to hire labour on their farms and reduce the need to rely on their children for any activity on the farm.

Chapter 5 – Conclusions and reflections

The challenges and gaps in the legal and institutional framework facing cocoa production and trade in Ghana require a multistakeholder approach to comprehensively address them. There is also a need to make processes transparent and information accessible to permit meaningful inputs by relevant stakeholders and to foster accountability in the sector.

Cocobod, as the central institution, makes most decisions about cocoa production and trade. Unfortunately, Cocobod's procedures and activities appear to be obscure and not accessible. There is an apparent lack of transparency, accountability, or inclusion of stakeholders in these processes. Even though farmers are organized into cooperatives, they are mostly focused on cocoa production and are not influential in decision making on issues of policy and planning. Further, civil society, which is a critical tool for representing the public interest and demanding accountability, is only now beginning to organize in this sector.⁴¹

There is very little information on the very important Producer Price Review Committee (PPRC) on cocoa that sets the farm gate prices. The PPRC is not created by legislation and consequently there is no certainty on the representation of all stakeholders, their mode of selection, tenure, and the qualifications of membership. There is also little published information on their procedures and their criteria for setting the farm gate prices. As the committee is not established by legislation, demanding representation, and transparency of appointments on the committee and its procedures is constrained.

Similarly, there is very little transparency over exactly how the Living Income Differential (LID) is being collected, where the money is being stored and how it's going to be spent or audited.⁴² Other reports have also expressed that there is no clarity on how much of the cocoa price actually gets paid to farmers, and no details had been provided about how the LID's 'stabilisation fund' would actually work.⁴³ Also implementation of other initiatives and programmes like Ghana Climate Smart Cocoa Standard and the Cocoa Management System (CMS), and the Ghana Cocoa Sector Development Strategy II (CSDS II) is opaque with little information available and accessible.

⁴¹ <http://www.ecocareghana.org/cocoa-governance-and-advocacy-project/>

⁴² <https://thecocoapost.com/lack-of-information-a-threat-to-lid-implementation-send-west-africa/>

⁴³ *Ibidem*

There have been calls for governance reform to strengthen the role and voices of civil society, farmers and other relevant stakeholders to engage in both the national and international deliberations on cocoa. To enhance inclusion for effective governance, there is a need for reform that ensures that the voices of farmers and other relevant stakeholders are reflected in decisions about cocoa: an environment where information is available and accessible, and regulators are accountable to farmers.⁴⁴ The first step is to give legal backing to the PPRC, prescribe its membership to include civil society representation and farmers' representation, and require publication of its meetings, deliberations and decisions. Also, full disclosure on the collection, storage and disbursement of the LID should be prescribed in law to permit monitoring and accountability.

It is expected that the forthcoming EU Regulation and UK legislation on FRCs will catalyze governance reform in the cocoa sector, with the hope that multistakeholder approaches are adopted to effectively address challenges in the sector. The ongoing due diligence reforms in the UK and the EU present a real opportunity for Ghana to seek assistance from these important trade partners to reform the sector. Ghana can draw from the experience from the FLEGT-VPA process that opened the forestry sector for multi-stakeholder inputs on regulation and management.

The key institutions for cocoa production and trade, Cocobod, Ministry of Lands and Natural Resources and Ministry of Food and Agriculture will have to be sensitized on the need for governance reform. Civil society and farmer groups would have to organize and be coordinated properly in demanding transparency and accountability. A well-coordinated civil society will enhance demand-side measures to encourage supply-side reform processes in the cocoa sector. Civil society should also position itself to leverage on the ongoing due diligence reforms to facilitate and consolidate their actions in the sector.

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⁴⁴ *Ibidem*

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