



The Cocoa Protocol: Success or Failure? June 30, 2008

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Background:

People around the world share a love of chocolate, one of the most delicious and pleasurable foods on earth. However, thousands of Africa's children are forced to labor in the production of cocoa, chocolate's primary ingredient. The West African nation of Cote d'Ivoire (Ivory Coast) is the leading supplier of cocoa, accounting for more than 40% of global production. Low cocoa prices and lower labor costs drive farmers to employ children as a means to survive. Poverty in surrounding countries leaves children vulnerable to exploitation by labor traffickers. The US Department of State has estimated that more than 109,000 children in Cote d'Ivoire's cocoa industry work under "the worst forms of child labor," and that some 10,000 or more are victims of human trafficking or enslavement. These child workers labor for long, punishing hours, using dangerous tools and facing frequent exposure to dangerous pesticides as they travel great distances in the grueling heat. Those who labor as slaves must also suffer frequent beatings and other cruel treatment.¹

The issue of child labor in the cocoa industry requires action on a number of levels in several different sectors. In several policy papers on this subject dating back to 2001, ILRF has outlined an agenda for effective advocacy on this issue for international financial institutions, governments, and corporations.² This document reviews the outcome of a significant policy instrument drafted in 2001, the "Protocol for the Growing and Processing of Cocoa Beans and their Derivative Products," also known as the Harkin-Engel Protocol.

I. What Was the Intent of the Protocol?

- The 'protocol' was intended to assure consumers that chocolate companies were acting ethically and ending forced and trafficked child labor in their cocoa supply.
- The original intent of the 'protocol' has not been achieved, and consumers today have no more assurance than they did eight years ago that trafficked or exploited child labor was not used in the production of their chocolate.

In 2001, following media exposes of trafficked children forced to labor in cocoa production in Cote d'Ivoire, Representative Eliot Engel (D-NY) introduced an amendment to the 2002 Agriculture Appropriations Bill to set aside \$250,000 for the Food and Drug Administration to develop 'slave free' labeling requirements on cocoa products. The bill was approved by the US House of Representatives by a vote of 291-115 in June 2001.

¹ ILRF field interviews with trafficked children in Mali and Ivory Coast, 2002, 2004, 2005.

² www.laborrights.org/stop-child-labor/cocoa-campaign

The bill was sent to the US Senate for a vote, but industry hired former US Senator Bob Dole for an undisclosed fee to lobby against its passage.³ Instead, the chocolate industry stopped the bill by agreeing to voluntarily adopt certain portions of the bill as an industry ‘protocol.’ This was a voluntary, non-binding document that set out time-bound steps to eliminate the worst forms of child labor and forced labor from all cocoa farms worldwide by July 2005, in exchange for which commitment the legislation was withdrawn.

The ‘protocol’ set forth an action plan with specific commitments for stakeholders. In particular, the industry agreed to undertake the following steps: establishment of a “joint” international foundation, and development and implementation of standards of public certification.⁴

Representative Engel and Senator Tom Harkin (D-IA) were witnesses to the ‘protocol’ signed in 2001. It is clear that the original intent, from the perspective of the two lawmakers who were its signatories, was to withdraw proposed legislation in exchange for a voluntary commitment from industry that fulfilled the intent of this legislation—providing American consumers with a reasonable assurance that no child labor was used in the production of the chocolate products they consume.

The Congressional representatives made a public statement in July 2005, on the expiration of the original ‘protocol,’ indicating that this intention had not been fulfilled⁵ and extending the industry deadline to July 2008. Now, on the eve of the second deadline, it is fair to ask: was this original intent fulfilled? In other words, can an American consumer today be any more assured than they could in 2001 that no child labor has been used in the production of a chocolate bar?

By this measure, the industry has failed resoundingly to satisfy the intent of the ‘protocol.’ None of the activities undertaken under the auspices of the ‘protocol’ have attempted to monitor or improve labor conditions within the cocoa supply of any chocolate company. Indeed for seven years, all the major chocolate companies, as well as industry associations and cocoa traders, have maintained that tracking or monitoring conditions within their own supply chains is impossible.⁶

However, there have been some significant developments in this regard completely outside of the ‘protocol’ process, as major corporations begin to experiment with voluntary certification initiatives, principally in the environmental and fair trade sectors. The experiments of note include Kraft Foods’ partnership with Rainforest Alliance to certify cocoa produced in Cote d’Ivoire⁷; agreements by Cargill, Nestle and Mars to work with Utz Certified⁸; ED&F Man’s short-lived ‘Corigins’ project to act as a trader of organic and Fair Trade cocoa⁹; and the development of new Fair Trade certified cooperatives in Cote d’Ivoire, covering some 14,000 cocoa farmers¹⁰. Also notable are Starbucks’ new COCOA standard, an overall sustainability

³ Chaterjee, Sumana, “Chocolate Firms Launch Fight Against Slave-Free Labels.” *Philadelphia Inquirer*, August 1, 2001. Available at <http://www.commondreams.org/headlines01/0801-03.htm>

⁴ www.cocoainitiative.org/images/stories/pdf/harkin%20engel%20protocol.pdf

⁵ Joint Statement on file at ILRF.

⁶ Industry statements at meetings of the Child Labor Coalition in Washington, DC on June 17, 2004, September 29, 2004, November 18, 2004, June 1, 2005, April 27, 2007, November 16, 2007, and February 1, 2008; notes from all meetings on file at ILRF.

⁷ www.rainforest-alliance.org/new.cfm?id=cocoa_farmers

⁸ <http://www.confectionerynews.com/news/ng.asp?n=83094&m=1CNE207&c=hngsnvejiltzdb>

⁹ www.confectionerynews.com/news/ng.asp?id=58922-organic-fair-trade

¹⁰ Correspondence between ILRF and Transfair USA, 2004, 2005, 2006, 2007

standard for cocoa growing with a strong labor standards component, and Starbucks' pilot initiative with TechnoServe in Cote d'Ivoire to implement these standards to the farmgate level¹¹.

It is important to keep in mind that while each of these initiatives does, at least, create the possibility for adequate supply chain monitoring of labor standards, addressing the 'consumer question,' none of these programs were developed under the auspices of the 'protocol' and representatives of the chocolate industry have continued to maintain, as late as May 2008, that it would not be desirable for individual chocolate companies to undertake monitoring within their own supply chains.¹²

Do these initiatives address child labor? In reality, no one system can truly guarantee 100% child labor-free product, and credible systems, including those cited above, make no absolute claims. Fair trade allies have stated: "Fair Trade standards provide the basis for changing the economic situations of cocoa farmers allowing them to sustain themselves economically and lessen the need for reliance on child labor. Fair Trade also supports community development, providing a social foundation for supporting the needs of children and families (ie: schools, healthcare)."¹³

That said, the standards described, as well as some individual corporate codes of conduct, do reference not only child and forced labor but all the core international labor standards. ILRF has reviewed the Starbucks COCOA standards¹⁴; Fair Trade certification labor standards¹⁵, Rainforest Alliance Sustainable Agriculture Standard¹⁶ and Utz Certified draft standard for cocoa¹⁷ and found all to be in conformance with ILO standards on forced labor and child labor.

However none of the monitoring systems associated with these codes contain the expertise needed to monitor labor rights violations, and none of the systems provide detailed guidance for rescue, removal, and rehabilitation of children found in this sector. The rehabilitation issue, and how it might be handled, are treated in section V below.

II. Depends on What the Meaning of "Is" Is

- Industry is making false claims regarding certification.
- Industry should work with credible multistakeholder certification systems to provide genuine process certification in cocoa supply chains.

Does the global chocolate industry claim to have succeeded in ending child labor? In its recent public statements, the chocolate industry has claimed that it is, in fact, meeting the letter of the 'protocol,' whether or not it is meeting the spirit of it. While as we noted above the industry is unable to answer the 'consumer question,' and consumers have no way of knowing today any more than they did in 2001 whether or not their chocolate bars are made by child labor,

¹¹ www.starbucks.com/aboutus/csrreport/csr.htm

¹² Testimony of Larry Graham, National Confectioners Association, at US Department of Labor, May 28, 2008. Available at www.dol.gov/ilab/programs/ocft/20080423.htm

¹³ Easson, Kimberly and Cate Baril, Memorandum from Transfair USA to ILRF on cocoa certification, February 6, 2008.

¹⁴ www.starbucks.com/aboutus/Cocoa_Practices_Guidelines_2008.pdf

¹⁵ http://www.fairtrade.net/producer_standards.html

¹⁶ www.rainforest-alliance.org/agriculture/documents/SAN_Sustainable_Agriculture_Standard_%20February2008.pdf

¹⁷ Standard not publicly available; Cocoa Code of Conduct Consultation description available at www.utzcertified.org/index.php?pageID=226

nevertheless industry has worked hard to promote the claim that it has ‘develop(ed) and implement(ed) credible, mutually acceptable, industry-wide standards of public certification.’

This claim cannot be understood to be true even given the broadest possible interpretation of the terms ‘standards’ and ‘certification.’ This has been pointed out in public discussions¹⁸, and recently industry representatives have modified their claim, suggesting that this is not ‘product certification’ but rather ‘process certification.’¹⁹ Again the claim is only possible to admit if we are willing to dramatically redefine what is meant by process certification.

In the US consumer market, the public deals with a vast array of certifications ranging from product quality specifications (Grade A eggs or syrup, octane 87 gasoline) to specifications of ethical or environmental standards (organic-certified produce, FSC-certified wood, dolphin-safe tuna). All certification systems have a number of characteristics in common:

- there is a set of **standards** that must be met in order to achieve the certification (whether it is octane rating or criteria for ‘dolphin-safe’ fishing)
- there is a **process** for verifying that a product, service, or person has met those standards (often by an independent monitoring organization)
- there is a **certification mark** logo or seal that identifies the standards and the verification that have been fulfilled
- there is a system for **auditing** to ensure that the certification mark is being used properly and that the product or service or individual continues to meet the standards over time (often by a completely independent oversight body, such as USDA’s oversight of the National Organics Program).²⁰

The industry “certification concept” is missing all these pieces. There is no set of clear standards with related compliance criteria to ensure that these standards are being met, and in the absence of clear standards, naturally no process to verify that producers are meeting those standards.

Product certification, a term that has been in use in the US consumer market for a century,²¹ refers to an assessment of the attributes of the actual product itself (e.g. is the battery AA or AAA, is the maple syrup Grade A or Grade B). **Process certification**, on the other hand, is a description of the process by which the product was made. Some prominent examples of analogous process certifications are the Kimberly process, an international process to ensure that diamond trade does not support violent conflict, and certifies shipments of diamonds as ‘conflict-free’²², and the Forest Stewardship Council, an initiative certifying timber products as sustainably harvested.²³ Rainforest Alliance, Fair Trade, and Utz Certified are also process certifications.

In the end, all process certifications also result in a meaningful communication to the consumer. In the absence of any consumer-facing communication regarding the individual product (be it

¹⁸ Child Labor Coalition meeting with representatives Jeff Morgan and Jonathan Atwood of the chocolate industry Global Issues Group, Washington, DC, November 16, 2007.

¹⁹ <http://www.cocoaverification.net/Docs/ICVB%20RFP%20for%20Verifiers.pdf>

²⁰ Conroy, Michael. *Branded! How the Certification Revolution is Transforming Global Corporations*. British Columbia, Canada: New Society Publishers, 2007, p. 10

²¹ Ibid p. 10.

²² www.kimberleyprocess.com

²³ www.fsc.org

cocoa bean or chocolate bar) there is no basis on which to assert that actual certification is taking place under the cocoa ‘protocol.’

The resulting “certification process” that industry has identified is a program to survey and report on the incidence of the worst forms of child labor over time: “Certification will provide a clear, statistically valid and representative view of labor conditions across the cocoa sectors of Ghana and the Ivory Coast, on an annual basis. It uses this information to identify both problem areas and the actions required to address them.”²⁴

We might substitute “data collection” for the term “certification” in the sentences above, and it becomes much clearer what is actually happening: Data collection will provide a clear, statistically valid and representative view of labor conditions across the cocoa sectors of Ghana and Ivory Coast, on an annual basis. Data collection will result in information to identify both problem areas and the actions required to address them.

In the end, the industry’s explanation of certification is a loosely interpreted continuous improvement cycle, with independent verification of data that is collected, but still not tied back to the end result that it hopes to achieve. Nor is it tied to any commitment to remediate child labor within the supply chain of any individual corporation sourcing cocoa from West Africa. Indeed, on numerous occasions ILRF representatives have asked industry representatives whether there would be any affirmative commitment to sourcing cocoa from farms that had been surveyed under the data collection process being developed. On each occasion, industry representatives stated that they were not willing to make such a commitment.²⁵ Certainly, this is not what the 2001 protocol intended in its requirement of certification.

The legislators involved with this initiative recently issued a public statement updating their views on whether or not certification was in place. They state: “In fact, the *data collection element of the certification process* covering an area that produces at least 50 % of the cocoa farming output in each country *has been completed*, and reports detailing the preliminary results of these surveys by the respective governments are expected to be released by July 1.” (Italics added).

“Industry will work with the governments of Cote d’Ivoire and Ghana *to have a sector-wide independently verified certification process fully in place across each country’s cocoa-growing sector by the end of 2010.*”²⁶

III. Bringing the State Back In

- Governments have a vital role to play in ending trafficking and worst forms of child labor.
- Industries have obstructed all efforts to hold them accountable under multilateral frameworks (UN, ILO); industry should not be engaged in multilateral initiatives until it is also an accountable actor under these frameworks.

²⁴ “Oversight of Public and Private Initiatives to Eliminate the Worst Forms of Child Labor in the Cocoa Sector in Cote d’Ivoire and Ghana,” Payson Center for International Development and Technology Transfer, October 2007.

²⁵ Meetings of the Child Labor Coalition with chocolate industry representatives in 2004, 2005, 2007.

²⁶ “Joint Statement from U.S. Senator Tom Harkin, Representative Eliot Engel and the Chocolate and Cocoa Industry on the Implementation of the Harkin-Engel Protocol,” June 16, 2008.

- Industry should be careful not to assign itself too much credit for activities that may in any case have resulted from bilateral and multilateral government engagement.

Clearly, industry has failed to undertake meaningful supply chain reforms, but what of the actions of non-signatories to the ‘protocol,’ in particular the West African governments? After all, whose responsibility are workers’ rights? It is important to remember that governments sometimes do take action to survey and develop action plans to combat child labor in their countries, and even target particular problem industries, even in the absence of voluntary industry initiatives. Indeed governments have more normally been a front line for corrective action than have employers.

National governments have over the past century worked through the multilateral bodies established as part of the United Nations, and as parties to treaties, covenants and conventions of these bodies. National governments have recognized the International Labour Organization (ILO), created in 1919 as the authoritative standard-setting body for international labor rights norms; by consensus, all ILO member governments around the world accept as fundamental and inalienable rights the following: the right to associate, the right to bargain collectively, the prohibition of discrimination in the workplace, and the effective abolition of child labor and of forced labor. While all ILO member nations acknowledge these core issues and the conventions associated with them as fundamental, nations additionally are encouraged to ratify the individual conventions, and thereby to take on the obligation to create and enact national action plans related to each topic. The ILO has developed, in particular over the last decade, a significant program dedicated to the eradication of child labor around the world, the International Programme on the Elimination of Child Labour (IPEC), and has provided technical assistance to many governments seeking to eliminate child labor in targeted sectors or regions or more comprehensively.

Ghana ratified ILO Convention No. 182 on the worst forms of child labor in 2000, and the Government of Ghana signed a Memorandum of Understanding with the ILO in 2000 to request assistance in implementing this convention. Ghana has not ratified the other relevant convention on child labor, ILO Convention No. 138. Ghana ratified the two conventions prohibiting forced labor, ILO Convention No. 29 and No. 105 in the late 1950s.

The Government of Ghana conducted a national Ghana Child Labour Survey in 2001. Ghana has worked with ILO on a broad National Time-Bound Programme for Eliminating the Worst Forms of Child Labour, working with ILO-IPEC and with significant financial assistance from the US Department of Labor. The Ghanaian government’s “National Programme for the Elimination of the Worst Forms of Child Labour in the Cocoa Sector 2006 – 2011” states clearly in its introductory section that the initiative “constitutes a component of the larger National Time-Bound Programme for Eliminating the Worst Forms of Child Labour.” Ghana thus treats the elimination of child labor in cocoa production as a component of its broader treaty obligations under the ILO.

In the national programme, the Government of Ghana points out that it was the first country to ratify the UN Convention on the Rights of the Child (CRC) in 1992²⁷ and that it developed its national plan of action on implementation of the CRC in 1992 as well. Additionally the Government of Ghana reaffirms in the programme its commitment to providing universal access to basic education for all Ghanaian children, referring to its White Paper on Educational Reform.

²⁷ In fact, 1990 although the Government of Ghana is accurate that it was, in the company of several other nations, an immediate ratifier of the CRC once it came into force in January 1990.

Interestingly in its national program Ghana refers to its surveys as what they are – an ‘integrated child labour monitoring system.’ The document states further that ‘its design will reflect the immediate data needs of Government’²⁸ and will result in a database of children, development of data collection and reporting procedures, synthesis of data into district level child labour monitoring reports that will feed into a National Child Labour Monitoring and Programme Implementation Progress Report prepared every six months if not quarterly. “These reports and the findings of the child labour surveys will inform the preparation of national reports such as those needed under the certification system or in fulfillment of international conventions.”²⁹

Interestingly also, the programme components make little mention of the responsibility of multinational corporations benefitting from the cocoa trade, although role of local employers and the commodity board, COCOBOD, are described. The only recommendation contained in the report that relates to broader farmer income issues, in the section titled Interventions that reduce the need for child labour in the cocoa sub-sector,³⁰ is as follows: “Advocate and promote Fair Trade programmes for Ghana cocoa.”

Cote d’Ivoire ratified ILO Conventions No. 138 and 182 in 2003, well after the outbreak of the media reporting on trafficked child labor in cocoa but on the eve of a decision by the Office of the US Trade Representative (USTR) regarding country eligibility under an important trade preference program for sub-Saharan Africa, the Africa Growth and Opportunity Act (AGOA). This suggests that unilateral trade privileges rather than industry concerns were the motivating factor, or at least played a significant role, in the decision of the Cote d’Ivoire government to ratify these instruments. Indeed the principle behind labor rights linkage to trade preference programs, first established in US law in 1984, is that such linkage can serve as an important unilateral incentive toward full respect for workers’ rights.³¹ In this case trade linkage apparently had precisely these intended effects, as implied by the USTR’s country reports on AGOA for 2002 (when Cote d’Ivoire was under consideration) and 2003 (where the ratification of the conventions is directly cited as one sign of progress influencing USTR’s approval of the country’s inclusion in the program).³² Cote d’Ivoire also requested technical assistance from the ILO to carry out a comprehensive quantitative survey to map the problem of child labor.

Cote d’Ivoire also took steps in late 2001 and early 2002 to combat trafficking through more stringent criminal prosecutions. According to the US Department of State’s Annual Trafficking in Persons Report for 2002,

Enforcement at Cote d’Ivoire’s marked land border crossing points was dramatically stepped up during 2001. With regard to protection of victims, while Cote d’Ivoire is under severe financial constraints, the government is cooperating with international organizations and NGOs to repatriate and deliver assistance to victims. Cote d’Ivoire’s most serious and successful efforts on the prevention front result from diplomatic agreements with source countries. The first of a promised series of cooperation agreements with Mali has contributed to a sharp decline of trafficked victims

²⁸ “National Programme for the Elimination of the Worst Forms of Child Labour in the Cocoa Sector 2006 – 2011,” Ministry of Manpower, Youth and Employment and Ghana Cocoa Board, Republic of Ghana, p. 19

²⁹ Ibid p. 20

³⁰ Ibid p. 28

³¹ ILRF has written extensively elsewhere on the issue of labor linkage in trade preference programs. See, for example, *Workers in the Global Economy*, 1999.

³² www.ustr.gov/Trade_Development/Preference_Programs/AGOA/Reports/Section_Index.html

to Cote d'Ivoire, although there is some evidence of a rise in trafficking in Burkinabe children. Additional agreements are planned with major source countries.³³

Cote d'Ivoire's trade privileges with the US were revoked in late 2004. Although the exact reasons for the suspension of privileges are not publicly known, ILRF conducted an extensive review of information available in USTR records. The US government did review information related to the problems of corruption, lack of transparency and expropriation of foreign property in Cote d'Ivoire; the country's civil conflict and repeated delay of national elections have also been subjects of concern and review, given explicit linkage in AGOA with criteria for democratic reforms. There is no evidence that information related to child labor, even less to the 'protocol' specifically, had any effect on this decision.

AGOA privileges removed from Cote d'Ivoire in 2004 are being reconsidered this year and may be reinstated by Dec 2008. Again, this decision most likely will hinge on factors entirely unrelated to the enforcement of international standards on child labor, an area on which various US government agencies are apparently in accordance that progress is being made. In the interval, the Government of Cote d'Ivoire has developed an action plan and is conducting a national assessment not only of cocoa but overall, as per its ILO commitments, on the worst forms of child labor.³⁴

To return to industry claims regarding certification: what the industry apparently is 'certifying' are the Child Labor Monitoring Systems (CLMS) developed by the national governments with the assistance of the ILO as representing a statistically valid and replicable process for identifying the incidence and causes of child labor. While we believe that the government CLMS programs are vital for developing a full understanding of the causes of child labor that will guide national governmental efforts to eliminate child and forced labor, these monitoring systems are not designed to serve as certification. As described by the ILO, the Child Labor Monitoring System is intended to provide national governments the necessary tools for identifying the incidence and causes of child labor within a sector in order to design remediation programs. To 'verify' or 'certify' such data collection in a context that does not connect back to ILO oversight and reporting is a dead end.

This has been stated similarly as early as 2004 by Anita Sheth of Save the Children Canada: "Since ILO conventions are primarily binding on states, not on individuals or companies, who will monitor and hold the chocolate industry accountable in delivering on the specified target (of the Protocol)?"³⁵ She continues:

If the idea of the Protocol is to codify certification as an implicit form of regulation to ensure that cocoa producing governments ratify and implement ILO 182 in their domestic context, (which the Government Cote d'Ivoire (*sic*) did following the development of the Protocol), then the job is better left to the ILO and to the governments. It is critical that industry does not substitute itself into these roles.³⁶

Sheth's comments are given further importance by virtue of the fact that corporations have historically resisted all efforts to make them parties to the international human rights framework.

³³ US Department of State, Trafficking in Persons Report, June 2002. Available at www.state.gov/g/tip/rls/tiprpt/2002

³⁴ US Department of State, Trafficking in Persons Report, June 2008. www.state.gov/g/tip/rls/tiprpt/2008

³⁵ Sheth, Anita, "'Targeting the Intolerable' in the Chocolate Trade: Child Farm Labor and the Harkin-Engel Protocol," Save the Children Canada, June 2004, p. 88

³⁶ Sheth, p. 89

To cite only a few prominent cases, in 1975, the United Nations created a Commission on Transnational Corporations which set out to negotiate a UN Code of Conduct on Transnational Corporations, a document which had the potential to create the necessary mechanisms of transparency and accountability that might have acted as early correctors of the forced child labor problem in cocoa production. However, during the 1980s, the UN Commission found it impossible to develop any mechanisms to make this code relevant, or even to research the level of compliance by companies or countries with the terms of the codes. By the end of the decade, the Commission itself was virtually without funds and unable to carry out even a modicum of its original mandate. Under strong pressure from the US government, it was dismantled in the early 1990s.

Asfaha notes that similarly corporations worked to undermine efforts through the UN Conference on Trade and Development (UNCTAD) to establish sensible development-oriented policies for the trade in commodities. He states, “In 1980, UNCTAD promulgated a *Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices* (the UNCTAD code)” which contained several clauses to address the challenges of market concentration; however, at the behest of lobbyists, the US withdrew support for the code and it died.³⁷

In 1977, the International Labour Organization (ILO) adopted a Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, a code which encompasses a broad range of rights and principles, and which furthermore includes a detailed complaint procedure which allows for an ILO Standing Committee on Multinational Enterprises to investigate a company’s practices. This code and its contents might have obviated the need for a separate cocoa ‘protocol’ as the fundamental rights, including prohibitions on forced and child labor, are well covered. However, this code has no sanctions or other enforcement mechanisms, and the Standing Committee has been unable even to launch investigations. In 1993 the committee received a request to review labor practices at a Pepsico bottling facility in Guatemala following severe harassment and intimidation of trade union members there.³⁸ The employer representatives on the ILO Standing Committee blocked the request. According to the committee report, the Employer Vice-Chairman stated “that the Employers did not perceive respect for human rights as a precondition for investment. If that were the case, she argued, employers would not have accepted the Tripartite Declaration.”³⁹

Sadly, in recent years the US government, in particular the US Departments of State and Labor, have taken a far less active public role in promoting policies to end child labor through bilateral and multilateral diplomatic efforts than heretofore. In particular the US Department of State, through its Bureau of Democracy, Rights and Labor, has taken an outsourcing approach to the diplomatic engagement of West African governments on this issue, preferring to invite corporations in the chocolate sector to a series of ‘roundtables’ where industry representatives could engage directly with West African government officials (and, nominally, other stakeholders) and take the lead in setting a diplomatic agenda in this area.

³⁷ Asfaha, Samuel, “Commodity Dependence and Development: Suggestions to Tackle the Commodities Problems.” South Centre/Action Aid International: April 2008. Available at www.southcentre.org

³⁷Correspondence from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations to the International Labor Rights Fund, on file at ILRF.

³⁸“Report of the Committee on Multinational Enterprises,” International Labour Office, Geneva March 1-4, 1993.

The European Union has recently issued a proposal that may have relevance to European consumers of chocolate, if it is enacted. In a recent public announcement, the Council of the European Union stated,

The Council . . . calls on the Commission to analyse the impact of positive incentives on the sale of products that have been produced without using child labour and to examine and report on the possibility of additional measures, including trade related measures, on products that have been produced using the worst forms of child labour, in compliance with WTO obligations. The Commission is also asked to examine how Corporate Social Responsibility, codes of ethical conduct and other actions can help by ensuring transparency, *including by informing consumers how products are made* (emphasis ours).⁴⁰

IV. What about Verification?

- Verification has been rendered irrelevant by the fact that the process supported by industry no longer bears any relation to supply chain monitoring or certification.
- The ‘public-private’ partnership funded by industry should not substitute for independent multilateral oversight.
- The oversight and validation offered by an independent research team from Tulane University may provide helpful public transparency on efforts in the cocoa sector.

As the chocolate industry has recently offered a contract worth \$1.8 million⁴¹ to the Amherst-based compliance group Verite to create an oversight process for government-led efforts, this process merits at least brief commentary. Returning to the question of original intent of the ‘protocol’ and its corollaries, we note that the original intent of verification has been subverted, rendering the details of the current process fairly irrelevant.

In 2002, when stakeholders in dialogue with the chocolate industry still had reason to believe that the ‘industry-wide standards’ being developed would resemble other known process certifications, an oversight verification group was constituted that was placed, with industry consent, in the hands of a prominent trade union (IUF) and a respected consumer rights organization (NCL). In its leadership the verification group modeled on other examples in credible process certification systems, described thus Conroy:

What has emerged more recently is certification to sets of standards related to actual performance. This ‘performance-based’ mode of certification requires that companies demonstrate they have changed their practices, not just put a management system in place. In forestry, for example, the performance certification standards of the Forest Stewardship Council require that auditors visit logging operations and verify that companies are actually leaving the quantity of trees along streams and shores required by the standards . . .⁴²

⁴⁰ Council of the European Union, “Council Conclusions on the promotion and protection of the rights of the child in the European Union’s external action- the development and humanitarian dimensions.” 2870th External Relations Council Meeting, Brussels, 26 and 27 May 2008. Available at www.consilium.europa.eu/Newsroom

⁴¹ “Responsible Cocoa Farming: Progress, Next Steps.” Available at www.candyusa.org/Media/Hot/Labor/support.asp

⁴² Conroy, p. 15.

Another established model that may have provided guidance for cocoa verification is the Kimberly process oversight established by the Clean Diamond Act ⁴³

However, by mid-2006 industry severed its relationship with this independent oversight group, despite the extensive work the group had done to create credible oversight.⁴⁴ In any case, as neither public standards nor monitoring nor certification system had been developed or implemented, there was little the verification group could do in its role as public watchdog.

Verite, a Massachusetts-based nonprofit organization with expertise in monitoring labor conditions in manufacturing supply chains, was offered a contract of \$1.8 million in mid-2007 to establish a body that would oversee, or ‘verify,’ the outcome of the government-led data collection processes in Cote d’Ivoire and Ghana. The body that was constituted in January 2008 consisted of 1/3 members of the chocolate industry, 1/3 members of the regional governments conducting the data collection, and 1/3 representatives of the public interest. No conflict of interest policies were adopted at the outset, leading to inherent problems for a body intended to provide public oversight. However, these internal problems are largely irrelevant given that the entire *raison d’etre* for verification had long previously been obviated by the fact that the industry had made a clear determination by late 2006 that it **would not** develop standards, undertake monitoring to ensure those standards were met, or develop any public certification mark, thus rendering the fourth element of credible certification, i.e. independent oversight, redundant at best, problematic (as a potential private sector replacement for a balanced tripartite ILO oversight process) at worst.

That said, public watchdog groups were provided with a surprising and useful alternative to the public oversight or ‘verification’ originally proposed in the form of an independent contract offered by the US Department of Labor in October 2006 to the Payson Center for International Development and Technology at Tulane University.⁴⁵ We are left with an interesting actual oversight process in the form of the public reporting by the Tulane research team to evaluate not only the accuracy but appropriateness of various initiatives, coupled with an existing long-term oversight process provided by the ILO with respect to government progress toward implementation of the child labor conventions.

V. Are Children Better Off?

- There is no reliable baseline of information and therefore it is difficult to show that any children have been positively affected by public or private efforts to date.
- Industry-supported programs have not been properly evaluated and therefore the actual impacts of such programs are unknown.
- Industry has not adequately defined what it considers remediation.

⁴³ www.state.gov/documents/organization/77550.pdf

⁴⁴ The Cocoa Verification Working Group was established in 2004 but its website is no longer operational. Background documents are on file at ILRF.

⁴⁵ “US Labor Department Funds Project to Evaluate Effectiveness of Anti-Child Labor Efforts in the Cocoa Industry,” US Department of Labor 2006. Available at www.dol.gov/opa/media/press/ilab/ILAB20061723.htm

Beyond our concerns regarding inadequate supply chain monitoring, after eight years, advocates are left with no way to measure whether or not the varied and scattered programs, and vast claims regarding spending, have had any impact whatsoever on children laboring in cocoa farms. First, there is a lack of adequate baseline data so it is impossible to measure whether any programs, government or private, have had an effect. The lack of baseline data is not accidental. In 2001, efforts to push for the collection of good, comprehensive data using sound and sensitive methodologies were stymied by the chocolate industry, who argued successfully that data collection should be sidelined into an existing survey, already underway, conducted by the International Institute for Tropical Agriculture (IITA) and funded by the US Agency for International Development.

In brief, IITA was already conducting surveys in select cocoa-growing regions of Cote d'Ivoire related to farming practices. A questionnaire, principally directed toward elders and village heads, and related to their observation of child labor in their villages, was tacked on. The full data set was never released, and an abridged version of results, released publicly a year after the 'protocol' was initiated, was criticized for poor methodology by child rights advocates. Moreover as the survey only covered certain regions of Cote d'Ivoire, and no study took place in Ghana (where the bulk of industry funding has reportedly been placed), advocates are left with even less information with which to evaluate any claims regarding the success of remediation programs for child laborers.

Now in 2008, regional governments, as part of their national action plans under ILO 182, are finally collecting systematic data, and the methodologies and results will be given a level of public scrutiny by the independent research team from Tulane University. Assuming the surveys are sound, and assuming independent validation provided by Tulane is able to continue over time, advocates might, for the first time, have the ability to review impacts going forward of industry programs to remove children from harmful labor, remediate and rehabilitate, and prevent further trafficking through targeted efforts at improving incomes in both supply and demand communities.

This assumes such programs are in place. An important part of the effort to eliminate child labor should be rehabilitation of the children forced to work, an area requiring particular sensitivity and expertise. To be sustainable, such efforts must work in tandem with broad development goals of governments themselves. UNICEF, the International Labour Organization, and several NGO worldwide with special expertise on children's rights are well-placed to provide the guidance necessary to ensure that children who are removed from hazardous and exploitative work, or rescued from traffickers, are adequately and appropriately protected, and assisted through programs designed to remediate the immediate harms, rehabilitate victimized children so that they can re-integrate into their communities or other appropriate protected settings, and ultimately, participate in opportunities for formal education. These activities go well beyond the plethora of corporate social responsibility initiatives designed to identify and eliminate labor rights violations within global supply chains, as the principle of remediation, in the case of children, is different than that for adults; the goal is not to correct workplace violations but to remove children altogether from inappropriate hazardous work, and to ensure they are given adequate educational opportunities.

However, although the term 'remediation' appears frequently in statements issued by the chocolate industry and its partners, to date there has been little clarification as to what activities the industry considers as the appropriate responses to the issue, and a scattered and poorly coordinated range of programs, including programs designed to improve farmer yields, have been indicated as industry's response to the child labor issue.

The National Confectioners Association has claimed that its ‘certification’ goes beyond mere data collection, as it is linked to remediation. “Remediation/ response programs are addressing issues raised in the reports,” according to spokesperson Larry Graham.⁴⁶ He continues, “Both countries are using the initial survey results to better target and strengthen their remediation efforts (for example, instituting community based child monitoring systems at the district level in Ghana).”

As noted above, industry claims related to remediation apparently take credit for government efforts to implement national action plans related to ILO 182. What of the projects industry itself is funding, in particular, the highly showcased International Cocoa Initiative (ICI)? While the ICI states it is undertaking important remediation activities at the village level in both countries, and has received a total of nearly \$7 million from industry beginning in 2004, ILRF was not able to obtain an exact breakdown of the group’s budget to determine the extent of actual expenditures in either of the target countries. An investigative journalist traveling to Cote d’Ivoire in January 2008 was unable to find any evidence of programs in place in that country to remediate child labor at the village level in cocoa growing regions.⁴⁷ Adding insult to injury the World Cocoa Foundation (WCF), which publicly debated the journalist, chose to rebut his findings with an impassioned statement of support, on the WCF blog site, from a partner NGO in Ghana rather than Cote d’Ivoire-- assuming, no doubt, that readers of the article in the US and Europe would not know the difference between the two West African countries.⁴⁸

Our document review suggests that the only program cited by industry that actually apparently provides direct services to children is the ECHOES program listed as “a partnership with USAID, the World Cocoa Foundation and chocolate companies, seeks to provide quality, relevant and accessible education to cocoa communities in Ghana and Cote d’Ivoire. All together, more than 340,000 children will have benefited by September 2009.” The total share of industry funding for this program, according to the National Confectioners Association website: \$674,000.⁴⁹ Its impact on children currently or formerly laboring in cocoa harvesting is unknown.

Noting that the ICI and WCF are accountable through their Boards of Directors to several major chocolate companies, we reiterate also our concern that public-private partnerships not substitute for sustained commitment by governments and donor agencies for comprehensive efforts to address child labor, i.e. through ILO-IPEC and through the Education for All initiative⁵⁰.

VI. Roots of the Child Labor Problem

- Poverty is a root cause of child labor.
- Farmers suffer from unstable commodity prices and market concentration of distributors.

⁴⁶ Testimony of Larry Graham, National Confectioners Association, at US Department of Labor, May 28, 2008.

⁴⁷ Parenti, Christian, “Chocolate’s Bittersweet Economy.” *Fortune*, February 4, 2008.

⁴⁸ www.worldcocoafoundation.org/2008/02/additional_comments_regarding.php

⁴⁹ Industry has scattered small amounts of funding to other basic education programs as well, though the exact amounts and programs are not clearly identified. Among other programs identified by ILRF are the Winrock CLASSE program and the Initiative for African Cocoa Communities, both detailed in ILRF’s “October 2006 – Report on Cocoa and Forced Child Labor.”

⁵⁰ The Education for All Initiative, initiated by UNESCO in partnership with the World Bank, seeks to extend access to free and universal public education to all children by 2015. See <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTEDUCATION/0,,contentMDK:20374062~menuPK:540090~pagePK:148956~piPK:216618~theSitePK:282386,00.html>

- Companies have claimed to help farmer incomes by increasing yields; in reality, yield increases have benefitted corporations but done little to raise farmer incomes.
- Governments have not helped farmers to bargain in the face of the concentrated power of multinational corporations.

In principle the problem of child labor in West Africa should have been approached, from the outset, in terms of its endemic root causes, and this section of our analysis should have preceded a discussion of all government, industry or multilateral efforts. In reality, the debate has been framed since 2001 in relation to the ‘protocol’ whose terms were established by industry, and thus proper discussion of the trade in cocoa as a commodity has never been on the table.

Here we attempt briefly to address an issue of enormous importance to the debate. The UN Conference on Trade and Development (UNCTAD) has stated, “There is a clear link between dependence on exports of primary commodities and the incidence of extreme poverty . . . The commitment to reducing extreme poverty by half by the year 2015 necessarily implies attention to the primary commodity problem.”⁵¹

The cultivation of cocoa and other commodity crops, whether by smallholders or on larger farms or plantations, is historically rooted in a system of colonial exploitation; widespread cultivation of cocoa is not indigenous either to Cote d’Ivoire or Ghana. The root cause of ‘labor shortages’ that compelled the importation of forced labor in the past and today are not in the nature of smallholder cultivation, but rather in the concentrated nature of commodity distribution, and the extreme volatility of farmgate prices.

“Poverty is the root cause of the worst forms of child labor,” states Jan Vingterhoets of International Cocoa Organization (ICCO).⁵² The problem may in fact intensify as ICCO expects the price of cocoa to fall during the coming few years while world production will increase, thanks to new investments in planting in new countries, and investments in technologies to improve yields in existing cocoa producing countries.

It is particularly important to note that industry has acted aggressively to promote its own interests at the expense of exacerbating the poverty that causes child labor. In 2003, well after the ‘protocol’ had been initiated, the world’s major cocoa exporters announced their intention to cease all purchases of cocoa from Cote d’Ivoire due to an increase in producer prices.⁵³ Commodity traders cited in the article included Archer Daniels Midland, Cargill and Barry Callebaut, all signatories to the ‘protocol.’

Since that time, through the World Cocoa Foundation (WCF), industry has moved aggressively to identify new sources of cocoa in developing countries that had not previously been major

⁵¹ Brown, Oli, Alec Crawford and Jason Gibson, “Boom or Bust: How Commodity Price Volatility Impedes Poverty Reduction, and What to Do About It.” Manitoba, Canada: International Institute for Sustainable Development, January 2008. ISBN 978-1-894784-04-7. Available at www.iisd.org/markets/policy/price.asp.

⁵² Dela Klutse, Felix, *Daily Guide*. Available at www.modernghana.com/news/169553/1/cocoa-price-falls.html

⁵³ “Ivory Coast: Exporters halt cocoa purchases due to row over prices,” just-food.com, 21 October 2003.

exporters of cocoa, and also to invest in technologies to increase farm yields. The latter programs are often identified in industry's claims of its investments in efforts intended to end child labor.⁵⁴

In reality, the promotion of expansion of production of export crops "often led to overproduction that then triggered a price collapse in international markets. For instance, the very success of Ghana's program to expand cocoa production triggered a 48% drop in the international price of cocoa between 1986 and 1989."⁵⁵

The WCF claims that incomes of farmers who have participated in its training programs have risen by 25 – 40 %. These claims have not been subject to any independent evaluation, and on the face of it, seem impossible as farmers in the sector in both countries, but most particularly Cote d'Ivoire, have been subject to dramatic price fluctuations over the past eight years. ILRF field investigations in Cote d'Ivoire between 2002 and 2007 reveal, at least anecdotally, that farmers never receive even the established farmgate price for cocoa; farmers interviewed in cocoa growing regions in 2005, when civil conflict was still occurring, received approximately one-third of the established farmgate price, let alone the world price.

Data gathered by ILRF in 2006 regarding the Sustainable Tree Crops Program, which claimed not that farmer incomes had increased, but that *farm yields* had increased by up to 40 %, found perversely that this success had come at a cost to the farmers, who, in some areas, had to more than double the amount of labor needed in order to get just a 30% increase in yields, thus reducing overall productivity per labor input. Furthermore, due in part to the increase volume of cocoa entering the market, a 30% increase in yields only nets a 23% increase in revenue at best, further increasing the overall cost to farmers per labor input.⁵⁶

Although the industry has failed to address the commodity policy problem, policy recommendations in this area are highly germane to efforts to end child labor. While ILRF are not experts on the issues of sensible and farmer-friendly commodity policy, we support the recommendations put forth in a paper issued by the Réseau des Organisations Paysannes et de Producteurs de l'Afrique de l'Ouest (ROPPA) and cited in part here:⁵⁷

- Cocoa Supply Management: The low price of cocoa on the global market is a major factor in the use of child labor. The global supply should be subject to a management agreement.⁵⁸
- Establish an International Secretariat: An international arrangement, based in West Africa, to control the global supply is needed and ECOWAS (along with Indonesia, Brazil and Cameroon) would be well-placed to lead supply management efforts as 63% of the world's cocoa is produced in West Africa.
- Introduce Production Controls: In order to avoid issues like smuggling and overflowing of buffer stocks, a new cocoa agreement should include production controls to ensure an

⁵⁴ Industry presentations at meetings of the Child Labor Coalition in Washington, DC, 2004, 2005, 2007.

⁵⁵ Bello, Walden, "Destroying African Agriculture." *Foreign Policy in Focus*, June 3, 2009. Available online: www.fpi.org

⁵⁶ Gockowski et al., *Sustainable Tree Crop- Working Paper Series- Issue 1* (May 2006). Available at <http://www.treecrops.org>; see also ILRF's "October 2006 Report on Cocoa and Forced Child Labor" for further analysis of this point.

⁵⁷ Niek Koning & Roel Jongeneel, "Food Sovereignty and Export Crops: Could ECOWAS Create an OPEC for Sustainable Cocoa?" *Forum on Food Sovereignty*, Niamey: November 2006. Available online: http://www.roppa.info/IMG/pdf/Niek_Koening_-_2_EN_Food_Sovereignty_and_export_crops.pdf.

⁵⁸ See also Brown, Crawford and Gibson, p. 17

effective management system. Quotas will be determined by the international secretariat and each country will have a five year period to adjust their production levels.

- **Raise Farm-Gate Prices:** A small raise in farm-gate prices for cocoa would ensure more stability in the market and increase the ability of farmers to invest in sustainable farming methods as well as worker wages. This is an important step in curbing child labor. The costs would be negligible for buyers.
- **Combine with Conservation Programs:** With a higher and more stable price, farmers can invest more labor and money in shaded growing systems, forest conservation and replanting and tree crop diversification which are more ecologically sustainable.
- **Establish Diversification Zones:** Supply premiums and credit to farmers to diversify their crops. This will be an important part of ensuring cocoa-producing countries' food sovereignty and their ability to respond to domestic food needs.⁵⁹

VII. Lessons Learned and Recommendations

ILRF has long been a pioneer in the area of labor standards compliance in global supply chains. We have worked through monitoring and certification initiatives to end abusive child labor in global commodity production from our work with the Rugmark program and the Sialkot soccer ball initiative in the mid-1990s, to our more recent work in agriculture, with VeriFlora and the Fair Flowers/Fair Plants program for cut flower certification, and through a number of other dialogues and partnerships. In 2001, when the Harkin-Engel Protocol was first announced, ILRF was a critical voice, pointing out that this particular initiative did not conform with best practice approaches to labor rights compliance in global commodity chains. Now, with seven years of analysis and observations behind us, what have we learned?

First, we have learned that bilateral and multilateral diplomacy works, and further, that trade and labor standards linkage can work and can be used effectively to push governments to make improvements in the protection of core labor rights. While no one would state that the problems in Cote d'Ivoire or Ghana have been resolved, and Cote d'Ivoire in particular has far to go before the problem is adequately addressed, it is clear that these governments have been responsive to multilateral engagement through the ILO and other UN agencies, and that Cote d'Ivoire has been responsive to trade linkage through the AGOA program.

However, the companies in this industry need more persuading before they take the first steps that are essential toward the establishment of any sort of independent supply chain monitoring, let alone certification. These steps would be:

- 1) establishing traceability within their own supply chains to the farm level, or at least, where cooperatives are accountable to and representative of their members, to the cooperative level;
- 2) establishing accountability amongst the middlemen in their supply chains to the trading corporation and between the trading corporation and the manufacturer/brand/retailer (there is ample precedent for this in other sectors; Target, Wal-Mart and a number of European retailers do expect suppliers and subcontractors to be responsible for implementation of their code of conduct to the farm level in the case of agricultural products)

⁵⁹ See also International Labor Rights Fund, "The World Bank and IMF Policies on Cote d'Ivoire: Impact on Child Labor in the Cocoa Industry," Washington, DC 2002.

- 3) working through the existing initiatives (such as FLO, Rainforest Alliance, or the Starbucks COCOA program) to develop stronger methodologies for labor standards monitoring, and linking these systems directly to an incentive/sanction system;
- 4) developing comprehensive rescue, remediation and rehabilitation programs to assist the children identified, and linking those programs directly to the monitoring program described in step (3), including contractual commitments to suppliers to remediate as a first resort, and to government national action plans;
- 5) developing joint positions with regional governments on international commodity policy, revival of the International Cocoa Agreement or the creation of a new and analogous agreement and process, preferably with the involvement of UNCTAD, and through private channels, assuring pre-financing for farmers; and
- 6) providing support for development programs in labor supply countries intended to address directly root causes by supporting economic development and the provision of universal basic education.

Recommendations

To companies:

- Take the Hippocratic Oath: first, do no harm. Ensure that your own supply chains provide fair and sustainable incomes for farmers and sustainable wages for workers.
- Focus on integrity of your own supply chains and engage programs that will monitor labor standards to the farm or cooperative level.
- Openly support multilateral initiatives to hold non-state actors accountable, and ensure your own operations and supply chains comply fully with existing guidelines such as ILO Tripartite Declaration of Principles Regarding Multinational Enterprises and also the OECD Guidelines for Multinational Enterprises.

To West African governments:

- Work with and support ILO-IPEC programs to eliminate child labor.
- Work with and support the International Migration Organization (IOM) on strategies to combat trafficking regionally.
- Work toward reinstatement of supply management mechanisms in the cocoa sector to protect farmers from price fluctuations and support revenue transparency.

To the US government and EU governments:

- Invest in funding the ILO-IPEC program and do not divert funding for child labor to public-private partnerships.

- Reengage in commodity agreements and publicly support the efforts of UNCTAD to promote development through farmer-sensitive commodity policies.
- Support and fund the Education for All initiative.
- Support revenue transparency for all commodity production worldwide, and hold US multinational corporations accountable to providing such transparency of payments.

To multilateral agencies:

- The ILO should continue to work with the governments of Cote d'Ivoire and Ghana to ensure full implementation of the ILO conventions.
- The World Bank and other international financial institutions should reverse policy and publicly support the efforts of developing country governments to regulate commodity prices, and should support and fund government efforts to implement the Education for All initiative. The World Bank should also offer its public support to national and international efforts to increase revenue transparency in all commodity sectors.

To consumers:

- Reward companies with ethical integrity in supply chains- companies that can tell you how the farmers and workers that produced your chocolate were treated.
- Continue to demand that world's largest chocolate manufacturers answer to the question as to how you can be assured no exploited or trafficked child labor was used in the making of their products.

For more information about the International Labor Rights Forum and child labor in the cocoa industry please visit www.laborrights.org.

The following resources are recommended for additional reading on the endemic problems of corruption in the cocoa industry:

Off, Carol, *Bitter Chocolate: Investigating the Dark Side of the World's Most Seductive Sweet*. Toronto: Random House Canada, 2006.

Global Witness, "Hot Chocolate: How Cocoa Fuelled the Conflict in Cote d'Ivoire," Washington, DC: Global Witness Publishing, Inc., June 2007.