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Combating Child Labour Through Corporate Social Responsibility: A Case Study of Côte d'Ivoire

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Summary

Although rooted in the history of humankind, child labour has become a matter of increasing global attention. Significant steps have been taken in the international arena to combat the problem. However, its prevalence gives reasons for concerns. According to latest estimates of the International Labour Organization, 215 million children in the world are still caught up in child labour and 115 million of them are subjects to its worst forms. While child labour has been declining modestly in many of the developing regions of the world in the last decade, it continues to increase in the sub-Saharan Africa. This reality emphasizes the urgent need for both international and national focus on the issue in the area.

Reports of children working under abusive and harmful conditions on cocoa farms in Côte d'Ivoire began to come out into public eye in 2000. This publicity led to increased awareness of these practices in the cocoa sector and fueled actions of the government and the cocoa industry to address the issue. Although both public and private initiatives to eliminate child labour in cocoa, mainly in its worst forms, have been taken, the progress towards the goal has proven to be rather unsuccessful due to various reasons.

The obligation to uphold international human and labour rights lies primarily on states. However, with the rise and global expansion of corporate social responsibility, it has been suggested that business can play an important role in raising international labour standards. Keeping all that in mind the study focuses mainly on the international and national legal framework to protect children from exploitive and harmful labour practices in the sector. Moreover, it explores the international principles created to encourage corporate social responsibility and how it can be used to raise compliance with international labour standards in the cocoa production in Côte d'Ivoire.

The main findings of this study is that Côte d'Ivoire is not complying with its obligation under international law to protect children against labour in its worst forms and the private industry has not yet fulfilled its social responsibilities, in accordance with initiatives already taken. However, it is expressed that corporations can and should contribute to a better compliance to those international standards through corporate social responsibility, even if it does so in a restricted way. This is considered possible if cocoa corporations make certain efforts to improve the scope and substance of their policies and provide for a more sufficient implementation and enforcement mechanisms.

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Abbreviations

| | |
|--------|-------------------------------------------------------------------------------------------------------------------------------|
| CRC | Convention on the Rights of the Child |
| CSR | Corporate Social Responsibility |
| C138 | ILO Convention No. 138 on the Minimum Age for Admission to Employment and Work |
| C182 | ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182 |
| GDP | Gross Domestic Product |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic Social and Cultural Rights |
| ILO | International Labour Organization |
| IPEC | International Programme on the Elimination of Child Labour |
| MNC | Multinational Corporation |
| NGO | Non-Governmental Organization |
| OECD | Organization for Economic Co-operation and Development |
| TNC | Transnational Corporation |
| UN | United Nations |
| WACAP | West Africa Cocoa/Commercial Agriculture Project |

1 Introduction

1.1 Background information

12-year old Sametta lives in Cote d'Ivoire, West Africa. She wakes up at 4:00 a.m., eats millet porridge, then walks two miles to her family's cocoa bean field. For the next 12 hours she picks cocoa pods and breaks them open so she can scoop out the 30-50 seeds, or "beans," inside. About 400 beans are needed to make one pound of chocolate. Sametta does not go to school. Her family needs her to work in order for them to survive. Her health is at risk because she uses a sharp machete to harvest the cocoa pods, which are sprayed with poisonous pesticides.¹

Child labour is an extensive global problem, especially in the developing regions of the world. *The International Labour Organization* (the ILO) estimates that of the 215 million working children in the world today, 70% of them are working in agriculture and about 115 million still remain in the worst forms of child labour.² Child labor is most prevalent in sub-Saharan Africa followed by Asia and the Pacific.³ According to the ILO, as in the case of young Sametta, most of these children are being deprived of their childhood, their opportunity to gain education and countless of them are regularly exposed to harmful work and exploitation.⁴

Despite the fact that opinions about child labour depend greatly on cultural and historical traditions, stages of economic development, and general conditions in societies, a broad consensus has been formed on the

¹ Dunn, Deborah. "Is it fair to eat chocolate?" *Skipping Stones* Nov.-Dec. 2008: 22. *Gale Student Resources In Context*. Web. 20 Mar. 2011.

² ILO: *Accelerating action against child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. International Labour Conference, 99th Session 2010 Report I (B), p. xiii.

³ *Ibid.*

⁴ IPEC. "Rooting Out Child Labour From Cocoa Farms. Paper No. 1. A Synthesis Report of Five Rapid Assessments." Geneva, International Labour Office, 2007, p.3.

unacceptability of the worst forms of child labour.⁵ That conclusion can be drawn from the wide global support for the 1989 United Nations *Convention on the Rights of the Child* and the rapid ratification of the 1999 ILO *Convention on the Worst Forms of Child Labour*. In 2006, the ILO set out with the ambitious goal of eliminating all worst forms of child labour by 2016. A substantial progress has been made in reducing the problem in many parts of the world.⁶ However, it is becoming clear that the chances of achieving the goal before that time are diminishing.⁷ Apart from different levels of support of ratifying states that complicate the elimination of child labour, implementation of international standards have shown to be slow in process. Although visible progress has been made in some economic sectors, several factors have made it more difficult one to address in agriculture. This is mainly due to the informality of the sector, which is usually not adequately covered by national legislations and enforcement of existing law is often weak.⁸ This emphasizes the role of non-state actors, among them multinational corporations, could potentially play in combating child labour in their supply chains abroad. It is here that corporate social responsibility could become more important instruments in advocacy efforts against child labour.⁹

In 2000, media reports emerged about abusive labour practices in the West African cocoa industry, particularly in Côte d'Ivoire, linking it to use of the worst forms of child labor.¹⁰ As the recognition of the existence of child

⁵ Ans Kolk and Rob Van Tulder: “*The effectiveness of Self-regulation: Corporate Codes of Conduct and Child Labour.*” *European Management Journal* Vol. 20. No 3. 2002, p. 262.

⁶ Supra note 2, p. 7. The number of child labourers fell by 11% from 2000-2004, and another 3% from 2004-2008 worldwide.

⁷ Supra note 2, p. 5 and *the Hague Global Child Labour Conference 2010 - Towards a World without Child Labour, Mapping the Road to 2016*. Conference report. Ministry of Social Affairs and Employment of the Netherlands, International Labour Office, International Programme on the Elimination of Child Labour (IPEC), Ministry of Social Affairs and Employment of the Netherlands - Geneva: ILO, 2010.

⁸ IPEC. Available at: <http://www.ilo.org/ipec/areas/Agriculture/lang--en/>, last accessed 15 mars 2011.

⁹ Supra note 5, p. 263.

¹⁰ See among other reports: Wintour, P. (2001, April 28). *Slave Warning for Chocolate Firms*. *The Guardian*. Retrieved from <http://www.guardian.co.uk/uk/2001/apr/28/world.patrickwintour>, Child labour in Ivory Coast an ongoing problem. *CBC News*. Retrieved from http://www.cbc.ca/world/story/2001/05/11/childlabour_km_010511.html, last accessed

labour by the industry grows, the need for a precise and detailed solution to combat the problem has become apparent.

1.2 Purpose

The main objectives of this thesis are to examine how child labour is protected under international laws and to explore the role of the private sector in combating child labour. Specifically, it will analyze how and to what extent corporate social responsibility can raise compliance to international labour standards in the cocoa production in Côte d'Ivoire.

1.3 Delimitation and scope

In order to examine the effectiveness of using corporate social responsibility to improve compliance with international labour standards on child labour, I have chosen to do a country case study on the cocoa industry in Côte d'Ivoire. There are mainly two reasons why I decided to focus on that particular country and that industry, i.e. because Côte d'Ivoire relies heavily on cocoa production for its national economy and is the largest cocoa exporter in the world and due to high prevalence of harmful child labour in the industry.

For the purpose of the study, the international legal framework against child labour will be portrayed, as well as the development of soft law instruments, created to regulate corporate activities in their operations and promote social responsibility. A country case study of Côte d'Ivoire will be provided, giving a brief overview on the country's global context, with the aim to deepen the understanding of the nature and prevalence of child labour in cocoa production. The Ivoirian legislation on the issue will be analyzed, as it is the primary role of governments to ensure the compliance with

obligations arising from ratified international standards. Moreover, the role the private sector in combating child labour in the industry will be examined and main initiatives highlighted. Lastly it will be analyzed how effective implementation of corporate social responsibility can be in raising international labour standards on child labour in cocoa supply chains and recommendations will be provided.

1.4 Methodology

This thesis relies on traditional legal method and a country case study. International standards, mainly human rights conventions, as the ILO Conventions on child labour and United Nations Convention on the Rights of Child, as well as existing legal sources at national level will provide for a direction in this research. Reports prepared by both international and non-governmental organizations will be widely used as references. Academic books and articles will be used to demonstrate different perspective with regards to child labour and corporate social responsibility. Furthermore, secondary data from international researches and surveys on the issues will be explored.

2 The International Legal Framework against Child Labour

Child labour is a part of social reality on international level, as well as on the national level. It is only through full awareness and action at both of these levels, the goal of elimination of child labour can be achieved.

2.1 Child Labour under the ILO Framework

Combating child labour has been a core task of the ILO since its establishment. The issue is addressed in both its Constitution in 1919¹¹ and in the Declaration of Philadelphia in 1944¹². Moreover, the ILO has played a leading role since the early 1990s in bringing the problem to the global awareness, among other labour issues.¹³

In the beginning, the ILO focused its legal activities regarding child labour on the development of standards and several of them were produced. The first ILO child labour convention, *the Minimum Age (Industry) Convention No. 5*, was adopted shortly after the creation of the organization and it prohibited the work of children under the age of 14 in industrial establishments. *The 1930 Forced Labour Convention No. 29* provided children with protection from forced or compulsory labour, such as victims of trafficking, children in bondage and those exploited by prostitution and pornography. A more comprehensive standard was established in 1973, the

¹¹ Adopted by the Peace Conference in April 1919, the ILO Constitution became Part XIII of the Treaty of Versailles (28 June 1919). The Constitution is available at: <http://www.ilo.org/ilolex/english/iloconst.htm>, last accessed 17 May, 2011.

¹² Adopted at the 26th General Conference of the ILO. The text of the Declaration was incorporated into the ILO's constitution in 1946 where it is reproduced as an annex. Available at: <http://www.ilo.org/ilolex/english/iloconst.htm#annex>, last accessed 17 May, 2011.

¹³ Supra note 2, preface p. x.

*Convention No. 138 concerning the minimum age for admission to employment*¹⁴ when the age limit was raised to 15 years or to the age on completion of compulsory schooling. The international debate on child labour arose again in the 1990s. In 1995, *the World Summit for Social Development*¹⁵ considered the eradication of child labour as one of the important factors for sustainable social development. Following that, the ILO Governing body initiated the development of a new instrument on child labour. In 1998, the adoption by the International Labour Conference of the *Declaration on Fundamental Principles and Rights at Work and its Follow-up*¹⁶, confirmed that effective elimination of child labour as one of the four principles concerning the fundamental rights to be respected by all ILO member states, regardless whether they have ratified the fundamental Conventions.¹⁷ *The Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182* was unanimously adopted by the ILO in 1999, requiring that States prevent the most harmful child exploitation practices that exist.

The ILO also provides for specific recommendations with regard to elimination of child labor. The ILO recommendations are not intended to create a binding obligation on member states and are not subjects to ratification. They are often adopted at the same time as conventions to act as a supplement to the same subject with additional or more detailed provisions. These provisions enable the principles of the Convention to be set out and stated more precisely, and their aim is to encourage and guide national programs and policies in given areas.¹⁸ Relevant recommendations

¹⁴ Adopted by the General Conference of the International Labour Organization on 26 June 1973.

¹⁵ The World Summit for Social Development Copenhagen 1995. The final report is available on: <http://www.un.org/esa/socdev/wssd/index.html>, last accessed May 3, 2011.

¹⁶ Adopted by the General Conference of the ILO at its 86th Session, June 18th, 1998

¹⁷ *A future without Child Labour*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report of the Director-General, ILO Labour Conference, 90th Session 2002, Report I (B), p.2.

¹⁸ ILO. Information retrieved from: <http://www.ilo.org/ilolex/english/rece.htm>, last accessed May 12, 2011 and http://training.itcilo.it/ils/CD_Use_Int_Law_web/Additional/Library/Doctrine/ILO%20Sources_Valticos.pdf, last accessed May 12, 2011.

here are: *Minimum Age Recommendation No. 146 from 1973 and Worst Forms of Child Labour Recommendation No. 190 from 1999.*

Apart from ILOs traditional work in creating labour standards, the *International Programme on the Elimination of Child Labour (IPEC)* was initiated in 1992. IPEC`s main purpose is to support member states in fulfilling their obligations under relevant ILO instruments and to achieve the main goal of eliminating child labour, with specified attention on its worst forms.¹⁹ Its activities range from advocacy and awareness raising, to technical cooperation with governments and assistance to children in regional and national projects.²⁰

2.1.1 ILO Convention No. 138 on the Minimum Age of Admission to Employment and Work

ILO Convention No. 138 on the Minimum Age for Admission to Employment and Work (C138) and Recommendation No 146 were created and adopted by the ILO in 1973 to replace ten conventions that all addressed minimum age of employment in various economic sectors with diverse contents.²¹ Although C138 allows flexible minimum age in employment, due to different levels of development in states, it has been perceived to reflect only on the social and cultural tradition of the Western world.²² For many years it was considered to be an obstacle for ratification by several of

¹⁹ *Accelerating Action Against Child Labour*. Global Report on Child Labour under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2010. Intro.

²⁰ IPEC at a Glance - Fact Sheet. Available at www.ilo.org/childlabour, last accessed May 2, 2011.

²¹ M. Borzaga, 'Limiting the Minimum Age: Convention 138 and the Origin of ILO's Action in the Field of Child Labour, in G. Nesi *et al* (eds.), *Child Labour in a Globalized World: A Legal Analysis of ILO Action*, Ashgate Publishing Ltd, Aldershot, 2008, p. 43.

²² *Child Labour in a Globalized World: A Legal Analysis of ILO Action*, p. 2.

the developing countries.²³ Until 1998, the number of ratifications of the C138 remained quite low.

Article 1 of the Convention states that: “*Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.*” This provision confirms the scope of C138, that it covers all sectors of economy and applies to both formal employment relationship between a child and an employer as well as to informal work that a child performs.²⁴ Furthermore, it places an obligation on member states to develop and implement into national legislation a policy to fight child labour and establish the minimum age for employment with consideration to the children’s well-being.

Article 2(1) obliges ratifying States to specify a minimum age for admission into employment or work that should apply within its territory and no one under that age limit should be allowed to work or be admitted to employment. Under article 2(3) it is stated that the minimum age shall not be lower than the age of completion of compulsory schooling, and, in any case, *may not be lower than 15 years*. According to article 2(4), states that have an insufficiently developed economy and educational facilities, can reduce *initially the minimum age to 14 years*. In article 2(5) the ILO provides for a special control mechanism, obliging the member states that do not apply the general standard of a minimum age of 15 years to report to the Organization under article 22 of the Constitution on the reasons for making that choice.

Article 3 of the Convention requires the ratifying States to set a minimum age for *hazardous* work. According to the article, the child must be at least

²³ Geir Ulfstein *et al*, *Making Treaties Work*, Cambridge University Press, Cambridge 2007, p. 52.

²⁴ Lee Swepston, ‘The Convention on the Rights of the Child and the ILO’, Vol. 61, *Nordic Journal of International Law* 1994, p. 10.

18 years. Hazardous work is defined as “*any type of employment of work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons*”. However, in accordance with article 3(2), it is left up to each member state to define in their national legislation what is to be considered hazardous work. A flexible clause is also to be found in article 3(3) where a member state can lower this age limit to 16 years if it can be ensured that the child has *full protection* of its health, safety and morals and that the child has received adequate training. Both of these measures have to be done in consultation with organization of workers and employers.

Article 4 and 5 present possible exceptions to the application of minimum age provisions mentioned above. Article 4(1) affirms that the member states can exclude certain types of work, like domestic work or family and small scale agricultural undertakings for example, if such measures are essential and connected to special obstacle of application of C138. Despite of this exception, hazardous work cannot be excluded from its material scope according to article 4(3). These are listed in article 5(3) and include manufacturing, mining and quarrying, construction, plantations and large-scale commercial agriculture.²⁵ Few legal expert have criticized the limitations in article 4, claiming that the provision that obliged states to provide for a list of excluded categories of work within their first year minimizing the flexible feature of it, since the states cannot adjust these lists of categories to suit new developments in the national context.²⁶

There are several situations where a state can choose to change the effect of C138 provisions. These possibilities are listed in articles 6 to 8. The kind of work described in these articles is, in other words, permitted. These exceptions are work done for *education and training* (article 6), *light work*

²⁵ Matteo Borzaga. 2008. “*Limiting the Minimum Age: Convention 138 and the Origin of the ILOs Action in the Field of Child Labour.*” *Child Labour in a Globalized World : A Legal Analysis of ILO Action*, p. 49.

²⁶ Supra note 23 and B. Creighton. 1997. “*Combating Child Labour: The Role of International Labour Standards*”, Vol. 18, *Comparative Labour Law Journal*, p. 375.

from the age of 12/13 years when the work is not likely to interfere with schooling nor harm their health or development (article 7) and participation *artistic performances* (article 8).

The *monitoring system* of C138 is the same as for the other ILO instruments, through regular *state reports*. These should contain information on what measures of compliance that have been taken in the national legislation and practice. The information must also be shared with the workers' and employers' associations in the country in question. These actors are then allowed to present comments, either in the report, or to the ILO itself. If the State should neglect to send in the report as required, the same organizations can send one in its place. The reports are examined by the Committee of Experts, and finally sent to the Labour Conference for assessment, together with the recommendations made from the Committee of Experts. The Government of the State in question can be, and often is, invited to answer any inquiries the Conference might have on the national implementation of international labour law.²⁷

2.1.2 ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour NO. 182

The debate in the 1990s indicated the urgent necessity to create a special standard on exploitative or unacceptable forms of child labour. Speculations if a new instrument should be drafted to revise or in addition to Convention no 138 were widespread.²⁸ In 1996, a resolution was adopted by the ILO Governing Body, which, inter alia, called on governments to: "*develop formal policies and set priorities so as to immediately proceed to put an end*

²⁷ Rules of the Game. A brief introduction to International Labour Standards 2009, citing article 19, 22 and 23 of the of the Constitution. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_108393.pdf, last accessed April 7, 2011.

²⁸ Supra note 2, p. 13.

to the most intolerable aspects of child labour, namely the employment of children in slave-like and bonded conditions and in dangerous and hazardous work, the exploitation of very young children, and the commercial sexual exploitation of children.”²⁹ This proved to be useful when the consensus formed for the unanimous adoption of a new standard on June 17th in 1999 by the ILO Member States at the 87th International Labour Conference, *the Worst Forms of Child Labour Convention, No. 182 (C182)*. The C182 reflected this new global recognition that ending the worst forms of child labour is critical. The preamble of the C182 concludes that: “...child labour is to a great extent caused by poverty and (...) the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education.” It was drafted so its goal, the call for effective and acute actions to eliminate the problem, was attainable through tripartite cooperation and without taking any considerations to the levels of economic development and strength of each country.³⁰ It is supplemented by *Recommendation No. 190*, which was adopted at the same time as C182 and provides a set of guidelines on what specific actions should be taken to increase the implementation of C182 provisions. The Convention has an unprecedented rate of ratification³¹, which demonstrates the will of member states to combat these worst forms of child labour worldwide. Furthermore, this has also led to a rise in ratifications of Convention No. 138.³²

Although C182 and C138 have the shared intention to eliminate child labour, there remains a certain difference between the two instruments, *the approach the conventions pursue and the immediate goal*. C138 is an attempt to eliminate *all forms* of child labour *progressively* through labour policy, without setting forth *any certain time frame*.³³ C182 is more of a

²⁹ Resolution concerning the elimination of child labour, adopted by the International Labour Conference at its 83rd Session on 18 June 1996.

³⁰ Supra note 2, p. 14.

³¹ Currently the C182 has 173 ratifications.

³² Deepa Rishkesh. 2008. “*The Worst Forms of Child Labour: A Guide to ILO Convention 182 and Recommendation 190*.” *Child Labour in a Globalized World*, p. 84.

³³ Ibid

right based convention and has the goal to eliminate the *worst forms* of child labour *as soon as possible and is more action-oriented*. It covers more restricted economic activities and focuses mainly on certain forms of child labour that member states should never tolerate, despite their levels of development.³⁴ C182 also sets clear priorities regarding which kinds of child labour should be eliminated first and provides for in article 2, *a single limit of 18 years* below which it is banned to engage children in the worst form of child labour, as defined in article 3. That is in accordance with the definition of a “child” in the UN Convention of the Rights of Child.

There is no universal definition of what constitutes as the worst forms of child labour but the C182 provides a widely accepted definition of the term:

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

This provision, for example, supports the broad range of issues under the ILO’s mandate which have definite links to the *Convention of the Rights of the Child* (CRC), that are not limited to economic exploitation in accordance to article 32 of CRC, but also use of children in illegal production and trafficking of drugs in article 33, sexual exploitation in article 34, trafficking

³⁴ ILO, Report of the Committee on Child Labour, IV (2A), ILC, 87th Session, 199, Geneva, Office commentary, 34. And supra note 32, p. 87.

in children in article 35, children in armed conflicts in article 38.³⁵

A distinction can be drawn between *two categories* of the worst forms of child labour. First those that are termed the *unconditional worst forms of child labour*, referred to in article 3(a-c) of C182, that fundamentally violate children's basic human rights and are *absolutely prohibited for all persons under the age of 18*. Secondly, *hazardous work*, as defined in national legislation, that may be conducted in legitimate sectors of economic activity but that is still considered damaging to the child labourers.³⁶ As to the exact types of hazardous work that is prohibited under article 3(d), article 4(1) leaves it up to *national determination after tripartite consultation*, taking into consideration relevant international standards. Chapter II of Recommendation No. 190 provides for a list of categories of hazards that tripartite consultation on hazardous work should include in its consideration on the issue.³⁷ If the nature of this type of work or the circumstances in which it is carried out is likely to be harmful to health, safety or morals of children, then it constitutes hazardous work that must be banned for individuals under the age of 18.³⁸ This obligation set out in article 4, i.e. each state must determine with regulation and identify types of hazardous work themselves is very important as a first step in clarifying what kind of work is to be eliminated and to take concrete actions in accordance with that. Ratifying states are also obligated to revise this list periodically for better protection.

The ratifying states are not only required to prohibit worst form of child labour but also to ensure the implementation of the C182 in several ways. According to article 5, suitable *monitoring mechanisms* have to be established, with tripartite consultation. Article 6 compels the creation of

³⁵ Noguchi, Yoshie. 2002. "ILO Convention No. 182 on the worst forms of child labour and the Convention on the Rights of the Child." *The International Journal of Children's Rights* 10, 355-369.

³⁶ ILO. *A Future Without Child Labour*. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at work, Geneva 2002, p. 9.

³⁷ The text of Recommendation No 190 is available at: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R190>, last accessed May 18, 2011.

³⁸ *Ibid* 32, p.85.

programs and policies of action to eliminate the worst forms of child labour as a priority and setting in place appropriate mechanisms for monitoring implementation of the C182. Chapter I of Recommendation No 190 provides direction for elements such programmes of action should aim at.

Article 7(1) states that: “*Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.*” This confirms the important obligation ratifying states have to apply C182. Moreover, it requires that states enforce and implement legislation with appropriate measures. Under article 7(2), obligated measures are listed that are especially important to follow if worst forms of child labour is to be effectively eliminated, so-called *effective and time-bound measures*. These measures should be for: “*prevention of child labour; providing support for the removal of children from the worst forms of child labour and their rehabilitation; ensuring access to free basic education or vocational training for all children removed from the worst forms of child labour; identify children at special risk; and taking account of the special situation of girls.*”

Under article 8 of the Convention the obligation is urged that ratifying states should take appropriate steps towards *international cooperation and assistance* in order to eliminate the worst forms of child labour. It is up to each member state to decide on what those steps should be.³⁹ Such cooperation can consist, for example, of support for social and economic development and similar measures. It also provides for broad consultation among governments and workers and employers organizations. Mutual legal assistance is advised as well as information exchange. Any methods taken should complement the ones already taken at the national level.⁴⁰

³⁹ Ibid 32, p.90.

⁴⁰ Ibid

One of the main challenges in the fight against child labour is the weakness of enforcement mechanisms. In the ILO report, *“Targeting the Intolerable”* it is stated that: *“ Since most working children are found in agriculture, domestic service and the informal sector, most of them work where child labour law enforcement is virtually absent. Besides, given the nature and scale of the problem it would be unrealistic to believe merely bolstering national labour inspection and law enforcement services can solve it. Strong legislation and effective enforcement are important but need to be supplemented by efforts on other fronts as well.”*⁴¹ Here is where non-governmental initiatives could be of help and will be further explored later in this writing.

2.2 Child Labour under the United Nations system

The United Nations (UN) has played an important role in promoting children’s rights in the international arena since the mid 20th century. *The Universal Declaration of Human Rights from 1948*⁴² contains important provision for children, although the emphasis is upon protection and non-discrimination, rather than providing special and independent rights to a child as a person.⁴³ The first step in recognizing children rights as a special category of human rights law within the system was taken with the adoption of *the United Nations General Assembly Declaration on the Rights of the Child* in 1959. The Declaration consists of ten substantive principles and a preamble and enumerates the most fundamental rights of the child in international law. Child labour is mentioned in principle 9: *“ The child shall be protected against all forms of neglect, cruelty and exploitation...”* Furthermore it is stated that: *“ The child shall not be admitted to employment before an appropriate minimum age, he shall in no case be caused or*

⁴¹ ILO. *Child labour: Targeting the intolerable*. 1996. Report VI(1), International Labour Conference, 86th Session, 1998. Geneva, p.87.

⁴² Adopted 10. December 1948, GA Res. 217, U.N. Doc. A/810, 71.

⁴³ Javaid Rehman. *“ International Human Rights Law. A Practical Approach”* 2003, p. 377.

permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development.”⁴⁴

Since then several UN instruments have been developed that provide protection from child labour, but most of those protect children indirectly. Some are specifically aimed to provide fundamental human rights to children, while others contain protection that applies to all individuals, including children. In this regard, the most relevant instrument within the UN system are the two Covenants adopted in 1966, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, as well as the *Convention on the Rights of the Child* in 1989.

2.2.1 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty, adopted by the United Nations General Assembly on December 16, 1966, and came into force in 1976. It includes general provisions on the protection of civil and political rights but also several provisions that protect valuable rights such as the right to life, liberty and security. Those rights are applicable to all individuals, *including children*. The Covenant addresses children specially in article 24, which states that “*Every child shall have, without any discrimination.....the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*” Though the article does not refer to child labour directly, the Human Rights Committee, which implements the ICCPR, has elaborated that the provision may be linked to the establishment

⁴⁴ The text is available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/142/09/IMG/NR014209.pdf?OpenElement>, last accessed mars 13, 2011.

of a minimum age for work⁴⁵ and to a more general prohibition of exploitive child labour.⁴⁶ Article 8 of the ICCPR prohibits slavery and similar practices and that applies of course to children.⁴⁷

2.2.2 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted at the same time as the ICCPR. It contains provisions, among others, on *education and health*, issues that affect children closely. In article 10(3), protection from *economic exploitation* is provided and it states that: “...*Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.*” The use of the term *employment* suggests the need for a *formal employment* relationship in order for the provision to apply. Moreover, this provision is supported by other rights in the Covenant, such as article 9 on the right of everyone to security, article 12 on the right to the highest attainable standard of health and article 13 that includes obligations regarding the right to education for all.

2.2.3 Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) came into force in September 1990 and is one of the main international instruments addressing

⁴⁵ The Human Rights Committee, General Comment No. 17: Rights of the Child (art.24) 7/4 1989, parag.4.

⁴⁶ Alessandro Fodella. “*Freedom from Child Labour as a Human Right: The Role of the UN System in Implementing ILO Child Labour Standards.*” *Child Labour in a Globalized World: a legal analysis of ILO action*, p. 205. 2006.

⁴⁷ M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised edition, N.P. Engel Verlag, Kehl, 2005, p. 548.

the rights of children. It is considered to be more comprehensive than any other human rights treaty on the subject, covering political, civil, economical, social and cultural rights. The CRC is an evident proof of the global acceptance that children are considered to require special protection and assistance as it has attracted a high number of ratifications.⁴⁸ Regarding child labour specially, the CRC addresses it as a general principle in article 32 and deals with critical issues of child labour in articles 33-36 and 38.⁴⁹

According to article 1 of the Convention a *child* is a person under the age of 18 years, unless member states set the legal age for adulthood lower in its national law. This provision represents a compromise since there are different views among the member states on *the age of majority*. Some experts have shared their concerns regarding this provision, claiming that the phrase “*unless, under the law applicable to the child, majority is attained earlier*” gives doubt to the effectiveness of the article.⁵⁰

Measures to combat child labour are found in article 32 of CRC. It obliges states to protect children from *economic exploitation* and from *performing dangerous work* as well as work that is likely to *interfere with the children’s education* or could be *harmful to their health and development*. Furthermore, it is stressed that the states have to ensure children protection in national legislation and through administrative, social and educational policies to guarantee the implementation of the article. States have also a special obligation to provide for a *minimum age limit* for employment in legislation, *hours and conditions of work* have to be regulated and to ensure effectiveness of the provision, relevant *penalties or sanctions* have to be in place. It should be noted that not all work that children do is considered as harmful and exploitive. In fact, there is nothing that prohibits children from

⁴⁸ See unicef.org. It should be noted that up to date, 193 nations have ratified this important treaty. The only two UN member states that have not ratified the CRC are Somalia and the United States.

⁴⁹Supra note 46, p. 209.

⁵⁰ D. McGoldrick, “*The United Nations Convention on the Rights of the Child*” 5 IJLF. 1991. Also see Human Rights Committee General Comment 17(35) adopted 5 april 1989, para. 4.

working within the family, just as long as the work is safe for their health and development, appropriate to their age and schooling and in compliance with national laws.⁵¹ Interestingly, the CRC includes only an obligation to provide for a minimum age, without establishing such a standard. From this point of view, the CRC, like the ICESCR, may be considered to be *more general and flexible* than relevant ILO instruments, mainly C138. However, the text of the CRC itself refers to “*other international instruments*” as a guideline to what should be considered by states in their regulation of the minimum age for admission to employment and the hours and conditions of the same. Therefore it is clear that ILO standards fall under this definition.⁵²

Furthermore, the rights the Convention provides for, have been extended in the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts⁵³ and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.⁵⁴ Both of them were adopted in 2000. The Optional Protocols are to be interpreted in accordance with the original convention, in this case in the light of the principle of non-discrimination, the child best interests and participation.⁵⁵ Moreover, these protocols correspond with the ILO Convention No. 182 regarding total prohibition against the worst form of child labour.

⁵¹ This interpretation can be confirmed in travaux préparatoires of the Convention. See also S. Detrick, *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires*, Dordrecht, Martinus Nijhoff, 1992.

⁵² *Supra* note 46, p. 210.

⁵³ Adopted by the General Assembly 25 May 2000, GA 263, UN GAOR, 54 Sess., Supp. 49; UN DOC. A/RES/54/263.

⁵⁴ Adopted by the General Assembly 25 May 2000, GA 263, UN GAOR, 54 Sess., Supp. 49; UN DOC. A/RES/54/263.

⁵⁵ Information retrieved from http://www.unicef.org/crc/index_protocols.html, last accessed May 18, 2011.

3 International regime and private initiatives on Corporate Social Responsibility

3.1 Corporate Social Responsibility in general

Over the past decades certain transformation in general attitudes towards the impact businesses have on the society has been evident.⁵⁶ The rapid growth of multinational corporations and changes in international trade, mainly due to globalization⁵⁷, has brought on more competition in global markets between governments, societies and corporations. This has further lead to a wide acceptance that corporations should take interest and respect human rights and consider the social and environmental effects of their actions. The fact that corporations do not only conduct business in a single market but also operate and have effect within different cultures, societies and political systems has raised concerns as to the scope of this responsibility. Therefore, potential harmful social and environmental consequences of corporation activities are being compared against their economic gain. The debate regarding corporate social responsibility (CSR) mainly concentrates on clarifying what this responsibility means and moreover how to achieve the balance between the profitability and social responsibility in this broader social context.⁵⁸

⁵⁶ See, for example, The Economist, A Special Report on Corporate Social Responsibility, 19 January, 2008.

⁵⁷ In most cases, the term globalization refers to economic globalization, which means the integration of national economies into the international economy through foreign direct investment, other capital flows, trade, migration and new technologies. Bhagwati, Jagdish (2004). *In Defense of Globalization*. Oxford, New York: Oxford University Press.

⁵⁸ *Corporate social responsibility in a global economy*. Norwegian Ministry of Foreign Affairs. Report No. 10 (2008-2009).

CSR is a complex concept, emerging as the interface between business and society. There is no universally recognized definition of the term but a broad range of views exists, demonstrating that CSR represents different things to different people. In general, CSR can be described as a voluntary responsibility that extends beyond the obligation to abide by national legislation and covers issues such as human rights and environmental responsibility.⁵⁹ For the purpose of this thesis, CSR will be defined as by the ILO: “*Corporate Social Responsibility is a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law*”⁶⁰ This definition recognizes that CSR is a method of balancing business activities throughout a corporation with interest of internal and external actors in various markets in which the corporation operates. Furthermore it confirms that CSR is voluntary action that goes beyond simple legal compliance with the law.

3.2 Internationally agreed principles on CSR

Over the past decades, a variety of soft law instruments, voluntary initiatives and self-regulations to promote corporate social responsibility have been developed and adopted by international organizations, multi-stakeholders groups, individuals corporations, concerned with the effect multinational corporations have on sustainable development in their operations. International organizations such as the Organization for Economic Co-operation and Development (OECD), the ILO and the UN have all created frameworks to regulate corporate activities and attempted to clarify the link between business and human rights. All these instruments play an important

⁵⁹ Supra note 58.

⁶⁰ The ILOs Governing Body, Subcommittee on Multinational Enterprises: “*InFocus Initiative on Corporate Social Responsibility (CSR)*.” GB 295/MNE/2/1. The International Labour Office. Geneva, March 2006.

role in promoting CSR today. This chapter briefly analyzes the most important emerging regulatory regimes and their approach to child labour.

3.2.1 Soft law development on CSR

Consequently, due to globalization, legally binding international instruments addressing multinational corporations and their responsibilities, have not been realistic, mainly because of a lack of political will and rapid changes in the global economy.⁶¹ That is why regulation, soft in its nature, has been considered to constitute, to some extent, as a possible response to the effect globalization has had on enforcement and implementation of national and international legal instruments for protection of labour rights.⁶²

There is no universal definition of soft law.⁶³ In many opinions, soft laws do not entail any special behavioral obligations and do not pose any legal liability or sanctions.⁶⁴ Its application remains voluntary and is generally not amenable to courts. However, this does not mean that soft law is not obeyed in practice. For international organizations, it seems rather to be a key technique for governing on a global level.⁶⁵ Soft law instruments are also easier to negotiate and are faster to react to issues than traditional international conventions. They are also more flexible and can serve to promote international cooperation in highly complex areas that normal decision-making process is difficult.⁶⁶

⁶¹ Roger Blanpain. “*The Globalization of labour standards: the soft track.*” P.7.

⁶² Ibid

⁶³ Francesco Francioni, “International ‘Soft Law’: a Contemporary Assessment”, in Vaughan Lowe and M. Fitzmaurice (eds), *Fifty Years of the International Court of Justice. Essays in honour of Sir Robert Jennings*, Cambridge, Cambridge University Press, 1996, pp. 167-178, p. 168.

⁶⁴ Duplessis, Isabelle. 2008. “Soft international labour law: The preferred method of regulation in a decentralized society”, p. 11. Citing R.R. Baxter, “International Law in ‘Her Infinite Variety’”, (1980) 29 *International and Comparative Law Quarterly* 549; Oscar Schachter, “Towards a Theory of International Obligation”, (1968) 8 *Virginia Journal of International Law* 300.

⁶⁵ Ibid p. 13

⁶⁶ Ibid p. 14

3.2.1.1 The OECD Guidelines

In 1976, OECD member states adopted the *Declaration on International Investment and Multinational Enterprises*. The Declaration is a policy commitment that requires member states to: “*improve the investment climate; encourage the positive contribution multinational enterprises can have on economic and social progress and to minimize and resolve difficulties which may arise from their operation.*”⁶⁷ Furthermore it urges states to follow the principle of national treatment and to handle multinational corporations no less favorable than domestic ones and in consistence with international law. All parts of the Declaration are subject to periodical reviews. The most recent review was completed in June 2000 and concerned *the Guidelines for Multinational Enterprises*.⁶⁸

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) were first presented in 1977.⁶⁹ They are general recommendations of shared values, addressed by governments to multinational corporations operating abroad and their subsidiaries. More specifically, they provide a voluntary framework for corporations “*to implement best practice policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives.*”⁷⁰ The aim of the OECD Guidelines is to: (a) *to ensure that the operations of enterprises are in accordance with government policies;* (b) *to strengthen the basis of mutual confidence between enterprises and society;* (c) *to help improve the foreign investment climate and* (d) *to enhance the contribution to sustainable development made by multinational enterprises.*⁷¹ Moreover, every member

⁶⁷ www.oecd.org/daf/investment/declaratio, last accessed April 3.

⁶⁸ In 2010, adhering governments started work on an update of the Guidelines, aiming at ensuring their continued role as a leading international instrument for the promotion of responsible business conduct. Information taken from: www.oecd.org. Last accessed April 6, 2011.

⁶⁹ The Declaration and the Guidelines have been revised in 1979, 1982, 1984, 1991 and 2000. See *OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarification*. 2001. Available at: [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=daffe/ime/wpg\(2000\)15/final&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=daffe/ime/wpg(2000)15/final&doclanguage=en), last accessed May 12, 2011.

⁷⁰ The OECD Guidelines for Multinational Enterprises, p.16

⁷¹ The OECD Guidelines for Multinational Enterprises, p. 9. Available at:

state is required to establish a *national contact point* with the purpose to promote the Guidelines and their application and handle inquiries and allegations on compliance failure.⁷²

The Guidelines have no formal enforcement mechanisms to ensure compliance. However, *the Committee on International Investment and Multinational Enterprises* is a body that reviews matters regarding implementation that arise from the instrument and interpret its provision. Decisions of the Committee have the form of “*clarifications*” of the Guidelines since they are not legally binding. The decisions are therefore general and explanatory statements, not actual judgments. This has been considered to limit the practical enforcement powers of the Committee.⁷³

As seen from above, the main purpose with the creation of the OECD Guidelines was to facilitate trade and investment among member states. Human rights protection was not their initial goal.⁷⁴ However, the Guidelines were revised in 2000 to express the general human rights responsibility multinational corporations have to “[*r*]espect the human rights of those affected by their activities consistent with the host governments’ international obligations and commitments.”⁷⁵ Notably, the OECD also includes recommendations in relation to the ILO’s core labour rights as set out in the *1998 Declaration on Fundamental Principles and Rights at Work*. *Employment and industrial relations* are addressed in section IV and as the elimination of child labour is one of the core objects of the ILO, the issue was included in the section, indicating that corporations should contribute to *the effective abolition of child labour*. Corporations ought do this through their management practices, with creation of high quality and well-paid jobs and with contribution to economic growth, thus

<http://www.oecd.org/dataoecd/56/36/1922428.pdf>, last accessed May 20, 2011.

⁷² Guidelines, p. 33.

⁷³ Jill Murray. “Corporate Codes of Conduct and Labour Standards”. Working Paper. Cornell University ILR School. 3-5-1998.

⁷⁴ De Schutter. 2006. “The Challenge of Imposing Human Rights Norms on Corporate Actors” p. 3-6; see also OECD Guidelines. 2000. Preamble

⁷⁵ See OECD Guidelines. 2000. Parag.2 of the chapter on ‘General Policies’

addressing the root causes of poverty in general and child labour in particular.⁷⁶

3.2.1.2 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

The ILO has a rich tradition of pursuing consensus between business and labour. Shortly after the adoption of the OECD Guidelines in 1977, the ILO Governing Body issued the *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (MNE Declaration). It was revised in 2000, to take into account the 1998 *ILO Declaration of Fundamental Principles and Rights of Work*⁷⁷ and amended again in 2006. The MNE Declaration is the ILO key instrument for promoting labour standards and principles in the corporate world. The Preamble of the MNE Declaration notes “*multinational enterprises can make an important contribution to the enjoyment of basic human rights*”. Moreover, MNE Declaration was the first comprehensive collection of international guidelines on agreed principles on corporate social policies or standards that focused entirely on labour rights.⁷⁸ The MNE Declaration addresses the tripartite parties of the ILO structure, the ILO, governments of member states and representatives of employers’ and workers’ associations. It offers guiding principles to these actors, in the areas of employment, training, conditions of work and industrial relations, set forth in article 7 and contains general policies aimed to achieve respect for human right as well as sustainable development in article 8.

⁷⁶ Commentary on the OECD Guidelines for Multinational Enterprise. Commentary on Employment and Industrial Relations, paragr.22. 2008.

⁷⁷ Adopted by the International Labour Conference, Geneva, June 18, 1998, ILO Doc. 28197701, OB Vol. LXI, 1978, ser. A, no.1 (1977). More recently (2006), the Declaration was amended once again to update its references to other ILO instruments.

⁷⁸ UN Report of the Secretary-General. Development of guidelines on the role and social responsibilities of the private sector. Preparations for the special session of the General Assembly entitled “World Summit for Social Development and beyond: achieving social development for all in a globalizing world” 3-14 April 2000

The MNE Declaration, in contrast with most other CSR instruments on labour issues, does not set any minimum requirements or obliges specific actions. It is rather intended to “*encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise...*”⁷⁹ It is considered useful because it goes beyond respecting fundamental human rights to a broader responsibility, for example the promotion of good industrial relations. It can also be used to counteract those who try to limit the social responsibility that corporation have towards labour practices.⁸⁰ Moreover, the main value of the MNE Declaration is, although ILO instruments are intended to apply only to governments, that the underlying principles of these same instruments can apply to corporations as well.⁸¹

The Declaration provides for a special procedure for regular review on its interpretation and application. *The ILO Committee on Multinational Enterprises* oversees the implementation of the instrument, and when necessary due to disputes, the Governing Body interprets the terms of it. The Committee receives periodic reports from member states on the application of it. However, the Committee has no authority to sanction a breach nor is there a monitoring process in place, besides regarding interpretation of the Declaration.⁸²

In the area of *conditions of work and life*, under article 36 of MNE Declaration, a recommendation regarding child labour is set forth. Both multinational and domestic corporations are *encouraged*, in order to secure effective elimination of child labour, to respect the minimum age for admission to employment. Furthermore, corporations should take

⁷⁹ Supra note 78

⁸⁰ ILO. “The ILO MNEs Declaration: What's in it for Workers?” p.6. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_152797.pdf, last accessed May 18, 2011

⁸¹ Ibid, p. 4

⁸² Procedure for examination of disputes concerning the application of the MNE Declaration by means of interpretation of its provisions. Adopted by the Governing Body of the ILO at its 232nd Session in March 1986. Geneva.

immediate and effective measures, *within their competence*, to secure the prohibition and elimination of the worst forms of child labour.⁸³

3.2.1.3 The United Nations Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights

In 2003, the UN Sub-Commission on the Promotion and Protection of Human Rights developed a set of draft norms, *the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (the Norms)⁸⁴, with the aim of regulating human rights and environmental responsibilities with reference to business.⁸⁵ The Norms attempted to impose a binding obligation, equal to human rights duties states have, on corporations, namely to “...*Within their respective spheres of activity and influence*”. *Promote, secure the fulfillment of, respect, ensure respect of, and protect human rights recognized in international as well as national law....*”.⁸⁶ As such, the Norms went one step further than the voluntary initiatives that had dominated the area of describing in which way corporate responsibilities should be approached.⁸⁷ The main difference between human rights obligations of state and corporations, were that states would have “*primary*” obligations and corporation “*secondary*” ones⁸⁸, and that human rights obligations of corporations would only have effect within their *capacity and competence*.

⁸³ In accordance with Convention No. 138, Article 1; Convention No. 182, Article 1.

⁸⁴ Sub-Commission on the Promotion and Protection of Human Rights, 55th Session, Agenda Item 4, Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12/Rev.2 of 26 August 2003.

⁸⁵ Nolan, J., “*With Power Comes Responsibility: Human Rights and Corporate Accountability*”, p.581. 2005.

⁸⁶ UN Norms. 2003. Art. 1

⁸⁷ Blichiz, David. 2008. *The Ruggie Framework – An Adequate Rubic for Corporate Rights Obligations?* p. 201.

⁸⁸ Ruggie J.G, 2008. Special Representative to the Secretary-General on Business and Human Rights. *Protect, Respect and Remedy: A Framework for Business and Human Rights*, para. 51.

This approach of the Norms engendered a mixed reaction from different actors. Many NGOs endorsed the Norms.⁸⁹ However, both the business community and many member states were strongly against holding non-state actors directly accountable for human rights violations, expressing it to be inappropriate to place such obligations on corporations and it could result in more weakening responsibility of states to protect human rights.⁹⁰ Moreover, it would have required a rewriting of the international law criteria on human rights obligations. Therefore, the Commission on Human Rights rejected to adopt the Norms. On April 20, 2005, the Commission adopted a resolution no 2005/69 on “*Human Rights and Transnational Corporations and Other Businesses*,” which requested the UN Secretary-General to appoint a Special Representative on the issue, with the main task of clarifying what role and responsibility states, corporations and other social actors have in business and the human rights regime. The need to investigate the responsibilities of business for realization of human rights was considered to be highly important.

3.2.1.4 The Framework: Protect, Respect, Remedy

In 2005, in response to the resolution mentioned in previous chapter, Kofi Annan, UN Secretary-General at the time, appointed Professor John Ruggie of Harvard University to the position of the *special representative* for a three-year term. His task was to propose measures to strengthen human rights performance of the business sector and to form a consensus among all stakeholders on the role and responsibilities of both states and corporations with regard to business impacts on human rights. To achieve this goal, Professor Ruggie carried out a comprehensive research and consultations with representatives of governments, business and civil society worldwide.⁹¹ In 2008, he submitted the final report of his initial mandate to the UN

⁸⁹ Ruggie 2007. Special Representative to the Secretary-General on Business and Human Rights. *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts* p. 21.

⁹⁰ Corporate Social Responsibility in a Global Economy. Norwegian Ministry of Finance, p. 76.

⁹¹ Information retrieved from: http://www.humanrights-business.org/files/report_thats_right.pdf, last accessed May 13, 2011.

Human Rights Council⁹² where he proposed a policy framework for managing business and human rights challenges. The framework rests on three pillars: “*the state duty to protect against human rights abuses by third parties including business; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access by victims to effective remedy, both judicial and non-judicial.*”⁹³ The Council unanimously supported the framework and extended Professor Ruggie’s term to 2011 with the mandate to make practical recommendation and guidance on ways to make to framework operational for all parties.⁹⁴ The main normative part of Professor Ruggie’s framework is his claim that corporations have specific responsibility to *respect human rights*.⁹⁵ The core of the responsibility entails that corporations adequately “*do no harm*”⁹⁶ and that is the “*baseline expectation for all companies in all situations*”⁹⁷. This means that corporations are obliged to refrain from interfering with the enjoyment of fundamental human rights of others. Further, it is noted that “*because the responsibility to respect is a baseline expectation, a company cannot compensate for human rights harm by performing good deeds elsewhere*”.⁹⁸ Professor Ruggie also recognizes that there may exist additional responsibilities that corporations have in special circumstances: when corporations perform certain *public functions* or have committed themselves to *voluntary actions*.⁹⁹ He claims, however, that the responsibility of “*doing no harm*” can go beyond an inactive responsibility

⁹² In 2006, the Commission was replaced by the *UN Human Rights Council*.

⁹³ The Special Representative of the Secretary-General, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: *Protect, Respect and Remedy: a Framework for Business and Human Rights*, delivered to the Human Rights Council, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008)

⁹⁴ UN Human Rights Council Resolution 8/7 from June 2008. *Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*.

⁹⁵ Blichiz. *The Ruggie Framework – An Adequate Rubric for Corporate Human Rights Obligations?*, p. 204.

⁹⁶ *Supra* note 93.

⁹⁷ *Ibid*

⁹⁸ *Ibid*, para 17

⁹⁹ Ruggie. 2009. Special Representative to the Secretary-General on Business and Human Rights. *Business and Human Rights: Towards Operationalizing the “Protect, Respect and Remedy” framework*, para 48.

and corporation can be required to take positive measures, mainly though to ensure that no negative consequences result from corporate operations.¹⁰⁰ Moreover, Professor Ruggie expresses that “*the corporate responsibility to respect exists independently of States’ duties.*”¹⁰¹ He suggests that corporations ensure compliance with national laws and avoid human rights violations through *due diligence*: “*This concept describes the steps a company must take to become aware of, prevent and address adverse human rights impacts.*”¹⁰²

The scope of the due diligence can be emphasized in three sets of measures. First of all, the context of the country in which corporations operate must be viewed closely and the specific human rights challenges that may emerge there. Next, the human rights impact of their activities within these specific contexts must be evaluated. Finally, their contribution to possible abuse through relationships with other actors, such as business partners, suppliers, state agencies, and other non-state actors, must be considered.¹⁰³ It is important to note here, when focusing on due diligence, corporations “*are expected to obey the law, even if it is not enforced and to respect the principles of relevant international instruments where national law is absent*”¹⁰⁴ Where national law conflicts with the relevant principles of international law or are not enforced properly, corporations should make efforts to uphold internationally recognized human rights. By failing to do so, corporation face the consequence of being is exposed to court of public opinion and occasionally to charges in courts of law.¹⁰⁵ Professor Ruggie stresses also that “*companies need to adopt a human rights policy*”¹⁰⁶ and suggests, “*the corporate responsibility to respect human rights includes*

¹⁰⁰ Supra note 93, para 24. For example, producing a workplace anti-discrimination policy might require the company to adopt specific recruitment and training programs.

¹⁰¹ Supra note 93, para 55.

¹⁰² Supra note 93, para. 56.

¹⁰³ Supra note 93, para 57.

¹⁰⁴ International Organisation of Employers (IOE) (ed.), *Business and Human Rights: The Role of Business in Weak Governance Zones*, IOE, 2006, 4 see: http://www.ioe-emp.org/fileadmin/user_upload/documents_pdf/papers/guides/english/The_Role_of_Business_in_Weak_Governance_Zones.pdf

¹⁰⁵ Klaus M. Leisinger. *On corporate responsibility for human rights*, p. 183.

¹⁰⁶ Supra note 93, para 60

avoiding complicity.”¹⁰⁷ He also recommends that companies look to the UN Declaration of Human Rights, the Covenants on Civil and Political and Social, Economic and Cultural Rights and the ILO’s core conventions for basic due diligence guidance.

The Special Representative issued his final report to the Human Rights Council in March 2011, with Guiding Principles for the implementation of the Framework, to be considered by the Council in June 2011.

3.2.2 Voluntary initiatives

Besides international efforts to develop soft laws on CSR, other voluntary initiatives and self-regulations are also being produced at different levels. These initiatives are not legally binding; nevertheless, as Professor John Ruggie expressed, “*they may have legal consequences.*”¹⁰⁸

3.2.2.1 The United Nations Global Compact

In 2000, the UN launched the Global Compact initiative (the Compact). Its main purpose is to increase the participation of the global business community in sustainable and social development. The Compact is a voluntary framework and consists of ten principles (initially nine) in the areas of human rights, labour rights, environmental responsibility and anti-corruption.¹⁰⁹ These ten principles are derived from diverse universally recognized instruments.¹¹⁰

The Compact is conducted through the active involvement of corporations, in cooperation with the UN, governments and representatives of organized

¹⁰⁷ Supra note 93 para 73

¹⁰⁸ John Ruggie. 2007. “State Responsibility to Regulate and Adjudicate Corporate Activities under the United Nations Core Human Rights Treaties.” Interim Report. *Harvard University and John F. Kennedy School of Government pub.* p. 23.

¹⁰⁹ Information retrieved from: www.unglobalcompact.org, last accessed April 28, 2011.

¹¹⁰ These instruments are: the UDHR, ILO’s Declaration on Fundamental Principles and Rights at work (1998), the Rio Declaration on Environment and Development (1992), and the UN Convention Against Corruption (2003).

labour. However, since the Compact is of voluntary nature, corporations commit morally to support and enact the ten principles, to their best ability and report annually on their implementation of those principles.¹¹¹ There is no specific monitoring process for measuring compliance to the Compact.

The Compact's labour principles, no. 3-6, are derived from the ILO Declaration on Fundamental Principles and Rights at Work (1998). Principle 5 provides that businesses should uphold *the effective abolition of child labour*. In explanatory material, prepared by the Global Compact secretariat, a comprehensive list of actions is set forth regarding measures that both corporations and societies of operations should take in the workplace.¹¹² In elaborating on Principle 5 it is stressed that children are entitled to same human rights as adults, rights including protection from economic exploitation and work that may be harmful to their well-being and that may compromise their development or their access to education. Furthermore, *strategy for corporations* is provided, emphasizing that before taking any action against the problem of child labour, an understanding must be developed of reasons and consequences of issue. It is stressed that a corporation has to identify and determine whether or not child labour is a problem within its operations. This is considered especially important if the corporation has transnational *supply chains*. If child labour is detected, swift actions are required and the child worker should be removed from the workplace and provided with practical solutions, such as enrollment to school and possible alternatives to increase the income for the family of the child. Furthermore, it is important that awareness exist regarding that without any support from any given corporation, child worker may be driven into worse circumstances of labour. Moreover in some instances where a child is the perhaps the sole provider of income, immediate removal

¹¹¹ Supra note 109.

¹¹² Information retrieved from:

<http://unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>, last accessed April 29, 2011.

from work could create more serious problems for the child than before.¹¹³

3.2.2.2 Corporate Self-Regulation

Corporations are founded and organized with the purpose to be profitable and fulfill the financial expectations of their shareholders. The basic objective of businesses is to develop, produce and supply products and services to their customers.¹¹⁴ However, corporations can also make important contributions to the society they operate in, as they are a major source of investment, development of products and job creation.¹¹⁵

Private initiatives to promote corporate social responsibility are diverse in scope, content and aspiration, depending on the industry in which the corporation is involved; the issues addressed as well as their implementation mechanisms.¹¹⁶ Some private CSR initiatives address a wide range of issues, including human rights, labour rights, community development, consumer protection, bribery, health and safety issues and environmental standards, to name a few.¹¹⁷ Other initiatives focus on one or a few of these issues, usually in more detailed way; and either address issues specific to corporations own operations or challenges facing a specific sector.¹¹⁸ The goal of some initiatives is to increase awareness of positive effect CSR can have in general. Others initiatives promote a specific code of conduct or provide tools such as reporting guidelines or services, such as certification systems. CSR initiatives can be created by corporations themselves; by

¹¹³ Information retrieved from:

<http://unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle5.html>, last accessed April 29, 2011.

¹¹⁴ IOE. The Role of Business in Society. P.4. 2004. Available at: http://www.ioe-emp.org/fileadmin/user_upload/documents_pdf/memberpublications/english/csr_sweden01_roleofbusiness.pdf, last accessed May 18, 2011.

¹¹⁵ Smith, N. C., 2003, *Corporate Social Responsibility: Whether or How?*, California Management Review, vol. 45, No. 4, p 52-76.

¹¹⁶ UN Report of the Secretary-General. Development of guidelines on the role and social responsibilities of the private sector. Preparations for the special session of the General Assembly entitled "World Summit for Social Development and beyond: achieving social development for all in a globalizing world" 3-14 April 2000

¹¹⁷ OECD. *Annual Report on the OECD Guidelines for multinational enterprises. Employment and industrial relations.* 2008, 238.

¹¹⁸ Supra note 114.

multi-stakeholders within a certain industry or it can involve actors from many sectors.¹¹⁹ A *code of conduct* can generally be defined as: “a written policy, or statement of principles intended to serve as the basis for a commitment to particular enterprise conduct”.¹²⁰ As codes of conduct are mostly defined and developed by corporations themselves, they normally do not carry any legal or regulatory obligation, apart from possible obligation corporation make to their owners and to the public by making such commitments.¹²¹ Therefore, it is highly important that these codes contain a clear method of implementation and a means to ensure effectiveness and compliance to it. *Social labeling systems* require, in addition to compliance to a code, that corporations attach a physical label to their products with the intent to certify that they are made and processed under decent working conditions.¹²²

It is also important to stress that CSR should not be seen as a *equivalent* to the crucial role governments have in implementing both national and international law. Again, this is mainly due to the fact that CSR is of voluntary nature and its concept involves responsibilities that are unilaterally identified by corporations themselves. This issue will be discussed in detail later in this writing.

¹¹⁹ OECD. *Annual Report on the OECD Guidelines for multinational enterprises. Employment and industrial relations.* 2008, 237.

¹²⁰ Michael Urminsky. (2001), *Self-regulation in the workplace: codes of conduct, social labeling and socially responsible investment* (Geneva: ILO), p. 13.

¹²¹ This applies only to publicly-held corporations and to corporations actually subject to consumer pressure.

¹²² Robert Liubicic. *Corporate Codes of Conduct and Product Labeling Schemes: The Limits and Possibilities of Promoting International Labor Rights through Private Initiatives*, Law and Policy in International Business, Vol. 30, 1998-1999, p.113.

4 Child Labour in Côte d'Ivoire

4.1 Côte d'Ivoire within the global context

In order to gain a better understanding on prevalence of child labour in cocoa, it is important to briefly overview the country's political and economic background. Côte d'Ivoire is a country in the sub-Saharan Africa. It became a French colony in 1893 but acquired its independence in 1960.¹²³ From 1960 to 1993, the country was strictly ruled by Félix Houphouët-Boigny. During this period the country maintained close political and economic relationship with its West African neighboring countries, as well as keeping close relations to France. However, since the end of Houphouët-Boigny's term, Côte d'Ivoire has faced two coups d'état (1999 and 2001) and a civil war.¹²⁴ In recent years, the political situation in the country has been very unstable.¹²⁵ However, a long presidential succession battle has apparently just ended.¹²⁶

Since the colonial period, the Ivorian economy has been highly dependant on the production and export of tropical products, such as cocoa, coffee and cotton. Agriculture is a significant source of employment for the country and around 61% of the Ivorian people are engaged in some form of agricultural activity¹²⁷, many of them being children. Economies that rely on commodity exports are vulnerable to the highs and lows of international

¹²³ Information retrieved at: <http://www.africa.com/cote-divoire>, last accessed April 15, 2011.

¹²⁴ Ibid

¹²⁵ Payson Center at Tulane University Final Report. 2011. "Oversight of Public and Private Initiatives to Eliminate Worst Forms of Child Labour in the Cocoa Sector in Cote d'Ivoire and Ghana." p.18.

¹²⁶ Information retrieved at: <http://www.bbc.co.uk/news/world-africa-13482188>, last accessed May 21, 2011.

¹²⁷ United States Department of State, *2010 Country Reports on Human Rights Practices - Cote d'Ivoire*, 8 April 2011, available at: <http://www.unhcr.org/refworld/docid/4da56dd6c.html>, accessed 15 April 2011, see also supra note 123 and <http://ivorycoastconsulate-losangeles.org/economy/>, last accessed 15 April 2011.

market prices¹²⁸ and the history of the country reflects on this well. During the 1960s and 1970s, Côte d'Ivoire went through substantial economic growth, mainly because of developments in the cocoa industry. To be more specific, a system was established where product prices were determined by the state itself. Furthermore, cocoa production of smallholders was promoted in various ways and expanded rapidly by the government.¹²⁹ Land was made available to those who were willing to cultivate it for cocoa. An “*open door*” policy for immigrants was also set forth, under which they were to enjoy similar rights to citizens, such as right to vote and access to land¹³⁰, providing for more laborers in the cocoa fields. The economic success of Côte d'Ivoire was therefore grounded on a strategy of depletion and a development of a regime for stable prosperity was ignored.¹³¹ In the 1977 the cocoa market peaked and the prices eventually plummeted, leaving Côte d'Ivoire in a difficult financial situation due to its high scale investments in industrial production as well as costly development projects taken in the years before. Public expenses climbed and when the government could no longer finance even its own operations, it began borrowing from abroad.¹³² By 1981, Côte d'Ivoire's external debt was 10 times what it had been in 1978 and debt service costs had increased even more rapidly.¹³³ Demands for economic liberalization, led by the *International Monetary Fund* and the *World Bank*, arose and a difficult period of political and social disorder began in the country.¹³⁴ In the middle of the 1990s, the state's control over the cocoa was diminished by abolishing former government market boards that had been set up to

¹²⁸ Supra note 123

¹²⁹ Boàs, Morten and Anne Huser. “*Child Labour and Cocoa Production in West Africa. The case of Cote d Ivoire and Ghana.*” Fafo report 522. Research Program on Trafficking and Child Labour. 2006, p. 26.

¹³⁰ Bay, Chris and Sarah Grossman-Greene. *A Brief History of Cocoa in Ghana and CI*. Tulane University, p. 15. 2009.

¹³¹ Bruce Broomhall. “*A Guilty Pleasure: The Global Chocolate Economy and the Conflict in Côte d'Ivoire*”. Available at:

<http://www.ligi.ubc.ca/?p2=/modules/liu/researches/research.jsp&id=73>, last accessed April 30, 2011.

¹³² Zeljko Bogetic et al., “Cote d'Ivoire: From Success to Failure A Story of Growth, Specialization, and the Terms of Trade,” The World Bank (Nov 2007): 1.

¹³³ Brian Klass, “From Miracle to Nightmare: An Institutional Analysis of Development Failures in Côte d'Ivoire,” *Africa Today*, Vol. 55, No. 1 (Fall 2008): 113.

¹³⁴ Supra note 130 and 132.

regulate the cocoa production and guaranteed cocoa farmers a stable product price in the world market. This action was intended to help and give farmers more control over trading of their product and to encourage the creation of producer organizations. In reality it left them totally dependent on the mercy of world market prices.¹³⁵ At the same time the cocoa futures market where most of the trading was, and still is, carried out on speculation.¹³⁶ This has had the effect that fluctuation in prices are more rapid and more larger, which has been difficult for the small farmers to deal with. One of the few options they have had was to cut their costs down and the employment of children was considered one of the harsh possibilities. Yet, another option was to increase the workload on children in the household.¹³⁷ So one can perhaps say, that the current practice of cocoa production in Côte d'Ivoire is somewhat of an outcome of a historical process.

Today, the Ivoirian economy is principally market-based and still relies greatly on the agriculture sector for a substantial part of GDP and of exports, as well as on forestry, and fisheries.¹³⁸ Currently, the country is the worlds leading cocoa producer and exporter.¹³⁹

¹³⁵Supra note 130, p. 21-22.

¹³⁶The Cocoa Industry in West Africa. A History of Exploitation. Anti-Slavery International 2004. Available at: http://www.antislavery.org/includes/documents/cm_docs/2008/c/cocoa_report_2004.pdf, last accessed April 29, 2011.

¹³⁷ Ibid

¹³⁸ Background Note: Cote d'Ivoire, United States Department of State, July 2008, <http://www.state.gov/r/pa/ei/bgn/2846.htm>, last accessed April 14, 2011.

¹³⁹ The country is estimated to produce 38% of the world's cocoa, according to: <http://www.cocoainitiative.org/en/resources/cocoa-producing-countries>, last accessed April 28, 2011.

4.2 Prevalence and nature of child labour in Côte d'Ivoire

4.2.1 General regarding child labour in West Africa and Côte d'Ivoire

Researches show clearly there remains a high incidence of child labour in sub-Saharan Africa and majority of these children are unpaid family workers in rural households.¹⁴⁰ The reasons for the prevalence of child labour in the region are complex and deeply embedded into the society. Factors that are considered to contribute to this situations are poverty, lack of regulations and enforcement regarding the issue, ingrained attitudes and perceptions regarding the role of children in rural areas, rapid population growth, and failure in educational systems.¹⁴¹ All these elements combined make child labour especially difficult one to tackle. It must be noted that not all activities that children undertake in agriculture would qualify as work to be eliminated under the ILO Convention No. 138 or Convention No. 182. Tasks appropriate to the age of a child and do not present hazards nor interfere with a child's education can be considered to be a normal part of growing up in this environment. However, the prevalence of hazardous child labour in sub-Saharan Africa is alarmingly high in agriculture.¹⁴²

While accurate information on the magnitude of child labour is limited, clear indications exist that child labour in Côte d'Ivoire is both widespread and common.¹⁴³ In a study from 2006 it was estimated that over 40% of children ages 5 to 14 years worked in Côte d'Ivoire.¹⁴⁴ The majority of these children are found in informal sectors, engaged in many activities in

¹⁴⁰ *Accelerating action against child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2010, p xiv.

¹⁴¹ Assefa Admassie. 2002. Explaining the High Incidence of Child Labour in Sub-Saharan Africa, p. 251.

¹⁴² Supra note 140

¹⁴³ Bay, Chris and Sarah Grossman-Greene. A Brief History of Cocoa in Ghana and CI. Tulane University, p. 15. 2009.

¹⁴⁴ United States Department of Labor, *2008 Findings on the Worst Forms of Child Labor - Côte d'Ivoire*, 10 September 2009, available at: <http://www.unhcr.org/refworld/docid/4aba3ee5c.html>, accessed 15 April 2011

agricultural, fishery or in domestic work. Children also work in small businesses or workshops, prostitution and are often recruited as child soldiers in situations of armed conflict. The involvement of children in work differs from one region to another and between sectors. Different social practices based on complex historical tradition may even provide for important differences between various groups of children working within the same area and in the same sector.¹⁴⁵ Côte d'Ivoire is also a source and destination country for trafficked children to work in these sectors, mainly from its neighboring countries.¹⁴⁶

4.2.2 Child involvement in cocoa production in Côte d'Ivoire

It has been established here that children have been and continue to be a part of the workforce in the cocoa sector in Côte d'Ivoire.¹⁴⁷ As in other agricultural sectors in West Africa, family labour is the most common type of labour in the cocoa production. Therefore, most children work alongside their families on farms owned by relatives or as a part of migrant worker family. A small percentage of the children working on cocoa farms have no family relations to the farmers. Most of them do not attend school, either because it is unavailable or unaffordable in most cases. Boys are more likely to be involved than girls.¹⁴⁸ This is mainly because of cultural traditions, i.e. girls have certain obligations in rural households, such as caring for younger children, preparing food and cleaning.¹⁴⁹

Cocoa production is very labour intensive and far too many children are to be found working under unhealthy and dangerous circumstances in cocoa

¹⁴⁵ Boås, Morten and Anne Huser. 2006. "Child Labour and Cocoa Production in West Africa". Fafo report 522. p. 11.

¹⁴⁶ Hugh D. Hindman. 2009. "The world of child labor: an historical and regional survey". p. 207.

¹⁴⁷ Tulane's University reports from 2007 and 2008/09 representative household surveys have confirmed prevalence of child labour in the cocoa sector.

¹⁴⁸ IITA. "Child Labour in the Cocoa Sector of West Africa: A Synthesis of Findings in Cameroon, Cote d'Ivoire, Ghana and Nigeria", Accra: IITA. 2002.

¹⁴⁹ Supra note 145, p. 14

farms. This work is most often inappropriate for their age as well as for their physical and mental capabilities. A recent survey conducted by the Payson Center at Tulane University, published in 2009, revealed that 24.1 percent of children, of ages between 5 and 17 had worked on a cocoa farm in the region, in the previous 12 months.¹⁵⁰ Furthermore, numerous of these children were subject to hazardous conditions, including operating tools (93.9 percent) and carrying heavy loads (79.8 percent). Dangerous activities such as cutting trees, burning down fields and frequent exposure to pesticides are also common practice. Of the children working on cocoa farms, 50.6 percent reported that they had been injured while working in agriculture.¹⁵¹ Other reports support this, demonstrating that most children, regardless of age, are engaged in some form of hazardous work in the cocoa farms.¹⁵²

4.3 Nation legal framework on child labour and enforcement in Côte d'Ivoire

4.3.1 Ratified international instruments regarding child labour

In 1960 the Ivoirian government ratified the ILO Convention 29, setting forth provisions for forced or compulsory labour. It has also ratified main conventions on children's rights such as the CRC in 1990 which should effectively make children rights holders and in 2003, the ILO Convention 138 on minimum age and most critical, Convention 182 on the worst forms of child labour.

¹⁵⁰ Payson Center for International Development and Technology Transfer. Tulane University. Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labour in the Cocoa Sector in Cote d'ivoire and Ghana. Third annual report. 2009.

¹⁵¹ United States Department of Labor, *2008 Findings on the Worst Forms of Child Labor - Côte d'Ivoire*, 10 September 2009, available at:

<http://www.unhcr.org/refworld/docid/4aba3ee5c.html>, accessed 15 April 2011

¹⁵² Rooting Out from Cocoa Farms, Report No. 2, p. 12. ILO.

4.3.2 National legislation and regulation regarding child labour

Child labour is, both directly and indirectly, addressed in the Ivoirian Constitution of 2000.¹⁵³ Article 3 prohibits slavery, forced labour, inhuman and cruel, degrading and humiliating treatment, physical or moral torture, physical violence and mutilation and all forms of debasement of the human being. This article applies to all individuals, including children. Article 6 of the Constitution ensures especially the protection of children and article 8 provides for protection of youth against moral exploitation and abandonment.¹⁵⁴

Article 23.8 of the Labour Code¹⁵⁵ sets the minimum age for employment at *14 years*. There is no explicit provision limiting the engagement to *light work* only but the legislation requires parents or legal guardians to sign employment contracts on behalf of children under 16 years and to serve as witnesses to contracts signed by children between 16 and 18 years.¹⁵⁶ Moreover, it is required that children under 18 get at least 12 hours rest between working shifts and children are prohibited from night work.¹⁵⁷ Decree No. 96-204 also prohibits night work by children ages 14 to 18 years, unless granted an exception by the Labor Inspectorate.¹⁵⁸ The Labor Inspectorate can require children to take a medical exam to ensure that the work for which they are hired to perform does not exceed their physical

¹⁵³ Constitution de la République de Côte d'Ivoire du 23 juillet 2000. Available on: http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=CIV&p_classification=01.01&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY, last accessed April 28, 2011.

¹⁵⁴ Supra note 150.

¹⁵⁵ (french) Loi no 95-15 du 12 janvier 1995 portant Code du travail. Available at: http://www.ilo.org/dyn/natlex/natlex_browse.country?p_lang=en&p_country=CIV, last accessed April 28, 2011.

¹⁵⁶ UN Committee on the Rights of the Child, Initial Reports of States Parties Due in 1993, Addendum, CRC/C/8/Add.41, prepared by Government of Côte d'Ivoire, pursuant to Article 44 of the Convention on the Rights of the Child, 2000, para. 85.

¹⁵⁷ Government of Cote d'Ivoire, Code du travail, 1995, no. 95/15, Articles 22.2, 22.3 and 23.8; available from <http://natlex.ilo.org/txt/F95CIV01.htm>, last accessed April 28, 2011.

¹⁵⁸ Decree No. 96-204, Article 4. United States Department of Labor, *2008 Findings on the Worst Forms of Child Labor - Côte d'Ivoire*, 10 September 2009, citing U.S. Embassy-Abidjan, report, October 1, 2001. Employers found in violation of the night work prohibition are punishable with imprisonment from 10 days to 2 months and/or a fine.

capacity.¹⁵⁹

In 2004, the Ivoirian government produced a list of hazardous tasks, as obligated by C138 and C182¹⁶⁰ in the cocoa sector,¹⁶¹ and a year later, adopted a decree defining hazardous work that is forbidden for children below 18 years.¹⁶² The decree outlines prohibited work in the categories of agriculture, forestry, mining, commerce and urban domestic sector, artisanship, and transport.¹⁶³ Regarding agriculture especially, the following dangerous types of work to be performed by children is banned: *cutting of trees; burning of fields; application of chemicals; application of chemical fertilizer; chemical treatment of fields/plants and carrying of heavy loads.* This decree is quite narrow in scope, with only six distinct activities listed and therefore partially covering ILO Recommendation 190. Until 2010, there were no laws specifically prohibiting the worst forms of child labor in Côte d'Ivoire. However, the Penal Code provided for that persons convicted of procuring a prostitute under the age of 21 could be imprisoned for 2 to 10 years and fined heavily.¹⁶⁴ In September 2010, the government enacted comprehensive law concerning the worst forms of child labour.¹⁶⁵ The law strengthens the regulatory framework against child labour in its worst forms.

¹⁵⁹ If the child cannot perform the required tasks, the employer must move him/her to a suitable job, and if that is not possible, the contract must be cancelled. See Code du travail, 1995, Article 23.9.

¹⁶⁰ Because the situations of individual countries differ, Convention 182 intentionally does not define the OSH hazards that constitute hazardous work. Therefore, governments that have ratified the Convention are required to determine which hazards exist in their own country with the input from local industry, labour and other interest groups.

¹⁶¹ Guy M'Bengue and Gérard Amangoua, Briefing by Delegation from Côte d'Ivoire, Meeting with USDOL officials, October 13, 2004. See also ILO-IPEC, West Africa Cocoa/Commercial Agriculture Programme to Combat Hazardous and Exploitative Child Labour (WACAP) - December 2004 status report, status report, Geneva, December 8, 2004, Annex 2.

¹⁶² Decree No. 67-265

¹⁶³ (french) Government of Côte d'Ivoire, Ministre de la Fonction Publique et de l'Emploi, Arrêté n° 2250 portant détermination de la liste des travaux dangereux interdits aux enfants de moins de dix huit (18) ans.

¹⁶⁴ (french) LOI no 81-640 du 31 juillet 1981 instituant le Code penal, article 335 and 336, available at: <http://www.loidici.com/codepenalcentral/codepenalinfractiondroitdesgenssalubrite.php>, last accessed May 1, 2011.

¹⁶⁵ (french) LOI No. 2010-272 du Septembre 2010 Portant Interdiction de la Traite et des Pires Formes de Travail des Enfants. Available on: http://www.ilo.org/dyn/natlex/natlex_browse.country?p_lang=en&p_country=CIV, last accessed April 29, 2011.

The Act prohibits trafficking of children of any nationality, race, or country of origin, outlaws certain practices including child pornography, and provides a stronger legal framework against hazardous work.¹⁶⁶ Lastly, the labour code also prohibits forced or compulsory labor.¹⁶⁷ The penalty for imposing labour on an individual is 1-5 years imprisonment and a fine.

By analyzing the Ivoirian legislation, there is no apparent contradiction with international labour standards on child labour. The law should apply to all sectors and industries in the country. However the gap between the formal legislation and the reality has proven to be wide. The main problem seems to be that the structure and institutions for implementing and monitoring child labour in the country are mainly inadequate due to lack of government resources. Child labour laws provisions are mainly enforced effectively within the civil service and in large multinational companies.¹⁶⁸ Since most of the child labour takes place in the informal sector and within the family the problem still remains unsolved.

4.3.3 Public initiatives in combating child labour in cocoa

In the last decade, the Ivoirian government has introduced various initiatives with the aim to protect children from exploitative work. Overall, legislative reforms have been done, increased development of programs in rural areas of the country and child labour concerns have been integrated into official policy making. In general, Côte d'Ivoire has a quite progressive child labour law, as mentioned in the previous chapter, but unfortunately the enforcement is still inadequate. Regarding other initiatives, the problem is same as with national legislation. Limited resources and lack governmental capacity has made many of these efforts slow to start and difficult to fully

¹⁶⁶ Payson Center at Tulane University report 2011, p. 21.

¹⁶⁷ (french) LOI no 95-15 du 12 janvier 1995 portant, "Dispositions Générales", Article 3.

¹⁶⁸ Human Rights Report of the U.S. Department of State in 2009. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135949.htm>, last accessed May 1, 2011.

implement.

First of all, as mentioned before, Côte d'Ivoire has ratified the two ILO Conventions, No 182 and 138 in 2003. Moreover, the government signed a *Memorandum* with the ILO-IPEC, agreeing to take part in the IPEC program for strengthening the legal framework in the country in accordance with Convention 182.¹⁶⁹ In the same year the Government signed the *African Charter on the Rights and Welfare of the Child*.¹⁷⁰ In 2004, the Government created the *Inter-Ministerial Committee to Combat Child Labour*, which included the government, NGOs and unions representing cocoa farmers. In 2005, the Committee adopted the *National Action Plan to Combat Child Labour*, an approach that consisted of: research, regulation, capacity reinforcement, prevention and reinsertion/repatriation in regards of child labour, found in multiple sectors of the country's economy. Same year, the Prime Minister of the country established a *Cocoa Task Force*, which worked with the international cocoa industry to develop a plan of action to enable Côte d'Ivoire to have a national child labour monitoring system in 50% of the country by 2008.¹⁷¹ Also in 2005, Côte d'Ivoire signed the *Multilateral Cooperation Agreement to Combat Child Trafficking in West Africa*¹⁷² with eight other West African states¹⁷³ agreeing to cooperate to combat the trafficking of children in the region and setting a framework for children's rights and child labour prevention.¹⁷⁴ Furthermore, in 2009 the government created an *Independent Office for the Fight against Child Labor* and launched a new program addressing child labor in cocoa-growing areas. The program objectives were to reduce poverty and thereby child

¹⁶⁹ Payson Center at Tulane University Report 2011.

¹⁷⁰ Available at: http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf, last accessed May 1, 2011.

¹⁷¹ United States Department of Labor, *2005 Findings on the Worst Forms of Child Labor - Côte d'Ivoire*, 29 August 2006, available at: <http://www.unhcr.org/refworld/docid/48d748e625.html>, accessed 20 May 2011

¹⁷² See the text of the agreement at: http://www.cacao.gouv.ci/commun/documents/Accord_MultilateralVA_ministres_27072005.pdf

¹⁷³ Partners to the agreement are Benin, Burkina Faso, Côte d'Ivoire, Guinea, Liberia, Mali, Niger, Nigeria and Togo

¹⁷⁴ Payson Center at Tulane University report 2011, 20-21.

labor by ensuring that each village had a primary school, health clinic, and income-generating activities to supplement cocoa income. It also was intended to raise general awareness among parents of the dangers associated with child labor in cocoa. In 2009 the government also began to implement this program in 10 villages, and selected 21 more villages for participation.¹⁷⁵ Currently, however, the political situation in Côte d'Ivoire makes implementation of any child labour elimination project almost impossible.¹⁷⁶

4.4 The role of the ILO in combating child labour in cocoa

The ILO plays a crucial role in the work to eliminate child labour worldwide. In 1992 the *International Programme on Elimination of Child Labour (IPEC)* was established. IPEC is described as: “a part of a broad-based effort throughout the ILO that combats child labour through utilization of the expertise of a wide range of departments dealing with policy integration, employment, sectoral activities, social protection, skills, enterprise development, communications and supporting employers and workers activities”.¹⁷⁷ The policy framework for IPEC is based on the *Declaration on Fundamental Principles and Rights at Work*, adopted in 1998, along with Conventions No. 138 and 182.

In the agricultural sector, the IPEC has supported the foundation of an *International Partnership for Cooperation on Child Labour in Agriculture*, it involves numerous agricultural organizations and aims to develop a cooperation approach to combat child labour in the sector. It works towards *progressive* abolition of child labour by support national governments to address the problem and by promoting a worldwide movement to fight it.

¹⁷⁵ Human Rights Report of the U.S. Department of State in 2009. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135949.htm>, last accessed May 1, 2011.

¹⁷⁶ Ibid

¹⁷⁷ *International Programme on the Elimination of Child Labour (IPEC) - What it is and what it does*, p. 2. (information brochure)

IPEC also provides support to its partners for the development and implementation of measures that aim to prevent child labour, improving their working conditions and assist to withdraw children out of hazardous and exploitive work.¹⁷⁸

Since 2001, IPEC has been prominent in international efforts to eliminate child labour in cocoa production.¹⁷⁹ The urgent need for action to address the problem at all levels gave rise to the ILO-IPEC technical assistance programme to combat hazardous and exploitive child labour in cocoa, *the sub-regional Programme to Combat Hazardous and Exploitive Child Labour in Cocoa/Commercial Agriculture in West Africa (WACAP)*. From 2002 to 2006, WACAP was carried out in five African countries, Côte d'Ivoire included, with the main purpose *to build capacities of partners, enhancing the knowledge base by clarifying the incidence and nature of child labour in the cocoa industry as well as raising awareness and social mobilization, improving social activities to help children and implement local child labour monitoring*.¹⁸⁰ Implementing the programme in Côte d'Ivoire proved to be difficult task. The political situation in the country had a complicated affect, leading to a delayed start-up time and numerous challenges along the way.¹⁸¹ According to WACAP project staff in Côte d'Ivoire, the national authorities considered the issue to be especially important since the Ivoirian economy depends heavily on cocoa production. A special task force unit was even established within the Prime Minster office. Before WACAP, there had been no special child labour unit in the Ministry of Labour. The main accomplishments of the programme were considered to be; the technical assistance, in the form of recommendations, provided to the government and other authorities to combat child labour and a system put in place by the WACAP to prepare children, through special education and guidance, before beginning formal education.¹⁸² Overall, through WACAP, IPEC has been able to give support the Ivoirian

¹⁷⁸ ILO Rooting Out from Cocoa Farms, Report No.1, p. 10, see also supra note 177

¹⁷⁹ Ibid

¹⁸⁰ ILO. Rooting Out from Cocoa Farms, Report No.3, p. 14-15.

¹⁸¹ Ibid p. 19.

¹⁸² Ibid

government and other actors to: “*assess, monitor, report on and demonstrate viable solutions for preventing and remedying the worst forms of child labour in cocoa production*”.¹⁸³

In addition to the technical assistance to national governments, the IPEC has also worked with the private actors, by promoting integration of CSR policies and programmes on child labour in cocoa and by doing so, addressed the challenge of working with the under-regulated informal economy.¹⁸⁴

4.5 Multi-stakeholders initiatives in combating child labour in cocoa

Media reports alleging that children were working under abusive and hazardous conditions, as well as trafficked for labour purposes, on cocoa farms in West Africa began to surface in early 2000. These public claims echoed throughout the global cocoa industry, urging cocoa corporations to act swiftly and evaluate their scope of influence and responsibility for human rights conditions in the cocoa supply chains.¹⁸⁵ Even before these reports became public, or since the mid 1990s, trafficking and forced labour of children in the agricultural sector of West Africa had been a matter of attention for many development organizations, both regional and international.¹⁸⁶ Despite this fact, no cocoa corporation had identified or taken effective measures to address the labour issues in their cocoa supply chain previously. The cocoa industries initial reaction to the allegations was

¹⁸³ supra note 178 p. 14.

¹⁸⁴ IPEC, 2005, information retrieved from : http://www.ilo.org/public/english/standards/ipecc/themes/cocoa/download/2005_02_cl_cocoa.pdf, last accessed May 3, 2011.

¹⁸⁵ Elliot J.Schrage and Anthony P. Ewing. 2005. “The Cocoa Industry and Child Labour.” jCC 18. p. 104.

¹⁸⁶ Sheth, A 2004, “Targeting The Intolerable” In the Chocolate Trade: Child Farm Labor and The Harkin-Engle Protocol, A Working Paper Series, No. 2, Save The Children Canada, Toronto, Canada. Elliot J.Schrage and Anthony P. Ewing, “The Cocoa Industry and Child Labour “.

denying any knowledge of the problem of child labour in cocoa.¹⁸⁷ However, when confronted, none of corporations were able to ensure that child labour was not being used in their cocoa supply chain, since most the corporation's cocoa had its origin from Côte d'Ivoire.¹⁸⁸

4.5.1 The Harkin-Engel Protocol

A multi-stakeholder partnership between the major cocoa and chocolate corporations and the US and Ivorian governments was formed to respond to public demands in 2001. The first step was made by signing an international agreement, committing stakeholders in the cocoa industry to collaborate on eliminating the worst forms of child labour from their supply chains, the *Protocol for the Growing and Processing of Cocoa Beans and their Derivative Products In a Manner that Complies with ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, widely known as the *Harkin-Engel Protocol*.¹⁸⁹

The Protocol is of voluntary nature and consisted of six time-bound steps, four of which were primarily concerned with public statements the industry vowed to undertake to end harmful child labour on West African cocoa farms. The two primary mechanisms for achieving this and expressed in article 5 and 6 of the Protocol, were the creation of a joint foundation to “*oversee and sustain efforts to eliminate the worst forms of child labour and force labour in the growing and processing of cocoa beans and their derivative products.*” The other key mechanism was the development and implementation of “*credible, mutually acceptable, voluntary, industry-wide*

¹⁸⁷ Statements from John Newman, Director of the British Biscuit, Cake, Confectionery, and Chocolate Alliance [BCCCA], June 2001 and Robert M. Reese, Senior Vice President of Hershey Foods, June 2001. See supra note 185.

¹⁸⁸ Supra note 185

¹⁸⁹ Named after two U.S. politicians who witnessed the signatures, senator Harkin and representative Engel. They had initiated an investigation into labour conditions in the West African cocoa sector after reports of child labour surfaced in the late 1990s and early 2000. The text is available:

<http://www.cocoainitiative.org/images/stories/pdf/harkin%20engel%20protocol.pdf>

standards of public certification” by industry in partnership with other stakeholders. It should be noted that the Protocol recognized that “*the ILO’s unique expertise and welcomes its involvement in addressing this serious problem.*” It further elaborates: “*The ILO must have a ‘seat at the table’ and an active role in assessing, monitoring, reporting on, and remedying the worst forms of child labour in the growing and processing of cocoa beans and their derivative products.*” By adopting the Protocol global cocoa corporations acknowledged, to some degree, their responsibilities for labour conditions in the cocoa supply chains.¹⁹⁰ However, the Protocol has had its faults. Due to the fact that it is voluntary, no mechanisms for enforcement are in place. Furthermore, concerns existed about whether it was possible to reach the goal of ending child labour exploitation in the cocoa industry without addressing the underlying causes of these conditions, such as economic, social and cultural grounds.¹⁹¹ Despite all this, many had high hopes.¹⁹²

Various initiatives have been taken as a result of the Protocol. In 2002, as response to the article 5 of the Protocol, *the International Cocoa Initiative (ICI) Foundation* was established to work towards responsible labour standards for cocoa production. ICI, with representatives of the cocoa industry, labour unions and non-governmental organizations concerned with child labour, is committed to “*oversee and sustain efforts to eliminate the worst forms of child labour and forced labour in the growing and processing of cocoa beans and their derivative products.*” It is funded by the industry¹⁹³ and its mission is to: *a) support field projects; b) act as a clearinghouse for best practices; c) conduct a joint research programme*

¹⁹⁰ Supra note 185 p. 106.

¹⁹¹ Sheth, A. 2009. “Such a Long Journey: Barriers to Eliminate Child Trafficking for Labor Purposes in the West African Cocoa Value Chain.” P. 56

¹⁹² *Our Guilty Pleasures: Exploitive Child Labour in the Chocolate Industry*, p. 5.

Available

at: https://www.worldvision.com.au/Libraries/Reports/WVAREport_Our_Guilty_Pleasure.sflb.ashx, last accessed May 18, 2011.

¹⁹³ The ICI was initially funded by the Global Issues Group, an ad hoc, pre-competitive association of cocoa industry participants formed in response to the Harkin-Engel Protocol requirements. However, the GIG stopped funding the ICI in 2006. Since then the ICI’s work has been funded by direct contributions from companies.

and d) develop a means of monitoring and public reporting under the Protocol.¹⁹⁴ In 2004, pilot ICI projects with the main aim to research the problem were launched in Côte d'Ivoire and Ghana. In Côte d'Ivoire ICI supported the government in its efforts to develop laws on trafficking as well as helping to develop a workable approach to identifying cases of worst forms of child labour, withdrawing children from exploitive work and providing them with sufficient support.¹⁹⁵ However, due to the civil conflict in the country, it has been difficult for ICI to work in the field.

An important component of the Protocol and presented in article 6 was to obtain reliable and credible information about the extent to which abusive child labour occurred in cocoa production. In 2002, *the International Institute for Tropical Agriculture (IITA)* surveyed, for this purpose, labour conditions on cocoa farms in West Africa.¹⁹⁶ The field survey estimated that almost 60,000 children under 14 are engaged in all cocoa-related tasks, it confirmed the prevalence of child labour and child trafficking in the cocoa supply chain, a high degree of the abusive labour practices, identified the main categories of child workers that were in the greatest risk of exploitation, and highlighted the potentially hazardous working conditions.¹⁹⁷

Achieving the other important objective of article 6, the creation and implementation of a public standard and certification process to ensure production of cocoa, free of the worst forms of child labour, proved to be more difficult one. In fact, labour standards, upholding ILO Convention 182 in the cocoa sector in Cote d'Ivoire were never made. Moreover, the

¹⁹⁴ World Cocoa Foundation, 'Global Chocolate, Cocoa Industry and Stakeholders Establish Foundation, International Cocoa Initiative—Working Towards Responsible Labor Standards for Cocoa Growing', Press Release, 1 July 2002.

¹⁹⁵ IPEC. "Case Study of the International Cocoa Initiative." Fact sheet. 2010. Available at: <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=14356>, last accessed May 15, 2011. See also Payson Center at Tulane University Report 2011.

¹⁹⁶ In February and March 2002, IITA surveyed cocoa farmers and workers from 1,500 farm households in 250 Côte d'Ivoire villages. In addition, IITA conducted community surveys in 15 Côte d'Ivoire villages to collect qualitative information on child labour (IITA 2002).

¹⁹⁷ IITA 2002, p. 22

industry has not yet finalized the required process of developing a credible certification system.¹⁹⁸ The first deadline for this goal in 2005 was missed; it was renegotiated to 2008 and then again to 2010. At each deadline, publically available evaluation reports stressing mostly unfulfilled outcomes that were generally disregarded.¹⁹⁹

In September 2010, the *Declaration of Joint Action to Support Implementation of the Harkin-Engel Protocol* and a new *Framework of Action* partnership agreement was created between the US Department of Labor, ILO and the cocoa industry. These instruments are intended to reaffirm stakeholders previous commitments to fight worst forms of child labour in West African cocoa farms by reducing “*the worst forms of child labour as defined by ILO Convention 182 in the cocoa sectors of CI and Ghana*”...“*by 70 percent in aggregate through joint efforts by key stakeholders.*” Furthermore, the Framework emphasis certain actions that are to be taken and clearly defines roles and responsibilities of all stakeholders involved.²⁰⁰

In conclusion, despite years of postponement and various attempts to collect necessary data on the problem, the Protocol has proven to be ineffective in eliminating the worst forms of child labour in cocoa production. There is little evidence of reduction in incidences, now a decade later, and no standards and credible certification process are in place.²⁰¹ In most recent time, individual cocoa corporation have increasingly made commitments in the forms of code of conduct to take on certain responsibilities in their cocoa supply chains and to use only certified cocoa, produced under credible and independent voluntary standards systems that provide assurance that C182 is being upheld. These systems have gained prominence in working to create

¹⁹⁸ Payson Center at Tulane University Report 2011 p. 8.

¹⁹⁹ *Our Guilty Pleasure: Exploitative Child Labour in the Chocolate Industry*. World Vision Australia. 2011. p.12.

²⁰⁰ Payson Center at Tulane University Report 2011 p. 15.

²⁰¹ *Our Guilty Pleasure: Exploitative Child Labour in the Chocolate Industry*. World Vision Australia. 2011. p. 17

more sustainable agricultural production sectors.²⁰² However, the present level of cocoa industry commitment to codes of conduct and to product certifiers is insufficient and need to be greatly improved to combat the problem.²⁰³

²⁰² Today, there are three widely recognised and supported voluntary standards systems that are credibly and independently pursuing a more ethical and sustainable cocoa production system: Fairtrade International, Rainforest Alliance, and UTZ CERTIFIED.

²⁰³ Payson Center at Tulane University Report 2011, p. 9.

5 The Effectiveness of Corporate Social Responsibility in Combating the Worst Forms of Child Labour – the Case of the Cocoa Industry in Côte d'Ivoire

For nearly a decade, international institutions, local governments and non-state actors have made extensive efforts to abolish the existence of child labour in cocoa supply chains in West Africa, including Côte d'Ivoire. While those efforts have resulted in some reduction of child labour²⁰⁴, the prevalence of it is still high and there is a long way to go towards total elimination of the problem. However, one has to believe that the goal is possible. Whatever path is taken, the challenge of tackling child labour in cocoa production must be approached with the understanding of the complex economic, social and cultural factors that contribute to it and in cooperation between all stakeholders.

5.1 Current challenges in Côte d'Ivoire

Poverty is both a cause and a consequence of child labour.²⁰⁵ Children in cocoa growing areas in Côte d'Ivoire face the cruel realities of rural poverty and are often required to work alongside their family for basic survival. It is simply the way of life in their culture and prevents many children from gaining education they so desperately need and deserve to break from circle

²⁰⁴ *Accelerating action against child labour*. ILO Global report on child labour 2010. According to the report, from 2004 to 2008 the overall decrease of child labour was 3% worldwide.

²⁰⁵ Unicef. Child Protection Information Sheet. Available at: http://www.unicef.org/protection/files/Child_Labour.pdf, last accessed May 17, 2011.

of poverty. Lack of education provisions is also a problem in the country. Primary education is compulsory but unenforced by authorities, mainly in the rural part of the country. Increased access to education is considered to be an essential element in any effective plan to reduce poverty and harmful child labour practices.²⁰⁶ Another factor that generally makes child labour in the region a complex and sensitive issue is that it is often part of cultural tradition. Perception about who is a child and what constitutes child labour is quite different across cultures. Many societies in Africa believe the work that children perform and domestic duties they have as part of process children have to go through to learn certain skills, necessary for their survival in the future.²⁰⁷

In recent years, as indicated before, important reforms have been made on Ivoirian labour law concerning child labour through ratified international instruments, revision of existing regulations, policy setting and other public initiatives. The labour legislation is now reasonably detailed with respect to relatively acceptable level of protection against child labour. However, if legislation is formally in place but not implemented, it is clear that it will not serve its purpose. This also applies, if authorities do not enforce law when breached by individuals, corporations or other organizations. There are several reports on problem related to lack of the enforcement of the Ivoirian labour legislation.²⁰⁸ The main reason for the problem regarding enforcement is the fact that most child labour in cocoa takes place in informal agriculture, within the family in rural households.²⁰⁹ This shows the limits of government intervention in the country. Furthermore, it has been pointed out that laws tend to be particularly impotent where state itself economically relies on child labour, which can easily be the case with Côte

²⁰⁶ International Cocoa Initiatives. Information retrieved from: <http://www.cocoainitiative.org/en/resources/child-labour-in-cocoa-growing>, last accessed May 17, 2011.

²⁰⁷ Assefa Admassie. Explaining the High Incidence of Child Labour in Sub-Saharan Africa, p. 258. African Development Bank 2002.

²⁰⁸ See Human Rights Report of the U.S. Department of State in 2009. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135949.htm>, last accessed May 1, 2011 and the Payson Center Tulane University reports.

²⁰⁹ *Child labour: Targeting the intolerable*. 1996. Report VI(1), International Labour Conference, 86th Session, 1998. Geneva, p.87.

d'Ivoire.²¹⁰ Private initiatives to promote labour standards do also have great difficulties to be effective in countries of conflict. Since the government has dedicated its limited resources to fighting a civil war is unlikely to fulfill its obligations to enforce labour standards. Although the Ivoirian government has initiative certain measures to address child labour in the cocoa sector, the national turmoil and lack of resources and political will, is a possible setback to any effective impact of private initiatives to combat child labour in the country.²¹¹

Supply chains represent the processes by which goods are produced from raw materials. An extensive, complex and disconnected supply chain characterizes the cocoa sector and that causes challenges when combating child labour. Cocoa is primarily a smallholder crop in Côte d'Ivoire with many hundreds of thousands farmers producing cocoa²¹² and only few of them belonging to co-operatives. Various sources indicate that monitoring in the supply chain is often ineffective or unreliable, making the traceability of cocoa to all individual farms very difficult.²¹³ Due to this high number of actors involved in the supply chain, taken together with limited access to rural areas and households, require well organized and consistent action to address these problems.

There are many other issues facing the cocoa industry. Environmental degradation associated with poor farming practices, declining yields, power differences between smallholder farmers and larger processor and poor access to finance or credit for farmers is a grave problem in Côte d'Ivoire, just to give some examples.²¹⁴

²¹⁰ Information retrieved from: <http://uk.oneworld.net/guides/childlabour>, citing <http://www.eurasianet.org/node/62728>, last accessed May 7, 2011.

²¹¹ Schrage. 2005. "The Coca Industry and Child labour", p. 111

²¹² U.S Department of State. 2010. "Background Note: Cote d'Ivoire" Available at: <http://www.state.gov/r/pa/ei/bgn/2846.htm>, last accessed May 14, 2011.

²¹³ See Payson Center at Tulane University Report 2011.

²¹⁴ *Our Guilty Pleasure: Exploitative Child Labour in the Chocolate Industry*. World Vision Australia. 2011. p.12.

5.2 Can CSR Raise Labour Standards Compliance in Cocoa?

5.2.1 General

Labour standards compliance in the cocoa industry is especially significant in the current light of trends in the production and the widespread use of child labour. The primary responsibility for enforcement of international labour rights standards lies with national governments. However, as indicated previously, there is a growing acceptance that corporations also play an important role in this context, through self-regulation and CSR. As outlined in the special representatives Ruggie's report: "*markets can be highly efficient means for allocating scarce resources, capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights*"²¹⁵ In this respect, corporations should perform due diligence in their operations, i.e. "*a process whereby corporations not only to ensure compliance with national laws but also manage the risk of human rights harm with a view of avoiding it.*"²¹⁶ Moreover, it appears to be widely agreed upon the international stage that where national law is not in place or insufficient in comparison with relevant international law, corporations should take international standard as guidance for further implementation of their CSR policies. From this, one can draw the conclusion that addressing CSR in Côte d'Ivoire, especially important with regards to its dysfunctional government, means compliance with the national law and also action that goes beyond what is required by the same law.

There can be certain benefits in using CSR in attempt to raise labour standards in cocoa supply chains. CSR may affect corporations operation in a way that traditional forms of labour regulation are not able to do. Unlike

²¹⁵ Draft from Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. *Guiding Principles for the Implementation of the United Nations "Protect, Respect and Remedy" Framework*. 2011. p.1.

²¹⁶ John Ruggie. 2008. "Protect, Respect and Remedy: a Framework for Business and Human Rights" report 2008. para 25.

national legislation, if the source of regulation is placed within the corporation itself, it can determine with much more precision how standards should regulate specific sectors of business.²¹⁷ Consequently, CSR policy can be created to account for the complexity of transnational production, that both national and international standards have problems to regulate. Therefore, can CSR be effective to improve labour practices in transnational cocoa supply chains. Moreover, CSR has a better capability to adjust swiftly to possible changes in at the operation level whereas national laws are more likely to be slow in adapting to the same changes.²¹⁸ CSR can also influence social and political recognition on the conditions of children working under such harmful conditions in another way than legislation.

However, there are certain implications attached with enforcement of CSR provisions about child labour. In their worldwide operations, corporations are often confronted with different views on child labour and the status children have in societies and perspectives often varies between the countries in which they operate and their country of origin. Expectations in a home country about corporate role in society often deviate from what host government considers normal. This can result in a difficult situation, such as when absolute prohibition on child labour is demanded or really strict monitoring of compliance of CSR, whereas the governments of the host countries of operation, both lack support and regulation regarding child labour.²¹⁹ In addition to this, general limitations to the CSR norms should be mentioned here. Firstly, the effectiveness of them is likely to be *restricted to certain sectors of the economy and types of corporations* and secondly, CSR norms are likely to protect labour standards as *complementary* to national and international law, *rather than autonomously*.²²⁰ However, these two limitations are not considered to be of harm here in this particular context.

²¹⁷ Kathryn Gordon, *Rules for the Global Economy: Synergies Between Voluntary and Binding Approaches* (Paris: Prepared for the Organisation for Economic Co-Operation and Development, 2000), at 8-9

²¹⁸ *Ibid*

²¹⁹ Kolk and Tulder. 2002. "The Effectiveness of Self-regulation: Corporate Code of Conduct and Child Labour." *European Management Journal*, Vol. 20. No. 3 p. 263.

²²⁰ Leo Herzenstein, *Can CSR raise labour standards?* Centre for Tomorrow. p. 1.

Two main private and voluntary forms of CSR that exist and have been identified previously in this thesis are: *corporate codes of conduct and product labeling schemes*. Unlike traditional labour market regulation, these forms of norms rest mainly on the participation and resources of non-state actors for its implementation.²²¹ They differ in three distinctive ways from the traditional regulation. Firstly, they *are not depended on employment contracts, a collective agreement or legislation* that determine the relationship between employers and workers. Secondly, these forms *depend upon internal or external systems of monitoring of compliance operated by non-state actors*. Thirdly, they are based on a means of enforcement that *rely on consumer preference*, not states power.²²² Because of these differences and in order for them to be effective, they require strict coherence and credibility.

When exploring the capability of CSR in raising relatively ineffective labour standards, the nature of these initiatives raises two concerns regarding: *the voluntary content and coverage of the codes and the lack of effective implementation mechanisms for monitoring compliance*. Therefore, if corporations pay closer attention to these issues, it could lead to a raise in labour standards, here improve compliance with international standards on child labour in cocoa, although it may be in a limited and context-related way.

Today, many of the major corporations in the cocoa industry have already adopted CSR policies but speculation about capability of them at addressing child labour still remains partially unanswered. In order to analyze the issue, it is important to explore closer what kind of measures are currently used to promote social responsibility of corporations and what should be embedded into them to increase compliance with them as well as international

²²¹ John J. Kirton & Michael J. Trebilcock, "Introduction: Hard Choices and Soft Law in Sustainable Global Governance," in Kirton & Trebilcock (eds), *supra*, 3 -29, at 9.

²²² Patrick Macklem and Michael Trebilcock, "New Labour Standards Compliance Strategies: Corporate Codes of Conduct and Social Labeling Programs". A Research Report prepared for the Federal Labour Standards Review, p.12. University of Toronto. 2006.

standards of child labour.

5.2.2 Codes of Conduct

Codes of conduct are the most common method of expressing and implementing social responsibility.²²³ The most significant problem with current corporate codes is that many of them are written as general statements or worded in vague language.²²⁴ That applies to the cocoa corporations as well. This can have the effect that active compliance in accordance with the code is greatly constricted or requires so little efforts from corporations that fulfilling the requirements nullifies any action taken.

For codes of conduct to be effective in addressing child labour certain issues need to be touched upon in their content. First of all, it is highly important that the text of particular a code reflects the *core international labour standards*, as it increases the reliability of the code as a tool to improve labour standards.²²⁵ When focusing on prohibition of child labour, it is crucial that any given code stresses that child labour is *not acceptable* in corporations operation and especially powerful if *minimum age of employment* is determined. Corporate code of conduct of one of the bigger chocolate corporations, Nestle, is a good example of this, as obligation to comply with international standards on child labour is laid out in its CSR policy and total prohibition of employment of children that have not completed their compulsory education.²²⁶ The cocoa corporation Barry Callebaut also stresses in its CSR norms that it: “*adheres to local laws regarding minimum age and other terms of employment. The minimum age for employment at Barry Callebaut is in accordance with the ILO*

²²³ Kolk and van Tulder. 2002. p. 260.

²²⁴ Simons, P. 2004. “Corporate Voluntarism and Human Rights: The Adequacy and Effectiveness of Voluntary Self-Regulation Regimes”, in *Department Des Relations Industrielles Industrial Relations*. No. 1, Vol. 59. p. 101.

²²⁵ Leo Herzenstein. Can Corporate Social Responsibility Raise Labour Standards? p. 4.

²²⁶ Nestle Corporate Business Principles. Available at: http://www.nestle.pl/download/Corporate_Busines_GB.pdf, p. 13, last accessed 16 May, 2011.

Convention or the age specified by local legislation if higher.”²²⁷ However, other corporations such as Hershey instituted no labour standards compliance for its cocoa suppliers and do not refer to any core international labour standards in their policy.²²⁸ Secondly, *applicability* is also an important factor in a successful code, making it clear to whom the code applies to. The codes should prescribe the importance that all suppliers and sub-contractors in the supply chain comply with responsibilities that are expressed. The likelihood of a code to be effective in raising labour standards compliance through the supply chain is limited if suppliers are not required to comply with it.²²⁹ Lastly, it would be valuable if codes of conduct were specific about the *nature of the code and what it covers*, i.e. if it has a broad or strict approach to child labour. A broad approach means that codes include responsibility for measures to provide alternative arrangements for children found to be working in cocoa, such as access to education.²³⁰ For example, Nestlé considers the social context in which children work in their supply chains, emphasizing that it cannot be solved without broader policies. To support this view it states that: “*ill-considered policies and commercial measures can make the situation worse for children.*”²³¹ A strict code does however only prohibit child labour and provides for no remedies. When the content and coverage of the code is sufficiently specific, monitoring and enforcement of the norm influence the extent to which CSR is more prone to improve compliance.

Monitoring application of codes of conduct has proven to be difficult to perform and costly for corporations, especially when it comes to combating child labour in cocoa supply chains.²³² This is mainly due to the informality of the sector and because the supply chains are very long and disconnected, involve many sub-contractors and buyers and the level of traceability is

²²⁷ Information retrieved from: <http://www.barry-callebaut.com/5663>, last accessed May 15, 2011.

²²⁸ “Time to Raise the Bar: The Real CSR Report for the Hershey Company” is available at <http://www.greenamerica.org/pdf/HersheyReport.pdf>, last accessed May 20, 2011.

²²⁹ Ibid and Kolk and van Tulder.

²³⁰ Kolk and van Tulder, 2002, p. 261.

²³¹ Supra note 226

²³² Payson Center at Tulane University report 2011 and supra note 230, p. 266.

therefore rather low. Moreover, monitoring the supply chain from one end of the world to another, particular if is widespread, is very challenging. In a report published by the US Department of State in 2010 it is stated that: “*there is no way to effectively monitor a supply chain without tracing it all the way down to the raw materials.*”²³³ Additionally, the State Department outlined key elements that businesses should adopt, including “*taking accountability for all the labor in the supply chain all the way down to raw materials, with a pledge to monitor compliance, remediate noncompliance, and verify those actions by an independent third party.*”²³⁴ Therefore, one can conclude that it is essential in practice that monitoring is ensured through *third actor*, that is completely independent and conducted in a coordinated and transparent manner. However, corporations are often reluctant to accept such arrangements and most prefer to do this themselves.²³⁵ Again, Hershey is one of those corporations, as it has no system in place to trace their cocoa nor does it seek independent third party certification.²³⁶ But without such independent monitoring and verification, it is much more difficult to determine if codes are being used effectively in practice or remain just an expression of good intention.²³⁷ Therefore, due to the complexity of the cocoa supply chain; the *involvement of all stakeholders* is crucial, with collaboration with independent third actor to verify good practices. This will be further discussed in the next chapter.

When monitoring reveals breaches of codes of conduct and labour standards, a consistent *enforcement* may lead to actually raising labour standards.²³⁸ However, to enforce the codes can be a challenge. A strict approach in a case of non-compliance, such as requirements on dismissing

²³³ U.S Department of State. Trafficking in Persons Report 2010. Available at: <http://www.state.gov/g/tip/rls/tiprpt/2010/142750.htm>, last accessed May 19, 2011.

²³⁴ Ibid

²³⁵ Kolk and Tulder. Child Labour and Multinational Conduct: A Comparison of International Business and Stakeholders Code. *Journal of Business Ethics* 36 (2002), p. 296.

²³⁶ “Time to Raise the Bar: The Real CSR Report for the Hershey Company” is available at <http://www.greenamerica.org/pdf/HersheyReport.pdf>.

²³⁷ Rhys Jenkins. 2001. “*Corporate Codes of Conduct: Self-Regulation in a Global Economy.*” United Nations Research Institute for Social Development (UNRISD) Programme Paper 2. p. 26.

²³⁸ Supra nota 225.

child workers or terminating contracts with employers of these children, does not necessarily change the underlying causes for child labour in the sector nor eliminate it. Researches have shown that severe sanctions can even worsen children's situation and drive them into more hazardous or more informal work.²³⁹ Therefore, corporation should try to improve the situations and offer the child workers other solutions, such as educational or training programmes of some kind and alternative income for families.²⁴⁰ This suggests that, given the limitation to the CSR in cocoa, that CSR initiatives may raise labour standards on child labour in the specific context when effective enforcement practices are implemented.²⁴¹

From all this, one can conclude that codes of conduct, in the order to increase compliance with international labour standards on child labour, have to be specific in content and coverage, i.e. to make it clear that all forms of child labour is prohibited with reference to international conventions on child labour, especially ILO C138 and C182 and that it will be combated if discovered. Moreover, it should be made explicit to whom the CSR norm applies to and that it should be complied with through all of the supply chain. It is essential that CSR norms have a clear method of implementation and means to ensure that it is being complied with. In addition to the need for monitoring, it is also preferable that there should be clear guidelines in place on how to deal with compliance failure, combined with alternative arrangement child workers under the minimum age of employment.

5.2.3 Social labeling systems

Another approach to codes of conduct and of special importance in cocoa, are *systems of social labeling*. Over the last decade, corporations have

²³⁹ Ibid 235, p. 297, citing Basu 1999b, Studies in Bangladesh showed that the threat of U.S sanctions and the consequent expectations of future restrictive laws on child labour, led to the dismissal of 40,000 children in the garment industry and between 5,000 to 7,000 girls moved to prostitution.

²⁴⁰ Ibid 235, p. 297, citing UNICEF 1997 and Save the Children, 2000.

²⁴¹ Ibid 225, p. 5.

increasingly started to address their social responsibility through *certification and labeling systems* in agriculture sector. When the *Harkin-Engel Protocol* was established, no private standards on social labeling had attained prominence.²⁴² There were very small amounts of cocoa certified by the global *Fairtrade Labeling system*.²⁴³ Today, there are three widely recognized voluntary standards systems that are considered to be credible and independent: *Fairtrade International, Rainforest Alliance, and UTZ CERTIFIED*. Each of these systems, though different in many ways, does share the common goal of *prohibiting the use of worst forms of child labour in production of cocoa that they certify*. As such, these certification systems have so far proven to be helpful to combat child labour exploitation in the industry.²⁴⁴ The mere fact that they are *not owned or operated by the cocoa industry*, have *transparent standards*, and *involve credible NGO partners* has enabled them to gain the trust of international organizations; governments and consumers in a way that initiatives started by the industry itself have not.²⁴⁵

Currently, many corporations in the cocoa industry are developing their own codes of conduct on child labour and undertaking their own monitoring but, so far, have had difficulty providing for the sufficient level of transparency and certification for their products.²⁴⁶ A clear example of this can be seen in Hershey's first CSR report published in 2010. The report was highly cited of many NGOs due to the fact that Hershey has no programs to trace its cocoa supply chain, no monitoring system or credible certification system for all their products, except for one.²⁴⁷ This can, however, not interpreted that the

²⁴² World Vision Australia. "Our Guilty Pleasure: Exploitative Child Labour in Chocolate Industry – 10 years from the Harkin-Engel Protocol. 2011. P.19. Available at: https://www.worldvision.com.au/Libraries/Reports/WVAReport_Our_Guilty_Pleasure.sflb.ashx, last accessed May 19, 2011.

²⁴³ Fairtrade International – FLO, 2011

²⁴⁴ See Payson Center at Tulane University Report 2011. "*The implementation of Certification System: As product certification provides credible assurance that cocoa is being produced in line with International Labor Organization (ILO) Convention 182, industry should continue to scale up its consumption – and publically commit to new procurement targets – of product certified cocoa....*"

²⁴⁵ Supra note 242.

²⁴⁶ Ibid p.20.

²⁴⁷ "Time to raise the bar" report. Available at: <http://www.greenamerica.org/pdf/HersheyReport.pdf>, last accessed May 21, 2011.

labeling systems mentioned above are the main solution to the child labour problem nor do they ensure compliance with labour standards completely. Some even consider it to be defect on these systems that they rely on *consumer expectation* for their mechanism of enforcement and that monitoring of operation compliance is done by a *non-state actor*. However, they do provide for different levels of independent certification and some believe that these systems have the potential to fill up a certain gap that corporations themselves have not been able to do when monitoring their supply chains.²⁴⁸

Lastly, it should be noted in this context and ought to be kept in mind when exploring effectiveness of CSR that success of such initiatives is partly: *“linked to stakeholder dialogue and stakeholder engagement, ideas that occur repeatedly in discussions of best CSR practice. Stakeholder engagement brings together representatives of business, non-governmental and public sectors in order to identify and address aspects of corporate responsibility, and has the added advantage that it has gained legitimacy among both business and development practitioners”*.²⁴⁹

²⁴⁸ Supra note 242, p. 20.

²⁴⁹ Michael Blowfield and Jędrzej Frynas. “Setting new agendas: critical perspectives on corporate social responsibility in the developing world.” 2005. *International Affairs* 81, 499-513.

6 Concluding Remarks

6.1 Conclusion

It is globally recognized that the problem of child labour is still persistent and serious. Various reasons contributed to its high prevalence and globalization is one of the main factors. International organizations, such as ILO and UN have both created important and recognized legal frameworks on protection against child labour but the problem remains to exist, mainly in the developing countries. The main purpose of this thesis was to examine the role of the private sector in the combat against child labour and more specifically how and if corporation social responsibility can be effective tool to improve compliance with international standards on the issue. Non-governmental and private initiatives, attempting to outline the responsibilities of corporations, have been explored as well as a country case study was made by examining closer child labour in cocoa industry in Côte d'Ivoire. The main conclusion is that CSR policies, if optimally used, can have a impact in the area of child labour and raise labour standards to some extent. However, it should be kept in mind that CSR norms do not provide a satisfactory solution to the problem of relative ineffectiveness of international labour standards in that country, as they are still tentative and limited in nature. What then further limits the effect of CSR norms are the underlying causes for child labour, most often due to complex economic, social and cultural conditions of each country, areas where corporations simply do not have the capacity to differentiate those causes sufficiently. At the same time, it is clear that when national governments are not standing up to their human and labour rights obligations in accordance with international law, corporations can and should use their power and resources to attempt to improve the problem through their CSR norms. That can be done with more consistant CSR norms with certain content and measures ingrained in them. To conclude, to successfully abolish child labour in cocoa, especially worst forms of it, partnership is vital, the efforts of the cocoa industry in

conjunction with international organizations and foreign governments could motivate the Ivoirian government to comply with both international and national labour standards.

6.2 Recommendations

This chapter outlines a few recommended steps and strategies private actors should take towards raising effectiveness of international labour standards in the Ivoirian cocoa sector. In general, more advocacy and deeper public awareness about child labour and the conditions children are working under in the cocoa production in Côte d'Ivoire needs to be enhanced and that is considered to be of highest priority. Corporations should also publicly give information regarding their action taken towards more responsible way of producing cocoa.²⁵⁰

Due to the fact that it seems to be difficult for a corporation to act on its own in combating child labour in the cocoa supply chains and because of the competitive business environment in the cocoa industry, which may lead to ineffective self-regulation, the model of using multi-stakeholders approach would perhaps be best suited to combat exploitative child labour in the industry. The main advantages of this approach is the experience sharing between stakeholders, division of monitoring costs as well and together, these actors can decide on fairer price to cocoa farmers. All stakeholders should take part in the creation and implementation of the CSR policy best suited.

- First of all, an effective implementation of existing framework, the Harkin-Engel Protocol, as well as the Joint Declaration and Framework from 2010, is recommended.

²⁵⁰ Oxfam Research Report. "Towards a Sustainable Cocoa Chain: Power and possibilities within the cocoa and chocolate sector." Available at: http://www.oxfam.org.uk/resources/policy/trade/downloads/research_sustainable_cocoa_chain.pdf

As identified previously, one of the main objectives of the Harkin-Engel Protocol was the development and implementation of “*credible, mutually acceptable, voluntary, industry-wide standards of public certification*”²⁵¹ by the industry in partnership with other stakeholders. This certification standard has not, up to date, been fully developed. Some critics even claim that the Protocol has not stood up for any its goal of eliminating worst forms of child labour in cocoa supply chains,²⁵² since there is little evidence of any reduction in incidences of child labourers in cocoa.²⁵³ To improve the effectiveness of corporate social responsibility to raise labour standards, it is therefore vital that the commitments made in the Protocol are fulfilled through compliance with the Joint Declaration and the Framework from 2010.²⁵⁴

- Increase support for ICI and country level child labour units

Since its creation the ICI has made good progress in capacity building and awareness programmes for farmers and communities which is a crucial element in the combat against child labour in the region. However, the development and execution of these programmes has been limited so far, certainly not at the scope and scale to push the required changes in the sector. This is mainly due to lacked financial resources, that mainly comes from contributors in the cocoa industry.²⁵⁵ Therefore, it is recommended that corporations increase support to ICI in their CSR policies, both financial support and by establishing programmes at the country level on labour rights.

²⁵¹ Article 5 of the Protocol.

²⁵² Tulane Report 2010. The Payson Center for International Development at Tulane University was commissioned by the US Government to monitor and report on efforts to achieve the elimination of the WFCL and child trafficking in the Ivory Coast and Ghana. Across its four reports (2007-10), Tulane University has documented the problems with implementation of the ‘certification’ process. The 2010 report, for example, indicates that less than 3% of cocoa growing villages in the Ivory Coast have been visited by monitors, and only 13% of communities in Ghana. This is a long way from the 50% and 100% targets.

²⁵³ Payson Center at Tulane University report 2011

²⁵⁴ The text can be found at: <http://responsiblecocoa.com/wp-content/uploads/2010/09/Cocoa-Declaration-of-Joint-Action.pdf>, last accessed May 22.

²⁵⁵ Information retrieved from: <http://www.cocoainitiative.org/>

Such programs should be integrated into a CSR policy to increase development of sustainable cocoa.

- Extensive implementation of certification systems

Widespread implementation of certification systems that credibly and independently assure that cocoa is being produced in accordance with international standards on child labour, especially with ILO C182, is recommended. Traceability of the product is essential factor for achieving sustainable supply-chain and therefore, addressing child labour exploitation in cocoa. It is furthermore a requirement of any certification system and empowers transparency.²⁵⁶ The industry should therefore increase its quantities of certified cocoa. Some big corporations, such as Mars, Nestle and Kraft have recently committed to do so by 2020.²⁵⁷ Corporations should commit themselves to increasing the amount of certified cocoa in their operation and partner up with a recognized certification system within publicly known time targets.²⁵⁸ Currently there are three main certification systems that are in important to the cocoa sector: Fairtrade International, Rainforest Alliance and UTZ Certified are all experienced certifications systems working towards improving the strength of their processes, and pursuing better cooperation and collaboration opportunities.²⁵⁹

²⁵⁶ Payson Center at Tulane University report 2011.

²⁵⁷ Citing World vision Austrila report 2011. "In the last three year there has been significant company investment and commitment to sourcing ethically certified cocoa. With market leaders like Kraft (including Cadbury) and Mars going down this path, it is an option growing in prominence industry wide. As previously highlighted, Mars has committed publicly to sourcing 100% sustainable cocoa that is independently certified by 2020. Kraft and Nestle are yet to match this, but have made significant commitments that will see their use of ethically certified cocoa increase substantially in the coming 1-5 years."

²⁵⁸ "Bitter Harvest: Child Labour in the Cocoa Supply Chain". 2010. P. 7.

²⁵⁹ Fairtrade Labelling Organizations International (FLO). (2010). Retrieved from <http://www.fairtrade.net/home.html>; International Federation of Organic Agriculture Movements (IFOAM). (2010). Retrieved from http://www.ifoam.org/about_ifoam/index.html; Rainforest Alliance (2010). Retrieved from <http://www.rainforest-alliance.org/agriculture.cfm?id=main>; Utz Certified. (2010). Retrieved from <http://www.utzcertified.org/index.php?pageID=224>

- Effective implementation of child labour monitoring systems

It is recommended to build on the current relationship with the ILO on the development of child labour monitoring systems given their extensive experience in this area.²⁶⁰

- Price fairness

It is highly important for corporations to secure fair prices for cocoa to tackle one of the underlying causes of labour exploitation, poverty of farmers in the region. Without receiving a fair price for their crops, cocoa farmers are not able to hire adult workers. The labour rights of adult workers are better respected and they get paid more fair wages. The industry needs to make efforts to ensure that cocoa production is a viable livelihood for farmers in order to combat child labour in the supply chains.²⁶¹

Finally, in the light of somewhat unconvincing results seen with industry self-regulation and partnerships to combat child labour over the past decade a certain legal framework in home states of corporations may have effect to improve labour standard compliance.

- Supply Chain Disclosure

It is recommended that corporations should increase overall transparency by revealing publicly about commitments made, monitoring and verifying processes, and overall effects of their operations. Such obligation may then be incorporated into domestic law of the home state of corporations. Law concerning this has been passed and signed in U.S, the so-called *U.S. Conflict Mineral law*.²⁶² In accordance with the law, corporations must disclose whether they are using certain minerals from the Democratic

²⁶⁰ See the progress at Rooting out child labour from cocoa farms Paper No. 4. - Child labour monitoring. A partnership of communities and government, 2007. ILO.

²⁶¹ *Our Guilty Pleasure: Exploitative Child Labour in the Chocolate Industry*. World Vision Australia. 2011. See also Bitter Harvest: Child Labour in the Cocoa Supply Chain". 2010..

²⁶² This legislation is included in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, passed by the US Senate on May 20, 2011 and signed by President Obama July 21, 2010. Regulation to implement it is currently not finalized. See: <http://elmconsultinggroup.wordpress.com/2011/04/09/news-flash-sec-delays-finalization-of-conflict-minerals-regulations-until-second-half-2011/>, last accessed May 20, 2011.

Republic of Congo or any of its neighboring countries. If that is the case, it is obliged to provide verification on how the minerals were acquired.

Currently many corporations in cocoa such as ADM, Hersheys, Kraft and Nestle do not give any disclosure in relations to their supply chain monitoring or other varification activities. However, Cadbury has committed itself to such reporting.²⁶³ If home states of corporations in the cocoa industry would require such supply chain disclosure it could have the potential to lead to more *due diligence and better transparency in the supply chains* on the part of corporations operating in Côte d'Ivoire.²⁶⁴

- Public-private agreements

Another developing model has emerged from the Netherlands where the Dutch government initiated an important public-private agreement in 2010, in which numerous cocoa retailers and producers along with non-governmental organizations committed themselves to transit all cocoa importation from ethical and sustainable sources by 2025. If this were to be done in other key cocoa processing or chocolate markets or countries, it could work towards elimination of exploitive child labour.²⁶⁵

²⁶³ Bitter Harvest: Child Labour in the Cocoa Supply Chain". 2010, p. 8.

²⁶⁴ Payson Center at Tulane Unversity Report. 2011.

²⁶⁵ *Our Guilty Pleasure: Exploitative Child Labour in the Chocolate Industry*. World Vision Australia. 2011. P. 26, citing the Dutch Sustainable Trade Initiative 2011, New Foresight 2011.

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