



Cocoa Research
Briefing 2: Major concerns and recommendations
– Côte d'Ivoire

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This report is a translation of the analysis produced in English.

List of abbreviations

ANADER	National Agency for Support to Rural Development
VPA-FLEGT	Voluntary Partnership Agreement – Forest Law Enforcement, Governance and Trade
CAF	Cocoa, a friend of Forests
CCC	Coffee-Cocoa Council
CN-REDD+	National Commission for the Reduction of Greenhouse Gas Emissions from Deforestation and Forest Degradation
CNRA	National Center for Agronomic Research
CSO	Civil Society Organisations
LID	Living Income Differential
EFI	European Forest Institute
EU	European union
FBO	Farmer-Based Organisations
ICF	Cocoa & Forest Initiative
MINADER	Ministry of Agriculture and Rural Development
MINEF	Ministry of Water and Forests
MINEDD	Ministry of the Environment and Sustainable Development
OHADA	Organization for the harmonisation of Business Law in Africa
OIPR	Ivorian Office for Parks and Reserves
REDD+	Reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks
SODEFOR	Forestry Development Corporation
TNC	Technical Negotiation Committee

1 Introduction

The cocoa sector is essential to Côte d'Ivoire. The sector provides 40% of the world's cocoa supply and mobilises nearly 1 million farmers who provide an income to 5 million people, i.e. about one fifth of the Ivorian population. Moreover, it is the country's leading foreign exchange earner and a leading contributor to government revenue. Clearly, cocoa occupies a central place in Ivorian society and for many households¹.

However, despite its importance to the Ivorian economy and society, the cocoa sector is experiencing major difficulties and is not fully playing its role as a driver of economic, social and sustainable development. According to the World Bank, more than half of cocoa farmers live below the poverty line, earning less than 757 CFA francs (about \$1.2) per day. They receive only a tiny fraction of the global revenue from the chocolate industry. Côte d'Ivoire's share of the profits from the global cocoa-chocolate supply chain is only 5-7%². Moreover, the expansion of cultivated areas over the past decades has come at the cost of the destruction of the country's forests, and thus the decline of its biodiversity and soil quality. In addition, the use of polluting pesticides in farm processing exacerbates environmental degradation. Finally, child labour in cocoa farming is a major issue for the sector. In fact, a recent report by the National Opinion Research Center of the University of Chicago puts the number of children working in cocoa production in Côte d'Ivoire and Ghana at 1.5 million³.

The sustainability of cocoa depends on the reconciliation of three factors: the efficiency of cocoa production and trade (for all actors), social protections and environmental preservation.

In response to these challenges, several initiatives have been launched in Côte d'Ivoire, including: the Cocoa and Forests Initiative⁴; the National Strategy on the Preservation, the Rehabilitation and the Extension of Forests⁵; the zero deforestation agriculture⁶; a forest friendly cocoa⁷; and the introduction of the Living Income Differential (LID)⁸. Additionally, the cocoa sector has a legal and institutional framework that organises and regulates the production and marketing of the product in the country. However, while these initiatives and frameworks are commendable, it must be noted that their gaps and deficiencies partly fuel the problems described above.

At the European level, the adoption of a new regulation on deforestation could also contribute to the fight against environmental and social problems in the cocoa sector. Indeed, given Europe's important role in the manufacture, export and consumption of chocolate, demand for cocoa beans in Europe is high. Between 2015 and 2019, the EU imported the majority of its cocoa from West Africa, notably from Côte

¹ Economic Situation in Côte d'Ivoire, *In the Land of Cocoa, How to Transform Côte d'Ivoire*, World Bank Group, 9^e ed, July 2019, available : Cote d'Ivoire Economic Update - World Bank Document.

² *Ibid.*

³ 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.

⁴ The Cocoa and Forests Initiative (CFI) is a joint partnership (2017) of the governments of Côte d'Ivoire and Ghana, and 35 cocoa and chocolate companies representing 85% of the global cocoa trade, aiming to eliminate deforestation from the cocoa supply chain. The Ministry of Water and Forests (MINEF) is coordinating the Initiative in Côte d'Ivoire. For more information, visit <https://initiativecacaoforets.ci/a-propos/>

⁵ Government policy adopted on 23 May 2018. For more information: https://www.eauxetforets.gouv.ci/sites/default/files/communique/strat_nationale_de_preservation_0.pdf

⁶ Policy put in place in 2016 by the Ivorian government in the framework of the international mechanism for reducing greenhouse gas emissions from fossil fuels Deforestation and forest degradation (REDD+).

⁷ In response to the ageing of cocoa trees and the disappearance of forest cover in Côte d'Ivoire, the "forest-friendly cocoa" (CAF) pilot project in the Sud-Comoé region aims to promote sustainable cocoa farming that reconciles the preservation of natural and forest resources with the improvement of the living conditions of cocoa farmers.

⁸ Fee introduced in 2019 by the Ghanaian and Ivorian governments of \$400 per tonne of cocoa in addition to the market price, of which 70% would be returned to cocoa farmers.

d'Ivoire (44%), Ghana (17%), Nigeria (8%) and Cameroon (7%)⁹. In the proposed regulation it published in November 2021, the European Commission's ambition is to reduce the impact of European consumption on forests and to eradicate deforestation from European supply chains. If adopted, this new EU regulation should oblige companies sourcing forest-risk products, including cocoa, to ensure that deforestation risks are identified, addressed and mitigated.

In a first article, published in July 2022, we listed all the texts that constitute the legal and institutional framework for cocoa production and trade in Côte d'Ivoire¹⁰.

The objective of this second publication is to identify the gaps in this existing legal and institutional framework and to propose solutions and/or improvements in the form of recommendations.

2 Gaps in the existing legal and institutional framework and recommendations

The shortcomings of the legal framework for cocoa production and trade concern both the legislative and regulatory framework and the institutional framework. In order to address these deficiencies and to respond adequately to the upcoming European regulation on deforestation-free commodities, recommendations have been developed in Section 2. They are the result of various consultations organized in Ghana and in Côte d'Ivoire throughout 2021 and 2022 in the form of workshops bringing together civil society actors as well as cocoa farmers, certification bodies and cooperatives.

2.1 Gaps in the legislative and regulatory framework

The legislative and regulatory framework has several shortcomings, as listed below. There are loopholes, lack of knowledge and lack of enforcement of legal texts.

2.1.1 Lack of legal texts on traceability

Traceability can be defined as the tracking in space and time of cocoa from its place of production to its destination, including processing. Cocoa can only be described as sustainable if it has been produced in compliance with the regulations in force, in particular those on deforestation, child labour, polluting pesticides and prohibited production zones such as parks and natural reserves, classified forests, sacred forests and botanical gardens. Traceability makes it possible to follow the journey of cocoa from its place of production to its destination, ensuring that the regulations have been respected. Furthermore, such a system would also allow the implementation of electronic payment systems to farmers, which would ensure the security of income and the equitable sharing of profits, as well as contribute to the fight against fraud¹¹.

⁹ Annex 6 of the Impact Assessment, Minimising the risk of deforestation and forest degradation from products placed on the EU market, European Commission, 17 November 2021, available at https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en

¹⁰ Available in French on : <https://www.clientearth.fr/actualites/ressources/dossiers-sur-le-cacao-publication-1/>

¹¹ The Ivorian NGOs Initiatives pour le Développement communautaire et la conservation de la Forêt (IDEF), INADES Formation et Observatoire Ivoirien pour la gestion durable des Ressources Naturelles (OI-REN) insisted on this point in their letter to the members of the European Parliament and Council dated February 28, 2022, available at https://ongidef.org/wp-content/uploads/2022/02/Lettre-aux-membres-du-conseil-et-du-parlement-europeen_Finale.pdf

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This would help to clean up the cooperative environment in Côte d'Ivoire. Indeed, the referencing of plots and farmers makes it possible to better map the agricultural cooperative system, as it could assign a unique identifier to each farmer link each farmer to a cooperative and ensure that they are only part of one. While this mechanism could therefore be used to control legality in the cocoa sector, it is not currently regulated by the Ivorian legal system.

Additionally, the EU 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 the supply chain due diligence approach adopted in the proposed Regulation is the ability to trace products back through the supply chain to their point of origin. 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 competent authorities to use available satellite imagery tools to check the land-use history of the relevant area for deforestation.

It is true that the European Commission does not directly impose obligations on farmer countries or farmers, as it addresses operators and large traders. However, in practice, Cote d'Ivoire would do well to put in place a reliable traceability system and the centralization of such a system at the national level would probably give Cote d'Ivoire a competitive advantage on the EU market. 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 or not there is a European requirement, for the reasons set out above, the implementation of a traceability system is essential and the draft proposed European regulation is precisely an opportunity to work towards the concretization 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 system, a number of elements should be considered to ensure its effectiveness. Indeed, there are many ways for stakeholders to circumvent traceability systems¹².

For example, according to a study by the European Forest Institute (EFI), most farmers (one third of farmers in Côte d'Ivoire) have several cocoa plots, some of which are over 30 years old in areas that have been deforested for a long time. Other, more recent plots, are planted in fallow areas, old cocoa plantation rejuvenation or in forested areas. As most sustainable certification programmes start with awareness raising about deforestation, farmers are well aware that it is in their interest to report those plots with no deforestation risks. Many will record production from illegal plots, such as those located in classified forests, as production from legal plots (i.e. located in the rural domain). Therefore, most cocoa from recently deforested areas can be traded as legal cocoa. In addition, many plantations have been established over several years and include trees with very different yields. This prevents auditors from

¹² For more details on this, see: Nitidae and EFI, Traceability and transparency of cocoa supply chains in Côte d'Ivoire and Ghana, 2021. p. 37-39

estimating the exact yield of a plantation and allows farmers to exaggerate production from older plots.

Another example is 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 have to do this in order to be able to sell beans of an acceptable quality. 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 homogenizes or improves quality, compensates for weight losses and conditions distinct product qualities.

► **Recommendation 1: Regulate traceability from cocoa production through processing to trade**

The introduction of a centralized traceability system that would make it possible to ascertain the origin of a product and certify if and when it has been mixed with other products. The system should also provide all the guarantees of good governance and make it possible to verify that the legal conditions have been respected. In our view, to ensure the effectiveness and reliability of traceability efforts, there is a need to bring full transparency to the cocoa supply chain, notably through the publication of the quantities produced and sold at each point in the supply chain, with transport documents indicating their origin and destination. This system should also protect personal data. In order to ensure good governance, independent monitoring should be framed and facilitated in the sector (see recommendation 5).

2.1.2 Shortcomings in pricing and selling

The setting of the price to be paid to farmers and the sale of cocoa production is insufficiently regulated by existing legal texts in Côte d'Ivoire. In fact, the conditions for setting the price as provided for by the legislation are incomplete. Can the situation be explained by the instability of the price paid to farmers, which varies from one year to the next? For example, while the farm-gate price of cocoa was 1000 FCFA/Kg (1,9 USD/Kg) for the 2020-2021 main season and 850 FCFA/Kg (1,6 USD/Kg) for the intermediate season, the price for the 2021-2022 main season is set at 825 FCFA/Kg (1,4 USD/Kg).

Indeed, the setting of the cocoa farm-gate price (price paid to farmers) is the work of the Government, which takes into account the global price of cocoa. The evolution of the price depends on several factors influencing the market price of cocoa: the confrontation of supply and demand, the climate and pests. Indeed, a drop in demand or an increase in supply pulls down the price of cocoa. Thus, the imbalance between supply and demand in the cocoa market causes price variations. Climate and pests, which affect the volume of the harvest, are also factors that make the evolution of prices unpredictable.

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Despite these factors of influence on the price, we believe that the price setting mechanism could be better regulated by setting out clear and objective criteria.

The regulations set out the terms and conditions for marketing, packaging and third-party holding of cocoa, as well as the conditions for exercising the profession of buyer and exporter of cocoa products. However, they do not, for example, address the anticipated sale of cocoa. Indeed, Côte d'Ivoire sells between 70 and 80 per cent of its crop in advance through an electronic auction system, and then uses the average sale price to set a guaranteed minimum price for farmers. Through the anticipatory sale system, the *Conseil Café-Cacao* (CCC) – the responsible government agency – hopes to take advantage of possible increases in world prices to set the minimum price for farmers during the main season. However, the opposite situation may occur, i.e. a fall in world prices. In this case, what guarantee do farmers have that they will receive a living income? The regulation does not seem to provide a solution. However, this is the aim of the Living Income Differential (LID)¹³. Indeed, in order to better remunerate farmers, Côte d'Ivoire and Ghana have put in place a new mechanism for selling their cocoa production in 2019 that takes into account a Living Income Differential (LID), which aims to provide farmers with a decent income. But, the implementation of the LID is not governed by any legal text. Furthermore, there is no regulation on compensation for exporting cooperative societies, should they be forced to sell below the expected price. This leads to a loss of income and does not guarantee that farmers will receive the full certification premium, which depends on the amount of the sale.

Above all, changes to the law have left cocoa industry players with less ability to participate in setting the farm-gate price paid to farmers. Under the terms of Article 7 of Ordinance No. 2000-583 of 17 August 2000 setting the objectives of the State's economic action in the area of coffee and cocoa trade, coffee and cocoa should have been bought from farmers at a price negotiated and fixed by agreement. This option offered to farmers to participate in the setting of the farm-gate price has been removed by Ordinance No. 2011-481 of December 28, 2011 laying down the rules relating to the trade of coffee and cocoa and the regulation of the coffee and cocoa sector. Indeed, Article 5 of the latter stipulates that: "coffee and cocoa are purchased from farmers at the farm-gate, at a minimum guaranteed price set by the body responsible for regulating the coffee and cocoa sector and regulating coffee and cocoa prices". This means that the price is now imposed by the regulatory body (the CCC). Also, the minimum guaranteed price, provided for in the aforementioned Article 5, is the one that is supposed to be paid to farmers during a harvest (for a given year). But this may be different the following year because of the above-mentioned factors. The guarantee does not therefore concern a minimum price to be paid to farmers on a permanent basis, to protect them from fluctuations due to the many influencing factors mentioned above.

In addition, the presence of intermediaries called "pisteurs" causes enormous losses for farmers. Indeed, these intermediaries often buy at a price lower than the price set by the state, taking advantage of the economic difficulties of the farmers. Sometimes these intermediaries collaborate with the cooperatives,

¹³ Fee introduced in 2019 by the Ghanaian and Ivorian governments of \$400 per tonne of cocoa in addition to the market price, of which 70% would be returned to cocoa farmers.

sometimes they compete with the cooperatives, the latter not always being able to buy the cocoa from the farmers at the set price, due to fluctuating cash flows.

► **Recommendation 2: Sufficiently regulate the issue of pricing and selling of production**

The setting of the price per kilogram of cocoa must reflect the effort made by the farmers and, above all, the price must sufficiently reward those who make an effort to fight deforestation, child labour, polluting pesticides and production in areas where production is prohibited. In addition, a minimum price is needed to protect farmers from market price fluctuations. The price-setting framework should be regulated in such a way as to guarantee participation from all stakeholders, to know the roles and responsibilities of each party, as well as to simplify and render transparent the system of calculation of the farm-gate price by the regulatory body.

In addition, the sale of production must be sufficiently regulated to address the issue of intermediaries who cause enormous harm to farmers. This will involve detailed regulation of the entire buying and selling process, as well as the accompanying measures, with penalties for offenders at each level of the chain. Thus, difficulties in accessing a production area should not be used as an argument for buying cocoa at a price lower than the farm-gate price, the minimum price guaranteed to farmers for the season. Ordinance No. 2011-481 of December 28, 2011, setting the rules for the trade of coffee and cocoa and the regulation of the coffee and cocoa sector remains a general framework that must be sufficiently clarified.

2.1.3 Lack of legal texts on information and stakeholder participation in decisions relating to the cocoa sector

Many farmers and civil society organizations (CSOs) often express their frustration with the lack of information available on the cocoa sector and their exclusion from decision-making in the sector in Côte d'Ivoire. For example, the political dialogue¹⁴ initiated in February 2021 by the Government of Côte d'Ivoire and the European Union, with a view to achieving sustainable cocoa production and the payment of a fair price to farmers, does not convene all the stakeholders. The CCC is regularly accused of a lack of transparency in the dissemination of related information. CSOs feel that the multi-stakeholder dialogue is not participatory nor inclusive. The integration of CSOs and Farmer-Based Organisations (FBOs) in this dialogue remains limited. In fact, out of six first meetings, CSOs and FBOs only participated in two, on the pretext that it is impossible to involve all stakeholders. In general, the lack of transparency in the

¹⁴ The sector policy dialogue between Côte d'Ivoire and the EU, aimed at supporting the implementation of a National Strategy for the Improvement and Sustainability of Cocoa Production. In this framework, the Government of Côte d'Ivoire has initiated a multi-stakeholder dialogue in Côte d'Ivoire with stakeholders in the cocoa sector.

management of the cocoa sector can lead to corruption and other malpractices that are detrimental to both smallholders and to all stakeholders in the sector.

This situation can be explained in part by the absence of a specific regulatory text on the subject. This problem, which also existed in the forestry sector, was somewhat alleviated by the adoption on 6 October 2021 of a decree setting out the modalities for informing, consulting and involving local communities in the management of state and local government forests. It is still too early to assess the effectiveness of this text, but it is a first step towards greater transparency and inclusion in the forest management sector. In our view, the adoption of an equivalent text for the cocoa sector is highly desirable.

► **Recommendation 3: Develop a regulatory text on information and stakeholder participation in decisions affecting the cocoa sector**

It is important to regulate the dissemination of information that is critical to stakeholders and to involve them in decision-making that affects the sector.

Sanctions and remedies should be provided for unjustified refusal to disclose or make available information of interest to stakeholders.

2.1.4 Lack of knowledge of legal texts

In general, the legal texts applicable to the cocoa sector are not well known by the sector's stakeholders. In this respect, the publicity measures for the laws and regulations concerned seem inadequate, in that they do not provide information to the population. They are laconic, whereas the resulting obligations, such as production without deforestation, without recourse to child labour, without polluting pesticides and outside prohibited areas, must be obligations of result.

In this context, publicity is a means of bringing a legal act to the attention of those concerned. The law, like the regulation, when it is enacted and in order to be implemented, must be subject to prior publicity in order to inform citizens of its existence. In Ivorian law, this takes two forms: notification and publication.

Notification is the method of publicising individual acts. It consists of bringing the legal act to the attention of a person or group of persons designated by name.

As for publication, its objective is to inform the public of an act of general scope. The publication medium is the official gazette. In principle, a legal text comes into force three clear days after its publication in the official gazette. However, in urgent cases, publication is made by posting in the prefectures. In this case, the text must also be published in the daily press and be the subject of three official radio announcements.

Once the publicity measures have been completed, the legal act becomes applicable to citizens. The latter

can no longer avoid its application on the grounds that they were not aware of the existence of the text. This is the famous maxim "no one is supposed to ignore the law".

In reality, it is clear that the majority of citizens are ignorant of the law. For example, many cocoa farmers in classified forests and protected areas are unaware of the ban on production in these areas. In addition, many people are unaware of the existing restrictions on child labour and the related penalties. This situation is explained not only by an explicit intention to transgress the rules of law nor by the laxity of the competent authorities in charge of enforcing these rules, but also, and above all, by ignorance of the existence or content of these rules. The publicity measures, although rigorous, may in some cases appear inadequate. It would therefore be wise to consider appropriate means of publicity in this area. Information and awareness-raising campaigns as close as possible to local communities should make it possible to guarantee better application of the legal texts that govern cocoa production and trade, with a view to achieving sustainability in the sector.

► **Recommendation 4: Popularise the legal texts applicable to cocoa production and trade**

Ignorance of legal texts often leads to their violation. This is why, in addition to traditional publicity measures, it is important to popularise these texts in order to increase their awareness among all actors.

It is therefore important :

- to conduct community information campaigns; and
- to publish, in this perspective, compilations of legal texts with appropriate messages accessible to small farmers.

2.1.5 Weak enforcement of legal texts

Although the legal texts on cocoa production and trade in Côte d'Ivoire are incomplete, few in number and of low quality, there are several¹⁵. As mentioned above, legal texts have been enacted to fight deforestation, child labour, the use of polluting pesticides and the production of cocoa in prohibited areas. Additionally, there are legal texts on the internal and external trade of cocoa and on the guarantee of the farm gate price to be paid to farmers.

However, these legal texts are not applied with the desired rigour. While the means of enforcing legal mechanisms, such as the means of publicity mentioned above, but also the effectiveness of the means of control and the availability of human resources, can be cited as causes of this lack of application, one should not lose sight of the fact that the competent authorities are often lax in applying the law.

¹⁵ See the first briefing of our Cocoa Research available in French on : <https://www.clientearth.fr/actualites/ressources/dossiers-sur-le-cacao-publication-1/>

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For example, the minimum guaranteed farm-gate price to be paid to farmers during a season is not complied with by certain actors in the sector. These actors often invoke the difficulties in accessing production areas as a reason for reducing this price, in violation of the regulations.

This is also the case for the purchase of cocoa by people who are not authorized to do so. Indeed, under the terms of Article 2 of the aforementioned Ordinance No. 2011-481 of 28 December 2011, coffee and cocoa purchasing operations may be carried out by professional coffee and cocoa agricultural organizations, private individuals or legal entities whose main activity is the purchase of coffee and cocoa, industrialists fulfilling the conditions set by decree, coffee and cocoa exporters fulfilling the conditions defined by the body in charge of regulating the coffee-cocoa sector and stabilizing coffee and cocoa prices. These persons must hold a license issued by the competent body (Article 3 of the aforementioned ordinance). In practice, unlicensed producers buy cocoa in their area of activity at a price below the minimum guaranteed price, in order to increase their production and sell it at a better price.

Another example is pesticide regulation. Pesticide applicators generally do not require any authorization to operate, even though the law requires it. In addition, it is forbidden to produce cocoa in classified forests and national parks and nature reserves, but the reality is quite different. In addition, the law prohibits forced labor, but it is clear that this practice still exists in the cocoa sector.

NGOs can help in this regard. To this end, independent monitoring should be developed, as foreseen in the VPA-FLEGT process relating to timber. The forestry legal reform initiated in this process between Côte d'Ivoire and the EU has seen the inclusion of independent monitoring in the Forestry Code currently in force and the drafting of a decree on independent monitoring. On the basis of this text and others of general scope, civil society organizations carry out independent monitoring activities, thus contributing significantly to the improvement of forest governance.

In the cocoa sector, some initiatives have been taken in this direction by NGOs, but these remain limited, given the scale of the enforcement challenge, which generally comes up against the interests of several actors in the sector. In the cocoa sector, unlike in the forestry sector, management is not as participatory and does not facilitate the coordination of the various actors on the need to carry out such actions.

In terms of human rights, efforts have been made by the government to enforce regulations, particularly in the fight against child labor, but challenges remain. Actors have difficulty understanding the phenomenon. During the legal workshops, stakeholders tried to distinguish between children who accompany their parents to the fields and who do work to the extent of their strength, especially during vacations, and those who are really used as workers. In the field, it is difficult to make the distinction, especially since respondents can hide the real situation quite easily.

In addition, women's access to land is problematic in certain localities of Côte d'Ivoire where they do not have the right to it, in opposition to the legislation in force which makes no distinction between men and women. The law on agricultural orientation states, among other things, that "the State ensures the reduction of gender inequalities by a greater involvement of women and youth in the agricultural sector".

In practice, women's right of access to forest and land resources is limited or non-existent due to social barriers, cultural obstacles and favoritism towards men.

► **Recommendation 5: Rigorously enforce the law.**

Law is the driving force behind policies because it facilitates their adoption and implementation. Indeed, there can be no sustainable cocoa production without behavioural prescriptions because the law is nothing more than a set of prohibitive and permissive rules. Moreover, it is the fear of the application of the sanction attached to the rule of law that leads social actors to comply with it. It is therefore important to provide for dissuasive sanctions. Also, the regulations pertaining to sustainable cocoa production and trade should be rigorously enforced so that those who respect them are sufficiently rewarded. NGOs should then use their whistleblowing power to bring the authorities to apply the rule of law. They should even make use of their right of appeal as provided for in article 110 of the environmental code to sanction infringements and thus force the actors to comply with the rules. They could even take legal action to ensure that the rule of law is applied relating, in particular, to the non-compliance with the minimum price guaranteed to farmers, child labor, women's access to forest and land resources, deforestation, cocoa production in prohibited forests and the use of polluting pesticides.

However, this right should be improved, as at present its exercise is subject to a prior referral to the competent national authority, which has the power to settle cases¹⁶. This means that before any action is taken before the judicial authorities, the matter must be referred to the administrative authority in order to state the same facts and wait for its decision, which may put an end to any other action. This may constitute an obstacle to this right of appeal. It is therefore important to remove the subordination to the competent national authority, which, moreover, is not clearly defined. At the very least, this prior recourse at the level of the administration must be better supervised. For example, the decision taken by the administration should not put an end to the possibility for the applicant to exercise his right to judicial review.

In addition, it would be wise to set up a complaints mechanism that would allow supply chain actors, particularly farmers, to register their complaints with bodies other than the courts, in order to seek appropriate solutions, without obstructing the path to justice. The complaints mechanism, set up in the REDD+ implementation process in Côte d'Ivoire, can be a source of inspiration for the cocoa sector.

¹⁶ Article 110 of the Environmental Code: "Local authorities, duly registered environmental protection associations or any other person must refer to the competent national authority before any recourse to the courts and/or exercise the rights recognised to the civil party with regard to facts constituting an offence under the present law and causing direct or indirect damage to collective or individual interests".

2.1.6 Inadequacy of legal texts

Some legal texts are unsuited to the realities of Côte d'Ivoire. This is the case with certain provisions of law n°98-750 of 23 December 1998 on rural land tenure. Namely, the provisions of Article 4 of this law, relating to certification and registration, and those of Article 6, relating to the forfeiture of the right to continuous and peaceful occupation for failure to certify, seem inappropriate, given the low rate of completion of these procedures, which are between 2% and 6%.

In fact, according to the aforementioned Article 4, ownership of land in the rural land domain is established by registering the land in the land register opened for this purpose by the administration. Customary land rights are established with a land certificate. Land, which is the subject of individual or collective land certificates, must be registered within a time limit set by a decree issued by the Council of Ministers.

Article 6 of the aforementioned law states that land that has no owner belongs to the State. In particular, land in the customary domain over which customary rights have not been established by a land certificate within a period of time to be determined by a decree issued by the Council of Ministers is considered to be without a landowner.

These provisions of Articles 4 and 6 of the above-mentioned law are not adequate for at least three reasons

Firstly, land ownership under Article 4 above is on an individual basis, out of step with our sociological reality which considers land as a common or collective asset of the family, in the broadest sense.

Secondly, Article 4 of the Law on rural land tenure imposes a procedure for owning land that is totally contrary to customary ownership, which arises from continuous and peaceful occupancy and requires no formality. It is about obtaining a land certificate on its rural land and its registration in the rural land register. Furthermore, these measures do not take into account the economic difficulties faced by rural populations because the cost of establishing the land certificate and registration, involving an expert geometrician, is very high, far from the financial capacities of small farmers.

Finally, the time limits to have a land certificate drawn up (Article 6 on the time limit granted to customary rights holders to have their rights established by the land certificate) and for the registration of certified land (Article 4 on the time limit for holders of land certificates to register their rural land) seem unsuited to the traditional concept of land ownership, which is not bound by any time limit, according to tradition. One consequence of this inadequacy is the failure of both individuals and administrative structures to respect these deadlines.

Consequently, the inadequacy of the above-mentioned legal provisions causes uncertainty about the ownership of rural land, due to the lack of land certification, thus leading to land tenure insecurity. This has a negative impact on land and forest governance, as well as on agricultural activities.

► **Recommendation 6: Adapt the law on rural land tenure to the sociological and economic realities**

The inadequacy of certain provisions of the law relating to rural land tenure creates legal insecurity in rural land tenure, with harmful consequences for agricultural activities, particularly cocoa production. It is therefore important for the state to avoid depriving local populations of their rural land merely due to the lack of a land certificate, by removing the time limits for certification and registration. The state could also promote land certification by paying all or a large part of the cost of land certification and registration.

2.2 Deficiencies of the institutional framework

The institutional framework for cocoa production and trade has shortcomings that originate, in particular, from the overlapping areas of competence, the lack of synergy between the various actions and interventions, and the absence of an organisational framework for the institutions.

2.2.1 Overlapping areas of competence

The responsibilities of the structures involved in cocoa production and trade are not clearly defined, which prevents them from interacting harmoniously to achieve sustainable cocoa production. Each structure, according to its remit, tries to carry out actions on its own scale. This results in the dispersion and inefficiency of the various interventions in achieving the objective of sustainability. This lack of clarity is also a source of conflicts of competence. In particular, this is the case for competence in the management of cocoa production in agroforests. When they are created, agroforests will be under the management of the Ministry of Water and Forests (MINEF). However, agricultural production is the responsibility of the Ministry of Agriculture and Rural Development (MINADER). Which of these two ministries will then be responsible for managing cocoa production in agroforests? The regulations do not provide a clear answer, so that the two administrations declare themselves competent, raising fears of a conflict of competence.

Another example concerns forest cover in the rural domain. In principle, MINEF is in charge of managing forest cover in the rural domain, on rural land, under the jurisdiction of the Ministry of Agriculture. When the area is no longer a forest¹⁷ as defined by the Forestry Code, who is responsible for its management? In practice, MINEF continues to issue logging permits in rural areas, even though the vegetation cover in some cases no longer constitutes a forest as defined by Article 1 of the Forest Code, and its management should therefore legally fall outside MINEF's remit.

¹⁷ Forest: any area of at least 0.1 hectare in one piece, with forest trees whose crown covers at least 30% of the surface and which reach a minimum height of 5 meters at maturity, constituting a dynamic and heterogeneous environment, having a direct or indirect effect on the soil, climate and water regime.

► **Recommendation 1: Clarify and harmonise the areas of responsibility of the structures forming the institutional framework for cocoa production and trade**

In order to contribute more effectively to sustainable cocoa production and trade under the right conditions, it is important to clarify the roles and responsibilities of the institutions and structures involved in this area. This will avoid overlapping areas of competence, which are sources of conflicts of competence and legal insecurity. In concrete terms, this could involve amending the legal texts on the creation, organisation, functioning and attribution of these structures.

2.2.2 Lack of synergy between the actors of the institutional framework

The lack of synergy between the different actions and interventions of public institutions in the sector is a worrying issue. This is a problem inherent to all ministries, which, despite the existence of cross-cutting issues that should bring them together in a framework of collaboration for effective management, prefer to work in a compartmentalized manner. For example, sustainable cocoa production, which falls under MINADER, presupposes the absence of deforestation. However, deforestation can occur in a classified forest managed by the Forestry Development Corporation (*La Société de développement des forêts SODEFOR*) under the supervision of MINEF and in a national park managed by the Ivorian Office for Parks and Reserves (*Office Ivoirien des Parcs et Reserves OIPR*), under the supervision of the Ministry of the Environment and Sustainable Development (MINEDD), which is also responsible for pesticide management. However, these different institutions are not coordinated in the fight against deforestation and the promotion of sustainable cocoa production, even though the impact on the climate is a cross-cutting issue. It is of concern to all institutions involved in the sustainable management of forest resources. The situation must therefore be addressed in an integrated manner.

Several examples of collaborative frameworks exist in the implementation of the FLEGT process and the REDD+ mechanism. For the FLEGT process, a Technical Negotiation Committee (TNC) that brings together all stakeholders has been established and holds regular coordination meetings on VPA-related projects. Regarding the REDD+ mechanism, the National REDD+ Commission, through its bodies, brings together all stakeholders.

Furthermore, sustainable cocoa production requires the combination of several actions of the institutions involved. However, there is no institutional organizational framework to achieve sustainable cocoa production, unlike the forest governance process, where stakeholders form several bodies that meet in the TNC to discuss related issues.

► **Recommendation 2: Create a framework for collaboration and action among stakeholders in the cocoa sector**

A collaboration framework would allow responsible bodies to carry out actions in synergy, in order to be complementary and efficient in achieving the objective of environmental and social sustainability. In concrete terms, a biannual coordination meeting under the facilitation of the Ministry of Agriculture could be set up, with a view to taking stock of the actions carried out, as well as exchanging views on the prospects and difficulties encountered. These meetings should be accompanied by more regular coordination meetings at a lower level in the ministries and technical structures, including the focal points. These meetings will undoubtedly make it possible to identify synergistic actions to improve the sustainability of cocoa production.

Furthermore, it is important to establish a relational flow chart or institutional arrangement. Indeed, this should clarify the responsibilities of each actor in sustainable cocoa production and trade. This will ensure that responsibilities are complementary and do not overlap. This arrangement should take into account all actors and recognize in particular the essential role played by CSOs. Their actions and interventions contribute to cleaning up the sector by forcing farmers, buyers, processors and exporters to respect the regulations.

2.2.3 Poor governance of cooperatives

Cooperatives are intended to support farmers in the production and trade of their cocoa. In reality, consultations during ClientEarth-funded workshops in 2021 and 2022 on the legal framework for cocoa production and trade revealed that several cooperatives operate against the interests of farmers. This is evidence of poor governance of these structures.

For many actors in the sector, this is due to the freedoms given in Article 7 of the Uniform Act relating to the law of cooperative societies, which states: "Any natural or legal person may be a cooperator of a cooperative society when he is not subject to any legal incapacity, in accordance with the provisions of the national law of each State Party". Thus, people who are not farmers create cooperatives for speculative purposes in order to make the biggest profit, disregarding the rights of farmers.

Nonetheless, it is difficult and undesirable to hinder cooperative freedom. In our opinion, it is important to work towards improving the governance of cooperative associations. In fact, the competent institutions have a role to play in monitoring the activities of cooperatives and their relations with members. Indeed, the CCC, is responsible for regulating all activities in the sector and approving operators. It may therefore withdraw the approval of operators in the event of non-compliance with the regulations in their operations.

► **Recommendation 3: Improve the governance of cooperatives**

The governance of cooperatives should be improved by establishing:

- a reserve fund within each cooperative, to ensure enough funds at the beginning of the season to be competitive on the market and avoid cash-flow issues;
- a mechanism for monitoring the activities of cooperatives, providing guarantees of transparency;
- sanctions, such as the withdrawal of licenses in case of non-compliance with regulations;
- a federation or confederation;
- training programmes for cooperative members on their rights in the cooperative society, to strengthen their vigilance.

3 Summary of recommendations for sustainable cocoa production and marketing

3.1 Recommendations relating to the legislative and regulatory framework

The recommendations relating to the legislative and regulatory framework are as follows:

- Regulate traceability from production through processing to marketing of cocoa;
- Sufficiently regulate the issue of pricing and selling of production;
- Develop a regulatory text on information and stakeholder participation in decisions affecting the cocoa sector;
- Popularise the legal texts applicable to cocoa production and trade;
- Rigorously apply the legal texts.

3.2 Recommendations on the institutional framework

The recommendations relating to the institutional framework are as follows:

- Clarify and harmonise the areas of competence of the structures forming the institutional framework for cocoa production and marketing;
- Create a framework for collaboration and action between stakeholders in the cocoa sector;
- Set up a relationship chart or institutional arrangement;
- Improve the governance of cooperative associations.

4 Conclusion

The legal framework for cocoa production and trade in Côte d'Ivoire includes several legal texts and institutions that contribute to the sustainable management of cocoa.

However, the legal texts governing the production and trade of cocoa have shortcomings that relate to traceability, pricing and sales, transparency, publication of information and participation of stakeholders in decisions concerning the cocoa sector. In addition enforcement of legal texts is lacking. The shortcomings of the institutional framework concern the overlapping of areas of competence, the lack of synergy and the absence of a relational organizational framework or institutional arrangement.

This is why we recommend, at the legislative and regulatory level, the regulation of traceability from production to the trade of cocoa, including processing, the regulation of price setting and the sale of production, the development of a regulatory text on transparency, the publication of information and the participation of stakeholders in decisions concerning the cocoa sector, the popularization of legal texts applicable to the production and marketing of cocoa and the rigorous application of legal texts.

At the institutional level, it is important to clarify the areas of competence of the structures forming the institutional framework for cocoa production and trade, to create a framework for collaboration and coordination between the actors involved in the sector, and to set up a relational organization chart or an institutional arrangement. In addition, it is important to improve the governance of cooperative associations, with a view to improving the well-being of farmers.

The legal framework for cocoa production and trade, if clarified and regulated in all situations, could contribute to the sustainable production of cocoa in Côte d'Ivoire and be marketed under transparent conditions for small farmers.

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