



*Working towards
responsible labour standards
for cocoa growing*

COMMENTS ON EXECUTIVE ORDER No 13126

1. INTRODUCTION

We appreciate the opportunity to offer comment on the Initial Determination Updating the List of Products Requiring Federal Contractor Certification as to Forced/Indentured Child Labor Pursuant to Executive Order 13126, 74 Fed as published in The Federal Register on September 11th 2009. It is our understanding that the Executive Order was created to “continue the executive branch’s commitment to fighting abusive child labor practices.” We seek to contribute to this objective based on the work we have undertaken in the last five years dedicated to supporting the elimination of the worst forms of child labor in the production of cocoa.

Included on the Initial Determination list was cocoa from the Cote d’Ivoire. We seek to draw the attention of the department to the fact that the evidence supporting the argument that forced child labor is a significant factor of production is inconclusive and the impact of listing cocoa from Cote d’Ivoire could have a significantly negative impact on the recognized efforts underway to combat both forced and hazardous child labor in the sector.

We at the International Cocoa Initiative believe we are uniquely competent to comment on this sector. A partnership among NGOs, trade unions, cocoa processors and major chocolate brands, the International Cocoa Initiative (ICI) was established specifically to combat child and forced labour in cocoa growing. The aim of the ICI is "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".

In September 2001, chocolate and cocoa industry representatives signed an agreement, known as the "Harkin-Engel Protocol", to eliminate the worst forms of child labour in the growing and processing of cocoa beans and their derivative products wherever cocoa is grown. Recognising the need for a long term solution the 2001 protocol included a commitment to establish a joint foundation, the ICI. ICI is an independent body, established under Swiss law in 2002, governed by a Board that reflects the partnership principle. Ten members are drawn from the cocoa industry, eight are from civil society groups. The International Labour Organization (ILO) acts as an advisor to the Board.

Members include ADM, Barry Callebaut, Cadbury Schweppes, CARGIL, Dignité, Education International, Ferrero, Free the Slaves, Global March, Hershey Foods, International Confectionery Association, International Trade Union Confederation (ITUC), International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations (IUF), Kraft Foods, Mars Incorporated, Nestlé, the US National Consumers League and WAO Afrique.

ICI's has adopted a holistic approach to its program activities reflecting the complex nature of child and forced labour. We work from community action in over 240 communities reaching some 600,000 people to national policy. With the active support of ICI and its local partners, communities develop action plans to address the underlying causes of worst forms of child labour and forced labour in a sustainable way. At the same time ICI actively supports a positive national policy environment and effective capacity to tackle the underlying causes. ICI has provided training to police and security forces to better tackle trafficking and provides support to NGOs for the rescue and rehabilitation of victims.

2. CONTEXT

Child labour including forced child labour is recognised as a worldwide phenomenon. The ILO global report in 2006 entitled "The end of child labour within reach" indicated that this phenomenon is present in many countries but particularly in those with lower income rates. The same report recognised the emerging progress of efforts to tackle child labour and commented that *"we must remember that economic and social policies must work in the same direction to provide sustainable decent work for parents and, for children, education at least up to the minimum age for admission to employment"*.

Starting in 2001 the cocoa sector has come under particular scrutiny with media and activist attention. Since this time research from a number of different bodies has clearly confirmed that hazardous child labour is a widespread feature of this sector in the West Africa region. Production in this region relies on a large number of very smallholder farmers, tenant arrangements and largely family labour. A combination of ignorance of risks, traditional practices that do not reflect contemporary child rights and child protection legislation, low incomes and weaknesses in rural education provision conspire to create these conditions. However it is also important to note that children helping out on their family farms is not in itself illegal, or prohibited by international conventions, as long as any work undertaken does not interfere with education, does not pose hazards to the child and is both age appropriate and properly supervised.

3. COMMENT

In the media broadcast that drew attention to the sector and even in the ongoing campaigning efforts of a number of groups it is stated or implied that the supply of cocoa is largely a product of slavery. The evidence available from all the studies to date does not support this statement. Studies from independent agencies such as the Payson Center of Tulane University; studies undertaken by national groups scrutinized by third party verifiers and indeed our own work does not support the assertion that slavery in the cocoa supply chain is widespread. However any single case of slave or forced labour is one too many and it needs the full extent of our collective efforts to eliminate these practices. Victims need concerted

coordinated efforts to ensure they are identified and rescued with the prosecution of those who perpetuate these criminal practices.

There is evidence that there are cases of forced labour in the cocoa sector in Cote d'Ivoire. This comes from agencies that have withdrawn victims of trafficking, from limited studies, from reports of the specialized police anti trafficking unit and informed parties. So while the majority of broad based studies have not detected cases of forced labour it is important to observe that studies which seek to establish the prevalence of child labor generally are not well suited to detecting the particular practice of exploitative and forced labor. However for the moment it remains impossible to cite sufficient robust evidence to determine whether the cases of forced labour that have been documented are sporadic cases or an indication of a more widespread practice with a significant impact on cocoa production in Cote d'Ivoire.

In ICI's own work in some 80 communities in Cote d'Ivoire we have observed that while hazardous labour, poor education attendance and work within the family context is very common, only a few cases of forced labour have come to light to date. There is a need for a body of appropriately designed research to better understand the prevalence of these criminal practices, to drive appropriate laws and policy. This will permit more effective action by the government and partners such as the ICI and its members.

It is ICI's belief that whatever action is taken must be cognizant of the efforts that have been put in place to address child and forced labour in the cocoa sector in Cote d'Ivoire. The context for these efforts are a period of political and civil conflict, with an administration whose mandate has been extended outside the normal constitutional procedure; a parliament whose mandate has expired and a country in economic decline due to these circumstances. However even given these conditions there has been consistent and constructive engagement to better understand and put in place the environment that can permit an effective response to forced labour in the cocoa sector. There have been concrete actions on behalf of the special police unit, in cross border collaboration in civil society actions and in international meetings to review and improve coordinated efforts.

There remains much to do. For the government to provide greater leadership, international development partners in providing support and other agencies to work to realize the action plans that have been developed. Cote d'Ivoire is a signatory to key international conventions that both provide a framework for such action and an obligation to report on progress.

4. CONCLUSIONS

As already noted the executive order states that it was created to "continue the executive branch's commitment to fighting abusive child labor practices". This is certainly a laudable objective and one that ICI and its constituent members share. The value of the executive order can therefore be appreciated as one of the tools deployed by the United States Government to draw attention to key human rights issues and mobilize an effective response. In the case of countries and sectors or products where the problem is either hidden or no action is being taken, then the sanction of prohibiting the furnishing of products to executive agencies may be a right and proper response to elicit action.

While there is clear evidence of individual cases of forced labour in the production of cocoa this evidence does not permit a statement of its extent. The wider studies on worst forms of

child labour while, in the opinion of ICI inadequate and only an indirect indicator of the prevalence of forced labor, suggest that this is not a significant factor of production. Whether this body of evidence therefore meets the test of the order that there is “a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor” remains in our opinion inconclusive.

Cote d’Ivoire has publically acknowledged the problem of child labour in cocoa and is putting in place plans and actions to address this. Any action that may negatively affect the nascent efforts in this sector would be at best counter productive and at worst could de-rail the plans and programs underway. Cote d’Ivoire is a country that would benefit and could effectively use support and encouragement to continue this demanding and challenging task.

Given the available evidence to date and the public commitment of the government of Cote d’Ivoire, it’s commercial and not for profit partners, a listing which may well result in punitive action, is not in keeping with the spirit of the objective of Executive Order. Indeed in the US Department of Labor’s report, required under the Trafficking Victims Protection Reauthorization Act 2009, the efforts of the Government of Cote d’Ivoire and the cocoa sector are recognised as exemplary as they seek to implement agreements made under the Harkin Engel Protocol. Therefore measures that indiscriminately punish the cocoa sector in Cote d’Ivoire as a whole, rather than target efforts aimed at apprehending and prosecuting those involved in promoting forced labour, are likely to negatively impact wider efforts to address the underlying causes of child labour in the sector. ICI would strongly urge that these considerations are taken into account in making the final decision.