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Was it produced legally?

Applying the legality
requirement in the EU
Deforestation Regulation
to cocoa from Côte d'Ivoire

ClientEarth

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Introduction

This case study is taken from a larger briefing published by ClientEarth¹ in April 2025.

That briefing provides a comprehensive examination the legality requirement under the EU Deforestation Regulation ("EUDR"), how it should be understood, and how due diligence on the legal compliance of commodity production should be approached by EU companies and EUDR competent authorities.²

This case study explores how the EUDR's legality requirement would apply to cocoa products produced in Côte d'Ivoire. It provides an assessment of the 'relevant local laws' that would likely fall within the scope of the legality requirement and an analysis of levels of enforcement, implementation and compliance with those laws – as well as important risks and indicators of non-compliance – across the Ivorian cocoa sector.

Equivalent case studies examining cattle, cocoa, palm oil and soy production in Brazil, Ghana and Indonesia are also available.

The research on which this case study is based was jointly undertaken by ClientEarth and Dr. Raphaël Kra, Director of the Cabinet International de Droits Environnementaux et Humains and long-standing in-country associate of ClientEarth in Côte d'Ivoire. The research focused on relevant national laws for the production of cocoa and has been informed by consultations with Ivorian civil society organisations actors involved in the cocoa sector and the governance of natural resources (for more details, see: [A legal pathway to sustainable cocoa in Ghana and Côte d'Ivoire](#)).

¹ Available on the ClientEarth website.

² This analysis has been informed by an independent expert legal opinion from Sir Nicholas Forwood K.C., who served for 15 years as a Judge of the General Court of the Court of Justice of the European Union, including two terms as President of Chamber. This opinion is available on the ClientEarth website at <https://www.clientearth.org/latest/documents/expert-legal-opinion-on-the-eudr-legality-requirement/>.

Executive summary

The EU Deforestation Regulation (“**EUDR**”) requires that the commodities and products to which it applies have been produced in accordance with local laws – known as the '**legality requirement**'. EU companies must conduct due diligence on their supply chains to ensure that their products satisfy the legality requirement.

Understanding the legality requirement:

- The scope of the legality requirement is not entirely clear and requires interpretation to clarify its meaning. Interpreted according to the EUDR's objects and purpose, the legality requirement should be seen as including all laws applicable in the country of production that affect the legal status of activities undertaken to produce the relevant commodities and products.
- **This includes pre-production and post-production activities** necessary for commodity production and the commercialisation and trade of the resulting products. It also includes the **direct and indirect effects** of those activities on the relevant “plot of land” or “establishment” **and the surrounding “area of production” – the area directly or indirectly affected by the production activities**.
- The local laws that are included in the legality requirement will vary from jurisdiction to jurisdiction. However, those laws **must either relate in some way to the topics listed in the EUDR as being relevant or must contribute to the Regulation's objectives or purpose**.

Contextualising the legality requirement for each producer country:

- Understanding which laws fall within the scope of the legality requirement is fundamental to a company's ability to comply with the EUDR's due diligence procedure. This is necessary for assessing any risks that relevant products do not satisfy the legality requirement. It will be impossible to complete the due diligence process without first identifying the relevant laws applicable in the area of production and understanding how they may affect the legal status of production activities.
- Each producer country will have different laws and legal institutions. While there may be similarities across legal systems and commodity sectors, due diligence investigations will need to consider local political, legal, cultural and sectoral dynamics. Understanding these local dynamics will help determine the level of diligence that is 'due' in a particular case. This briefing explores the key legal and sectoral considerations in Brazil, Côte d'Ivoire, Ghana and Indonesia for cattle, cocoa, palm oil and soy production.

Due diligence on legal compliance:

- There are likely to be challenges to gathering the necessary information and investigating the legal compliance of specific production activities in most countries, both inside and outside the EU. **Companies should therefore anticipate common challenges and design their due diligence systems to overcome them.** Adapting due diligence procedures to overcome any practical challenges to investigating legal compliance as well as customising investigations to address contextual and supply chain-specific risk factors is necessary to complete the due diligence process.
- In addition to official sources of information, it will usually be necessary to consult with local legal experts and non-governmental stakeholders to identify the relevant local laws and to understand the 'reality on the ground' regarding their implementation and enforcement. **This should be regarded as standard practice for companies completing due diligence under the EUDR.**
- Due diligence on specific supply chains should be tailored to investigate whether general risks of legal non-compliance apply to specific production activities. **Understanding the dynamics of commodity production in the relevant jurisdiction will be necessary to verify information that gives an appearance of legal compliance.** Official documentation and third-party certificates should not simply be taken at face value – information must be verified and supported by evidence.

Recommendations

Several key recommendations for approaching due diligence when assessing commodity production activities against the EUDR legality requirement can be drawn from the research and analysis in this briefing.

- Invest in a comprehensive, independent and authoritative analysis of the applicable laws in the country of origin and how they apply to commodity production activities.
- Catalogue contextual information regarding levels of legal implementation, compliance and law enforcement, as well as trends in non-compliance and the reasons behind them.
- Consult local experts on both points above.
- Investigate the current and *historical* circumstances of commodity production activities, including advice from non-government local stakeholders.
- Do not rely on official records or third-party certification alone – consult a range of local stakeholders, especially where contextual information indicates general risks of legal non-compliance within the sector or raises concerns about the reliability of official data and records.
- Speak to locals: consult local community and civil society stakeholders (such as labour unions, workers' associations, community organisations and NGOs) to verify the reality 'on the ground', including whether any sectoral risks apply to the specific supply chain and whether local rights holders are being unlawfully impacted.
- Competent authorities should require companies to demonstrate that they have consulted appropriate experts and a variety of local stakeholders as described above to identify the full spectrum of applicable laws and their implementation – in general and in specific production areas.
- Competent authorities should require companies to convince them, by explaining the company's assessment of non-compliance risks, that the information they gathered is reliable and adequately conclusive that there is no reason to be concerned that their relevant products were not produced in compliance with all applicable legal requirements.

Background

Adopted on 31 May 2023, the EUDR aims to promote the use of deforestation-free products to reduce the EU's impact on the world's forests, thereby reducing the EU's contribution to global climate change and biodiversity loss.

The commodities and products covered by the law are: cattle, cocoa, coffee, oil palm, soy, rubber and wood – and specific products listed in Annex I of the EUDR that “contain, have been fed with or have been made using” these commodities – defined as “**relevant commodities**” and “**relevant products**” respectively.

It establishes two fundamental requirements that relevant commodities and relevant products must satisfy to be imported into, traded in, or exported from the EU:

- They must be “**deforestation-free**”; and
- They must have been **produced legally**.

To ensure these requirements are respected, the EUDR requires EU companies who import, trade and export relevant products to complete a mandatory “due diligence” process on their supply chains.

At the core of this process are requirements to:

- **Identify** the area where the product originated
- **Check** the land was not deforested after 2020; and
- **Ensure** the production of the product was conducted legally.

This “due diligence” process – and the information EU companies rely on to complete it – will be the primary mechanism for demonstrating, checking and verifying compliance with the law's requirements.

These new rules are a significant evolution of an existing EU law which prohibits trade in illegal timber – the EU Timber Regulation (“**EUTR**”) – which requires timber importers to trace supply chains to the point of origin and check the legal compliance of the timber harvesting activities.

In this regard, the EUDR's supply chain traceability and legal compliance requirements are not new. However, they have been extended to agricultural commodities and products derived from them.

Case study

1. Summary of the Ivorian legal framework



Côte d'Ivoire follows a civil law tradition. Its legal framework consists – in hierarchical order –

- the Constitution,
- ratified international treaties or agreements,³
- laws and regulations, and
- legal norms adopted by the Executive in the form of decrees, orders and circulars or instructions.

Laws need to comply with all superior laws or norms above them in the hierarchy, otherwise they may be deemed unconstitutional.

The Constitution is at the top of the legal system. All other norms are inferior to it and must comply with it. It establishes the rules governing the acquisition and exercise of legislative power, the organisation and operation of the various State institutions, and the protection of human rights and the environment.

It prohibits degrading and humiliating forced labour (Art. 5) and child labour (Art. 16). It also regulates access to rural land ownership (Art. 12) and lays down rules for the protection of the environment (Arts. 27 and 40).

Importantly, Article 27 of the Ivorian Constitution recognises the right to a healthy environment for all people.

The Forest Code,⁴ the Rural Land Tenure Act,⁵ the Environment Code⁶ and the Act on National Parks and Nature Reserves⁷ are the main pieces of Ivorian legislation relevant for cocoa production.

These laws define the rules governing the use of rural land, provide a framework for the sustainable management of forest resources, national parks and nature reserves, and establish the fundamental principles designed to protect the environment against all forms of degradation. They are complemented by numerous implementing decrees which detail the specific rules applicable. Together, these rules define the areas where cocoa can be produced and under what conditions, who can buy and sell it, at what price and in what circumstances.

3 There are three ways international agreements can apply domestically: treaties negotiated and ratified by the President without parliamentary oversight over ratification, treaties negotiated by ministers that are not subject to ratification and treaties negotiated and ratified by the President pursuant to an authorisation law adopted by the Parliament (which are subject to review by the Constitutional Court). In the case of human rights treaties, the question of ratification depends on whether or not the treaty modifies domestic law. If it does, it must be ratified by means of a parliamentary authorisation law subject to review by the Constitutional Court. If not, there is no need for such a ratification law.

4 Act no. 2019-675 of 23 July 2019.

5 Act no. 98-750 of 23 December 1998.

6 Act no. 2023-900 of 23 November 2023.

7 Act no. 2002-102 of 11 February 2002.

2. Key laws relevant to cocoa production in Côte d'Ivoire

2.1 Land tenure

Cocoa production is authorised on all rural land⁸ except in sacred forests.⁹ Cocoa production is not permitted in classified forests, national parks or nature reserves¹⁰ as they do not form part of the rural land estate. The same applies to botanical gardens, which, because of their conservation and scientific research function, are exempt from all agricultural production and logging activities.

Cocoa can however be produced in areas within classified forests formally designated as “enclaves” and agroforests – areas previously designated as classified forest and reclassified to allow limited agricultural activities, provided certain conditions are met (see [section 3.7](#) below).

When cocoa is produced in a forested area – such as forested rural land or an agroforest – this should be authorised in a **forest management plan**. The Forest Code requires that any project involving development in a forest – including one belonging to a private individual or a legal entity – is subject to prior approval and monitoring by the forestry administration through the adoption of a forest management plan.

The procedural formalities for the latter depend on the size of the forest. Consequently, **any activity contrary to a forest management plan is prohibited**.

2.2 Land-use rights

The Ivorian Civil Code defines property rights and sets out the conditions necessary for the validity of any type of contract. The current legal framework for rural land tenure in Côte d'Ivoire is set out in the Rural Land Tenure Act¹¹ and its implementing texts.

The main provisions of this law relate to the definition and content of rural land, the ownership rights on such land, its development and management. When producing cocoa, farmers need to have property rights over the land they are farming or have the written or oral consent of landowners to farm their land.

In the agriculture sector, several contractual arrangements are possible: a concession, a long lease, a simple land lease contract, a sharecropping contract, a planting-sharing contract with sharing of the plantation, a planting-sharing contract with sharing of the land, a contract for pledging a plot in production against a loan, or a contract for accession as a free beneficiary.



⁸ Article 2 of the Rural Land Tenure Act (Act no. 98-750 of 23 December 1998) defines rural land as (i) land outside the public domain, i.e. land belonging to the State or to local authorities and intended for public use (roads, harbours, etc.), (ii) land outside urban perimeters, i.e. the outskirts of towns, (iii) land outside duly constituted as “areas for deferred development” (“zones d’aménagement différé”), i.e. land reserved by the State for future works, (iv) land outside classified forests and protected areas (parks and reserves), (v) lands outside duly constituted tourist zones. Rural land is permanently composed of (i) state-owned land (ii) land owned by local authorities and private individuals and (iii) land without owners. On a transitional basis, it comprises (i) customary land and (ii) land granted by the State to public authorities and private individuals.

⁹ Article 1 of the Forest Code defines a sacred forest as any forest reserved for cultural or religious expression.

¹⁰ Act no. 2002-102 of 11 February 2002, on the creation, management and financing of national parks and nature reserves

¹¹ Act no. 98-750 of 23 December 1998.

2.3 Pesticides

The use of pesticides is regulated by Decree no. 89-02 of 4 January 1989 on the approval, manufacture, sale and use of pesticides. This decree requires pesticides to be formally approved before they can be produced or imported into Côte d'Ivoire.

Similarly, the profession of pesticide retailer and sprayer is subject to government regulation and approval. Waste associated with pesticide use, for example packaging and residues, must be rendered unfit for other uses and disposed of with "due care" – although what constitutes due care is not defined.

A number of banned products are listed in Order no.159/MINAGRI of 21 June 2004, prohibiting the use in agriculture of active substances used in the manufacture of phytopharmaceutical products.

2.4 Impact assessment

Decree no. 2024-595 of 26 June 2024 on rules and procedures for environmental and social assessments requires that certain agricultural projects or hydro-agricultural developments must be the subject of an in-depth¹² or simplified¹³ environmental and social impact study, depending on the nature of the project's potential impacts and the size of the area concerned.

These limitations are such that small cocoa producers would not be required to carry out an environmental impact assessment unless their activities took place in an ecologically sensitive area.

2.5 Farmer registration

According to Decree no. 2022-392 of 8 June 2022, **every farmer is obliged to register in a dedicated cocoa farmer register**. Registration enables the farmer to receive a professional card, officially recognising their status and the associated rights.

2.6 Labour

Cocoa production involves the use of labour for a variety of tasks.

As the majority of cocoa farms in Côte d'Ivoire are family-run, the workforce is generally of family origin, working informally, and labour laws do not apply.

However, some large farms require external labour. If a relationship of subordination exists between the farm and a worker, then this creates an employer-employee relationship which is subject to applicable **labour law**.

Act no. 2015-532 of 20 July 2015 on the Labor Code and its implementing decrees set out detailed working conditions for employees, including working hours in agricultural establishments, rest periods, salary conditions and health and safety requirements.

2.7 Trade, customs and tax

The sale of cocoa is also regulated. Ordinance no. 2011-481 of 28 December 2011 lays down **rules for the sale of cocoa**, including standards for quality, weights and packaging measures, quality control and phytosanitary treatments. The regulation lays down the conditions governing the profession of buyer and exporter of cocoa products, as well as the packaging of cocoa for export.

¹² Projects that imply the land clearing of more than 50 ha, the use of chemical products or aerial spraying on an area of more than 500 ha, the irrigation and drainage of an area of more than 50 ha, an agro-pastoral dam with reservoir area of more than 1 ha, or any rural land consolidation project. Projects located in or near risk zones or ecologically sensitive areas. Projects involving the physical or economic displacement of people.

¹³ For pesticide use or aerial spraying over an area of between 20 and 500 ha.

Côte d'Ivoire has a management and regulatory body for the cocoa (and coffee) sector: the **Conseil Café-Cacao** or **CCC**.¹⁴

The CCC is responsible for regulating all activities in the sector, including:

- controlling the quality of cocoa beans;
- approving operators allowed to purchase cocoa beans;
- forecasting harvests and monitoring physical stocks;
- setting purchase prices for producers and ensuring these prices are applied; and
- organising and controlling domestic and foreign trade.

At the beginning of each season, the CCC sets the minimum farm gate price per kilogramme of cocoa to be paid to farmers. This results from Ordinance no. 2011-481 of 28 December 2011 which sets out the rules for the trade of coffee and cocoa and the regulation of the coffee and cocoa industries.

Act no. 64-291 of 1st of August 1964 and Decree no. 2012-1008 of 17 October 2012 set the terms and conditions for the trade of coffee and cocoa. The Customs Code describes the legal requirements for the transport and export of cocoa. The General Tax Code provides legal guidance on property and corporate taxes.

2.8 Corruption

Corruption, fraud and conflict of interest are covered by Order no. 2013-660 of 20 September 2013 on the prevention of and fight against corruption and related offences.

2.9 Sustainability standards

Côte d'Ivoire supported the drafting of the **ARS-1000 standard for sustainable cocoa** in the framework of the African Organization for Standardization (ARSO), adopted on 15 June 2021.

On 8 June 2022, the Ivorian Government published a decree approving the ARS-1000 standard, making it **mandatory for the entire Ivorian cocoa sector** and setting out a 24-month timetable for its entry into force. This period covers a one-year pilot phase, which was launched in January 2024, and a national roll-out in 2025.

The ARS-1000 could possibly play a role in supporting EUDR due diligence and harmonising approaches. Indeed, the information collected and verified under ARS-1000 in terms of product traceability, environmental and social sustainability and legality could provide operators with relevant information for the risk assessment required by the EUDR.

However, the ARS-1000 certification is not sufficient to ensure full compliance with the EUDR and was not adopted for this purpose.

A paper published by the German Initiative on Sustainable Cocoa (GISCO) in February 2023 on *The African Standard for Sustainable Cocoa* found that the ARS-1000 only references compliance with national legislation in the context of farming in protected areas and labour rights and does not require a compliance check of other laws within the scope of the EUDR legality requirement.

¹⁴ Created by Ordinance no. 2011-481 of 28 December 2011.

2.10 Relevant public agencies

There are a number of other public entities in addition to the CCC that are relevant for the cocoa sector:

- The **Ministry of Agriculture, Rural Development and Food Production** (MEMINADERPV) is responsible for implementing and monitoring the Government's policy on agriculture and rural development, including leading the process of securing rural land, improving agricultural production and selling production through the CCC.
- The **Ministry of the Environment, Sustainable Development and Ecological Transition** (MINEDDTE) implements and monitors the Government's policy on environmental protection, in particular the management of parks and nature reserves, the development of environmental services and the fight against pollution - particularly from pollutants such as pesticides.
- The **Ministry of Water and Forests** (MINEF) is responsible for the sustainable management of water and forest resources.
- The **Forest Management Company** (SODEFOR) deals with the management of state-owned classified forests entrusted to it by the forestry administration under general or specific agreements.
- The **Ivorian Office of Parks and Reserves** (OIPR) is responsible for the management of land, fauna, flora and their biotopes in parks and reserves.



Fleuve Bandama, Côte d'Ivoire

3. Key considerations for assessing legal compliance risks

3.1 Challenges in identifying relevant national laws and conflicting institutional competencies

In Côte d'Ivoire, national laws set the legal framework and general principles for the regulation of the cocoa sector. These are then implemented through the adoption of implementing decrees. The decrees define the details of a procedure or specific rules applicable to a particular situation.

This means the **legal framework for cocoa production is scattered across numerous legal texts**. Moreover, some of these implementing texts are contradictory, unclear or incomplete.

Given the absence of a centralised legal database, a comprehensive analysis of the legal framework for cocoa requires careful examination and consultation with local legal experts.

Likewise, the number of public agencies involved in the cocoa sector brings another level of complexity as their responsibilities are not clearly defined and sometimes conflicting, which prevents them from interacting effectively.

This lack of clarity is a source of conflicts of competence, for example in the management of cocoa production from agroforests or the management of forests in the rural domain. There is also a lack of synergy between institutional bodies as they are not coordinated in the fight against deforestation and the promotion of sustainable cocoa production. It is difficult to keep track of legal texts and political developments across this myriad of institutions.

3.2 Informality of the agriculture sector

The Ivorian cocoa sector is **smallholder-based**. According to the CCC's estimates, nearly one million smallholder farmers grow cocoa, producing 90% of the country's cocoa on farms smaller than four hectares.

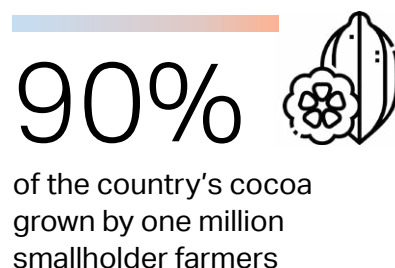
Given the multitude of small producers at the source of the supply chain, data collection and due diligence require greater efforts compared to sectors dominated by large-scale production.

The Ivorian cocoa production phase – and first sales of cocoa to a cooperative or authorised purchasing operator – is **mostly informal**, as production is family-run on a small-scale and organised unofficially.

Small-scale producers plant, harvest and prepare the cocoa in their fields. When the cocoa has fermented and dried, they sell it. Between the farm gate and the cooperatives or authorised purchasing operators, there are often intermediaries, known as 'pisteurs', who buy and sell cocoa informally.¹⁵

Given the informal nature of the first part of the supply chain, it is unlikely that farmers will have explicit proof of compliance with environmental standards and labour law.

Once cocoa reaches a cooperative or an authorised purchasing operator, it enters a more formal route with required documentation and data collection.¹⁶



¹⁵ Bockel, L.; Ouedraogo, S.A.; Auguste, K.A.; Gopal, P. 2021. Analyse prospective de la filière cacao en Côte d'Ivoire 2020-2030 – Vers une politique commune de marché de cacao en Afrique de l'Ouest. Accra, FAO. <https://doi.org/10.4060/cb6508fr>

¹⁶ Nitidae and EFI, Traceability and transparency of cocoa supply chains in Côte d'Ivoire and Ghana, 2021

Some farmers hire workers periodically, others have permanent workers on their plantations. These workers rarely have written employment contracts, instead making verbal agreements with farmers on an *ad hoc* basis.

The absence of documentation does not necessarily imply non-compliance with Ivorian law, but it makes it challenging to assess compliance

3.3 Traceability

Existing traceability systems in Côte d'Ivoire allow cocoa beans to be **tracked from the first buyer** and cover subsequent sales between cooperatives and traders.

These systems focus on the quality and weight of cocoa beans through the various stages of transport, cleaning and drying that take place between purchase from the local trader or cooperative and export.¹⁷

A decree was adopted in September 2023 to set up a **new national cocoa (and coffee) traceability system**. According to the CCC, the latter will include a computerised system for recording commercial transactions and a system for labelling bags of coffee and cocoa.

This will identify the producer and the area of origin of the products – and trace their journey from the production area to the end customer. The aim is to:

- determine the origin of coffee and cocoa products at each level of the supply chain;
- ensure compliance with the guaranteed minimum purchase price at the farm gate;
- secure financial transactions in the coffee and cocoa sectors; and
- preserve product quality by promoting compliance with minimum sustainability standards.

However, this system is not yet operational.

Several voluntary certification schemes are available to cocoa farmers – such as Fairtrade, UTZ and organic – which use various systems of traceability – such as mass balance, segregation and identity preservation – though participation in these schemes comes at a cost.

The main cocoa trading companies have also developed software to track their supply chains. However, these systems rarely include traceability as far back as farmers' plots and often cover only a share of the supply chain.



¹⁷ Currently, the system is composed of a registration module for cocoa bags and phytosanitary treatments (SICOPS – Système d'Information et de Contrôle des Opérations de Distribution des Produits Phytosanitaires et de la Sacherie) and a monitoring module for national trading of cocoa and coffee (SYDORE – Système de Gestion des Données Régionales). For more info, see Nitidae and EFI, Traceability and transparency of cocoa supply chains in Côte d'Ivoire and Ghana, 2021.

3.4 Absence of centralised databases

There is a **lack of publicly available information** on the zoning of protected areas in which agricultural activities are prohibited. In Côte d'Ivoire, there is no legal land-use map indicating zoning categories.


Therefore, the exact delimitation of protected areas could pose practical difficulties, as the boundaries are not demarcated on the ground. Spatial information about these areas is not publicly available, and the accuracy of any information that is available may be limited.

Until this information is formalised and accessible, it constitutes a source of legal uncertainty for cocoa harvested close to protected areas.

Cocoa farmers also have limited information about where cocoa farming is permissible, with the result that many cocoa farms overlap with protected areas

3.5 Absence of formalised interests in land

In order to farm a plot of land, a producer should have the right to carry out agricultural activities on the land: either because they have ownership rights to the land or have the owner's authorisation, for example in the form of a lease.

 However, interests in land acquired for agricultural purposes are not normally registered or formalised.

Côte d'Ivoire has a **formal centralised land tenure system** for urban and rural land. According to Article 12 of the 2016 Constitution, only Ivorians and national and local authorities can own rural land.

The Ivorian state-centric approach to land management is not adjusted to customary practices, which has led to a discrepancy between laws on paper and what happens in reality.¹⁸

The tenure reform of 1998 allows continuous and peaceful customary rights to give rise to a formal property right capable of supporting a land certificate. This can be individual or collective to respect community customary rights. However, this property right is temporary.

The law requires conversion of these certificates to individual land titles within 10 years, after which unregistered land reverts to the state.

However, implementation of the Rural Land Tenure Act has encountered enormous difficulties, to the point where it is estimated by the Ivorian public rural land agency – the “Agence Foncière Rurale” or “AFOR” – that **only about 3% of rural land is registered** according to these procedures, mainly because they are complex and very costly.

Villages must also be demarcated and land management committees have been set up for this purpose. These committees make decisions on requests for individual or collective land certificates, which must be converted into individual land titles within 10 years. In theory, these certificates can be issued to foreigners, whereas titles can only be issued to Ivorians.

Foreigners must convert their certificates into leases of up to 99 years. While some have advocated for the certificates to be the final document, the issue of restricting land to Ivorian nationals is one explanation for the two-stage process.

18 DeJong, T. (2021). *Tree and land tenure nexus in Côte d'Ivoire*. Washington, DC: USAID Integrated Land and Resource Governance Task Order under the Strengthening Tenure and Resource Rights II (STARR II) IDIQ.

Where a cocoa farmer has no land ownership rights, they should at least have an agreement with the owner – whether it be the state, a community or an individual. Any individual or legal entity, Ivorian or foreign, may lease rural land for cocoa production purposes, provided they hold, at least, a land certificate. The land certificate is therefore a guarantee of access to rural land, as it identifies the owner who is authorised to enter into the lease contract. In theory, land without a land certificate can be leased but a legal framework to allow this has not yet been adopted.

There is no obligation in Ivorian law for the parties to a lease agreement to agree it in writing or to register their contract. In practice, rural land leases are not usually registered or formalised. The AFOR has introduced model contracts designed to allow holders of rural land use rights to secure their acquired rights. However, farmers rarely make use of them due to a lack of information or bias against government authorities.

In contrast, contracts for concessions granted by the state on land it owns are generally documented.

The absence of documentary evidence of land-use rights to the area of production does not make the use of the area illegal. However, it contributes to the informal nature of the sector and leads to legal uncertainty.

Indeed, without a valid legal title to use the land – whether a property title or a lease – farmers are themselves at the risk of being evicted.

3.6 Lack of clarity on forest conversion

The existing legal framework for forest conversion is incomplete and inadequately implemented.

Where implementing procedural rules exist, they are often not followed or enforced, or they are unclear. For example, any clearing of forests not already provided for in a forest management plan is subject to prior authorisation from the forestry administration (decree no. 2020-423 of 29 April 2020).

This authorisation is subject to the maintenance of at least 30% of the forest area concerned. This means any application to clear a forest, even a privately-owned forest, can only be authorised to exploit 70% of the area. The aim of this measure is to restore forest cover.

However, the decree has several limitations. It does not specify the contents for an application for forest clearance, nor does it specify the circumstances in which an environmental assessment is required. Without these details, relevant authorities are unable to make informed or consistent decisions.

In addition, the question of whether it is possible to clear land for agricultural purposes in ecologically sensitive areas remains unanswered

Ecologically sensitive areas include forests located in: mountain areas, coastal areas, areas essential for the protection of banks, slopes and catchment areas, in particular gallery forests, in forests providing particular ecosystem services or playing specific protective functions (Article 48 Forest Code).

Under the terms of this provision, the management and use of this category of forest are determined by decree. In fact, the decree setting out the terms and conditions for the management and use of ecologically sensitive areas – which lists the activities that have the effect of disrupting the natural cycles of their ecosystems – omits deforestation and land clearance. The list is not exhaustive, but the omission of deforestation and land clearing suggests these activities can be carried out in ecologically sensitive areas, particularly for agricultural purposes, as is the case in practice.

3.7 Cocoa produced in protected “classified” forests

According to the CCC, it is estimated that 30% of cocoa comes from protected “classified” forests – where agricultural activities are not permitted.

A classified forest is part of the private forest estate of the State or of a local municipality that is protected under the Ivorian Forest Code. The classification of a forest requires the adoption of a regulatory act which defines its area and purpose. Despite these areas requiring formal identification, there is no publicly available map of their exact location.

In principle, cocoa production is not allowed in classified forests (Article 46 and 101 of the Forest Code). However, given the limited information about the boundaries of these areas, encroachment of cocoa farms into classified forests is widespread.

A census carried out by the CCC in 2020 estimated that there were almost 120,000 farmers living in the 234 classified forests in Côte d'Ivoire, representing 12% of Ivorian farmers.¹⁹



*A census carried out by the CCC in 2020



¹⁹ See: En Côte d'Ivoire, le secteur du cacao face au casse-tête des exigences environnementales de l'UE.

Agroforest scheme

The Ivorian government introduced an agroforestry scheme in 2018²⁰ to:

- restore severely degraded classified forests;
- avoid the outright expulsion of communities from classified forests and the resulting social problems; and
- provide a legal basis for some of the agricultural production in classified forests.

In practical terms, this involves converting all or part of severely degraded classified forests²¹ into agroforests, in particular for cocoa production. The idea is for cocoa trees to grow amongst other species of trees to create a virtuous eco-system for all the species present.

To create an agroforest, a “reclassification” procedure needs to be carried out to revoke the classified forest status of the area.²²

This includes a technical, social and environmental feasibility study.

Once the agroforest is formally created, it needs to be subject of a concession agreement and must have a management plan. The management plan should be drawn up by the concessionaire and approved by the Forest Administration, with a view to the sustainable management of the forest.

Decree no. 2021-437 of 8 September 2021 specifies that these agroforests may not be used to create industrial cocoa plantations. Farming in these areas needs to comply with the specific criteria and rules of the management plan. Failure to do so can result in penalties, including fines and imprisonment (Article 88 Forest Code). Without these concession contracts and management plans, an agroforest cannot be legally constituted, and the cocoa derived from it cannot be considered legal.

To date only three agroforests have been created in Côte d'Ivoire.²³ This is out of approximately 85 classified forests eligible for the agroforest scheme.

Any cocoa coming from so-called agroforests – except the three areas covered by agroforest concessions – would currently be considered illegal.

It should be noted that in an attempt to expedite the creation of agroforests and legalise cocoa production coming from classified forests, the Ivorian government passed a decree in September 2024²⁴ that purports to cancel the prevailing decrees that established the ‘reclassification’ procedure to create agroforests²⁵ and create a list of agroforest areas instead. However, it is our view that this approach is inconsistent with the Forest Code, a legal norm which is superior to a decree. This interpretation would mean these recent changes are invalid.

3



agroforests created out of a possible 85 that are eligible in Côte d'Ivoire*

20 Policy for the Preservation, Rehabilitation and Extension of Forests of the Ministry of Water and Forests (MINEF) of 2018.

21 Forests with a degradation rate of more than 75% of the dense rainforest zone evergreen and semi-deciduous forest (Article 2 of Decree no. 2021-437 of 8 September 2021).

22 This procedure is detailed in Decree no. 2019-979 of 27 November 2019 and Decree no. 2021-437 of 8 September 2021.

23 In Scio, Haut-dodo and Rapide Gras.

24 Decree No. 24-800 of 5 September 2024.

25 Decree no. 2019-979 of 27 November 2019 and Decree no. 2021-437 of 08 September 2021.

Enclaves and farms within classified forests

Areas can be formally carved-out of classified forests as designated “enclaves” where farming is allowed.

The term “enclave” is not defined in Ivorian law, but by reading articles referring to it we understand it to be an area locked within a classified forest, with no access to a public road, where agriculture is allowed. The concept was created to recognise the existence of villages in forest areas before they were designated as classified forests and avoid their subsequent displacement.

Legally, an enclave may be created when the surrounding classified forest is designated – or subsequently through a separate decree or legal order. If pockets of farmland within a classified forest are not duly constituted, they will be illegal enclaves and any agricultural production coming from them will also be considered illegal.

The legal text establishing an enclave must detail its boundary (surface area, geographical coordinates and polygons).

However, we understand from consultations with local civil society actors and cooperatives that, in practice, local people are often unaware of their boundaries and encroach on classified forest areas.

Therefore, there is a risk that cocoa purportedly produced in enclaves may in fact have been produced in classified forests outside the boundaries of the enclave and therefore produced illegally. Penalties for exceeding enclave boundaries may include seizure of agricultural produce, destruction of crops and criminal prosecution.

3.8 Use of unregistered pesticides

The use of pesticides is regulated by Decree no. 89-02 of 4 January 1989. This decree equires authorisation to be obtained for pesticides themselves, as well as for pesticide retailers and sprayers.

Any pesticide imported or manufactured in Côte d'Ivoire must first be approved by the Ministry of Agriculture on the recommendation of the Pesticides Committee or be granted provisional authorisation for sale. Prior authorisation for pesticide manufacturing and/or packaging establishments is also required. It is the responsibility of the pesticide retailer to check the products they buy are approved or have prior authorisation for sale.

The profession of sprayer is also subject to prior approval. After any pesticide application, empty packaging must be rendered unfit for use and pesticide residues must be destroyed with due care.

Authorised officials from ministries with representatives on the Pesticides Committee are entitled to carry out checks on the premises and worksites of pesticide manufacturers, retailers and sprayers.

Any infringement of the law is subject to the immediate seizure of the products in question, without prejudice to other administrative sanctions and civil or criminal proceedings provided for by the regulations in force.

Order no. 159 / MINAGRI of 21 June 2004, prohibiting the use in agriculture of active substances used in the manufacture of phytopharmaceutical products, lists a number of prohibited products.

However, we understand from consultations with local civil society actors and cooperatives that, **in practice, the use of unregistered pesticides is widespread in the Ivorian cocoa sector.**

This is due to easy access to cheap, illegal substances, farmers' lack of awareness of the legal requirements and weak enforcement of the relevant regulations.²⁶ Similarly, it seems pesticide sprayers rarely have the compulsory prior approval.

3.9 Child labour

A 2020 report by the National Opinion Research Center of the University of Chicago estimates the number of children working in cocoa production in Côte d'Ivoire at 790,000.²⁷

The government has made efforts to enforce labour regulations, but challenges remain – mainly due to the cycle of poverty created by cocoa farmers' low earnings and difficulties in employing workers.

The Ivorian Constitution enshrines a ban on child labour (Article 16) and Act No. 2010-272 of 30 September 2010 provides further rules for the prevention and repression of child exploitation, including child trafficking and hazardous child labour.

It defines a child as every human being below the age of 18 years (Article 3). Article 4 lists the 'worst forms of labour' that are prohibited for children, including work which, by its nature or the conditions in which it is carried out, is likely to harm the health, safety or morals of the child.

Article 5 provides that children may not be engaged in dangerous work, which, because of the conditions in which it is carried out, is likely to:

- endanger their lives;
- deprive them of their childhood, their potential and their dignity;
- harm their health and physical and mental development; or
- deprive them of their schooling, the opportunity to go to school, prevent them from attending school regularly or from being able to benefit from the education they receive.

790,000

children working in cocoa production
in Côte d'Ivoire



Order no. 2017-017 MEPS/CAB of 2 June 2017 also lists dangerous work that is prohibited for children, including land-clearing, harvesting with a machete or sickle, shelling with a sharp object, handling agrochemicals and driving motorised equipment.

However, Order no. 2017-017 specifies that children between the ages of 16 and 18 may carry out the work listed above provided their health, safety and morals are fully guaranteed and that they have received specific instruction or vocational training for the activity.

Children aged between 13 and 16 may carry out 'light' work (Order no. 2017-016 MEPS/CAB of 2 June 2017). "Light work" is defined as work which, by its nature and the conditions in which it is carried out is not likely to be:


- harmful to the child's health or physical, mental, moral or social development; or
- harmful to the child's school attendance, participation in vocational guidance or training programmes or ability to benefit from the education received.

²⁶ Voice Network, Cocoa Barometer 2022.

²⁷ 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. Available at https://www.norc.org/content/dam/norc-org/pdfs/NORC%202020%20Cocoa%20Report_English.pdf.

Children may also take part in so-called “socialising activities”, defined as any unlisted task carried out by a child aged between 13 and 16 under the supervision of the legal representative for the purposes of education and social integration. The activity should not be likely to harm the child’s health or physical, mental, moral or social development, their school attendance, vocational training or wellbeing.

Because the cocoa sector is mostly informal and dominated by small family-run farms, it is not unusual to see children on cocoa plantations.




One of the challenges is that, in practice, it might not be easy to distinguish between situations that constitute prohibited work and those that are closer to vocational training or socialising activities appropriate for children living on family-run farms.

Given that estimates of child labour in the Ivorian cocoa sector remain high, operators will need to monitor their supply chains closely and verify the circumstances of any children working on farms.

4. Conclusion

While the trade and export of cocoa products are well regulated in Côte d'Ivoire and legal requirements are effectively enforced by the Conseil Café-Cacao, the regulation of cocoa production is relatively light.

Plus, the legal framework, while comprehensive, contains gaps and inconsistencies in addressing the social and environmental issues of the cocoa sector.



Gaps in both the legal provisions and their implementation contribute to a level of legal uncertainty which can be challenging to clarify at the farm level.

These can pose challenges to investigating and evidencing legal compliance.

Likewise, the informal nature of cocoa production in Côte d'Ivoire and the common lack of formal records or official documentation can complicate the process of documenting legal compliance. This is related to cocoa farmers’ very low incomes, high levels of poverty and their marginalisation from decision-making processes.

However, the relatively strong legal and institutional framework for the trade in cocoa – and the importance of the cocoa trade for the national economy – have allowed the Ivorian government to make several industry governance reforms. These reforms, such as the development of the national traceability system and the implementation of the ARS1000 standard, help address deforestation and support efforts to comply with EUDR requirements.

ClientEarth is a registered charity that uses the power of the law to protect people and the planet.

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