

# *The Child Labour Quagmire in Ghana: Root Causes and Ephemeral Solutions*

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## I. INTRODUCTION

Section 307 of the United States (US) Tariff Act of 1930 bars the importation into the US of ‘merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured labour – including forced child labour. Such merchandise is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s)’.<sup>1</sup> The US Department of Labour, over the years, has partnered with the Ghanaian government, civil society organizations, and other key stakeholders to address child labour issues within Ghana’s cocoa industry as a means of ensuring that cocoa exports are not in any way associated with child labour.<sup>2</sup> These collaborative efforts have been made possible through the Harkin-Engel Protocol, under which voluntary commitments have been made between the US and Ghana in a declaration entitled: ‘Protocol for the Growing and Processing of Cocoa Beans and their Derivative Products in a Manner that Complies with International Labour Organisation (ILO) Convention 182’.<sup>3</sup> Since the Harkin-Engel Protocol was signed, US\$24 million has been provided by the US Department of Labour to support the eradication of child labour issues in Ghana and Ivory Coast.<sup>4</sup>

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<sup>1</sup> US Customs and Border Protection, ‘Forced Labour’ (2020), <https://www.cbp.gov/trade/programs-administration/forced-labor> (accessed 15 October 2020).

<sup>2</sup> US Department of Labour, ‘Child Labour in the Production of Cocoa’, Bureau of International Labour Affairs (2017), <https://www.dol.gov/agencies/ilab/our-work/child-forced-labor-trafficking/child-labor-cocoa> (accessed 14 August 2019).

<sup>3</sup> CLCCG Annual Report (2017).

<sup>4</sup> *Ibid.*

The fact that the Ghanaian Government has made and continues to make strenuous efforts to address the problems of child labour cannot be denied. National development plans over the years have consistently included child labour as one of the problems to be addressed, and reiterate the Government's intention to design and implement interventions to tackle it. Interventions in this regard include: education, skills training, credit schemes and rural development, all of which provide opportunities for an effective fight against child labour.<sup>5</sup> It is argued, nevertheless, that significant gaps remain with regard to measures that deal with the root causes of the problem, ensure effective sanctions against exploiters, and cater to the needs of children caught in the web of child labour, particularly in Worst Forms of Child Labour (WFCL). This article discusses the nature of child labour within Ghana's cocoa industry and the governance gaps that exist, and proffers some recommendations in this regard.

## II. BACKGROUND ON THE CHILD LABOUR SITUATION IN GHANA

Globally, there are approximately 152 million children involved in child labour. This works out to be almost one in every ten children in the world. Slightly less than half this number (73 million) are engaged in hazardous work,<sup>6</sup> meaning they work under dangerous conditions with little or no protection. Child labour is a stark reality in Ghana, and the prevalence of WFCL tends to aggravate the issues, making the reality harder to deal with. Like all social realities, child labour must be regulated by society, otherwise it will regulate society. In Ghana, almost 2 million children, aged 5–17 years, which corresponds to about 22% of this age group, are involved in Child Labour.<sup>7</sup> Further statistics are somewhat chilling. Disturbing details emerging from the latest and most authoritative survey on the subject reveal that of the 1.9 million children engaged in child labour, 1.2 million are engaged in WFCL.<sup>8</sup> The fact that 91% of such children have two living parents points to the fact that neglect of parental responsibility may be a major cause of child labour in Ghana.<sup>9</sup>

Ghanaian child workers are engaged in agriculture, forestry and fishing (91.2%); wholesale and retail trade (13.2%); mining and quarrying; manufacturing; construction; transportation and storage; accommodation and food service activities; information and communication; and as household employees. Boys dominate sectors like fishing, commercial agriculture, forestry, quarrying and mining, truck pushing, and drug

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<sup>5</sup> Government of Ghana (2003), *Ghana Poverty Reduction Strategy: 2003–2005*; Government of Ghana (2010), *Medium-Term National Development Policy Framework: Ghana Shared Growth and Development Agenda (GSGDA), 2010–2013*; Government of Ghana (2014), *Ghana Shared Growth and Development Agenda (GSGDA) II, 2014–2017*.

<sup>6</sup> ILO-IPEC (2017), *Global Estimates of Child Labour: Results and Trends, 2012–2016*, Geneva, p 11. See also ILO-IPEC (2013), *Marking Progress Against Child Labour – Global Estimates and Trends 2000–2012*, Geneva, p vii, which put the number of children in child labour at 161 million.

<sup>7</sup> Inter-Agency Country Report (ILO, UNICEF, World Bank) *Child Labour and the Youth Decent Work Deficit in Ghana*, February 2016, p 16.

<sup>8</sup> Ghana Statistical Service, *Ghana Living Standards Survey Round 6 (GLSS 6) Child Labour Report*, August 2014.

<sup>9</sup> Ghana Statistical Service, *Ghana Child labour Survey, 2003 (GCLS, GSS 2003)*.

peddling; while girls are engaged predominantly in child domestic work, portage ('*kayaye*'), prostitution, selling and local eatery (chop bar) work.<sup>10</sup>

The category of WFCL includes child domestic work, fishing, head portage, commercial sexual exploitation, customary or ritual servitude, small-scale mining and quarrying, and commercial agriculture.<sup>11</sup> Most children engaged in WFCL work in very dangerous and hazardous working environments, which routinely expose them to injuries, toxic substances, sexual abuse, violence and even death; and many child workers suffer from physical, psychological and emotional disturbances. Most children involved in WFCL suffer from depression and often lack hope that their situation will improve.<sup>12</sup> Data from the World Bank, UNICEF and the United States Department of Labour confirm these findings.<sup>13</sup> Even though data and statistics on child labour are widely publicised, and the prevalence of WFCL in Ghana is evident, the phenomenon persists and may be on the rise.

Laws and regulations which prohibit child labour abound in Ghana's legal system. For instance, the 1992 Ghanaian Constitution in Article 28 guarantees the child's protection from engaging in any work that is considered injurious to his or her health, education and development. The Children's Act of 1998 is a comprehensive enactment which seeks to protect the rights of children, including the right to education, health and shelter. This law puts the minimum age for employment at 15 years.<sup>14</sup> In June 2000, Ghana ratified the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182).<sup>15</sup> Ghana has also ratified the African Charter on the Rights and Welfare of the Child in 2005, which contains extensive provisions on the rights of the Child that are more far reaching than those contained in the Children's Act. The Children's Act complies with the principal provisions of both Conventions.

### III. CHILD LABOUR AND THE COCOA INDUSTRY IN GHANA

Since independence, the cocoa industry has contributed significantly to Ghana's foreign exchange earnings, household income, and employment generation. Ghana and the Ivory Coast together produce about 60 per cent of the world's cocoa.<sup>16</sup> However, the levels of child labour participation in the cocoa industry in these two countries are quite high.<sup>17</sup>

<sup>10</sup> Ghana Statistical Service, Ghana Living Standards Survey Round 6 (GLSS 6) Child Labour Report, August 2014.

<sup>11</sup> Ghana Statistical Service, Ghana Child labour Survey, 2003 (GCLS, GSS 2003).

<sup>12</sup> Ibid.

<sup>13</sup> Inter-Agency Country Report (ILO, UNICEF, World Bank) Child Labour and the Youth Decent Work Deficit in Ghana, February 2016, p 16; Peter Fallon and Zafiris Tzannatos, Child Labour – Issues and Directions for the World Bank, 1997; UNICEF, Situation Analysis of Children and Work in Ghana, 2000; Bureau of International Labour Affairs, 2016 Findings on the Worst Forms of Child Labour.

<sup>14</sup> Children's Act, 1998 (Act 560), s 89.

<sup>15</sup> International Labour Organisation, 'C182 – Worst Forms of Child Labour Convention, 1999 (No. 182)', [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182) (accessed 6 November 2020).

<sup>16</sup> US Department of Labour, 'Child Labour in the Production of Cocoa', Bureau of International Labour Affairs (2017), <https://www.dol.gov/agencies/ilab/our-work/child-forced-labor-trafficking/child-labor-cocoa> (accessed 14 August 2019).

<sup>17</sup> Amanda Berlan, 'Child Labour in Cocoa: Whose Voices Prevail?' (2009) 29 *The International Journal of Sociology and Social Policy* 141–151.

Western media reports, especially the UK media, often present child labour within the cocoa industry in West Africa as very alarming.<sup>18</sup> For instance, *The Guardian* newspaper reported on 16 April 2001 that:<sup>19</sup>

No one knows how many children die as they are shipped to the cocoa plantations of West Africa. What is known are the appalling conditions on many of the boats. Those who have lived to tell of such things say they were left with a tiny amount of food and only filthy drinking water for a journey that lasts days [...] The dilapidated Nigerian ship has been plying the west coast for years, transporting its cargoes of children to labour in the sprawling cocoa plantations, or to work as servants, and de facto sex slaves, in the homes of the rich.

Consistent with the quote above, the US Department of Labour puts the number of children engaged in hazardous work on cocoa farms in both Ghana and the Ivory Coast at 2 million.<sup>20</sup> Working in hazardous conditions on cocoa farms definitely has negative effects on children's health, education and future livelihoods.<sup>21</sup> The Fairtrade Foundation attributes the causes of child labour to poverty, unjust terms of world trade, conflict and drought.<sup>22</sup>

Cocoa production is a household-level activity in Ghana involving all family members, and children are often assigned roles and duties.<sup>23</sup> The roles assigned to children in cocoa farms are considered part of the socialization process, which allows parents to pass on the trade of cocoa farming to the younger ones.<sup>24</sup> While this practice may be acceptable in the Ghanaian or African context, internationally it raises concerns. Hence, although some form of child labour may be taking place in some cocoa farms, it may not be as pervasive as is often portrayed by the Western media.

Apart from the reported cases of child labour on cocoa farms, child trafficking by cocoa farmers and their agents is also quite common in Ghana.<sup>25</sup> Traffickers target poor children, some of whom are recruited with the 'consent' of their parents from one part

<sup>18</sup> Ibid.

<sup>19</sup> *The Guardian*, 'Aboard the Slave Ship of Despair: Traffickers Buying the Young in West Africa' (2001), <https://www.theguardian.com/world/2001/apr/16/chrismcgreal> (accessed 6 November 2020).

<sup>20</sup> US Department of Labour, 'Child Labour in the Production of Cocoa', Bureau of International Labour Affairs (2017), <https://www.dol.gov/agencies/ilab/our-work/child-forced-labor-trafficking/child-labor-cocoa> (accessed 14 August 2019).

<sup>21</sup> US Department of Labour, 'Child Labour in the Production of Cocoa', Bureau of International Labour Affairs (2017), <https://www.dol.gov/agencies/ilab/our-work/child-forced-labor-trafficking/child-labor-cocoa> (accessed 14 August 2019).

<sup>22</sup> Amanda Berlan, 'Social Sustainability in Agriculture: An Anthropological Perspective on Child Labour in Cocoa Production in Ghana' (2013) 49 *Journal of Development Studies* 1088–1100.

<sup>23</sup> Francis Baah, 'Use of Children and the Issue of Child Labour in Ghanaian Cocoa Farm Activities' (2010) 2:9 *Journal of Agricultural Extension and Rural Development* 198–204.

<sup>24</sup> Francis Baah, 'Cocoa Cultivation in Ghana: an analysis of farmers' information and knowledge systems and attitudes'. *PhD Thesis, Institute of International Development and Applied Economics*, University of Reading, Reading, UK, 292 (2006).

<sup>25</sup> Elliot J Schrage and Anthony P Ewing, 'The Cocoa Industry and Child Labour' (2005) 18 *Journal of Corporate Citizenship* 99–112.

of the country to another, particularly from the north to the south for work.<sup>26</sup> It is reported that traffickers are mostly middle-aged individuals.<sup>27</sup> Ghana is a source, transit and destination country for children and women trafficked for forced labour and sexual exploitation. Children are trafficked within the country as domestic servants, cocoa farm labourers, street vendors, porters, for work in the fishing industry, and for use in sexual exploitation. Children are also trafficked to and from Cote d'Ivoire, Togo, Nigeria and Gambia as domestic servants, labourers, and in the cocoa industry.

In December 2005, the government of Ghana enacted the Human Trafficking Act (Act 694) as its most comprehensive legislation against trafficking in persons. Ghana's Human Trafficking Act defines trafficking in persons in similar terms as article 3 of the Palermo Protocol.<sup>28</sup> Article 3 of the Palermo Protocol which provides the first internationally agreed definition of trafficking in persons defines the term as follows:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of, the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>29</sup>

The Palermo Protocol mandates State Parties to take the necessary measures to prevent trafficking, protect and assist victims, criminalize trafficking and also engender cooperation in the international arena for the fight against trafficking.<sup>30</sup> The Palermo Protocol and its definition of trafficking paved the way for national authorities, especially States parties to adopt a holistic and a comprehensive approach to combat trafficking.<sup>31</sup>

#### IV. RECOMMENDATIONS AND CONCLUSION

This piece has shown that there are growing and worrying trends in the incidence of child labour in Ghana. As a vibrant democracy with a continuously improving human rights record, Ghana cannot allow such a state of affairs to persist. Ghana has a responsibility to

<sup>26</sup> International Labour Organization (ILO), *Combating Trafficking in Children in West and Central Africa, Synthesis Report Based on Studies of Benin, Burkina Faso, Cameroon, Cote d'Ivoire, Gabon, Ghana, Mali, Nigeria and Togo*, 2001 at 5, <http://www.ilo.org/public/english/standards/ipecc/publ/field/africa/central.pdf> (last visited on 10 June 2007).

<sup>27</sup> Daily Graphic Report, 29 March 2005, No. 149389.

<sup>28</sup> Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on the Work of its First to Eleventh Sessions, U.N. GAOR 55th Session, Agenda Item 105, U.N. Doc. A/55/383 (2000) (hereinafter the 'Palermo Protocol').

<sup>29</sup> *Ibid*, art 3.

<sup>30</sup> *Ibid*, art 2. See also Kelly Hyland, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 8 HUM. RTS. Q. 30 (2001).

<sup>31</sup> Palermo Protocol, *supra* note 6, Preamble.

fight child labour issues especially on cocoa farms. The experience of the cocoa industry in Ghana offers lessons for the legislature, executive, judiciary and other critical stakeholders about the need to promote international labour standards and ensure that child labour is eradicated from Ghana's cocoa industry.

This, it is suggested, can be done at different levels: (i) enacting new legislation; (ii) amending existing legislation; or (iii) ratifying, through the mechanism of an Act of Parliament, all the major international treaties, conventions and agreements that address child labour issues.

As the Executive Branch has not in many decades proposed legislation to comprehensively address child labour issues, we should look to the Ghanaian Parliament to do so. The content of such legislation is not disputable. It must at once address the root causes of child labour (poverty and culture) as it addresses the symptoms. Interventions that target the root causes include: developing effective models for addressing exploitative child labour; improving access to education by eliminating mainly financial barriers; and ensuring that social programmes target child labour-endemic areas. Secondly, legislation on child labour must be comprehensive. Child labour deserves legislation that is exclusively focused on the subject, as has been done for human trafficking. Again, exclusive legislation would mean that Parliament would have to designate a Ministry to be charged with child labour issues, with an accompanying budget. At the moment, different ministries have superintendence over various aspects of child labour. A dedicated Ministry would spearhead inter-sectorial engagement and collaboration, creating the necessary synergies between stakeholders working jointly towards the elimination of child labour. The Ministry could also work to intentionally integrate programmes for the elimination and prevention of child labour into existing government policies across the spectrum of initiatives in various ministries, departments and agencies.<sup>32</sup>

There are several challenges that Parliament is likely to face in an attempt to perform the above suggested functions. The first is the legislative and interpretative saga that surrounds the introduction of Private Member's Bills (PMBs) in Ghana. In Ghana, any Bill that has financial implications ('in the opinion of the person presiding' in Parliament) must be introduced by or on behalf of the President. Some have interpreted this provision in such a way as to make it next to impossible for PMBs to be proposed. It has been argued that every Bill has financial implications, as even the paper on which the Bill is printed for examination by Parliament is a charge on the Consolidated Fund. Others believe that the Constitution did not intend to outlaw all PMBs; but only those that have direct and significant financial implications. Several attempts at introducing PMBs in Ghana have all failed. This debate has still not been resolved by Parliament and to date has not been submitted to the courts for resolution.

Another challenge is that Ghana, as a dualist (as opposed to a monist country), does not allow the automatic application of international treaties, conventions and agreements signed by the Executive. These need to be ratified to be operational in Ghana. Thus, Parliament has additional duties in examining international agreements and possibly

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<sup>32</sup> Bureau of International Labour Affairs, 'Findings on the Worst Forms of Child Labour' (2017), <https://www.refworld.org/pdfid/5bd05ac616.pdf> (accessed 12 November 2020).

ratifying them for domestic implementation. This is all the more difficult because Parliament is often called upon to ratify agreements without the opportunity to amend them.

There are also judicial options that may be used to combat the WFCL, although this route is less clear cut and neat. Chapters 5 and 6 of the 1992 Constitution of Ghana contain an elaborate list of standard civil, political, economic and social rights that relate directly to child labour. Additionally, article 23 of the Constitution, nested in Chapter 5 of the Constitution, imposes a mandatory duty on administrative bodies and officials to act fairly and reasonably and to comply with requirements imposed on them by law. The Constitution further confers a right on persons aggrieved by acts and decisions of any person or institution, including administrative bodies and officials to have recourse to a court or tribunal for redress. It is noteworthy that the Supreme Court of Ghana has approved the application of this constitutional provision through simple processes by ordinary Ghanaians in the 2004 decision in the case of *Awuni v West African Examinations Council (WAEC)*.<sup>33</sup>

Given that Ghana operates under a common law tradition, the role of courts in shaping policy or legislation will continue to be very significant. In the last two decades the courts of Ghana have played a significant mediating role. In cases such as *British Airways v Attorney-General*<sup>34</sup> and *New Patriotic Party v Attorney-General (Ciba Case)*,<sup>35</sup> the courts have effectively monitored executive actions and illustrated the parameters and limitations of same. It follows that a litigation strategy that targets comprehensive judicial review and standard setting regarding child labour could lead to significant reform in that domain. Such a strategy would be twofold: establishing precedent that could be used to prevent the many human rights abuses implicated in WFCL, and effectively cripple the practice; and secondly, and perhaps more importantly, targeting state institutions that should be guarding against WFCL as defendants, using Article 23 of the Constitution, and getting the courts to literally order them, on pain of sanctions, to do their job.

Child labour will not simply go away. The incentives for its existence are many. Enduring poverty means that parents have to put their children to work early on. A deep culture of apprenticeship means that many do not see child labour as wrong, even if they fail to realize that such labour, in a changing world with a vastly transformed labour market, has become increasingly hazardous. Intentional and definitive legislative action, and failing that, comprehensive judicial responses, are needed to stem the tide of child labour in the developing world, including Ghana.

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<sup>33</sup> [2004] 1 SCGLR 471.

<sup>34</sup> Supreme Court of Ghana Law Reports (SCGLR) 547.

<sup>35</sup> [1996–97] SCGLR 729. In this case, the Supreme Court accorded a corporate body the same status as a natural person in enforcing the fundamental rights enshrined in the 1992 Constitution of Ghana.