

**ENDURING CHILD LABOUR ON IVORY COAST'S COCOA FARMS:
PRACTICALITY OF THE ILO STANDARDS AND THE MISSED
OPPORTUNITIES**

A thesis submitted for the degree of

Doctor of Philosophy

by

Kéma Alexis Foua Bi

Department of Politics, History and the Brunel Law School

Brunel University

September 2014

ABSTRACT

This thesis examines the enduring nature of child labour on Ivory Coast's cocoa farms. The thesis shows that the role of the state in promoting instead of inhibiting child labour practices in the Ivory Coast favours the thriving of challenging factors to any prospect of a total abolition. This thesis focuses on the influences of traditions customary practices underpinning the child labour practice. The thesis shows the adverse role of Multinational Corporations operating in Ivory Coast's cocoa industry. This thesis shows that despite Ivory Coast being a signatory to the ILO Convention on the Worst Forms of Child Labour 1999 (No. 182), the United Nations Convention on the Rights of the Child (1999) as well as other regional and sub-regional legal instruments, the appropriate legal and policy response to child labour has yet to be provided. The thesis, therefore, offers the pedagogic approach as the shifting factor.

Keywords: Child labour; International Labour Organisation (ILO); Core International Labour Standards (CILS); child rights; State practices, Corporate Social Responsibility (CSR).

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List of Abbreviations

ADM	Archer Daniels Midland
ACRWC	African Charter on the Rights and Welfare of the Child
ACTRAV	Bureau for Workers' Activities
ANARREC	Agence Nationale de la Réinsertion et de la Reconstruction
AU	African Union
CEACR Recommendations	Committee of Experts on the Application of Conventions and
CESCR	Committee on Economic, Social and Cultural Rights
CILS	Core International Labour Standards
CLASP	Child Labour Action Support Programme
CLDA	Child Labor Deterrent Act
CNLTEE Exploitation of Children	National Committee for the Fight against Trafficking and
CRC	Convention on the Rights of the Child
CSR	Corporate Social Responsibility
ECOWAS	Economic Community of West African States
EFA	Education for All
EU	European Union
FLSA	Fair Labor Standards Act
GDP	Gross Domestic Product
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ILC	International Labour Conference
ILO	International Labour Organisation
ILS	International Labour Standards
INTUC	Indian National Trade Unions Congress

IPEC	International Programme on the Elimination of Child Labour
MCTU	Malawi Congress of Trade Unions
MDGs	Millennium Development Goals
MNCs	Multinational Corporations
NAECL	National Authority for Elimination of Child Labour
NEPAD	New Partnership for Africa's Development
NPECLC labour in cocoa	National Programme for the Elimination of the worst forms child labour in cocoa
NPC	National Policy for Children
OPT	Occupied Palestinian Territory
SNA	System of National Accounts
TEAM	Tobacco Association of Malawi
TOTAWUM	Tobacco Tenants and Allied Worker Union of Malawi
UDHR	Universal Declaration of Human Rights
UGTCI	Union General des Travailleurs de Cote d'Ivoire
UNESCO Organization	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Fund
UNHCR	United Nations High Commissioner for Refugees
USDA	U S Department of Agriculture
WACAP combat Hazardous and Exploitative child labour	West Africa Cocoa and Commercial Agriculture Project to combat Hazardous and Exploitative child labour
WFCL	Worst Forms of Child Labour
WHO	World Health Organisation
WTO	World Trade Organisation

Dedication

With deep sense of appreciation, this thesis is dedicated to:

The Almighty God, through Jesus Christ our Lord, for keeping me alive thorough, serious sicknesses on two occasions during this research. And to the following individuals

Seri Charles Foua Bi

Yohou Christine Epouse Foua Bi

Late Valy Saturnin Foua Bi

Prisca Hebert

Mario Hebert

Irié Gaetan Foua Bi

Rev. Djedje Barthélemy Meless

But for their help, I would not have commenced and complete this programme when I did.

Acknowledgements

It will be a remiss if in trying to undertake such a complicated research, profound thanks and appreciations are not accorded to all those who played a crucial part in the achievement of the academic enterprise.

I would like to thank Professor Ben Chigara profusely for his crucial role in the attainment of my most cherished dream. I gratefully acknowledge the impact of his scholarship on my research. I also acknowledge his moral support and his kindness.

I also wish to express my gratitude to my second supervisor Professor Manisuli Ssenyonjo for his guidance and support in conducting this research.

To my family, I am grateful for your help, your continuous prayers, and your supports. Thanking you *per se* could constitute a topic for a thesis.

To my friends and colleagues: Professor Ademola Abass (for helping me to embark on this academic journey and for being a source of inspiration along the journey); Pastor Balliet Henoc Coumond; Grah Jean Philippe Azany; Dr Joseph Ife Ogbona; Dr Rosana Deplano; Dr Chidebe Nwanko; Dr Salman Al-Subaie; Dr Yahya Alshammari; Dr Oluwarotimi Olubokun, Chilewubeze Henry Uzokwe, Orowhuo Okocha; Cosmas Anyakudo; Wilson Diriwari; Armand N'guessan; Angeline N'guessan; Jean Migal Digbeu; Yvonne Digbeu; Charles Kouassi; Lucie Zabo-Kouassi; Daniel Kouamé; Veronique Kouamé; N'drin Gacien Bogui; Deborah Sharon Kaiza; Albertine Debehoua.

I am grateful to the staff of Brunel Law School who ensured the smooth running of the school during the period of my research. I am grateful to the school for sponsoring my presentation at the Edinburgh Ph.D. conference in December 2014. I particularly express my gratitude to Amanda Kunicki, Rahena Begun (left the school), and Mathew Howells (left the school).

I am grateful to SOAS University and the Institute of Advanced Legal Studies for allowing me to use their respective libraries.

I am grateful to Mr Yapi Dodo, former First Secretary of the Embassy of Côte d'Ivoire in the United Kingdom of Great Britain and Northern Ireland.

I am profoundly grateful to Mrs Gisèle Nathalie Assé, Communication Advisor at the Permanent Representation of Côte d'Ivoire to International Commodity Organisation.

Introduction

This thesis examines the enduring nature of child labour on Ivory Coast's cocoa farms.¹ Child labour practice is a global endemic phenomenon.² Although the practice has been present in various societies over centuries,³ its despicable nature has made it intolerable in present modern societies.⁴ Despite universal efforts through the International Labour organisation (ILO) and the United Nations, regional efforts through the African Union and Sub-regional efforts through the Economic Organisation of West African States (ECOWAS), child labour endures in Ivory Coast.

Indeed the noticeable worldwide efforts through increasing legislative activities of the leading international organisations, to eradicate all forms of child labour, appear to have less impact on the present state of affairs in regard to child labour practices.⁵ Thus, various challenges marring the way to a complete abolition raises the question as to whether legislating could be the only approach to the issue of child labour? The same discourse applies to child trafficking that is an underlying problem to the enduring child labour practice in Ivory Coast.⁶

In its recent report, the World Bank estimates that an average of 1,300,000 tons of cocoa beans is produced per year in Ivory Coast. Based on the estimates, Ivory Coast remains the

¹ See Charlene Cooper, 'Ivory Coast Child Labor Persist on Cocoa Farms' (Job and Hire, June 2012) <<http://www.jobshire.com/articles/2261/20120629/ivory-coast-child-labor-persists-cocoa-farms.htm>> accessed 28 August 2014. See also Jennifer Booton, 'Rights Group Finds Child Labor Rampant in Nestle's Ivory Coast Supply Chain' *Foxbusiness*, (29 June 2012) <<http://www.foxbusiness.com/markets/2012/06/29/rights-group-finds-child-labor-rampant-in-nestle-ivory-coast-supply-chain/>> accessed 28 August 2014.

² See Basu Kaushik and Tzannatos Zafiris, 'The Global Child Labor Problem: What Do We Know and What Can We Do?' (2003) 17 *The World Bank Review* 147, 173.

³ See Peter Kirby, '*Child Labour in Britain, 1750- 1870*' (Palgrave Macmillan, 2003).

⁴ See Motkuri Venkatanarayana, 'Child Labour in India' (2004) 59 *Indian Journal of Agricultural Economics* 169.

⁵ See Franziska Humbert, 'The Challenge of Child Labour in International Law' (Cambridge University Press, Cambridge 2009) 31, 34.

⁶ See Unicef, '*Child trafficking in West Africa: Policy Responses*' (Unicef, Innocenti Research centre, Florence 2002) 11. See Patt Martin, 'Human Trafficking and Modern-day Slavery - Côte d'Ivoire (Ivory Coast)', available at <http://gvnet.com/humantrafficking/CoteD'Ivoire.htm>, accessed 28 August 2014.

world's largest cocoa producer. Indeed Cocoa accounts for one-quarter of the country's exports and public revenues. The report indicates that approximately 700,000-smallholder families (about six million people) depend on the agricultural activity for their primary source of income. About 500,000 producers produce coffee, and the sub-sector is an essential pillar of the rural economy. However, inadequate producer incentives and poor management of the sector's agencies have limited cocoa's contribution to rural growth and poverty reduction. More importantly, the report reveals that 60 percent of Ivory Coast cocoa farmers live below the poverty line, and they account for around 28 percent of the total number the poorest in the country.⁷

The Ivory Coast like any modern country has subscribed to the respects of human rights values and other values pertaining to modern societies. The Ivory Coast is signatory to most United Nations legal instruments as well as the ILO major Conventions; paradoxically the end goal for these various international endeavours appear to be unattainable for the West African country. The practice of child labour in its worst form continues to create a public outcry. This thesis attempts firstly to characterise the enduring child labour practice on Ivory Coast's cocoa farms as an evil practice which, in many respects corrodes the children's human rights, and secondly to appeal to the stakeholders in Ivory Coast cocoa industry. The new paradigms this thesis attempts to underscore are elements seen as crucial in paving the way forward for Ivory Coast to depart permanently from child labour in the cocoa industry, as well as other sectors.

Study about child labour in the context of Ivory Coast demands a great emphasis on some issues. Child labour targeted from the global perspective requires an analysis of the role of some key international organisations. Hence, the emphasis placed on the ILO's standards that undoubtedly benefit both the international and domestic legal environments in the combat against child labour. In the same vein, the United Nations' actions remain highly determining.

Child labour targeted from the human rights perspective is indeed a serious undermining factor to efforts to promote and protect human rights in general and child rights in particular. Hence, the analysis of the existing legal instruments is promoting and protecting human rights and child's rights. The thesis also attempts to underscore the negative impacts of child

⁷ See Document of The World Bank Report No: PAD1028: International development association project paper on a proposed additional credit to the republic of côte d'ivoire, available at http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/03/03/000333038_20100303224544/Rendered/PDF/516110PJPR0P10101Official0Use0Only1.pdf, accessed 2 July 2014.

labour on the various rights of the child enshrined in the existing international, regional and sub-regional legal instruments.

Child labour targeted from a local perspective can be characterised as the worst form as it is practiced in inhuman and shameful conditions. In recent years, the alarming nature of the practice on Ivory Coast's cocoa farms became the focus of international attention. Hence, this thesis discusses various international, regional and sub-regional activities undertaken towards the elimination of the practice in the West African country. It is worth noting that, despite various concerted efforts to eradicate the phenomenon in Ivory Coast, a strong sentiment of failure is evident on the ground.

The lack of encouraging and promising results in terms of child labour eradication on the Ivory Coast cocoa farms compels to focus the debate on some undermining factors. Among other factors, culture and customs appear to be the most challenging. The role of traditions and customs is determining in the perpetuation of child labour practices in most parts of the world. Hence, the thesis discusses cultural and customary considerations allowing child labour practice to endure in Ivory Coast. Child labour, also, targeted from socio-economic and developmental perspective in Ivory Coast, although non-justifiable, is regarded as a practice deriving from the disadvantageous situation of the country. The Ivory Coast as a developing country apparently lacks the resources and infrastructures needed to trigger a paradigm shift in the social conditions of the people.

According to Kaushik and Zafiris, 'the recent academic interest in child labour is matched by the increasing prominence of the issue in both national and international policy settings. According to them, the ILO Convention No 182, the UNCRC, and the United Nations Millennium Declaration are three documents that share a common concern for eradicating global poverty and encouraging investment in children.'⁸

More significantly, amidst growing concerns about child labour and child trafficking in the cocoa supply chain, two US politicians, Senator Tom Harkin and US Representative Eliot Engel in 2001 initiated a legislative process that resulted in the Harkin- Engel Protocol.⁹ The

⁸ Basu Kaushik and Tzannatos Zafiris, 'Child labour and Development (2003) 17 The World Bank Economic Review 145, 146.

⁹ See Text of Protocol - <http://www.harkin.senate.gov/documents/pdf/HarkinEngelProtocol.pdf>, accessed 2 July 2014.

public-private agreement signed by global chocolate and cocoa industry representatives in September 2001 aimed to work towards eliminating the worst forms of child labour in the process of cocoa production, and this is to be carried out in line with ILO Convention No 182. The protocol details the prohibition and immediate actions against the worst forms of child labour.¹⁰

In response to Article 5 of the Protocol, the International Cocoa Initiative a multi-stakeholder initiative came into existence in 2002. The structure stimulated remediation activities in a total of 290 communities in both countries. In 2008, a renewed benchmark was established calling for the certification of half of all cocoa plantations as free from child labour by July of the same year. In September 2010, the Ghanaian and Ivorian Governments, along with the representatives from the US Government and international cocoa/chocolate industry signed the Declaration of Joined Action to Support Implementation of the Harkin-Engel Protocol.¹¹

More importantly, The Framework of Action offers a number of benefits. Therefore promoting improved coordination and integrated planning, implementation, and assessment of interventions was essential.¹² In That respect, Ivory Coast re-affirmed its commitment to the Declaration and its accompanying measure. Moreover, the Tulane¹³ studies made significant progress in the efforts to eradicate the phenomenon of child labour as well as adult

¹⁰ The central goal of the protocol was to develop voluntary industry-wide standards of certification by 2005. It served as a catalyst over the last decade.

¹¹ The 2010 Declaration is aimed at the reduction of the worst forms of child labour by 70 percent in the cocoa industry of Ghana and Ivory Coast by the year 2020.

¹² Ibid.

¹³ Significant data about child labour in Ivory Coast were gathered during the 2008/09 survey conducted by Tulane University's Payson Center for International Development. The next survey is due in 2014 by Tulane and the project goals are: calculate of best baseline estimates on the number of children working in the Worst Forms Child Labour in the production of cocoa during the 2008/2009 harvest seasons, develop and execute nationally representative child labour surveys during the 2013/2014 cocoa growing season in Ivory Coast and Ghana, and report on differences in the number and percentage changes of children working, in child labour, and in hazardous work between the 2008/2009 and 2013/2014 estimate. The current project is said to help assess the prevalence of the Worst Forms of Child Labour (WFCL) in cocoa growing areas of Ivory Coast and Ghana during the 2013/14 harvest season, as called for under the 2010 Framework. The Tulane project will also develop a detailed, step-by-step survey implementation and data analysis manual to allow for the replication of research design and reporting on findings and will provide technical support and training to further develop the capacity of the national statistical offices in Côte d'Ivoire and Ghana to collect nationally-representative data on child labour in cocoa growing areas in future years. See The Child labour Cocoa Coordinating Group at <http://www.dol.gov/ilab/issues/child-labour/cocoa/2012-CLCCG-Report.pdf>, accessed 2 July 2014.

forced labour on Ivory Coast and Ghana's cocoa plantations. Meeting obligations under the Harkin-Engel Protocol is also a significant point in the Tulane studies.¹⁴

There is a general tendency to include daily work in child labour hence, the rejection of all the work. Nieuwenhuys' analysis of this approach is sufficiently detailed to give an insight of the whole debate. According to her, moral condemnation of child labour assumes the child's place in modern society must be one of perforce dependency and passivity is paradoxical. She considers that this approach is a denial of children's capacity to legitimately act upon their environment by participating to work to make them altogether dependent upon entitlement guaranteed by the state. In that respect, she notes that current child labour policies do not address the exclusion of children from the production of values. Hence, they paradoxically reinforce the children's' vulnerability to exploitation.¹⁵

More significantly, whereas industrialised societies set children apart ideologically as a category to exclude from the production of values in the developing world, socialisation, education, training and play are the rationales behind children's participation to work. She emphasises that children's total exclusion to the production of values is a yardstick of modernity. Hence, a high incidence of child labour is considered as a sign of underdevelopment. She observes that international agencies and highly industrialised countries now turn this yardstick into a tool that is condemned as backward and undemocratic by those with a high incidence of child labour.¹⁶

Most child labour happens and endures due to the abject poverty of children and families.¹⁷ More significantly, the lack of opportunities for education or income is regarded as an important factor. Although several factors affect poverty, international agencies tend to be paying more attention to trade policy as an important factor. For example, the 2003 UN Human Development Report identified "unfair trade rules" as one of the four main obstacles

¹⁴ See Tulane University's (Payson Center for International Development) Survey Research on Child Labour in West African Cocoa Growing Areas: CLCCG Meeting & Stakeholder Briefing Washington DC, 03/12/2013 available at http://www.candyusa.com/files/StoryofChocolate/Tulane_CLCCG_March2013.pdf, accessed 2 July 2014.

¹⁵ Olga Nieuwenhuys, 'The Paradox of Child Labour and Anthropology' (1995) 25 *Annual Review of Anthropology* 237, 251.

¹⁶ *Ibid.*

¹⁷ See Franziska Humbert, 'The Challenge of Child Labour in International Law' (Cambridge University Press, Cambridge 2009) 26.

to economic development in poor countries. Many poor countries are heavily reliant on export of primary commodities. These commodities suffered from declining prices due to an increase of global competition and tight markets concentration with a few firms dominating key sectors. For instance, in 2002-03 the world coffee prices hit 100-year low. Consequently, the drop in prices depressed the economies of most Central America and African countries that depend on coffee exports. As a result, child labour in some regions reportedly increased.¹⁸

The element that could draw the attention of more scholars in the debate about child labour is the irony of social justice. The ILO tremendously promotes social justice. However, apart from the cultural argument, the child labour practice in most developing countries is underpinned by disadvantaged economic situation of the country. Where, for instance, parents do not have adequate supports from the state; they have a choice between surviving and starving. As a reasonable human reaction, they will resort to all means in order to survive. The means include sending their children to work, even if themselves, they are in employment. The move is aimed at increasing incomes for the family. Equally employers in developing countries might not have sufficient resources to guarantee the national minimum wage rate. In such context, parents will be tempted to fill the financial gap by sending their child to work. The idea of the redistribution of resources is also valid in the argument of the irony of social justice.

The tendency in this debate is to criticise developing countries without exploring alternatives in order to strike the balance. Although the complexity of the issue demands that one remain realistic, states ought to observe international standards. The nature of the child labour practice requires that states strictly follow ILO standards. The prohibition of child labour is not negotiable. The social cost of child labour is detrimental to the country's developmental objectives as it damages the next generation. Therefore, sufficient implementation and enforcement of the relevant laws is vital.

¹⁸ See Child labour Public education project at http://www.continuetolearn.uiowa.edu/labourctr/child_labour/about/global_economy.html, accessed 3 January 2014.

Hypotheses

The thesis examines the opportunity for Ivory Coast and the other actors engaged in the fight against the child labour practice on Ivory Coast's cocoa farms, to adopt the appropriate approaches for a complete elimination of the phenomenon. It is understood that at the current stage of the debate on the issue in the Ivory Coast context, the undeniable fact is that the country has not been capable of determining the scale of the problem. It is evident that without an explicit knowledge of the scale of the problem, it is impossible to have the situation under control and manage it. The ultimate goal for the Ivory Coast and the other actors involved in addressing the issue ought to be a focus on these particular questions. In order to achieve this aim, the thesis seeks to answer the following questions, which, in turn, create the structure of the thesis.

1. Has the ILO been successful in combatting child labour by setting International Labour Standards? Should the ILO have a more direct involvement in action to eliminate child labour? Of course the issue of sovereignty as to be considered in relation to this specific question
2. The causal connection between child labour and the economy is one the issue this research seeks to establish. The research seeks to establish that it is more a point of social tradition whereby child labour is not regarded as a taboo rather than an economic issue.
3. The research seeks to establish that the issue of child labour cannot be addressed by law only but also by heightening public awareness. Public awareness must be raised not only in Ivory Coast but also in the neighbouring countries. This approach might eventually change governments' policies in the sub-region.
4. The Ivory Coast's heavy dependence on foreign companies in the cocoa industry must be minimised. Hence, analysing the missed opportunities and the new perspectives for the stakeholders in Ivory Coast cocoa industry in their fight against child labour could provide and answer to whether Ivory Coast has failed to accord sufficient importance to abolishing child labour.

Chapter 1 discusses the standard setting role of the International Labour Organisation (ILO) in the view to establishing the consistency and the relevance of the organisation in the international arena. This chapter examines the ILO's distinguished role in the fight against child labour around the world. It shows that ILO's working mechanism and its endeavour to

provide country members with the workable legal framework for the total elimination of child labour around the globe has resulted in the adoption of its Convention No 182. More importantly, the chapter underscores the ILO's human rights approach in that workers' right to freedom of association and invariably, the right to take collective action lie at the core of all human rights. Finally, the chapter shows that the ILO has been the spearhead of an initiative that has triggered the involvement of international, regional and sub-regional organisations in the protection of the welfare and fundamental rights of the child.

Chapter 2 shows that the child labour practice has its roots in the pre-colonial era of Ivory Coast. It shows that the practice evolved over the particular historical periods of Ivory Coast. The chapter examines the typology and characteristics of child labour set by the ILO. The chapter explores the nature and the scale of the problem in order to determine the appropriate approach to be adopted in combatting it. This approach also applies to the issue of child trafficking that is the underlying problem to child labour on Ivory Coast's cocoa farms. The chapter enquires whether theories such as utilitarianism and functionalism can help to comprehend child labour in society. This chapter analysed the socio-economic environment of child labour in the Ivory Coast. The analysis showed that there is an economic rationale for the child labour practice on Ivory Coast's cocoa farms, and this remains one of the key challenges to a possible eradication of the phenomenon. Additionally, the chapter places emphasis on the issue of governances in the fight against child labour in Ivory Coast.

Chapter 3 examines the legal reforms undertaken by Ivory Coast in compliance with the International Labour Standards (ILS). This chapter focus on the child labour practice on Ivory Coast's cocoa farms. This chapter shows that the type of the child labour practice on the cocoa farms could be characterised as the worst form of child labour as defined by ILO Convention No.182. More importantly, this chapter underscores the fact that although the child labour practice on Ivory Coast's cocoa farms has existed for several decades, the issue was brought to the international public's knowledge a decade ago by the US government and the western media.

Chapter 4 examines the underpinning factors to the perpetuation of the child labour practice on Ivory Coast's cocoa farms. This chapter shows that the cultural perception of the cocoa farming communities as rural communities is an important, challenging factor to a possible elimination of child labour. This chapter showed that although efforts are made to adopt a

universal approach to child labour and child rights, cultural perceptions in different areas of the globe remain serious challenges.

Hence, the chapter examines the impediment of culture and custom to the combat against child labour in the Ivory Coast. This chapter placed emphasis of the substantive argument, procedural argument, developmental argument, and economic and social argument to demonstrate that these arguments in the child labour debate in Ivory Coast's cocoa industry are crucial. The substantive argument and procedural argument are made to show that the Ivory Coast made significant efforts in domesticating the relevant international legal instruments. The developmental and socio-economic argument are made to highlight some political and structural weakness of the country to manage the issue of child labour in the foreseeable future. In the same vein, this chapter examines some specific issues nursed by the socio-politic orientation of Ivory Coast at the dawn of its independence from French colonial rule. The particular issues examined in this chapter appear to be overlooked by the Ivory Coast authorities. Indeed they seem to dissociate these issues from the ongoing debate about the worst forms of child labour on cocoa farms.

Chapter 5 examines the impacts of the child labour practice on the rights of the child. This chapter also focuses on the issue of child trafficking as this phenomenon is regarded as an underlying problem to the enduring child labour practice on Ivory Coast's cocoa farms. The chapter analyses the different rights corroded in the process of the worst forms or even by the child's involvement in any child labour. This chapter shows that most child rights instruments have been ratified by the Ivory Coast and other countries concerned with child labour issues. Most importantly this chapter discusses the responsibility of stakeholders in the degradation of the child's rights through child labour.

Chapter 6 examines the possible ways to find and answer to the issues of the worst forms of child labour currently practiced on Ivory Coast's cocoa farms. This chapter outlines the necessary approaches the Ivory Coast should adopt in order to manage the situation. Particular challenges for the Ivory Coast in the fight against the enduring child labour practice on its cocoa farms. This chapter shows that successive Ivory Coast authorities appear to have failed to pay attention to some specific issues that have contributed make the problem of child labour a situation completely out control. This chapter shows that child labour is an evil and shameful practice in any civilised nation. The chapter examines the missed opportunities by stakeholders in the fight against child labour. This chapter also shows that

the Ivory Coast is unable to eliminate child labour within its borders in the foreseeable future because it has no knowledge of the scale of the problem and little is done to demonstrate a genuine willingness to address the issue. However, the chapter offers the pedagogic method as the adequate approach to adopt in order to overcome the current challenges.

Methodology

The research methodology relied upon is predominantly textual analysis. It is necessary to proceed from an interdisciplinary approach in order to address the questions raised sufficiently. The issue of child labour entails economic, social and political themes. Thus, different approaches need to be confronted in order to trigger the paradigm shift needed in the Ivory Coast context.

Historical analysis is critical to this research because the child labour practice has occurred over centuries in different societies. More significantly, the practice has existed since the heyday of slavery in African societies. In the particular case of Ivory Coast, it is well-documented that the practice was deeply rooted in the pre-colonial epoch of the country. Arguably the acceptance of the practice in pre-colonial societies has facilitated its tolerance in the colonial period as well as in the post-colonial era. In most western societies, however, the perception of childhood over different historical periods has played an important part in the tolerance of the practice. Moreover, the understanding of a shift in perception of child labour in western societies has a bearing in the acknowledgement that child labour not only is a social evil that jeopardise human rights development but it is also a shameful practice in any modern society.

The comparative method is also utilised to explore and establish the potential challenges attendant upon Ivory Coast as a developing country in its efforts to have a firm grip on the phenomenon of child labour. Child labour being a universal problem, the experience of more advanced countries which have been able to bring the situation under control and thus had the opportunity to combat it, could serve as an essential reference point for a struggling country such as Ivory Coast.

Contributions

The present research seeks to make a meaningful contribution to knowledge at both the national and international levels. A contribution to literature is made by the uniqueness of the content of this thesis. The gap in literature is determined by the fact that cultural underpinning factors, and some particular issues pertaining to cocoa farming and farmland exploitation are left out in the discourse about enduring child labour in Ivory Coast. There has been no study carried in such a way to underline the challenges pertaining to the child labour practice in the context of Ivory Coast's cocoa farms. This thesis provides a comprehensive and in-depth knowledge of the child labour practice in Ivory Coast's socio-cultural context. At national level, this is the first piece of research that examines the legal input of Ivory Coast authorities in the fight against the child labour practice. More significantly, this dissertation serves as a catalyst for Ivory Coast authorities in realising that they are not at the stage of eliminating child labour, but at a stage where they ought to find the resources to determine the scale of the problem and thus manage it.

While it contributes to filling the gap in the literature, the present thesis also makes a significant practical contribution to Ivory Coast's endeavour to have the phenomenon of child labour under control. The real facts exposed to Ivory Coast, and the other actors involved in the fight against child labour on cocoa farms are that, issues such as child labour cannot be resolved through increased legislative activities. Hence, the attention of all stakeholders and actors concerned with eliminating the practice is drawn to the particular contextual challenges. The authorities are especially invited to adopt the pedagogic approach in order to increase the level of public awareness.

Chapter 1

Approaches to the Elimination of Child Labour in the International arena: an analysis of the ILO's Standards Setting Role

*‘If the capital of a great institution consists of sympathy, hope, faith, it cannot be said that the International Labour Organisation began its task with insufficient capital. It was born at a moment when a great stirring of hope quivered in the hearts of all those who cherished a desire for social justice’*¹⁹

Introduction

This chapter examines the standards setting role of the International Labour Organisation (ILO). The chapter shows that, in performing its role in the international arena, the organisation remains focused and consistent.²⁰ Legitimacy has never been an issue in the debate about the ILO's standards setting role. Instead, the indefensible and undermining view that the ILO lacks the capability to address the challenging labour issues in the international arena required a meticulous analysis.²¹ More importantly, the chapter shows that the ILO standards are fit for purpose in the context of globalisation, where workers' rights and child labour in particular, and labour relations in general become increasingly challenging issues for international law framers and governments alike.

The chapter shows that the ILO's aim to eradicate child labour and all forms of child rights violation attendant to the practice is shared by other agencies in the international arena. Thus, this chapter examines the role of other United Nations agencies, regional organisations such as the African Union, and sub-regional organisation such as ECOWAS. The sole objective

¹⁹ Albert Thomas, Director-General of the International Labour Organisation (1919-1932).

²⁰ Albert Thomas the first Director General of the ILO was adamant that the International Labour is a Necessity; a necessity of which the world has been waiting for 50 years, and which the harshness of war has made fully evident. He predicted that whatsoever obstacle it meets, whatever the resistance opposes it, it will live. See Albert Thomas, 'The International Labour Organisation, its Origin, Development and Future' (1921) 1 International Labour Review 5, 22.

²¹ See William A. Douglas, John-Paul Ferguson and Erin Klett, 'An Effective Confluence of Forces in Support of Workers' Rights: ILO Standards, US Trade Laws, Unions, and NGOs' (2004) 26 Human Rights Quarterly 273, 299.

for setting international, regional or sub-regional legal frameworks in relation to child rights is indubitably the prevention of child abuse, and child rights violations among which the worst forms of child labour practiced on Ivory Coast's cocoa farms must be counted.

1.1 ILO's Role in Addressing Child Labour and Other International Labour Issues: An Analysis of Its Sustainable Role

Several ideas underpin the assertion that ILO's role is defensible. The ILO's method of governance, its uniqueness in applying the tripartite mechanism, its endeavour to promote social justice, its eagerness to refocus international competition, and its resolution to establish a permanent social dialogue are tremendous qualities for an organisation. The qualities not only strengthen the ILO's legitimacy, but they also defeat all attempts to portray the organisation as incompetent. More significantly, all these topics have in common the protection of human rights in labour relations. Noteworthy, the ILO's role in addressing child labour in the broader spectrum is as notable as its role in the elimination of the worst forms of child labour on Ivory Coast's cocoa farms.

Rodgers et al. provide a clear understanding of the means of governance applied by the ILO to succeed in its mission. According to them, the ILO relies on four means of governance. Hence, they write that:

Four democratic means of governance characterise the ILO. The first, mean of governance is concerned with tripartite whereby the representatives of workers and employers, enjoying equal status with that of governments, join with them in free discussion and democratic decision on social and economic measures, and collaborate in increasing productivity. The second mean of governance is manifest in the adoption of international Conventions and recommendations to be submitted to national authorities for ratification or other actions. The third mean of governance is a system of inspection set to ensure enforcement of the relevant laws and regulations. The fourth mean of governance is exercised by collaboration among international bodies in order to ensure that all economic and financial policies contribute to social progress and well-being.²²

²² See Gerry Rodgers, Eddy Lee, Lee Swepston and Jasmien van Daele, *The International Labour Organization and the quest for social justice, 1919–2009* (International Labour Office, Geneva 2010).

1.1.1 An Analysis of Some Elements Justifying ILO's Standards Setting Role

The Tripartite Mechanism

The tripartite consultation refers to 'a process whereby workers, employers and governments contribute to the development of labour standards and the protection of worker's rights through voluntary interaction and dialogue.'²³ This tripartite structure makes the ILO a unique forum in which the governments and the social partners of the economy of the member states can debate and elaborate labour standards and policies freely and openly.²⁴ The ILO is the first of its kind within the United Nations. This mechanism of the ILO was a revolutionary break with the State-centric international order of the early twentieth century.²⁵

From its inception, the ILO's founders were committed to the tripartite structure. Article 3(1) of the Constitution stipulates that: the ILO General Conference was to have four representatives from member states, two of them representing the government, one representing employers and one representing workers.²⁶ More significantly the ILO has provided three tools that explicitly promote the tripartite mechanism. These instruments are recommendation 113 (1960),²⁷ Convention No. 144 (1976)²⁸ and recommendation 152 (1976).²⁹ Lorenz is right to think that the tripartite structure is an important historical inheritance of the ILO.³⁰

²³ See William R Simpson, 'The ILO and tripartism: Some reflections' (1994) 117 *Monthly Labour Review* 40, 45.

²⁴ See Steve Charnovitz, '*The International Labour Organisation in Its Second Century*' in Max Planck Yearbook of United Nations Law (Kluwer Law International, Netherlands 2000) 147, 184.

²⁵ Laurence Helfer, 'Understanding Change in International Organisations: Globalisation and Innovation in the ILO' (2006) 59 *Vanderbilt Law Review* 649, 726.

²⁶ See Article 3(1) of the ILO Constitution.

²⁷ The Tripartite Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113) (Recommendation 113) was the first ILO instrument to expand upon the concept of tripartism. It essentially proposes that domestic labour relations systems promote effective consultation and cooperation between public authorities and employers' and workers' organizations. See Brian W. Burkett, 'Reflections on Tripartism and Labour Law Reform' (2005) 12 *Canadian Labour and Employment Law Journal* 261, 290.

²⁸ The Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) requires ratifying states to implement procedures to facilitate national tripartite consultations. However, Convention 144 is limited to matters respecting the ILO; it relates to the development, implementation and review of international labour standards based on a tripartite model at the national level See Brian W. Burkett, 'Reflections on Tripartism and Labour Law Reform' (2005) 12 *Canadian Labour and Employment Law Journal* 261, 290.

²⁹ The Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152) (Recommendation 152) elaborates on Convention 144. It proposes the use of tripartite consultation in the preparation and implementation of legislative or other measures designed to give effect to ILO Conventions and

According to Lorenz, ‘the tripartite structure is not just an accident. It is a structure that is unique, and that in many of the other industrial democracies has been implemented to work very well to provide a viable sort of social safety-net in those societies.’³¹ Thus, Melanson observes that ‘the founders of the ILO presumed that this unique structure could best reflect the complex pattern of conflict and consensus that characterises production relations within the industrial democracies.’³²

Tripartism has made the ILO the most open organisation; ³³ the most representative organisation; and the first international institution in history that brings together workers, employers and Governments.³⁴ For these reasons, it is a *sui generis* organisation the like of which had never existed.³⁵ The Governing Body of the ILO is also a tripartite organ; it consists of 56 people, 28 of whom represent Governments (10 of which are members of chief industrial importance), 14 employers and 14 workers.³⁶

The International Labour Conference is the principal organ of the ILO. It adopts ILS. Each Member State’s delegation must consist of four members: two Government delegates, one worker delegate and one employer delegate (2/1/1).³⁷ The ILO Constitution requires Member States to agree on the designation of non-Government delegates from the country’s most representative organisations of workers and employers, where such exist.³⁸ The ILO

recommendations, as well as in dealing with questions arising out of reports to be made under Article 19 of the ILO constitution which sets out the procedural steps required to adopt proposed Conventions or recommendations. See Brian W. Burkett, ‘Reflections on Tripartism and Labour Law Reform’ (2005) 12 Canadian Labour and Employment Law Journal 261. 290.

³⁰ Ed Lorenz, ‘Bringing law to globalization through ILO Conventions: a labour perspective on the core labour standards’ (2002) 11 Michigan State University-Detroit College of Law’s Journal of International Law 101, 112.

³¹ Ibid.

³² Richard A Melanson, ‘Human Rights and the American Withdrawal from the ILO’ (1979) 1 Universal Human Rights 43, 61.

³³ La Rosa and Isabelle Duplessis, ‘Tripartism within the ILO: a Special Case’ (International Training Centre, Turin 2001) 1.

³⁴ Bernard Beguin, ‘ILO and the Tripartite Systeml’ (1959) 32 International Conciliation 410, 448.

³⁵ Royal Meeker, ‘The International Labour Organisationl’ (1923) 108 ANNALS of the American Academy of Political and Social Science 206, 210.

³⁶ Sec. 1 Article 7 of the ILO Constitution.

³⁷ Sec. 1 Article 3 of the ILO Constitution.

³⁸ Sec. 5 Article 3 of the ILO Constitution.

Constitution also requires that each delegate has the right to vote individually on all issues submitted to the conference.³⁹ In practice, worker delegates vote together, and employer delegates vote together, following the logic of their interests rather than any presumed national allegiance.⁴⁰ Under these regulations, employer and worker delegates enjoy the freedom of expression and the free vote in dance with instruction from their organisation. Through this mechanism, they can vote against each other or even against their Government representatives without being at risk.⁴¹

Unlike the International Labour Conference, for which the member state nominates the employer and the worker to include in its delegation, worker and employer representatives on the Governing Body are nominated by the employers ‘and workers ‘groups at the Conference.⁴² This measure consolidates the autonomy of the Governing Body.⁴³ This approach is an evidence of the strict tripartite procedure in the functioning of the ILO.

Moreover, in practice, the tripartite principle is also applied in some departments of the Governing Body, such as the Committee on Standing Orders and International Labour Standards; and the Committee on Freedom of Association. It is also evident in relation to the operation of ILO instruments (at national level) and the supervisory procedure, such as the Conference Committee on Application of Standards.⁴⁴ As observed hereinbefore, International Labour Standards have a unique tripartite characteristic that enhances their reception in domestic law.

The tripartite experience in the communist bloc has substantially changed the relations between workers, employers and governments. The paradigm shift in the communist bloc has

³⁹ Sec. 1 Article 4 of the ILO Constitution.

⁴⁰ La Rosa and Isabelle Duplessis, ‘*Tripartism within the ILO: a Special Case*’ (International Training Centre, Turin 2001) 1.

⁴¹ *Ibid.*

⁴² Sec. 4 Article 7 of the ILO Constitution.

⁴³ For more detail about the Governing Body see ‘*Introduction to the Governing Body* (ILO, Geneva 2008).

⁴⁴ See Neville Rubin, Evance Kalula and Bob Hepple, ‘*Code of International Labour Law: Volume 2, Principal Standards of International Labour Law, Part 1: Law, Practice and Jurisprudence* (Cambridge University Press, Cambridge 2005).

served to legitimate the choice of the ILO for this approach in the quest for sustained development and social stability.⁴⁵

Determining Hazardous child labour appears to be an obvious and straightforward process. However, the enduring debate on relativist approach to the issue remains a sore point in an attempt to agree upon specific activities deemed hazardous in the practice of child labour. Meanwhile in compliance with the ILO Conventions States have to determine the list of activities regarded as hazardous child labour. Indeed The Tripartite Consultation process for determining hazardous child labour is rooted in the fundamental tenets of the ILO and is a reflection of its long history and commitment to social justice through cooperation between workers, employers, and Governments.

It is clearly stated in the '*Step by Step Guide for facilitators,*' provided by the ILO for the elimination of Hazardous child labour that the Government takes the lead by naming a person or unit to oversee the Determination Process. The appointee is usually someone or a unit within the Ministry of Labour and is referred to as the 'Competent Authority.' Because determination of child labour is an obligation on the Government as a ratifying State, it cannot delegate this vital function to an outside body. While the Government necessarily leads the process of determining hazardous child labour, the involvement of the representative bodies of workers and employers is necessary because it gives them the opportunity to familiarise with the needs and perspectives of the parties they represent. By sitting together at the same table, they can work out solutions or compromises that are more likely to be practical and adopted by their constituents than if either were to be there alone or if they were not present at all.⁴⁶

In other respects, the tripartite mechanism has proven efficient in china and Africa. Burkett observes that 'domestic labour law reform processes that were consistent with tripartite principles have had a positive impact on the labour environment. Indeed strict compliance with the principle governing labour law reform i.e. equal access, meaningful consultation,

⁴⁵ See Casale Guisepppe, 'Experience of Tripartite Relations in Central and Eastern Europe Countries' (2000) 16 International Journal of Comparative Labour Law and Industrial Relations 129, 142.

⁴⁶ See ILO, The Tripartite Process of determining hazardous child labour - Guide for facilitators / International Labour Organization, Intenational Programme on the Elimination of Child Labour (IPEC)' (ILO, Geneva 2012).

compromise, and the pursuit of consensus, has resulted in broadly accepted reforms.⁴⁷ From a theoretical and practical perspective an organisation promoting such values cannot be regarded as a useless institution.

The ILO understood the important part played by Multinational enterprises in the economies of most countries and international economic relations. Thus, in the pursuit of worldwide social justice and stability, it was legitimate to expand the tripartite mechanism to multinationals. Indeed governments, employers, workers and their respective organisations are to benefit from the mechanism.⁴⁸ Hence, during its 204th Session in Geneva, the Governing body of the ILO adopted on 16 November 1977, the Tripartite Declaration of Principle Concerning Multinational Enterprises and Social Policy.⁴⁹

The consensus reached represents a unique example of common worldwide social policy formulated by governments, employers and workers, in the best tradition of the ILO. The Declaration contains guidelines that should help to enhance multinational enterprises' positive contribution to economic and social progress. More importantly the guidelines can help to reduce or resolve difficulties to which their operations may give rise.⁵⁰

The ILO standards have attracted most developing countries, mainly the newly independent African countries.⁵¹ Etukudo writes that 'in the 1950s and 1960s, when the majority of African countries reached independent statehood, these countries were naturally keen to work with the ILO, but only rarely had national employers' organisations in place. The ILO encouraged the establishment or reactivation of these organisations so that there would be full, tripartite representation in all dealings with the ILO. African employers' organisations are today making a valuable contribution to national development in addition to their

⁴⁷ Brian W Burkett, 'Reflections on Tripartism and Labour Law Reform' (2005) 12 Canadian Labour and Employment Law Journal 261. 290.

⁴⁸ See Tripartite Declaration of Principles Concerning Multinational available at http://wp.cedha.net/wp-content/uploads/2011/05/Tripartite-Declaration-of-Principles-Concerning-Multinational-Enterprises-and.pdf_br, accessed 21 August 2014.

⁴⁹ Ibid.

⁵⁰ See International Labour Office, 'Tripartite declaration of principles concerning multinational enterprises and social policy' (ILO, Geneva 2001).

⁵¹ See Leonardo Baccini and Mathias Koenig-Archibugi, 'Why Do States Commit to International Labor Standards?: Interdependent Ratification of ILO Conventions, 1948-2009' (2014)66 World Politics 446, 490.

undisputed role in wealth creation.’⁵² He rightly observes that the ILO asserts that the most appropriate way to overcome poverty and social injustice was through concerted action decided upon and implemented by employers, workers and governments.⁵³

The ILO’s role in guiding the newly independent sub-Saharan African countries to structure their Employers’ organisations demonstrates that not only is the organisation capable of changing the world labour environment, but it is also an organisation that has endowed itself with the tools to thrive in its noble mission. More significantly the influence of the tripartite consultation on the Chinese labour relations is seen as a great contribution of the ILO to a shift in perception.

Shen and Benson observe that ‘the Chinese model of tripartite consultation differs from that advocated by the ILO. However, the authorities’ overriding objectives were to provide a mediation mechanism that deals with the increasing number of labour disputes, promote the conclusion of collective agreements, and involve all major players in employment relations in addressing all labour issues.’⁵⁴ These are some core ideas promoted by the ILO in the process of tripartite consultation. Hence, to the question as to whether the tripartite consultation in China is the first step to collective bargaining, it should be given an affirmative response. The attainment of this stage in the communist bloc appears interesting in that capitalist values appear to be accepted in an opposed system. In that respect Kent writes that:

In many ways, China's interaction with the ILO has been a highly sensitive one. The changing nature of its participation has reflected the conflicting pressures of economic modernization, of its authoritarian political system and its expanding participation in global regimes. Trade union or industrial rights, in the critical sense of the individual's right to form and join the trade union of his choice and the union's right to independence from the state, have not constituted a major part of its socialist history, and have only recently emerged, like the fabled Trojan horse, as an issue introduced by economic modernization.⁵⁵

Promoting Social Justice

⁵² Akamino Etukudo, ‘From scepticism to confidence: African employers’ organizations as partners in development’ (1991) 130 *International Labour Review* 113.

⁵³ *Ibid.*

⁵⁴ Jie Shen and John Benson, ‘Tripartite consultation in China: A first step towards collective bargaining?’ (2008) 147 *International Labour Review* 231, 248.

⁵⁵ *Ibid.*

Rephrasing the definition of social justice developed by the British Commission on Social Justice, Christopher rightly emphasises that:

Social justice can be defined in terms of a hierarchy of four ideas. First, that the foundation of a free society is the equal worth of all citizens, expressed most basically in political and civil liberties, equal rights before the law and so on. Second, the argument that everyone is entitled, as a right of citizenship, to be able to meet their basic needs for income, shelter and other necessities. Third, self-respect and equal citizenship demand more than the meeting of basic needs: they demand opportunities and life chances. Finally, we must recognise that although not all inequalities are unjust..., unjust inequalities should be reduced and where possible eliminated.⁵⁶

Although some scholars perceive social justice as a vague and ill-defined ethical concept,⁵⁷ the core of the values encapsulated in the definitions provided is fit for the purpose of establishing stable and peaceful social structures. The founders of the ILO were mindful of social justice. It was necessary to secure peace against a background of exploitation of workers in the industrialising nations. The preamble to the ILO Constitution underscores the necessity of social justice for the establishment of universal and lasting peace.⁵⁸ Indeed in the early days, the founders of the ILO had committed themselves to working for social justice as their assessment of the past and their mandate for future. Juan Somavia reiterated this idea.⁵⁹

The ideal of social justice could have been a misnomer had the ILO failed to create the appropriate institutional framework for its realisation. According to Maupin, the tripartite mechanism was the institutional expression of the ILO's reformist vision of social justice in that it allows free confrontation. More significantly, it reconciles the respective interests of workers and employers, with the active involvement of governments.⁶⁰

⁵⁶ Christopher D. Merrett, 'Social Justice: What Is It? Why Teach It?' (2004) 103 *Journal of Geography* 93, 101. See also Commission on Social Justice, '*Social Justice: Strategies for National Renewal. The Report of the Commission on Social Justice*' (Vintage, London 1994).

⁵⁷ See Raymond Jancauskas, 'The concept of social justice: some current applications' (1959) 17 *review of social economy* 34, 50.

⁵⁸ The preamble of the ILO Constitution provides that 'whereas universal and lasting peace can be established only if it is based on social justice'.

⁵⁹ Juan Somavia, Director-General of the International Labour Organisation, 1999-2012.

⁶⁰ Francis Maupin, 'New Foundation or New Façade? The ILO and the 2008 Declaration on Social Justice for a Fair Globalization' (2009) 20 *European Journal of International Law* 823, 852.

In recent years, the ILO member states have committed to achieving progress and social justice in the context of globalisation. Such move is justified by the primary goal of the ILO founders to set social justice as their assessment of the past and their mandate for future. The ILO Declaration on Social Justice for Fair Globalization was unanimously adopted on 10 June 2008.⁶¹ Built on the Philadelphia Declaration of 1944 and the Declaration on Fundamental Principles and Rights at Work of 1998, it expresses the contemporary vision of the ILO's mandate in the era of globalisation.⁶² Worthwhile, after 90 years of existence of the ILO, social justice remains a deeply rooted value for the organisation. All this is evidenced by the fact that, although the world in which it is to be carried out has profoundly changed in recent years, the mission of the ILO to promote social justice remains unchanged.⁶³

The pursuit for social justice as a core mission of the ILO is one of the main arguments put forward to support its standards-setting role. The justification of its standards-setting role is an attempt to corroborate its legitimacy in a context where considerable views tend to dismiss the ILO as an organisation fit for purpose. The experience of applying the core principles of social justice has proven beneficial in development planning and the post-apartheid urban construction of South Africa.

From Viser's analysis, it appears that the experience of applying social justice became evident with the advent of post-apartheid national governance because policy frameworks aimed at planning and funding strategies for reconstructing of some cities and delivering basic needs to the poor have emerged.⁶⁴ Convinced that the important aspect of the impact of apartheid policies' on urban living is 'fragmentation,' which has led to inequality and lack of development in many parts of the cities, the South African local government representatives opted for social justice that increasingly emerge from their distributive choices. Indeed driven by the salient political motivation to undo apartheid legacies by rectifying an urban geography which is seen to hamper good urban planning, they succeeded in creating

⁶¹ See ILO Declaration on Social Justice for a Fair Globalization available at http://www.ilo.org/global/meetings-and-events/campaigns/voices-on-social-justice/WCMS_099766/lang--en/index.htm_br, accessed 21 August 2014.

⁶² Ibid.

⁶³ Michel Hansenne, 'Promoting social justice in the new global economy' (1994) 117 Monthly Labour Review 3.

⁶⁴ See Gustav Visser, 'Reconstruction Social Justice, Integrated Development Planning and Post-apartheid Urban' (2001) 38 Urban Studies 1673, 1699.

Tygerberg⁶⁵, a city presented as a classic post-apartheid local government construction product.⁶⁶

The South African experience in experimenting social justice is crucial in justifying the ILO mission because, in the recent history of mankind, social injustice has not transpired as brutal as the Apartheid. The underlying broad base consensus in the decision-making process has proven how social justice can bring about stability development. Social justice also serves as the underlying principle for economic growth and prosperity.⁶⁷ From the specific perspective of ILO 's mission to promote social justice, it should be understood that the exercise of social justice in employment not only leads to the societal well-being of workers but it also facilitates the relations between the parties involved in the process.⁶⁸

Refocusing International Competition

At the inception of the ILO, the founders had an 'increasing understanding of the world's economic interdependence and the need for cooperation to obtain similarity of working conditions in countries competing for markets.'⁶⁹ The new approach transpires in Thomas' emphasis on the International labour organisation's drive to dissipate the ever-recurring fear of international competition that threatened the existence of various isolated attempts at reform.⁷⁰

According to Wisskirchen, the aim of preventing states with weak social standards from gaining a competitive advantage over states with higher ones by establishing international

⁶⁵ The City of Tygerberg, located in the Cape Metropolitan Area constitutes the restructured remnants of 16 former *apartheid* local governments, service areas and management organisations brought about by the highly controversial amalgamation of South African cities in 1994/95 see Gustav Visser, 'Reconstruction Social Justice, Integrated Development Planning and Post-apartheid Urban' (2001) 38 Urban Studies 1673, 1699.

⁶⁶ See Gustav Visser, 'Reconstruction Social Justice, Integrated Development Planning and Post-apartheid Urban' (2001) 38 Urban Studies 1673, 1699.

⁶⁷ See, Leopold Specht et al., 'Theme I: Economy, Prosperity and Social Justice' (2003) 16 Leiden Journal of International Law 849, 871.

⁶⁸ Joseph E Stiglitz, 'Employment, Social Justice and societal well-being' (2002) 141 International Labour Review 9, 29.

⁶⁹ See ILO, <http://www.ilo.org/dyn/normlex/en/f?p=1000:1:0::NO::>, accessed 5 August 2013.

⁷⁰ See Albert Thomas, 'The International Labour Organisation, its Origin, Development and Future' (1921) 1 International Labour Review 5, 22.

minimum standards became paramount.⁷¹ Policy response from governments was indeed for a fairer trade environment. More importantly, international agreements in the field of labour would help prevent international competition from taking place to the disadvantage of workers, and would constitute a code of fair competition between employers (business entities) and between states.⁷²

The idea of fair competition is present in the ILO constitution. It stipulates that ‘Whereas also, the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations that desire to improve the conditions in their countries.’⁷³

Standards Fit for Purpose

The ILO is better understood through the nature of its Standards. Wisskirchen writes that ‘the ILO’s methods of work and the practical results thereof are not well known, notably the content of ILO’s numerous International Labour Standards even inside the member states which have ratified them.’⁷⁴ International labour standards are characterised as primary tools for governments which, in consultation with employers and workers, are seeking to draft and implement labour law and social policy in conformity with internationally accepted standards.⁷⁵

The lack of knowledge about the ILO itself has often led some scholars to underestimate the significance of the organisation in the global community. Lorenz writes that ‘I do not know whether I understand why we do not give much attention to the ILO. I think many people are not aware of it.’⁷⁶ He goes further to express his surprise about the fact that the National Council Research did not mention the ILO in its project to study International Labour

⁷¹ Alfred Wisskirchen, ‘The standard-setting and monitoring activity of the ILO: Legal questions and practical experience’ (2005) 144 *International Labour Review* 253.

⁷² See ILO, ‘International Labour Law’ at <http://actrav.ilo.org/actrav-english/telearn/global/ilo/law/lablaw.htm>, accessed 4 October 2013.

⁷³ See third preambular paragraph of the ILO Constitution.

⁷⁴ See Albert Thomas, ‘The International Labour Organisation, its Origin, Development and Future’ (1921) 1 *International Labour Review* 5, 22.

⁷⁵ See ILO, How International Labour Standards are used, available at http://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-use/lang--en/index.htm_br, accessed 21 August 2014.

⁷⁶ See Ed Lorenz, ‘Bringing law to globalization through ILO Conventions: a labour perspective on the core labour standards’ (2002) 11 *Michigan State University-Detroit College of Law's Journal of International Law* 101, 112.

Standards.⁷⁷ Such lack of knowledge or understanding does not facilitate attempts to justify the standards setting role of the ILO at the world stage. The standards setting role of the organisation is highly justifiable on the basis of the values embedded in those standards. Indeed International Labour Standards (ILS) are characterised by two features: in the first place, they are universal, as they are intended for implementation in all ILO member states; on the other hand, and as a counterpart, they possess certain flexibility. Flexibility of standards is the price of their universality.⁷⁸

It is worth noting that from the tripartite standpoint, ILS are the result of discussions among governments, employers and workers, in consultation with experts. Indeed ILS represent the international consensus on how particular labour problems could be tackled at the global level and reflect knowledge and experience from all corners of the world. Thus, governments, employers and workers' organisations, international institutions, multinational corporations and non-governmental organisation can benefit from this knowledge by domesticating the standards.⁷⁹ The standards' legal character allows their incorporation in the legal system and administration at the national level, and as part of the corpus of international law that can bring about greater integration of the international community.⁸⁰

⁷⁷ Ed Lorenz as an historian could not understand why the ILO is not given much attention. The ILO role is so crucial in the world that he urges not only the American lawmakers but also all stakeholders in the globe to give more attention to the organisation. See Ed Lorenz, 'Bringing law to globalization through ILO Conventions: a labour perspective on the core labour standards' (2002) 11 Michigan State University-Detroit College of Law's Journal of International Law 101, 112.

⁷⁸ The concept of Universality goes beyond the question of the number of States which are Members of the Organisation. Paramount in that concept is the idea that the aims and purposes of the ILO and the action that it takes must correspond with the needs of all the peoples throughout the world, whatever social or economic regime exists in their countries. The principle of universality means also that the functioning of the ILO should not be designed solely to fit any given social system or to impose a pattern of social structure to be uniformly applied; but it must maintain its purpose to help the governments and people of all countries to develop solutions to the labour problems that exist in their own special circumstances. In fact, the activities of the Organisation are required to adapt themselves to all possible forms of the life of those nations which have voluntarily accepted its aims as set forth in the Constitution. Its Constitution provides adequate scope for such adaptation. See ILO: 'Record of Proceedings, International Labour Conference, 37th session' (ILO, Geneva 1954) 436.

⁷⁹ See ILO, 'The benefits of International Labour Standards', available at http://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm_br, accessed 21 August 2014.

⁸⁰ The ILO standards' legal character derive from the binding effect created when a state member ratify a Convention. The ILO standards take two forms: Conventions and Recommendations. While Recommendations are intended to provide guidance for national policy and practice, Conventions are international treaties creating obligations under international law for countries that ratify them.

International labour standards lay down the basis minimum social standards agreed upon by all players in the global economy and, as noted hereinbefore, The ILO's tripartite structure established by the founders of the organisation ensures standards backing by governments, employers and workers alike. As Valtico observes, 'if standards have to be universal, and, therefore, applicable to States whose level of development and legal approaches differ considerably from one another, the only realistic approach is to develop standards with sufficient flexibility so that they can be adapted to the most diverse of countries.'⁸¹ In other words, International Labour Standards are flexible because they are adopted with a view that they should appeal to the majority of very diverse nations. It is a delicate balance to maintain, since it consists of not adopting standards which are too high and, therefore, would not be attractive to most Member States, nor inadequate standards that would only enshrine the lowest common denominator in order to attract the most nations to participate.⁸²

More significantly ILS cover subject matter of labour law and social policy. The content of ILS has been broadening both in fields and persons covered and framework within which matters are addressed.⁸³ In the first 40 years of its existence, the ILO concentrated on developing and enforcing international labour standards that regulate working conditions, such as working age, working hours, wages.⁸⁴

Eighth institutions determine the ILS, namely,⁸⁵ core and fundamental institutions; generally applicable institutions; benefits institutions; conditions of work institutions; occupational safety and health institutions; labour administration institutions; sea-farer workers institutions; institution on other types of workers. ILS are into three groups of standards: core and fundamental standards; priority standards; and other standards.⁸⁶

⁸¹ See Nicolas Valticos, 'Conventions de l'Organisation internationale du Travail à la croisée des Anniversaires' (1996) *Revue générale de droit international public* 36.

⁸² ILO, '*International Labour Standards: A Global Approach*' (ILO, Geneva 2001) 3.

⁸³ Nicolas Valticos and Geradold Von Potobsky, '*International Labour Law*' (Kluwer Law and Taxation, Boston 2005) 20.

⁸⁴ See Pham T Nghia, 'Incorporating the Core International Labour Standards on Freedom of Association and Collective Bargaining into Vietnam's Legal System' (PhD. Thesis, Brunel University 2010).

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

On the path to decent work, ILS are first and foremost about the development of people as human beings.⁸⁷ From a functionalist perspective, the need to achieve the goal of decent work in a globalised economy has become crucial. The world community's response to the rising challenges is to develop international legal instruments on trade, finance, the environment, human rights and labour. The ILO contributes to this noble goal by devising and promoting international labour standards aimed at making sure that economic growth and development go along with the creation of decent work.⁸⁸ The pertinence and the impact of such enterprise on the worldwide labour environment cannot be ignored or minimised.

ILS are important in many aspects. Firstly, ILS are considered a path to decent work. Decent work⁸⁹ is crucial to workers because it sums up the aspirations of people in their working lives. The Declaration of Philadelphia affirms that labour is not a commodity,⁹⁰ and neither is labour an inanimate product that can be negotiated for the highest profit or the lowest price. Working makes people human being. Work is part of everyone's daily life and is crucial to a person's dignity, their well-being and development as a human being.⁹¹ For this reason, economic development should include the creation of jobs and working conditions in which people can work in freedom, safety and dignity.⁹²

It is worth noting that the ILO thrives in setting International legal frameworks on social standards. These standards are significant because they ensure a level of fair dealings in the global economy. It is crucial in that it helps governments and employers to avoid the temptation of lowering labour standards in the belief that it could give them greater

⁸⁷ See ILO, 'The benefits of International Labour Standards', available at http://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm_br, accessed 21 August 2014.

⁸⁸ Ibid.

⁸⁹ From the ILO's point of view, decent work involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men. See ILO decent work agenda at <http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>, accessed 05 October 2013.

⁹⁰ See the Philadelphia Declaration of 1944.

⁹¹ ILO, '*Rule of the Game: An Introduction to International Labour Standard*' (ILO, Geneva 2005) 7.

⁹² See Pham T Nghia, 'Incorporating the Core International Labour Standards on Freedom of Association and Collective Bargaining into Vietnam's Legal System' (PhD. Thesis, Brunel University 2010).

comparative advantage in international trade.⁹³ A growing body of research indicates that compliance with international labour standards often accompanies improvement in productivity and economic performance.⁹⁴ The postulate is in response to criticisms that International Labour Standards are often costly thus hindering economic development.

Economic development has always depended on the acceptance of rules. Indeed legislation and functioning legal institutions ensure property rights, the enforcement of contracts, respect for procedure, and protection from crime. Given the fact that these are the core elements of good governance no economy can operate without them because a market governed by a fair set of rules and institutions is more efficient and brings benefit to everyone.⁹⁵ Premising any argument on these core values for the justification and the appeal to accept the ILO standards unconditionally, gives a scholarly moral satisfaction and the assurance that no valid criticism can prevail against the ILO as a contemporary organisation whose standards are fit for purpose. Given the crucial role of the ILS, it could not be claimed with success that the ILO's standards setting role is irrelevant to the development the world community. The ILO is consistent and focused in all its undertakings. Hence, Thomas was right to assert that:

No one can reproach the International Labour Office with having neglected any of its tasks or with letting slip opportunities of proving its existence. Rather has it been criticised for its ambitions. But, when everything is taken into account and work is judged as a whole in its proper proportions, who will wish that the opposite kind of criticism should be provoked? Is it not better to be criticised for doing too much than too little? What human organisations require at their birth are little daring and a little faith.⁹⁶

At its 86th Conference in June 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work.⁹⁷ The Declaration recognised eight fundamental Conventions

⁹³ See ILO, 'The benefits of International Labour Standards', available at http://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm_br, accessed 21 August 2014.

⁹⁴ Ibid.

⁹⁵ See ILO, 'The benefits of International Labour Standards', available at http://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm_br, accessed 21 August 2014.

⁹⁶ See Albert Thomas, 'The International Labour Organisation. Its Origin. Development and Future' (1921) 1 *International Labour Review* 5, 22.

⁹⁷ The ILO Declaration on Fundamental Principles and Rights at Work is an expression of commitment by governments, employers' and workers' organisations to uphold basic human values - values that are vital to our social and economic lives. See Declaration at <http://www.ilo.org/declaration/lang--en/index.htm>, accessed 05 October 2013.

that are related to four main issues. The first issue is freedom of association and collective bargaining; the second issue is the elimination of forced and compulsory labour, the third is the elimination of discrimination in respect of employment and occupation, and the fourth issue is the abolition of child labour.⁹⁸

In addition to its Conventions, the ILO has adopted a number of Recommendations. A Recommendation does not create obligations, but rather provides guidelines for action in some particular field.⁹⁹ Recommendations are officially communicated to every Member State of the ILO, which is expected to bring them before the authorities within whose competence the matter lies for enactment of legislation or other actions.¹⁰⁰ ILO Recommendations are considered as soft law in contrast with ILO Conventions that are considered as hard law.¹⁰¹ As noted earlier, by May 2010, the ILO has adopted 199 Recommendations. It is also worth mentioning the contribution of the ILO Codes of Practice in guiding the general trend to for the betterment of workers worldwide.¹⁰²

The Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour, are the result of the ILO's World Employment Conference held in Geneva in 1976.¹⁰³ It marked, with other international efforts in the mid-

⁹⁸ The Core standards are provided under section 2 of the Declaration. These four standards because they embody the fundamental dignity of workers as a human being as promulgated in the key human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The core standard concerned with child labour seeks to provide to children across the globe the opportunity to develop to full potential. It seeks to stop child labour that jeopardises education and development. It requires governments to fix a minimum age not less than completion of compulsory education and never less than 14-15. Worst forms of child labour such as forced labour, sexual exploitation, child soldiers, and illicit activities are addressed by this core labour standard.

⁹⁹ Article 19 of the ILO Constitution.

¹⁰⁰ Ibid.

¹⁰¹ Sarosh Kuruvilla and Anil Verma, 'International Labour Standards, Soft Regulation, and National Government Roles' (2006) 48 *Journal of Industrial Relations* 41, 58. See also Paul Gormley, 'The Emerging Protection of Human Rights by the International Labour Organisation' (1966) 30 *Albany Law Review* 13, 51.

¹⁰² Since 1950 ILO Codes of Practice have set out practical guidelines for public authorities, employers, workers, enterprises and specialized occupational safety and health protection bodies. While they are not legally binding instruments and are not intended to replace the provisions of national laws or regulations, or accepted standards, the Codes of Practice provide valuable guidance on safety and health at work in certain economic sectors. See ILO Foreign Right Catalogue 2012.

¹⁰³ See Tripartite Declaration of Principles Concerning Multinational available at http://wp.cedha.net/wp-content/uploads/2011/05/Tripartite-Declaration-of-Principles-Concerning-Multinational-Enterprises-and.pdf_br, accessed 21 August 2014.

1970s, the beginning of practical global efforts to encourage the widespread growth of opportunities for remunerative work. It places emphasis on the relationship that exists between economic growth, employment expansion and the satisfaction of basic human needs.¹⁰⁴

As stated hereinbefore, the ILO system is based on the development of standards established through the equal cooperation of governments, employers and workers by means of a voting procedure in which each of the three groups has equal weight. Therefore, there is the consensus paving the way to the adoption of the Convention and a high rate of ratification and successful incorporation to each member state's legal system.¹⁰⁵ Meanwhile, from the general observation it derives that the lack of implementation and enforcement persist in most state members. The simple proof for such assertion is the increasing frictions in labour relations across the globe.¹⁰⁶ This state of affairs leads to the question as whether member states are reluctant to implement and enforce ILS or they have not built the capacity for such an important duty. The common understanding is that countries have the erroneous perception that Conventions are not binding. Hence, the suggestion that they make the prohibition of child labour a constitutional principle should prevail in the arguments about combating the phenomenon.

Whatever the argument may be, most developing countries' approach to joining International Organisations seems paradoxical and it raises the question as to why countries join International Organisations?¹⁰⁷ The question is raised because the ideal for being part of those organisations is often not reflected in those countries' practices. Joining an International Organisation should not be driven by pure mimetism or compliance. It appears that some countries join International Organisation just to reinforce their sovereignty or for the sake of appearing as a partaker to the building of a genuine world community and the safeguarding of international relations. It is evident that by adopting such approach they will not join in good faith. As a result they would not observe the principle of strict compliance to the spirit of

¹⁰⁴ See David A Waugh, 'The ILO and human rights' (1982) 5 *Comparative Labour Law* 186.

¹⁰⁵ *Ibid.*

¹⁰⁶ See Beverly J Silver, 'World-Scale Patterns of Labor-capital Conflict: Labour Unrest, Long Waves, and Cycles of World Hegemony' (1995) 18 *Review (Fernand Braudel Center)* 155,187.

¹⁰⁷ See Charles Chatterjee, '*International Law and Diplomacy*' (Routledge, London 2011) 65.

relevant treaties. This attitude could be the rationale behind insufficient implementation and enforcement of ILS.

1.1.2 The Human Rights Approach

A universalist approach to the concept of work and working relations can be linked to a tradition of solidarity and commitment.¹⁰⁸ Workers' right to freedom of association and invariably, the right to take collective action lie at the core of all human rights because it arguably creates the means by which all other rights are asserted and defended.¹⁰⁹

Since the Second World War, the ILO's main efforts have been in the field of human rights protection and the guarantee of individual freedom. As such, the ILO is the leader in developing that portion of world law dealing with the new concept of human rights. More specifically, the ILO has developed world-wide machinery rather than the more limited type of regional protection.¹¹⁰ After the Second World War, the ILS focused on human rights and more technical issues.¹¹¹ A number of ILS go beyond the traditional field of labour law and touch upon matters of civil liberties (freedom of association), penal law (forced labour) and property law (indigenous people).¹¹² The notion of rights emerged as a consequence of the civil and political rights proclaimed by the French Declaration of the Rights of Man and the Citizen of 1789.¹¹³ The Declaration states that 'men are born and remain free and equal in

¹⁰⁸ Amartya Sen, 'Work and rights' (2000) 139 *International Labour Review* 119, 128.

¹⁰⁹ Dejo Olowu, 'Globalisation, Labour Rights, And Challenges for Trade Unionism in Africa' (2006) 18 *Sri Lanka Journal of International Law* 129, 148.

¹¹⁰ Paul Gormley, 'The emerging protection of human rights by the International Labour Organization' (1996) 30 *Albany Law Review* 13, 51.

¹¹¹ See Ben Chigara, 'Latecomers to the ILO and the Authorship and Ownership of ILS' (2007) 29 *Human Rights Quarterly* 706, 726.

¹¹² See ITC-ILO, 'International Labour Law' available at http://actrav.ilo.org/actrav-english/telearn/global/ilo/law/lablaw.htm_br, accessed, 21 August 2014.

¹¹³ See Mr. Primeaux's Website, English Bill of Rights (1689) available at http://primohistory.com/Declaration%20of%20the%20Rights%20of%20Man%20and%20of%20the%20Citizen.pdf_br, accessed, 21 August 2014.

rights' and 'any society in which no provision is made for guaranteeing rights has no Constitution.'¹¹⁴

However, Charles Fourier¹¹⁵ has been said to be the father of the expression the right to 'work.' According to him, politics extol the rights of man and do not guarantee the prime and only useful right, 'the right to work.' As Mayer observes, 'such concerns are implicit in the ILO Constitution of 1919 and the Declaration of Philadelphia of 1944. Indeed, the former declares in its Preamble that the prevention of unemployment is one of the ways of improving conditions of labour ... involving such injustice, hardship and deprivation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled.'¹¹⁶

The latter relates to the aims and purposes of the Organisation (and it is annexed to the Constitution). It stipulates that 'all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.'¹¹⁷

Furthermore, the Declaration Concerning the Aims and Purposes of the ILO emphasises that all human beings "have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity."¹¹⁸ The ILO's legitimacy particularly after the adoption of the Declaration of Philadelphia (1944) depended on the promotion of human security for both metropolitan and

¹¹⁴ See Conseil Constitutionnel at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/cst2.pdf, accessed 7 October 2013.

¹¹⁵ Charles Fourier (1772-1837) is a French social theorist who advocates a reconstruction of society based on communal association of producers known as phalanges (phalanxes). His system came to be known as Fourierism.

¹¹⁶ See Jean Mayer, 'The concept of the right to work in international standards and the legislation of ILO member states' (1995) 124 *International Labour Review* 225, 242. See also Third ITUC World Congress: Address by Guy Ryder, Director available at http://www.ilo.org/actrav/media-center/speeches/WCMS_244487/lang--en/index.htm_br, accessed 21 August 2014.

¹¹⁷ The General Conference of the ILO in its 26th Session in Philadelphia, adopted a Declaration (Declaration of Philadelphia) on 10 May 1944, The Declaration is concerned with the aims and purposes of the International Labour Organisation and the principles which should inspire the policy of its member states. See documents at: http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#declaration, accessed 06 October 2013.

¹¹⁸ *Ibid.*

native indigenous colonial labours.’¹¹⁹ The right to work is recognised as fundamental human rights and is confirmed in the International Covenant on Economic, Social and Cultural Rights (CESCR).¹²⁰ Article 6 and 7 of the Covenant provide the following rights:

- 1- Right to freely chosen work, Right to gain a living by work
- 2- Right to technical and vocational guidance and training
- 3- Right to full and productive employment
- 4- Right to conditions of political and economic freedoms
- 5- Right to fair wages
- 6- Right to equal remuneration for work of equal value
- 7- Right of women to conditions not inferior of those of men

The most significant concept devised by the ILO had an uplifting effect on the workers’ rights in the new global context. The concerns in regard to guaranteeing and protecting workers’ rights has become less challenging after decades of effective regulations and consensus among ILO members States. The ILO Director-General, Juan Somavia introduced the concept of "decent work" in 1999 shortly after assuming his position. The word "work" is intended to be broader than employment or labour, reflecting the variety of ways in which people contribute to the economy and society.¹²¹ The word "decent" denotes that work must be of acceptable quality in terms of income, working conditions, job security, and rights.¹²² The 2008 Declaration on Social Justice for a Fair Globalization recognises the "four equally important strategic objectives" of the Decent Work Agenda: (1) promoting employment, (2) enhancing social protection, (3) promoting social dialogue, and (4) realizing rights at work.¹²³

¹¹⁹ Ben Chigara, ‘The ILO and ‘Human Security ‘of Sub-Saharan African Labour in A Abass (ed) ‘ *Protecting Human Security in Africa*’ (Oxford University Press, Oxford 2010) 85.

¹²⁰ The International Covenant on Economic, Social and Cultural Rights (CESCR) was adopted UN General Assembly resolution 2200A (XXI) of 16 December 1966. It entered into force on 3 January 1976 in accordance with Article 27. See documents at United Nations, *Treaty Series*, vol. 993, p. 3. Accessed 6 October 2013.

¹²¹ The concept of "decent work" is seen by Juan Somavia as a strategic way of framing ILO objectives in that the term encompassed the needs of workers and developing countries without alienating employers and industrialized nations. See Gerry Rodgers et al. ‘*The international labour organization and the quest for social justice, 1919-2009*’ (ILO, Geneva 2010) 223, 24.

¹²² Ibid.

¹²³ See Declaration on Social Justice for a Fair Globalization, Para. I.A.

The Declaration further recognises that these four pillars are "inseparable, interrelated and mutually supportive."¹²⁴ It is worth noting that the ILO's core labour standards, which spell out the right to decent working conditions, come under the category of the second generation of human rights.¹²⁵ In the context of decent work, holistic approach demands consideration of all human rights, not just those work rights that initially appear most relevant. For example, to combat child labour, policy-makers must consider the minimum age for employment as well as the child's right to education, right to health, right to family life, and right to participation in the community, among other rights that may be affected by such policy changes.¹²⁶

Worthwhile, the concept of decent work must go beyond the ILO's four Core Labour Standards embodied in the Decent Work Agenda. The definition of decent work must address whole jobs, whole people, and whole families. For ILO to do so, it must recognise that the various dimensions of people's lives are interrelated, interdependent, and indivisible, and consequently must be addressed in a holistic human rights framework.¹²⁷ These core values are central to the ILO work to promote social justice and guarantee peace.

The Declaration of Philadelphia provides that: 'the holistic human rights approach encompasses the principles expressed in the ILO Declaration of Philadelphia and the ILO Declaration on Social Justice, including the ideas that civil and political rights such as freedom of expression and association are essential to sustain progress, and that the "war against want" requires both national and international efforts to promote the common welfare.'¹²⁸

¹²⁴ Ibid. Para. I.B.

¹²⁵ The second generation of human rights are social, economic and cultural rights. The right to work, to education or to equal pay for equal work are rights of entitlement or "claim rights" which require active policies by the state. However, the individual citizen cannot take out an action against the state if, for example, he or she should become unemployed or is unable to participate in the nation's cultural life.

¹²⁶ Gillian Macnaughton and Diane F Frey, 'Decent work for all: a holistic human rights approach' (2011) 26 *American University International Law Review* 441.

¹²⁷ Ibid.

¹²⁸ See Philadelphia Declaration, § I; Declaration on Social Justice for a Fair Globalization.

This approach of the ILO rests upon the idea that all human rights are inherent to human dignity.¹²⁹ As a result, all human rights have equal status, and accordingly, they cannot be ranked in a hierarchical order. The 1993 Vienna Declaration also reaffirms the equality of rights that urged the international community and national governments alike to treat all human rights in a fair and impartial manner.¹³⁰

The prevailing argument here is that the ILO has already accomplished the greatest practical results at the universal level of any political institution in man's history in the specialised area of human rights protection as it relates to trade union freedom. In other words, it should be underscored that the ILO has broadened the traditional concept of human rights contained in international law by effecting a recognition of social, economic, property, and labour guarantees as an essential facet of an industrialised society. Human rights, such as life and liberty, are meaningless without a corresponding protection of labour standards in the new globalised context. Following the adoption of the ILO Declaration on Fundamental Principles and Rights at Work in June 1998, an international consensus had emerged on the sanctity of ILO's core labour standards as a focal response to the imbalances of globalisation processes.¹³¹

Undoubtedly, human rights promote development, and this view is highly sustained by the ILO since its inception.¹³² Equally, development foster human rights values because in the context of development, education is highly prioritised hence public awareness are increasingly present in society. Obviously, the generalised and high level of education plays

¹²⁹ See *The Human Rights Based Approach to Development Cooperation towards a Common Understanding among UN Agencies* at <http://www.undg.org/index.cfm?fuseaction=SearchResults>, accessed 06 October 2013. This document of the United Nations Development Group (UNDG) proclaims the indivisibility of civil, cultural, economic, political, and social rights because all are inherent in the dignity of every person and therefore hold equal status.

¹³⁰ See Declaration on the Right to Development, G.A. Res. 41/128, art. 6, U.N. Doc. A/RES/41/128 (Dec. 4, 1986) (affirming the indivisibility and interdependence of all human rights); World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, T 5, U.N. Doc. A/CONF.157/23 (July 12, 1993) it proclaims that "All human rights are universal, indivisible and interdependent and interrelated."

¹³¹ See Dejo Olowu, 'Globalisation, Labour Rights, And Challenges for Trade Unionism in Africa' (2006) 18 Sri Lanka Journal of International Law 129,148. See also World Trade Organisation (WTO), *Doha Ministerial Declaration*, WT/MIN (01)/17, 20 November 2001. D document available at: http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_implementation_e.pdf, accessed 06 October 2013. All WTO member states reaffirmed their Singapore Declaration of 1996 recognising the ILO's core labour standards as being so fundamental that they should not be violated.

¹³² Heidmarie Wiczorek-Zeul, 'Human Rights and Development' (2008) 38 Environmental Policy and Law 249.

an important role in reducing social predicaments such as child labour and child trafficking. The concept of development appears to be the focus of developed countries and developing countries alike. The ILO makes the sustained development of its member states paramount because the ideal of social justice and peace is more likely to be attained in a safer environment. In that perspective, the ILO adheres to the idea that the rights at work can be broadly integrated within the same overall framework which also demands opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.¹³³

The comprehensive view of society that informs the approach adopted in the ILO vision of decent work (ILO, 1999) provides a more promising understanding of the needs of institutions and policies in pursuit of the rights and interests of working people.¹³⁴ The ILO, therefore, is the custodian of workers' rights within the United Nations system.¹³⁵ The ILO in such quality seeks to protect both workers' rights and trade union interests. Characterised as a fundamental human right, the right to join a trade union and through the union, to bargain for a fair return for one's labour is thus a foundation stone for constructive competition in the world market.¹³⁶

The ILO has the merit of being justified in its standards-setting role because it has adopted a more up to date approach to human rights. The underlying philosophy to its approach being the promotions of social justice, the International Labour Standards, are all rights based Conventions. As Gormley rightly put, 'the inescapable conclusion remains that they represent a significant advancement over the work of the League of Nations because the purpose of the League was to maintain the peace rather than to promote social justice and human rights.'¹³⁷ In fact, under the League system only the ILO had any major degree of competence to seek such idealistic goals. Indeed, the Declaration of Philadelphia in 1944 set forth the view of the

¹³³ Genevieve Lafond, 'Dignity at work: why is international law fit for the job?' (2011) 24 *Revue Quebecoise de Droit International* 3,4.

¹³⁴ Amartya Sen, 'Work and rights' (2000) 139 *International Labour Review* 119, 128.

¹³⁵ *Ibid.*

¹³⁶ See Report of Sixteenth World Congress of the ICFTU, 'The global market - trade unionism's greatest challenge' available at http://actrav.ilo.org/actrav-english/telearn/global/ilo/seura/icftu1.htm_br, accessed 22 August 2014.

¹³⁷ Paul Gormley, 'The emerging protection of human rights by the International Labour Organization' (1966) 30 *Albany Law Review* 13, 51.

post-war ILO, which carried forward the work it had begun while under the League. The new role of the ILO was redefined by the Philadelphia Declaration. In turn, the Declaration of Philadelphia was incorporated into the Constitution.¹³⁸

It should, therefore, be agreed with Gormley that The ILO has led the way in developing new and more realistic definition of human rights by incorporating human, economic, and social rights into its numerous Conventions. Even though single individuals cannot petition the ILO directly, as they can the Commission of Human Rights, Council of Europe, their case can be presented by "an industrial association of employees or workers" under the text of Article 24 of the ILO Constitution. Accordingly, injured persons and labour groups can obtain some redress of their grievances in those instances wherein alleged violations of ILO Conventions have occurred. Additionally, the ILO has developed the most advanced system of conflict-resolving global machinery available to private groups and also to member states. Further, even the International Court of Justice can be utilised in appropriate circumstances. In other words; labour groups have emerged as subjects of ILO "common law."¹³⁹ However, Wieczorek-Zeul writes that:

And yet, policy dialogue is not always easy. The governments of some of the countries we work with maintain that certain political or civil human rights conflict with their culture; other governments view women's rights and their right to sexual autonomy as not in keeping with their cultural values. There can, however, be no compromising on these issues. Women's rights, like any other human freedom, are non-negotiable. As a development policy maker, I can add that if these rights are not upheld, poverty reduction measures will only be half as effective.¹⁴⁰

It should however be emphasised that many developing countries well accept the ILO'S approach to human rights. The International Labour Standards mightily influenced the regional labour standards in term of setting labour rights. Indeed the strongest basis for labour rights in Africa lies in the African Charter on Human and Peoples' Rights, 1981 (the African Charter). Being the most widely accepted human rights instrument among African states, the

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Heidemarie Wieczorek-Zeul, 'Human Rights and Development' (2008) 38 Environmental Policy and Law 249.

Charter's potential as a tool for advancing worker's interests in Africa are enormous.¹⁴¹ Article 10 of the African Charter guarantees the right to freedom of association;¹⁴² Article 11 provides for the right to freedom of assembly, and Article 15 secures the right to work under equitable and satisfactory conditions, and for equality in wages.¹⁴³

1.1.3 The ILO's General Approach to Child Rights

The ILO's approach to human rights in general and child rights in particular is undisputable. Although some critics¹⁴⁴ have underestimated the Organisation's role in the promotion of human rights, the core of its action cannot be dissociated with the betterment of mankind in the work environment. Waugh writes that; The ILO has regarded human rights as encompassing whatever rights are essential to the betterment of human life. Looking to the basic needs of man, it has proposed programs for full employment, just, and favourable conditions of work and such regulations as well assure freedom and human dignity.¹⁴⁵ This approach is significant in that the ILO from its inception has promoted the protection of children. Two of the first six Conventions promulgated in 1919 were concerned with regulating the employment of children.¹⁴⁶

In the pursuit of child rights protection, the ILO's Convention No182 rightfully demands the elimination of the worst forms of child labour. Indeed the worst forms of child labour are the most claimants of child rights. A variety of rights is systematically violated in the process of carrying out any work deemed 'Worst Form of Child Labour.' Article 3(d) states that: 'Work which, by its nature or the circumstances in which it is carried out, is likely to harm the

¹⁴¹ See Dejo Olowu, 'Globalisation, Labour Rights, And Challenges for Trade Unionism in Africa, (2006) 18 Sri Lanka Journal of International Law 129, 148.

¹⁴² Article 10 - 1. Every individual shall have the right to free association provided that he abides by the law. 2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

¹⁴³ Article 15 - Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

¹⁴⁴ This view is shared by David Waugh when he states that: The International Labour Organization (ILO) is not generally thought of as a human rights organization, even though from the time of its founding Conference in Washington, D.C. in October, 1919, one of its central purposes has been to facilitate the extension of human rights' See David A Waugh, 'The ILO and human rights'(1982) 5 Comparative Labour Law 186.

¹⁴⁵ David A Waugh, 'The ILO and human rights'(1982) 5 Comparative Labour Law 186.

¹⁴⁶ See ILO Minimum Age (Industry) Convention, 1919 (No. 5) and ILO Night Work of Young Persons (Industry) Convention, 1919 (No. 6).

health, safety or morals of children.’¹⁴⁷ Child rights are carefully considered even in previous Conventions. In exploring the possibility of employment for young persons aged 13 to 15, the ILO urges the competent authorities, to permit work that is not likely to be harmful to their health or development as well as work that will not prejudice their attendance at school.¹⁴⁸

1.1.4 The ILO’s Actions Against Child Labour

Smolin rightly observes that ‘although the ILO has been adopting Conventions relating to child labour since its inception in 1919, its activism in regard to child labour has passed through four distinct stages. Indeed he notes that the first stage is concerned with the period spanning between 1919 and 1932, where the ILO created five area-specific Minimum Age Conventions which are Industry (1919), Sea (1920), Agriculture (1921), Trimmers and Stocker (1921) and Non-Industrial Employment 1932). However, he observes that the ILO’s Constitution and these five initial Conventions failed to name the abolition of child labour as a goal or purpose, or even use the term child labour.’¹⁴⁹

In regard to the second stage he notes that the ILO’s activism on child labour primarily involved creating revised version of the Minimum Age Sea (1936), Industry(1937), and Non-Industrial Employment (1937).These Conventions raised the primary minimum age for full-time employment from fourteen to fifteen. More significantly, unlike the Conventions adopted in the first stage of activism, the term children were used in the second stage of activism Conventions to refer to persons under the age of fifteen or those still within the compulsory education laws. He also observes that, in its initial two periods of activity on child labour, encompassing over fifty years, the ILO was concerned principally with establishing fourteen (and then later fifteen) as a basic minimum age for most forms of employment outside the context of the family.¹⁵⁰

More remarkably, he observes that ‘the terminology of "abolishing child labour" was absent from the Conventions of the second stage activism. Moreover, the ILO's foundational 1944 Philadelphia Declaration of Principles, which clarified the purposes of the ILO, failed to

¹⁴⁷ Article 3(d) Worst Forms of Child Labour Convention, 1999 (No. 182).

¹⁴⁸ See Article 7 (1a) (1b) Minimum Age Convention, 1973 (No. 138).

¹⁴⁹ David M Smolin, ‘Strategic Choices in the International Campaign Against Child Labour’ (2000) 22 Human Rights Quarterly 942, 987.

¹⁵⁰ Ibid.

include the abolition of child labour within the core principles of the ILO, and referred to children only in the context of the provision for child welfare and maternity protection.¹⁵¹ As to the third stage of the ILO activism on child labour, he notes that the 1973 Minimum Age Convention (C38) was intended gradually to replace the area-specific Conventions mentioned hereinbefore. Indeed the purpose of the new Convention was the total abolition of child labour.¹⁵²

From that perspective, there was not only need to correlate compulsory education with minimum age employment standards, but also a necessity of placing a floor of fifteen for the minimum age employment standard. Indeed in its purpose, scope, and standards, the 1973 Minimum Age Convention was an ambitious compare to the previous Conventions. However, given the fact that treaties are only binding on nations that ratify them, the mere existence of an ambitious Convention is meaningless unless the Convention attracts a significant number of ratifications. Smolin concludes, therefore that the major failing of the Minimum Age Convention from the perspective of the ILO was probably its failure to attract sufficient ratifications, particularly in the nations containing the majority of the world's child labourers.¹⁵³

Furthermore, Smolin observes that the fourth stage of ILO activism on child labour began in the 1990s and still continues, and the characteristics of this fourth stage include: moving child labour from the periphery to the centre of the purposes of the ILO.¹⁵⁴ It is evident that the idea underpins the ILO's approach to an effective action against child labour that a clear national policy against the exploitation of children is the fundamental basis and point of departure. The ILO admits that the merit of a national policy lies in the fact that it articulates societal objectives and commitments and provides a coherent framework for an associated programme of action. Furthermore, national policy and programme action on child labour should be placed in the context of national, social and economic development policies that

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ In its analysis Smolin indicates that these new areas are criminal matters such as prostitution, pornography, and drug trafficking, and the question of minimum age limits for military service, through explicit inclusion of these matters in the 1999 Convention on the Worst Forms of Child Labour.

address the larger issues of poverty, education and development.¹⁵⁵ However, the ILO's recommendation intends to improve the conditions of children it appears to overshadow the crucial issue of culture and customs, issues that often hamper the adequate implementation of ILS in some countries.

The ILO has always stood for the effective abolition of child labour. Indeed this objective is enshrined in a number of instruments. Thus, the ILO permanently and consistently advocates the development of national policy on child labour as a requirement to overcome the phenomenon. The creation of the IPEC is thus in line with the ILO's objective.

The ILO's International Programme on the Elimination of Child Labour (IPEC) was created in 1992 with the overall goal of the progressive elimination of child labour, which was to be achieved through strengthening the capacity of countries to deal with the problem and promoting a worldwide movement to combat child labour.¹⁵⁶ Indeed, it is a technical cooperation programme that works towards the elimination of child labour by strengthening national capacities to address child labour problems and by contribution to the worldwide movement to combat child labour. IPEC currently has operations in 88 countries, with an annual expenditure on technical cooperation projects that reached over US\$61 million in 2008. It is the largest programme of its kind globally and the biggest single operational programme of the ILO.¹⁵⁷ Noteworthy, since its inception in 1992 there have been an increasing number of governments who signed a Memorandum of Understanding with the ILO. Their commitment to the elimination of child labour became apparent.¹⁵⁸

The ILO recognises the need to set priorities for actions against child labour and vulnerable groups must be the main priority. On the 87th session of the General Conference of the

¹⁵⁵ See Guys Thijs, 'National policies and programmes in Action against child labour' (International Labour Office, Geneva 2000) 7.

¹⁵⁶ See ILO, 'About the International Programme on the Elimination of Child labour (IPEC) available at http://www.ilo.org/ipec/programme/lang--en/index.htm_br, accessed 22 August 2014.

¹⁵⁷ Ibid.

¹⁵⁸ See ILO, 'Social Protection Platform' available at http://www.social-protection.org/gimi/gess/ShowCountryNewss.do?cid=547_br, accessed 22 August 2014.

International Labour Conference, ILO member states adopted a new Convention concerning immediate action for the elimination of the worst forms of child labour.¹⁵⁹

It is worth noting that National ILO offices work to reinforce the national tripartite relationship between the social partners (government, employers and workers). The evidence of such endeavour rest upon the ILO-IPEC project “*Towards child labour free cocoa growing communities through an integrated area based approach*” developed in 2010 and implemented in Ghana and Ivory Coast. It is one of the first projects designed to address all child labour issues in cocoa growing communities as opposed to focusing on cocoa farming in isolation.¹⁶⁰

The integrated and coordinated approaches adopted by the ILO clearly manifest through supporting the development of Decent Work Country Programmes and National Action Plans to eliminate child labour. Indeed in West Africa this has included the strengthening of national legal frameworks concerning child labour and regional initiatives to combat child trafficking. The ILO’s International Programme to Eliminate Child Labour (ILO-IPEC) also funds community level interventions which are implemented through the social partners or national or international NGOs. At the international level the same tripartite structure brings together governments, international employers’ and workers’ organisations concerned by child labour in the cocoa supply chain.¹⁶¹

The integrated area-based ethos approaches the elimination of child labour as a process embedded in wider national strategies for eliminating child labour, promoting education and decent work and reducing poverty. The new approach is aimed at creating an environment where children do not shift from one hazardous sector or occupation to another. More significantly it guarantees an environment where vulnerable families and communities are given the opportunity to address their livelihood and their economic situation which is one of the root causes of child labour. Moreover there will be an environment where the necessary

¹⁵⁹ See Guys Thijs, Action Against Child Labour: 1. National policies and programmes available at http://collections.infocollections.org/ukedu/en/d/Jh2393e/2.4.1.html_br, accessed 22 August 2014.

¹⁶⁰ See doc SWAC/OECD 2011. Document available at <http://www.oecd.org/swac/publications/49069653.pdf>, accessed 25 March 2014.

¹⁶¹ Ibid.

consensus at both community and national levels is generated to garner the ownership needed to support long-term change.¹⁶²

The most recent and comprehensive ILO standards on child labour are the Minimum Age Convention, 1973 (No.138), and its accompanying Recommendation (No.146), and the Worst Forms of Child Labour Convention, 1999 (No.182) and its accompanying Recommendation (No.190). The ILO Bureau for Workers' Activities (ACTRAV) is involved in issues concerning environmentally sustainable development and child labour for many years - through supporting trade unionists to develop and to implement their policies and action plans.¹⁶³

Figure 1.1: Number of children in child labour and hazardous work, actual 2000-2012 and levels for 2016-2020 assuming pace of progress during 2008-2012



Source: ILO, Making progress against child labour: Global estimates and trends 2008-2012 (Figure 2)

In regard to figure 1.1 above, The ILO admitted that the current pace of progress is too slow to reach the 2016 target to the elimination of worst forms of child labour.¹⁶⁴ This analysis derives from the fact that the 2000-2012 pace of progress is deemed satisfactory in term of

¹⁶² Ibid.

¹⁶³ See ACTRAV's mission at <http://www.ilo.org/actrav/about/lang--en/index.htm>, accessed 25 March 2014.

¹⁶⁴ See ILO, 'Marking progress against child labour' available at , http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ippec/documents/publication/wcms_221513.pdf_br, accessed 22 August 2014

elimination of worst forms of child labour. Although a slow pace of change is obvious in recent years, the ILO's work remains remarkably tremendous in the combat against child labour not only in Ivory Coast but also in the rest of the globe. However, it is worth noting that The ILO has failed to bring the contributing factors to such slow pace under its control since the 2008 survey. There is a clear indication that the ILO faces multiple and dynamic challenges hence it should not rest on its laurels.

1.2 Enshrining Children's Rights in Legal Frameworks: The Standing International Legal Instruments

1.2.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights¹⁶⁵ (UDHR) maps out the scope of human rights protection. In this respect, the UDHR does not contain any specific provision for the rights of the child. Meanwhile, some provisions appeal to the necessity of safeguarding some fundamental rights of the child. For instance Article 1 in providing that all human beings are born free and equal in dignity and rights,¹⁶⁶ does not make any distinction as to whether human rights should be enjoyed by an adult or child. Therefore, a child born free will grow up in the permanent enjoyment of his freedom, his dignity and rights.

The text implies that children and adults alike have their human rights from birth, and they should enjoy it throughout their childhood. Furthermore, Article 1 underpins the endowment of all human beings with reason and conscience hence the necessity of treating one another as brothers. Article 4 prohibits servitude and slavery in all forms. The provision of this article should be appealing to countries where children are in work bondage and servitude. More importantly, Article 25(2) affirms the necessity of giving special care to childhood. This entitlement enshrined in the UDHR indicates the importance of child rights in society.

¹⁶⁵ See Claude E. Welch, 'A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights: Origins, Drafting and Intent' (2000) 24 Human Rights Quarterly 287, 290.

¹⁶⁶ The Universal Declaration of Human Rights (UDHR) was adopted without dissent on December 10, 1948. Article 1 provides that: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'

1.2.2 The United Nations Convention on the Rights of the Child

Among the core international human rights instruments, the United Nations Convention on the Rights of the Child¹⁶⁷ remains the most completed legal frameworks in regard to child rights.¹⁶⁸ Meanwhile, other core human rights instruments¹⁶⁹ have provided room for child rights due to the importance of the issue. The ILO also has addressed the issue of child rights in a more precise ambit. Where these legal instruments evoke the issue of human rights in general, the issue of child rights cannot be ignored. The point is pertinent in that children as human being cannot be excluded from the general human rights debates.

Lopatka writes that ‘the Convention on the Rights of the Child is as a result of cooperation and the unanimous will of the United Nations. It sets moderate rather than unduly ambitious standards of promotion and protection of the rights of the child.’¹⁷⁰ More importantly Lopatka emphasises that ‘the provisions of the Convention are order for some and an incitement for all, universally, to raise standards or promotion and protection of the rights of the child in all sphere that concern that the child and in all countries of the world.’¹⁷¹ This observation bears the substance of the CRC in that not only children’s rights are no more apprehended in distorted ways but also the willingness of the United Nations to bring about a new approach was evident.

Viljoen observes that ‘after its adoption in 1989, the Convention on the Rights of the Child secured the required 20 ratifications, causing the Convention to enter into force in record time, in September 1990, less than a year after its adoption.’¹⁷² Meanwhile, he regrets that the African involvement in the drafting process was limited in that only a maximum of three

¹⁶⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49.

¹⁶⁸ It is observed that some lacunae in the substantive ambit of the CRC have been filled by two optional protocols. See Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press, Oxford 2012) 133.

¹⁶⁹ There are ten core international human rights treaties but the relevant instruments are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

¹⁷⁰ Adam Lopatka, ‘The Rights of the Child Are Universal: The Perspective of the UN Convention on the Rights of the Child’ in Michael Freeman and Philip Veerman (eds) *The Ideologies of Children’s Rights* (Martinus Nijhoff Publishers, Boston 1992) 51.

¹⁷¹ Ibid.

¹⁷² Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press, Oxford 2007) 140.

African states participated for the first nine years that the working group took to draft a final proposal.

Child labour being a phenomenon tightly held in the claws of traditions and culture in developing countries in general and in Ivory Coast in particular; the answer provided by the Convention in that respect is the most appropriate for any country plagued by the outrageous practice. The recognition of the importance of traditions and cultural values of each people for the protection and harmonious development of the child does not mean that implementation of the rights granted to the child by the Convention should be relinquished. Indeed if such traditions are inconsistent with the substance of those rights it is necessary that the provision prevail. Similarly, if the hierarchy of values recognised in a given country, are inconsistent with the values upon which the Convention on the Rights of the Child is based, the aim should be to replace the values that are inconsistent with the Convention with those promoted therein.¹⁷³ The framework provides a clear guidance that could facilitate the work of the committee on the Rights of the child that is the implementation structure under the Convention.

This treaty sets out the civil, political, economic, social, health and cultural rights of children. Right from the preamble, great emphasis is put on the 'duty of care' owed to childhood by every human society.¹⁷⁴ The preamble recalls the proclamation of the United Nations in the Universal Declaration of Human rights, and that childhood is entitled to special care and assistance. Moreover, the revolutionary concept of "best interest of the child" stated in Article 3 of the Convention has appealed to many scholars in that it embodies the whole philosophy of making the child the subject of exceptional rights in society. The right to education are, indisputably, one of the fundamental rights in every human society. This transpires in Article 28 of the Convention. Furthermore, Article 32¹⁷⁵ appeals to countries that, indeed, have become addicted to the practice of child labour. The countries concerned

¹⁷³ Adam Lopatka, 'The Rights of the Child Are Universal: The Perspective of the UN Convention on the Rights of the Child' in Michael Freeman and Philip Veerman (ed) *The Ideologies of Children's Rights* (Martinus Nijhoff Publishers, Boston 1992) 51.

¹⁷⁴ Paragraph four of the preamble states that: "Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance..."

¹⁷⁵ Article 32(1) States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

ought to recognise that their attitudes jeopardise the education and development of the children involved in the ugly practice.

Child trafficking regarded as a serious phenomenon remains a challenging issue for most developing countries in general and in particular for West Africa. Child trafficking appears to be the principal factor in the dynamic of child labour in Ivory Coast.¹⁷⁶ Thus, Article 35 of the Convention stipulates the requirement for states to take all measures necessary to eliminate child trafficking.¹⁷⁷

In terms of safeguards for the full expression of the rights of children as well as opportunities for nations to embark on ambitious programs, the Convention on the Rights of the Child is the most adapted international legal frameworks. It is the *organon* ‘offered’ to any nation that is ready for a paradigmatic shift in its perception of a child. This idea is reinforced in the recent General comment of the UN Committee on the rights of the child as follow:

It is necessary for states to have adequate legal and institutional frameworks to respect, protect and fulfil children’s rights, and to provide remedies in case of violations in the context of business activities and operations. In this regard, States should take into account that:

- (a) Childhood is a unique period of physical, mental, emotional and spiritual development and violations of children’s rights, such as exposure to violence, child labour or unsafe products, or environmental hazards may have lifelong, irreversible and even transgenerational consequences;
- (b) Children are often politically voiceless and lack access to relevant information. They are reliant on governance systems, over which they have little influence, to have their rights realized. This makes it hard for them to have a say in decisions regarding laws and policies that impact their rights. In the process of decision-making, States may not adequately consider the impact on children of business-related laws and policies, while, conversely, the business sector often exerts a powerful influence on decisions without reference to children’s rights;
- (c) It is generally challenging for children to obtain a remedy – whether in the courts or through other mechanisms – when their rights are infringed upon, even more so by business enterprises. Children often lack legal standing, knowledge of remedy mechanisms, financial resources and adequate legal representation. Furthermore, there are

¹⁷⁶ See UNICEF, ‘*Child trafficking in West Africa: Policy Responses*’ (UNICEF Innocenti Insight, Florence 2002).

¹⁷⁷ Article 35: ‘States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form’.

particular difficulties for children in obtaining remedy for abuses that occur in the context of businesses' global operations.¹⁷⁸

1.2.3 The Child Rights According to Other Core Human Rights Instruments

Other core international human rights instruments address the issue of child rights, chiefly, the International Covenant on Civil and Political Rights (ICCPR 1966)¹⁷⁹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966).¹⁸⁰

The ICCPR

The ICCPR has a mandate to commit its parties to respect the civil and political rights of individuals, including the rights to life, freedom of religion, freedom of speech and freedom of assembly. This commitment was reaffirmed in the recent meeting of the states parties to the Covenant.¹⁸¹ Article 6 of the Covenant promotes the protection of the right to life that should be enjoyed by every human being because such a right is inherent to every individual. The rights to life are equally recognised to the adults and the child.

Moreover, in the ordinary course of life and certain circumstances, young persons are given special treatment compared to adults. An emphasis is placed on this in Article 10 Paragraph 2(b) of the Covenant. Article 10 paragraph 2(b) stipulates that "Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. Furthermore, Article 10(3) states that juvenile offenders shall be segregated from adults and be accorded treatments appropriate to their age and status.

¹⁷⁸ See UN Committee on the rights of the Child (CRC) General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, 17 April 2013, CRC/GC/16, available at <http://www.refworld.org/docid/51efcd24.html>, accessed 22 January 2014.

¹⁷⁹ The International Covenant on Civil and Political Rights (ICCPR 1966) is one the ten core International Human rights instruments. It was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27.

¹⁸⁰ The International Covenant on Civil and Political Rights (ICCPR 1966) is one the ten core International Human rights instruments. It was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

¹⁸¹ See the 2014 Meeting of States Parties to International Covenant on Civil and Political Rights, available at http://www.un.org/News/Press/docs/2014/hr5168.doc.htm_br, accessed 22 August 2014.

Most significantly, Article 24 of the Covenant explicitly names the family, the state and society as custodians of child rights protection. Article 24 also promotes the right for the child to be registered at birth and also the right to have a nationality. Overall, the ICCPR underscores important set of rights that should be enjoyed by both the child and adult but with special attention in regards to treatment of the child.

The ICESR

The International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) has a mandate to commit its parties to work towards the granting of economic, social, and cultural rights. Economic, Social and Cultural Rights to individuals, include labour rights, the right to health, the right to education, and the right to an adequate standard of living. This Covenant is equally significant in the domain of protection for human rights in general and for child rights in particular.

For instance, Article 13 of the Covenant places emphasis on the importance of education for the strengthening of human rights and fundamental freedom. Indeed emphasis on education through this provision is pertinent because children are often deprived of schooling, even at the primary level when they are, from a very early age, engaged in child labour and other activities detrimental to their social and physical development.

The enshrining of child rights in international legal instrument is without doubt the evidence of a shift in mankind's perception to the status of the child. The UDHR has clearly set the framework to the betterment of every human being's life. Although, this international instrument does not specifically underscore the rights of the child, there is a perception that children as human beings ought to enjoy their dignity and right to life as well as other substantive rights. In that respect, adults have the 'duty of care'. Hart and Pavlovic emphasise that, 'as to children, rights have developed differently than for adults in regard to civil and political rights that have been recognised to children recently, and after the social rights.'¹⁸² In the light of this recognition there is an increasing obligation for parents or guardians to play the adequate role in protecting the rights of the child. Thus according to Hayek:

With regard to children the important fact is, of course, that they are not responsible individuals to whom the argument of freedom fully applies. Though it is generally in the best

¹⁸² Stuart Hart and Zoran Pavlovic, 'Children's rights in education: A historical perspective' (1991) 20 School Psychology Review 345, 358.

interest of children that their bodily and mental welfare be left in the care of their parents or guardians, this does not mean that parents should have unrestricted liberty to treat their children as they like.¹⁸³

The Child Rights Convention *per se* is tremendously generous with what a child can enjoy as rights. Seen as the Magna Carta of child rights, it opens the door to a wide field of legal capability to every nation to promote and protect the rights of the child by enacting laws and regulations at domestic levels. For instance, Article 40 of the Convention requires governments to establish special rules and procedures regarding children accused or convicted of criminal offences. It also requires government to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.¹⁸⁴ As Cullen pertinently observes, indeed, in a major shift regarding children's rights, this Convention separates children's rights from the family.¹⁸⁵ This approach is significant in the sense that, earlier human rights provisions, such as Article 24 of the 1966 International Covenant on Civil and Political Rights (ICCPR), either contextualised the child within the family or provided for rights of families only.¹⁸⁶

It is worth noting that the CRC has recalled in its preamble the core idea that childhood should be entitled to special care and assistance.¹⁸⁷ More significantly the CRC promotes the family cell. Therefore, it advocates the strengthening of family by urging the competent authorities to provide the necessary protection and assistance so that it can fully assume its responsibilities within the community.¹⁸⁸

¹⁸³ Friedrich A Hayek, *The Constitution of Liberty* (Routledge and Kegan Paul, London 1963) 377.

¹⁸⁴ Article 40 CRC, See also Jane Fortin, *Children's Rights and the Developing Law* (LexisNexis UK, 2003) 550. See also Unicef, Progress of Nations 1997 Special Protections, Progress and Disparity, available at http://www.unicef.org/pon97/p56a.htm_br, accessed 22 August 2014.

¹⁸⁵ Holly Cullen, 'Child Labour Standards: From Treaties to Labels' in Burns H Weston (ed) *Child Labour and Human Rights: Making Children Matter* (Lynne Rienner Publisher Inc, Boulder 2005) 92.

¹⁸⁶ *Ibid.*

¹⁸⁷ The preamble recalled this idea initially stated in Article 25(2) of the Universal Declaration of Human Rights.

¹⁸⁸ See Andrew Bainham, 'Contact as a right and Obligation' In Andrew Banham, Briget Lindley and Martin Richards (eds) *Children and Their Families: Contact, Rights and Welfare* (Hart Publishing, Oxford 2003)61.

Indeed, convinced that the family is the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children,¹⁸⁹ the CRC underscores the necessity to establish stable family cell. However, family environment cannot always guarantee the security of the child when his human rights are jeopardised. More remarkably, violations of child's human rights often occur in the family environments. Meanwhile, on the assumption that such occurrence will reduce or unlikely when the family cell is well established and wealthier, the CRC's approach has some merits.

The enforcement mechanism provided in the Convention on the Rights of the Child is through a monitoring system which involves government reporting to the Committee on the Rights of the Child. The main function of the Committee is to examine progress made by states parties under the Convention (Part II Articles 42-45). The main weakness with the reporting 'enforcement' mechanism is that it is often very ineffective and indeed; some African countries do not even bother to report to the committee or if they do; the reports are often inadequate or make claims to the inapplicability of certain Articles of the provision to their countries.¹⁹⁰

It is tempting to conclude that the African child charter and the Convention complement each other in their conception of childhood and the rights of children that flow from such conception. After all, the African Child Charter in its preamble reaffirms adherence to the principles of the rights and welfare of the child as claimed in inter alia the convention. However, behind the apparent harmony lie ideological and conceptual differences between the two documents which may suggest, at the very least, that there remain unanswered questions on the conceptual understanding of the essence of both the context and substance of the of the rights of the child.¹⁹¹

¹⁸⁹ See the preamble of the Convention on the Rights of the Child, paragraph 18(1) of the 1999 African's Charter on the Rights and Welfare of the child, Article 16(3) of the Universal Declaration of Human Rights, and the House of Lords' definition in *Huang v Secretary of State for the Home Department*.

¹⁹⁰ See Welsham Ncube, 'Prospects and Challenges in Eastern and Southern Africa: The interplay between international human rights norms and domestic law, tradition and culture' in Welsham Ncube (ed) *Law, Culture, Traditions and Children's Rights in Eastern and Southern Africa* (Ashgate-Dartmouth, Aldershot 1998) 5.

¹⁹¹ Welsham Ncube, 'The African cultural fingerprint? The changing concept of childhood' in Welsham Ncube (ed) *Law, Culture, Traditions and Children's Rights in Eastern and Southern Africa* (Ashgate-Dartmouth, Aldershot 1998) 12, 13.

The ICCPR's unambiguous approach to the protection of child's rights for adjudication is a significant point in the Covenant. The rights of accused juvenile persons will be better protected if they are separated from adults. More importantly by underscoring who are the custodians of child rights protection, the Covenant has a merit of being classified as a core international human rights instruments. This Covenant provides few, but significant articles that guarantee some rights for the child.

The ICESCR, like other core international human rights instruments, puts human rights in general and child rights in particular at a high level of consideration. The approach taken in the ICESCR that is to urge states parties to make primarily education compulsory has the merit of setting a framework for the realisation of fundamental rights inherent to every human being. As indicated elsewhere in this thesis, education is the backbone of a stable and thriving society in terms of human rights. Hence, the textual analysis of human rights instruments appear necessary to identify where children's rights are covered in other instruments than those exclusively concerned with child rights.

Dismissing the ILO's role in the protection of human rights in general and in child rights in particular is the result of a superficial evaluation. The ILO's legal instruments are significantly protective of workers' rights. Various human rights violations arise in work environments across the globe. The ILO's standards setting role at the international level has the merit of working towards a human rights violation and free work environments. The appeal to the competent authorities across the globe, to better these rights sounds very loud. The ILO's approach to child rights is unambiguous through its Conventions related to children. Indeed the legal frameworks to safeguard children's fundamental human rights are precise.

The underlying assumption of all international human rights instruments on the rights of children is that the international law as a body of law is a significant tool in the improvement and development of the conditions under which children live across the world. However, the main problem with international law has always been the enforcement mechanisms and procedures for that body of law. International treaties are directed and binding on state parties to the Convention or treaty.¹⁹² Only a very small portion of international law gives rights

¹⁹² See Welsham Ncube, 'Prospects and Challenges in Eastern and Southern Africa: The interplay between international human rights norms and domestic law, tradition and culture' in Welsham Ncube (ed) *Law, Culture, Traditions and Children's Rights in Eastern and Southern Africa* (Ashgate-Dartmouth, Aldershot

directly to individuals and hence the often repeated assertion that the subjects of international law are states and not individuals. It is for this reason that international human rights instruments are directed to state parties to recognise, implement, expand, develop and enforce the recognised rights of individuals within their territories.¹⁹³

1.3 Enshrining Child Rights in Legal Frameworks: The Standing Regional and Sub-Regional Legal Instruments

1.3.1 The African Union Act

The African Union Act reaffirms adherence to the principles of human and peoples' rights and freedoms which are contained in the Declarations, Conventions, and other instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations.¹⁹⁴ Meanwhile, in regard to the defunct Organisation of the African Unity, Abass observes that:

The only reference to 'human rights' in the OAU charter exists in Article II(e) which enjoins the organisation to promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.¹⁹⁵

In the light of this fact, it is hard to believe that replacing the Organisation, by referring to the defunct one, could effectively promote human rights. Moreover, Abass rightly states that:

The OAU's distinct lack of appetite for human rights and civil liberties is further manifested in the fact that it took almost 20 years that is to say, nearly half the organization's life span,

1998) 3. See also Kofi Quashigah, 'Religion and the republican state in Africa: The need for distanced relationship' (2014) 14 African Human Rights Law Journal 78, 92.

¹⁹³ Ibid.

¹⁹⁴ See Preamble of the African (Banjul) Charter on Human and People's Right (1981), article 9, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

¹⁹⁵ Ademola Abass, 'African Peace and Security Architecture and the Protection of Human Security' in Ademola Abass (ed) *Protecting Human Security in Africa* (Oxford University Press, Oxford 2010) 248. See also Gino J Naldi, 'Future trends in human rights in Africa: The increased role of the OAU?' In Michael Evan and Rachel Murray (eds) *The African Charter on People's Rights: The system in Practice, 1986-2000* (Cambridge University Press, Cambridge 2002) 1.

before its members adopted the Charter on Human and People's Rights (ACHPR) IN Banjul the Gambia.' It was not until five years later that the Charter entered into force.¹⁹⁶

Abass is right to assert that 'as a result, there is no provision in the AU Act that makes mentions of human security in direct terms. Indeed, what is commonly found in the constitutive treaties of African organizations is the duty to maintain peace and security in general.'¹⁹⁷

1.3.2 The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child,¹⁹⁸ as well as the CRC, promotes the best interest of the child.¹⁹⁹ The concept of 'best interest of the child' was itself fashioned by UN Convention on the Rights of the Child (CRC).²⁰⁰ According to Viljoen, 'it is denied that The African Children's Charter is the replica of the CRC in Africa. It seems that political and legal motives drove the adoption of the Charter.'²⁰¹ From a much more constructive view point, the legal motive is pointed at as the most consistent element. From that perspective, Viljoen writes that:

From a legal point of view, therefore, there was a need to adopt a regional human rights instrument dealing with the issues of particular interest and importance to children in Africa.²⁰²

The African nations' approach is justified by the fact that some omissions ranging from practices prevalent in African society, such as female genital mutilation and circumcision to the role of the extended family in the upbringing of the child and matters of adoption and, some other issues, were noticeable in the CRC. In other words, the contextual consideration

¹⁹⁶ Ademola Abass, 'African Peace and Security Architecture and the Protection of Human Security' in Ademola Abass (ed) *Protecting Human Security in Africa* (Oxford University Press, Oxford 2010).

¹⁹⁷ Ibid at 257.

¹⁹⁸ See OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999.

¹⁹⁹ See Article 4 of the Convention.

²⁰⁰ Article 3(1) stipulates that: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

²⁰¹ See Frans Viljoen's analysis about the question: Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press, Oxford 2012) 393.

²⁰² Ibid.

underpinned by culture and customs are not covered by the CRC. Therefore, the African Children's Charter was the ideal legal instruments to address the points of concerns pertaining to the conditions of African children. The Charter dissipated the concerns that have not been addressed by the CRC. Therefore, as Viljoen puts it,' the two instruments are not in an oppositional but rather a complementary relationship.'²⁰³

The Charter has the merit of addressing issues peculiar to the child in the African context. The issue rose being the promotion and the protection of the rights of the child; a Universalist approach would have hardly prevailed in a context that sustains a different value system. Education as a fundamental right for the child and the purpose for education are present in Article 11 of the Charter.²⁰⁴ Indeed education is the most reliable mean to prepare the child for the status of a good citizen. Therefore, the education of the child shall be directed to fostering respect for human rights and fundamental freedom.²⁰⁵

More significantly, the Charter has the merit of resting all actions in regard to children, upon the concept of 'the best interest of the child.'²⁰⁶ Interestingly, the Charter urges all State parties to protect African children from child labour. Article 15(1) provides that: 'Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or interfere with the child's physical, mental, moral, or social development.'

The justification of child labour and other harmful practices detrimental to the welfare, the dignity, the growth, and development of the child is often premised on settled and well accepted traditional and social principles. Article 21(1)²⁰⁷ of the Charter urges states parties to take appropriate measures to eliminate all social and cultural practices deemed harmful to the child because they are practices that systematically violate child rights. The Charter also

²⁰³ Ibid.

²⁰⁴ Article 21 (1) provides that: 'All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.'

²⁰⁵ This idea underpinned by Article 4 which provides that: 'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.'

²⁰⁶ Ibid.

²⁰⁷ States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular: (a) Those customs and practices prejudicial to the health or life of the child; and (b) Those customs and practices discriminatory to the child on the grounds of sex or other status.

designates trafficking in children, as one of the most complex issues in sub-Saharan Africa in general and in particular in West Africa. Trafficking is a phenomenon that systematically violates children's human right. Therefore, state parties are urged to take appropriate measure in this area.²⁰⁸

The letter and the spirit of its Articles can yield the Chatter admirations and praises. However, it should not be ignored that parents who subject their children to child labour are not strangers to the idea of 'best interest of the child' that is invoked by the Charter. Parents definitely know what the best interest of their children is but the disadvantageous economic context in most developing countries leaves no choice to them than pushing their children in the child labour practice. This line of reasoning underpinned the argument of the irony of social justice mentioned in the introduction of this thesis. Moreover its

1.3.3 The African Charter on Human and People's Rights

Commonly known as the Banjul Charter,²⁰⁹ the African Charter on people's Rights among other is believed to have largely proved to date to be a false dawn for the promotion and protection of human rights in Africa.²¹⁰ Such observation sharply contrasts with one the primary objectives asserted in the preamble of the Charter. The preamble of the Charter stipulates that 'State parties reaffirm their adherence to the principles of human and people's rights and freedom contained in the Declarations, Conventions and other instruments of the Organization of African Unity, the Movement of the Non-Aligned Countries and the United Nations.'²¹¹

Reaffirming their adherence, among other principles, to the principle of human rights contained in Conventions, it evident that the African States parties have thereby adhered to

²⁰⁸ Article 29 stipulates that: 'States Parties to the present Charter shall take appropriate measures to prevent: (a) the abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child; (b) the use of children in all forms of begging.

²⁰⁹ African (Banjul) Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

²¹⁰ See Gino J Naldi, 'Future trends in n human rights in Africa: The increased role of the OAU?' in Michael Evan and Rachel Murray '*The African Charter on People's Rights: The system in Practice, 1986-2000*' (Cambridge University Press, Cambridge 2002) 5.

²¹¹ See preamble of the African (Banjul) Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

the principle of rights of the child embodied by the CRC. Therefore, the recognition to every individual the entitlement to enjoy the rights and freedom embodied by the Charter, equally benefit to African children.²¹²

Noteworthy, the Charter contains some Articles that place emphasis on the particular circumstances of children in terms of human rights protection. Article 5 states that: ‘Every individual shall have the right to the respect of the dignity inherent in a human being and the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, the slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.’ The wording of the provision is concise and it is appealing to states parties where degrading practices such as Child labour and child trafficking are common place. Bearing in mind that no provisions of the Charter exclude children as beneficiaries to the rights promoted, any provision that is advantageous to the child must be upheld by state parties.

More importantly, Article 17 of the Charter stipulates the rights for every individual to education.²¹³ Given that education remains one the substantive rights of the child in every human society, it could not be denied that a charter that promotes the rights to education for every individual has pinpointed a crucial element in the interest of children. Naldi writes that: ‘The African Charter makes the briefest of express reference to the rights of children.’²¹⁴ This statement is made in reference to 18(3)²¹⁵ of the Charter that is the only provision containing the term ‘Child Rights’. ‘Although the observation is acceptable, this should not purport that the Charter does not promote children’s rights through some of its provisions.

1.3.4 The African Union’s Direct Action Against Child Labour

²¹² Article 2 : ‘Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.’

²¹³ Article 17(1) states that every individual shall have the right to education.

²¹⁴ See Gino J Naldi, ‘Future trends in human rights in Africa: The increased role of the OAU?’ in Michael Evan and Rachel Murray ‘*The African Charter on People’s Rights: The system in Practice, 1986-2000*’ (Cambridge University Press, Cambridge 2002) 5.

²¹⁵ Article 18(3) The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in International Declarations and Conventions.

The African Union's (AU) indirect action against child labour is primarily noted through Nepad.²¹⁶ The New Partnership for Africa's Development (NEPAD) is the technical body of the African Union. The strategic framework Document of the Nepad was adopted during the 37th Summit of the defunct Organisation of African Unity in July 2001. NEPAD is designed to address the current challenges facing the African continent. Critical issues such as the escalating poverty levels, underdevelopment and the continued marginalisation of Africa needed a new radical intervention, spearheaded by African leaders, to develop a new Vision that would guarantee Africa's Renewal. The primary objectives of NEPAD are as follow:

- 1- Eradicate poverty
- 2- Place African countries, both individually and collectively, on the path of sustainable development
- 3- Halt the marginalisation of Africa in the globalisation process and enhance its full beneficial integration into the global economy
- 4- Accelerate the empowerment of women

In that respect, combatting child labour is deemed to include the action of NEPAD. The rationale for this is that poverty being presented as one of the root causes of child labour in Africa; an effective action to alleviate poverty can have a significant impact on child labour. The programme of action of NEPAD is holistic, comprehensive, integrated sustainable development initiative for the revival of Africa, guided by its objectives hereinbefore mentioned, its principle and strategic focus. Although, NEPAD's programme of action does not expressly mention the elimination of child labour, the alleviation of poverty that remain its main target can incidentally affect child labour practices within communities.

It is evident that stronger and better education is a fundamental objective for human resource development. As examined in previous chapters, education is a determining factor in combating child labour. In that perspective, NEPAD is working towards Education for All (EFA) in Africa, a programme designed to fit within the framework of the AU Second Decade of Education for Africa (2006–2015) and the Millennium Development Goals

²¹⁶ See NEPAD's actions at <http://www.nepad.org/>, accessed 24 March 2014.

(MDGs).NEPAD endeavours to monitoring and intervening as appropriate to ensure that the Millennium Development Goals in the areas of health and education are achieved.²¹⁷

1.4 The West African Sub-Region and Child Rights Issues

1.4.1 The ECOWAS's Approach to Child Rights

In comparison to the other African regional organisations, ECOWAS was equally seen as an organisation that also circumvents the core debate about human rights. The lack of reference to human rights in its constitutive documents evidences such assertion. Indeed, Emphasis is hardly put on this vital issue within the West African economic community.

Ebobrah observes that ‘a feature of the 1975 ECOWAS Treaty (1975 Treaty) is that it does not mention human rights and completely avoids any use of human rights language. Even economic freedom usually seen as vehicles for integration was carefully couched to avoid any link with rights.’²¹⁸

Meanwhile, after more than a decade of hesitation, the Economic Community made a considerable progress in that respect, at least in terms of usage of the human rights language. The paradigm shift in perception, arguably after years of criticisms, occurred in 1993 with the revision of the ECOWAS Treaty (Revised Treaty). The evidence of ECOWAS' willingness to adopt a new approach to human rights transpires in the revised instruments. The particular reference to human rights made in the revised Treaty is the evidence of a new approach to the issue of human rights in the sub-regional institution's dealings.²¹⁹ However, the revised treaty per se has not provided a wider scope to human rights.

More importantly, the ECOWAS' unequivocally reaffirms the recognition and protection of human and people's rights as termed by the African Charter on Human and People's Rights' (African Charter). These fundamental principles are to be adhered to by ECOWAS member

²¹⁷ See NEPAD. ‘Human Capital Development’ available at http://www.nepad.org/humancapitaldevelopment_br, accessed 22 August 2014.

²¹⁸ Solomon T Ebobrah, ‘Critical Issues in the Human Rights Mandate of the ECOWAS Court of Justice’ (2010) 54 *Journal of African Law* 1, 25.

²¹⁹ The references are mainly made in the preamble of the COWAS revised treaty.

States in the pursuit of the Economic Community's objectives.²²⁰ The shift in perception *per se* is significant to the issue of child rights in the ECOWAS area. The cultural and traditional stigmatisations of the child are facts contributing to the predicament of children in terms of rights recognition. In a community where Human Rights in general terms are not recognised, it will be a fallacy to imagine or claim the child's human rights.

There is a necessity to make the issue of child rights a relevant question in most developing countries. The important step to secure promotion and protection of human rights in most developing countries is to create consciousness to human rights. Once people are conscious of human rights, the next step is to draw their attention to the necessity of respecting and protecting these rights. When these crucial stages are passed, the attempt to make the child rights debate a relevant question to them succeeds.

In a declaration adopted in 2001 in Dakar, the ECOWAS asserted its reliance upon the current standing international and regional human rights instruments to advocate child rights in the sub-region.²²¹ The declaration made in that respect was to reaffirm its attachment to the principles set forth in the instruments. The declaration simply recognises the Convention of the African Charter on the Rights and Welfare of the Child. The preamble only provides that: 'Ecowas states members' commitment to abide by the terms of the African Charter on the Rights and Welfare of the Child, and the United Nations Convention on the Rights of the Child, the Declaration and Plan of Action of the World Summit.' In the general scope of human rights, the issue of trafficking in persons has been a challenge for the ECOWAS. The response to this phenomenon is also given through a mere declaration.²²²

As per the terms of the ECOWAS Heads of States, the suffering caused by the growing incidence of trafficking in persons within the West African Sub-region and from their member states to other parts of the world has become a matter of serious and deep concern. The adoption of a plan of action against trafficking in persons through this declaration is a

²²⁰ See Gino J Naldi, 'Future trends in human rights in Africa: The increased role of the OAU?' in Michael Evan and Rachel Murray *The African Charter on People's Rights: The system in Practice, 1986-2000* (Cambridge University Press, Cambridge 2002) 5.

²²¹ See Declaration a/dcl.1/12/01 on the decade of a culture of the rights of the child in West Africa (2001-2010). This declaration was *adopted in Dakar (Senegal) on 20 - 21 December 2001*.

²²² See Declaration a/dc12/12/01 on the fight against trafficking in persons. This declaration was adopted during the Twenty-Fifth Ordinary Session of Authority of Heads of State and Government in Dakar (Senegal) 20 – 21 December 2001.

significant step. The Heads of States declared that they would undertake all necessary efforts to implement fully the ECOWAS Initial Plan of Action against Trafficking in persons 2002-2003. More importantly the ECOWAS Secretariat was directed to monitor and report to the Ordinary Summits of Heads of States in 2002 and 2003 prospectively, on the progress made in the implementation of the Declaration and the Initial Plan of Action.

1.4.2 ECOWAS's Response to Child Labour

ECOWAS does not provide a straightforward answer to the lingering issues of child exploitation. Hence, the inexistence of the workable legal framework proper to the institution is regarded as of lack interest in efficiently addressing the human rights question in general and the child rights issue in particular. However, ECOWAS' approach to the issue of trafficking in person that has a bearing in the debate about child labour was unveiled in a plan of action.²²³

Indeed, the ECOWAS member states, aware of the growing incidence of trafficking in human being, (women and Children in particular) in West Africa and beyond, Heads of States at their 23rd Session in May 2002 at Abuja (Nigeria) adopted a Decision on the illegal trafficking in Children calling for the formulation of an ECOWAS Policy on child trafficking and the adoption of strategies for effective advocacy and sensitisation in Members States.²²⁴ The focus of members States was to be on of the legal and administrative framework. Their responsibilities established in three major points are as follows:

1. Ensure criminalization of the practice of trafficking, enacts legislation that would prohibit the practise, with adequate sanctions, deal with issues of protection of victims, compensation for damages, repatriation rights and procedures, regulate entry procedures at borders.
2. Ratify and domesticate all International Conventions – United Nations Convention on Transnational Organized Crime and the Protocol to prevent, suppress and Punish

²²³ See the Joint ECOWAS.UNODCCP/CICP Regional Meeting of Experts on Trafficking in Persons. The meeting was held in Lomé (Togo) from 2 - 3 December 2002.

²²⁴ Ibid.

Trafficking in Persons and all Human Rights Conventions, ILO Conventions on forced Labour and minimum age.

3. Ratify ECOWAS Conventions on Extradition and Mutual Assistance in Criminal Matters to provide a framework for cooperation among law enforcement agencies.

In the light of the ECOWAS' shift in approach, combatting child trafficking is paramount. The evaluating some legal instruments established by few member states shows that policy and lawmakers accepted the new approach in the sub-region. For instance, Child trafficking is designated as a criminal offence in Nigeria. The Anti- child trafficking legislation in force in Nigeria are – Child Rights Act 2003, Labour Act (CAP.L1 Laws of the Federation of Nigeria 2004) and the Trafficking in Persons (Prohibition) Law Enforcement and Administration 2003 (CAPT23LFN2004), which was amended in 2005.²²⁵ The Trafficking in Persons (Prohibition) Law Enforcement and Administration 2003 established a body known as the National Agency for the Prohibition of Traffic in Persons and Other related Matters (NAPTIP) vesting it with the responsibility of enforcing laws against and prosecute persons and to rehabilitate and counsel victims.²²⁶

Conclusion

The shift to a more comprehensive approach to human rights in the sub-Saharan Africa is noticeable. The adoption of regional legal instruments for human rights in general and child rights in particular have changed the political, social and political landscape of the region previously believed to be reluctant to espouse the human rights discourse. Nonetheless, the scarcity of provisions related to human rights in the African Union Act is an issue that needs to be addressed.

The adoption of the African Charter on the Rights and Welfare of the Child is a significant shift in the perception of the child in Africa. Such an instrument is determinant in the elimination of the wide range of abuses suffered by millions of children in sub-Saharan

²²⁵ See The explanatory Memorandum of the Nigerian 'Trafficking IN Persons (Prohibition) Law Enforcement and Administration (Amendment) Act, 2005' available at http://www.protectionproject.org/wp-content/uploads/2010/09/Nigeria-TIP-Amendment-Act-2005.pdf_br, accessed 22 August 2014.

²²⁶ See NAPTIP Information Nigeria available at http://www.informationng.com/tag/naptip_br, accessed 22 August 2014.

Africa. Chiefly, child labour being the most important area of child rights violation in Africa; it is paramount to set a workable legal framework in order to address the phenomenon adequately.

The African Charter on people's Rights is also a regional instrument that has alluded to the rights of the child. Although the Charter is regarded as a false dawn for the promotion and protection of human rights in Africa, it has the merit of enshrining substantive human rights.²²⁷ It should be understood that, when making reference to the phenomenon such as child labour that has the most destructive effects on the child's development and health, Article 16 of the Charter²²⁸ appeals to the awareness of states parties. The significance of this appeal to awareness lies in the fact that children should always be viewed as the future of the nation. In that respect Viljoen notes that 'with 41 percent of its population under the age of 15, the adage that 'children are the future' rings more true in Africa than anywhere else.'²²⁹

The ECOWAS appears to circumvent the debate on the growing child rights violation in the sub-region. Two declarations were issued, but the revised Treaty does not provide enough for child right in particular and human rights in general. The attitude of the organisation begs the question whether the social dimension is a priority on the path to regional integration? Indeed, there is a lack of a community instrument for human rights and child rights. West Africa is a fertile ground for child labour, child trafficking and several other practices that negate the child's human rights. There ought to be a legal instrument specific to the area in order to quell all the phenomena in their dynamic.

Arguably, the rationale behind putting aside the prospect of the establishment of its rights based legal instruments, is the fact that there already exist workable legal instruments in that respect both at the international and the regional levels. Another probable explanation of ECOWAS' reluctance to enact community instruments for human rights is that member states have their national laws to address the general issue of human rights. However, few countries

²²⁷ Since children are not excluded by the Charter in regard to the enjoyment of rights it embodies, they equally benefit from the rights expressly recognised to all individual by the Charter.

²²⁸ Article 16 (1) provides that: 'Every individual shall have the right to enjoy the best attainable state of physical and mental health.'

²²⁹ See Frans Viljoen, '*International Human Rights Law in Africa*' (Oxford University Press, Oxford 2012) 391. See also his comment about the figures indicated at the same page.

in the region have the adequate child rights instruments. Among other states, Nigeria is regarded as the country that enshrined children's rights in an adequate legal framework.²³⁰

Indeed, Nigeria assented and promulgated the Child Rights Act in September 2003. The extent of the content evidences the seriousness of the child rights violation in the country. Unlike Nigeria, Ivory Coast, one of the West African Countries plagued by child rights violations and various types of child abuses, does not have such an important legal framework. The paradigm shift in approach to child rights legislation could inspire the others ECOWAS member states. Moreover, the Community itself could be inspired and progress towards setting legal framework related to children's rights and welfare.²³¹

The creation of the ILO was a great achievement, and it was the result of a century of continuous effort on the part of individuals and nations.²³² At that time, the ILO was one of the earliest multilateral organisations and the first permanent organisation to draft treaties on a regular basis.²³³ The attempt to justify the ILO's standards setting role is purposed to demonstrate the shortfall in arguments about the relevance of the organisation in the international labour arena. The ILO is devoted to promoting social justice and internationally recognised human and labour rights. In that respect, it reaffirms its founding ideal that labour peace is essential to prosperity. From its inception, the ILO had the drive to succeed in all its enterprises. The ILO strictly adheres to the fact that where human rights are denied or violated in any part of the world, it is bound to have a chain effect on the other parts of the world.²³⁴

²³⁰ The Nigerian Child Rights Act, which was enacted in 2003, seeks to regulate and protect the rights of children as enshrined in the 1999 Constitution.

²³¹ In this perspective ECOWAS could adopt the European Union's approach to the rights of the Child. Conventions and Charter of the Council of Europe, such as the Convention on the Adoption of Children, The European Convention on the Legal Status of Children Born out of Wedlock, The European Convention on the Exercise of Children's Rights are wide range of instruments covering all areas of child rights protection. See Council of Europe (1996) *The Rights of the Child: A European Perspective*, Council of Europe Publishing.

²³² Lewis Lorwin, 'The ILO and World Economic Policy' (1936) 33 *International Labour Review* 457, 467.

²³³ Steve Charnovitz, 'The International Labour Organisation in Its Second Century' in *Max Planck Yearbook of United Nations Law* (Kluwer Law International, Netherlands 2000) 147, 184. See also Jean Morellet, 'Legal Competence of the International Labour Organisation!' (1933) 166 *The Annals of the American Academy of Political and Social Science* 46, 52.

²³⁴ See, Patrick Bolle, 'Supervising labour standards and human rights: The case of forced labour in Myanmar (Burma)' (1998) 137 *International Labour Review* 391.

The ILO, more than any other international organisation took a firm stance in leading the fight against the dynamic phenomenon of child labour across the globe. Notwithstanding the tremendous work of the ILO to improve worker's conditions, to safeguard the interest of trade unions, the immoral element to child exploitation alone is appealing. The noble goal of the ILO to eliminate the worst forms of child labour makes it special. Hence the organisation should receive the recognition of its qualitative legal endeavours and therefore be celebrated.

The Child rights discourse emerged in the western narrative but soon it reached the most remote corners of the globe. As a result, the work of child rights activists, lawyers and, several NGO's has paved the way to a new approach to childhood in general and in particular to the issue of Child Rights. From the denial to recognition, the 'long walk to freedom' for children has been materialised through The United Convention on the Rights of the Child in 1998. This Convention not only promotes the general Human rights of the child, but it also promotes his Economic and Social Rights.²³⁵

The current approaches to child rights at all level of standards and frameworks setting is in perfect harmony with the ILO's aim to eliminate child rights violation that occurs through child labour practices. The complementary work performed by the various agencies is aimed to achieve their common goal that is creating a better and safer environment for the children across the globe. Worthwhile, several legal instruments have emerged at the International, regional and sub-regional levels. The ultimate goal for the policy and law framers is to assert children's rights in every dimension to guarantee a far-reaching result. The protection of children's rights is paramount in that, all abuses and exploitations occur in contexts wherein the child is utterly defenceless. The child's opinion in matters concerning his existence as a human being is nonexistent.

Undoubtedly various international organisations have endeavoured to promote child rights values in setting the most contemporary and updated legal instruments. However, the general observation leads to acknowledging the failure in achieving most of the goals enshrined in the legal frameworks. This analysis is to be applied to the specific case of child labour in Ivory Coast in that the phenomenon endures despite the existence and the implementation of international, regional, sub-regional, and national legal instruments. This state of affairs leads to the analysis of the current situation of child labour in Ivory Coast.

²³⁵ The provision related to the Economic and Social Rights run from Article 23 to 32 of the UN Convention on the Rights of the Child.

Chapter 2

The Child Labour Practice in Ivory Coast

*“Child labour has serious consequences that stay with the individual and with society for far longer than the years of childhood. Young workers not only face dangerous working conditions. They face long-term physical, intellectual and emotional stress. They face an adulthood of unemployment and illiteracy”.*²³⁶

Introduction

Child labour appears to be a deeply rooted phenomenon in Ivory Coast cultural environment. Analysing the phenomenon in a pure cultural context, Ivory Coast could have paved the way to a debate wherein dissenting views would certainly arise.²³⁷ Child labour is a complex issue for Ivory Coast for various reasons. Moreover, it constitutes a matter of great concern for both the local observers and the international community. Hence, this chapter attempts to underline those keys issues constitutive of the problematic.

This chapter attempts to situate the child labour practice in the historical context of Ivory Coast. The historical enquiry will help to understand how the practice originated and why it endures even in the WTO era. This chapter examines the different forms of child labour as characterised by the International Labour Organisation (ILO) in order to determine the particular type of child labour practiced on Ivory Coast’s cocoa farms.

The chapter also examines the nature of the problem in order to determine the appropriate approach to combating the practice. Prior the textual analysis, this chapter analyses Child labour in theoretical frameworks. This approach is taken to enquire whether the practice can be justified from philosophical and ideological perspectives. This chapter also examines the issue of child trafficking across Ivory Coast’s borders. The phenomenon of child trafficking is an underlying problem to the particular issue of child labour on Ivory Coast’s cocoa farms because the majority of child labourers on the farms are victims of child trafficking. Among

²³⁶ Kofi Annan, United Nations Secretary-General (1 January 1997 – 31 December 2006).

²³⁷ The peculiarity of the child labour debate in the African context in general and in Ivory Coast in particular is that cultural relativism stands as the underpinning argument.

other problems in the child labour debate in Ivory Coast, the issue of governance is seen as crucial. Hence, the chapter analyses the incidence of governance on the social conditions of children.

2.1 Overview of the West African Country

2.1.1 Some Characteristics of Ivory Coast

The Ivory Coast is located in the southern tip of West Africa, sharing borders with five countries two of which are landlocked (see figure 2.1).²³⁸ The Ivory Coast has 60 ethnic groups divided into six major groups: Sénoufo, Lobi, Dan, Krou, Mandé and Akan. It is characterised by a large proportion of youth: 48% of the population is below 15 years. Agriculture is the most important sector in the Ivory Coast, hence as evidenced at the global level; the contribution of children in Agricultural is the highest in the sectorial distribution of child labour (see the ILO's recent report in table 2.1 below). Out of a total area of 322,462 sq. Km, Ivory Coast possess, 167,100 sq. Km which is used for agriculture. It contributed 33 percent of the GNP in 1998 and employed almost 50% of the population. The industrial sector contributes 25 percent of the GNP while the civil service represents 41.3% and employs 25 percent of the population.²³⁹

It is worth noting that after reaching the peak of its cocoa trade known as the '*economic miracle*' in the 1970's and early 1980's, Ivory Coast plunged into an economic recession from which the country has recovered. However from 1999, after the country's first military coup, to 2010 the political and social stability was severely affected. The ensuing social and political unrests have negatively impacted the efforts initiated in the area of human rights in general and child rights in particular.

²³⁸ The geographical location of Mali and Burkina Faso made them countries locked between other countries. Thus they have no opening at the Atlantic Ocean like Ivory Coast. Their position in the northern border of Ivory Coast renders them almost reliant to the southern neighbour as far as maritime shipping is concerned.

²³⁹ See Central Intelligence Agency, the World Factbook, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/iv.html>, accessed 25 July 2014.

Table 2.1: Sectorial distribution of child labour, number and percentage share, 5-17 years age group, 2008 and 2012

Sector ^(a)	2008		2012	
	('000)	% share	('000)	% share
Agriculture	129,161	60.0	98,422	58.6
Industry	15,068	7.0	12,092	7.2
Services	55,109	25.6	54,250	32.3
(of which domestic work)	(10,557)	(4.9)	(11,528)	(6.9)

Note: (a) Excluding children with missing information on economic sector.

Source: ILO, Making progress against child labour: Global estimates and trends 2008-2012

Figure 2.1: The map of Ivory Coast

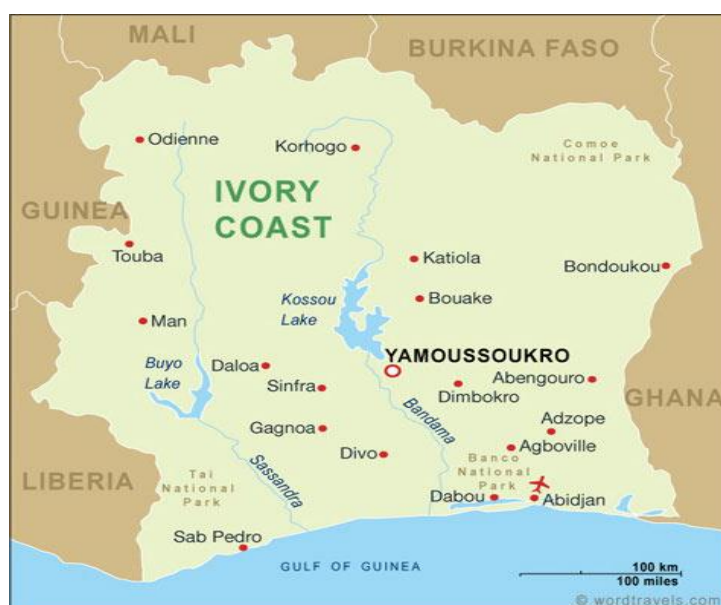


Table 2.2: Brief Statistics about Ivory Coast

Total population in 2013	20.320.000
GDP (US \$ Billion) 2013	30.91
Life expectancy at birth, total (years) 2012	50

Source World Bank²⁴⁰

²⁴⁰ See World Bank, Côte d'Ivoire at <http://data.worldbank.org/country/cote-divoire>, accessed 2 July 2014.

2.1.2 Child Labour during the Principal Historical Phases of Ivory Coast

The Analysis of the child labour practice at the import historical stages of Ivory Coast is aimed at understanding the purpose of the practice formerly, the different mutation that occurred over time, and why the practice endures. The key historical periods of Ivory Coast for this purpose are designated as the pre-colonial era, the colonial era, and the post-independence era. The post-independence period will include the early years of Ivory Coast's accession to independence²⁴¹ and the era of the World Trade Organisation (WTO).

The Pre-Colonial Era

The pre-colonial era in this context is considered to be a period where the current day Ivory Coast was not yet under any foreign colonial rule. From a geographical perspective, there was no country instead there was a juxtaposition of tribes in that forested region of the gulf of guinea. Indigenous people in the area had their customs and traditions in regard to children's upbringing. Therefore, the key issue here is the place of the child in those primitive societies' organisation of work.

From Gastellu's observations about the pre-colonial societies in Ivory Coast, it appears that the patterns of child labour already existed in the principal historical era of the Ivory. He notes that 'the foundation of farm work rested upon women and children in the pre-colonial era. However, this has considerably changed after independence where the advent of western education in rural areas prevented most children from taking part in farm work on a regular basis.'²⁴²

Indeed, in pre-colonial Ivory Coast, the main production activities were hunting, gold mining and cultivation for family personal consumption. Children were involved in all cultivation processes. Obviously, the western style education was inexistent thus the legitimate approach to child upbringing in society was their initiation to farming and pastoral activities. It is certain that younger children will not work, but those who reached a reasonable age to participate in farming activities, and cattle rearing will do it not only as training for their adult life but also for the immediate increase of production.²⁴³

²⁴¹ The Ivory Coast became French colony in 1893 and gained independence from France on 7 August 1960.

²⁴² See Jean-Marc Gastellu, '*Riches Paysans de Côte d'Ivoire*' (L'Harmattan, Paris 1989) 98.

²⁴³ Ibid.

From the pre-colonial era through to the post-independence era of Ivory Coast, the eastern region of the country has been a centre of attention for sociologists, anthropologists and historians in regard to agricultural activities. The Juablin, one of the prominent territories in the east, was characterised by its flourishing agricultural activities. In describing the character of the pre-colonial Juablin society, Groff indicates that ‘the pre-colonial Juablin society possessed basically four levels of socio-political organization, each of which centred on an authority figure. In ascending order of magnitude, there were the domestic group, the extended residential unit or aulo, the village and the kingdom. At the base of Juablin social organisation was the domestic group. This unit consisted of a man, his wives, their children and other dependents including slaves and pawns. The domestic group was the principal unit of subsistence production and consumption. Its members cooperated in the work of the annual agricultural cycle which provided them with their basic means of physical survival.’²⁴⁴

The analysis of the Juablin social stratification shows that the domestic group that is the lower group was involved in the production activities. Most importantly, apart from their wives who are the backbone of all farming activities, their children at the age of participating to farming activities were automatically engaged in the communal activities. Again the rationale for this is that there were no other occupations for children in the pre-colonial era than training them to the only available activities deemed to prepare them for the adult life. In that respect, Togunde and Carter write that:

The causes of child labour have historical, economic, and cultural underpinnings. The emergence of child labour can be traced to the pre-colonial epoch, especially in African societies. In general, African cultures have regarded child labour as preparation for a child’s future occupation, particularly with farming.²⁴⁵

The practice of slavery constitutes an important factor in the practice of child labour in pre-colonial Africa in general and in Ivory Coast in particular. Slavery was a common practice within traditional societies. Hence, the use of children born from slave parents was an ineluctable option. As indicated elsewhere, the children of slaves were the property of the slave owner and as such the children at the age of participating in various cultivation

²⁴⁴ See David H Groff, ‘*The development of capitalism in the Ivory Coast: The case of Assikasso, 1880-1940*’ (Ph.D. thesis, Salford University 1980) 53, 56.

²⁴⁵ Dimeji Togunde and Arielle Carter, ‘Socioeconomic causes of child labour in urban Nigeria’ in Dwan Kaoukji and Najat M’Jid (eds) ‘*Children’s Services in the Developing World*’ (Ashgate Publishing Limited, Farnham 2009) 90.

activities will automatically engage in them. In that respect, Perbi writes that ‘Farming, animal rearing, hunting, and fishing were the basic economic activities in pre-colonial Africa and slave labour was used. Slaves helped to grow foodstuffs in the forest and the savannah regions of Africa as well as along the coast and the desert fringes. They were also used in collecting food plants like Shea butter, kola nuts, oil palm and coconuts.’²⁴⁶

The Colonial Era

Nieuwenhuys observes that ‘the general perception about child labour during the colonial period was positive as anthropologist romanticised the work of rural children in colonies. She asserts that ‘children’s work was celebrated as an antidote to poverty during the colonial period because of its contribution to the family economy, but nowadays it has come to be perceived as an indicator of poverty.’²⁴⁷ It is not surprising that child labour in the colonial era of Ivory Coast is romanticised by both the colonial authorities and anthropologists since the practice existed long before the colonisation process begun.

In pursuance of the economic policy under colonialism, children between the ages of 16 and 18 were to pay tax. The idea also underpins this that the colonial administration had to introduce these measures to meet the cost of ruling the colony by resources mobilised within the colony itself. A head tax obligatory for all inhabitants between the age of 16 and 60 was introduced in 1900.²⁴⁸ As to the crucial issue of education for indigenous children during colonisation, Kipré notes that Governor Angoulvant made following precision in 1914:

The purpose of the village school is to help us get in touch with the large possible number of natives; it follows that the amount of students it receives are more important than the quality.²⁴⁹

Hence, in light of governor Angoulvant’s point of view, schools were introduced for the interest of the colonial system and not for the benefit of the people themselves. It is worth noting that primary education was made compulsory by the colonial administration; it was all

²⁴⁶ See Akosua Perbi, ‘Slavery and the slave trade in pre-colonial Africa’ (Paper delivered on 5th April 2001 at the Univ. of Illinois, U.S.A.) pdf available at <http://latinamericanstudies.org/slavery/perbi.pdf>, accessed 28 June 2014.

²⁴⁷ Olga Nieuwenhuys, ‘The Paradox of Child Labour and Anthropology’ (1995) 25 Annual Review of Anthropology 237, 251.

²⁴⁸ Dereje Alemayehu, ‘The Crisis of Capitalist Development in Africa: The case of Côte d’Ivoire’ (Bremer Afrika Studien, Hamburg 1997) 105.

²⁴⁹ Pierre Kipré, ‘Côte d’Ivoire: La formation d’un peuple’ (Ides-Ima, Fontenay-sous-Bois 2005) 128, 129.

faith and free for children aged 6 to 12.²⁵⁰ The move by the colonial authorities was evidenced by the construction of several primary schools in the principal colonial cities such as Bingerville, Guiglo, Bouaké, and Bobo-dioulasso in the early 1940s.²⁵¹ Indeed, more schools were added to the existing few built between 1893 and 1920.²⁵²

From the perspective of having school to prevent the rise of child labour and various exploitative activities involving children, the colonial authorities' move regarding schooling for children underpins the argument that education in colonial Ivory Coast was not a deterrent to child labour. Children above 12 or those between 6 and 12 (who could not attend colonial schools for any reason) could have engaged in various labours without being in contradiction with colonial principles regarding schooling.

Most importantly, colonial Ivory Coast was the epoch of large coffee and coca plantations owned by the colonial administration and a few wealthy native planters. Thus, the need for labourers was an important issue for industrial farm owners. The first wave of migrants from other French colonial territories in West Africa started to flow in Ivory Coast from 1947. Cissé writes that: 'Families came en masse and colonial villages were created in the forested zone of Ivory Coast. They came with wives and children to work on colonial farms.'²⁵³

The Post-Independence Era

Introduced in Côte d'Ivoire since 1888 in Aboisso (South-eastern City of Côte d'Ivoire) by Verdier and Bretignierds,²⁵⁴ cocoa cultivation as noted hereinbefore occupies a prominent place in the Ivorian economy. Most importantly, cocoa became a cash crop only in 1912 when colonial authorities forced Africans to cultivate it.²⁵⁵ Cocoa is a raw material processed to manufacture production of chocolate and derivative products.²⁵⁶

²⁵⁰ Paul Désalmand, *L'histoire de l'éducation en Côte d'Ivoire: Des origins de la conférence de Brazzaville (1944)* (Ceda, Abidjan 1983) 336.

²⁵¹ Abdoulaye J Touré, *Les batisseurs de l'enseignement en Côte d' Ivoire* (Ceda, Abidjan 1984) 17.

²⁵² Pierre Kipré, *Côte d'Ivoire: La formation d'un peuple* (Ides-Ima, Fontenay-sous-Bois 2005) 128.

²⁵³ Chikouna Cissé, *Migrations et mise en valeur de la basse Côte d'Ivoire (1920-1960): Les forçats ouest-africains dans les bagnes éburnéens* (L'Harmattan, Paris 2013) 120, 123.

²⁵⁴ Upper Volta is the present day Burkina Faso, a landlocked country sharing borders with the north of Ivory Coast.

²⁵⁵ See the library of congress <http://lcweb2.loc.gov/frd/cs/citoc.html/> accessed 22 January 2012.

Cocoa accounted for nearly 15% of GDP and 40% of exports, CFAF 789 billion revenue in 1998. As for production, it increased e.g. 725 393 tonnes in 1990 to 1,400,000 tonnes in 2002. The nation's cocoa production hit a record 1.48 million tons in 2010 despite the political crisis.²⁵⁷ The remarkable figures confirm the position of Ivory Coast as the world's leading cocoa producer. This performance was achieved by about 600,000 managers who animated the production apparatus, thus, approximately 6,000,000 people living in cocoa revenues.²⁵⁸

'Originally areas of strongest productions were Eastern and Central East. These regions were then the cocoa belt. A new culture front has developed in the west due to climate change and soil degradation under the pressure of migration, both domestic (Centre, East Central, North), and 'foreign (countries of the sub-region). Therefore, the main cocoa area is now the centre-west, with 36% of production. Cocoa production in Côte d'Ivoire, in general, is practiced with small farm. It is not mechanised instead it is practiced using tools such as machetes and hoes. Sometimes, modern tools like spray or atomizer for pesticide treatments are used.'²⁵⁹

'In forested Ivory Coast, the smallholder coffee and cocoa economy expanded from the 1920s. Its development relied on arrival in areas of low population of many immigrants from drier regions unsuited for coffee and cocoa cultivation (Upper Volta,²⁶⁰ Mali, and the northern and central savannah districts of Ivory Coast, mainly Baoulé people). They came as wage labourers but also looked for forested land to create plantations.'²⁶¹ After the official abolition of forced labour in 1947, the massive exodus of young people in urban areas was threatening for the industry. In such context, there has been an exponential increase of the

²⁵⁶ Cocoa liquor is used to produce chocolate through the addition of cocoa butter. Other ingredients such as sugar, milk, emulsifying agents and cocoa butter equivalents are also added and mixed. The proportion of the different ingredients depends on the type of chocolate being made. See International Cocoa Organisation, cocoa processing, <http://www.icco.org/about-cocoa/processing-cocoa.html>, accessed 6 February 2013.

²⁵⁷ John Heilprin, 'Child labour probed in Ivory Coast's cocoa fields' *Associated Press* (28 November 2011) <http://www.boston.com/business/articles/2011/11/28/child_labour_probed_in_ivory_coasts_cocoa_fields/> accessed 7 February 2013.

²⁵⁸ See the Ivory Coast government website for cocoa information: <http://www.cacao.gouv.ci/index.php?rubrique=1.1.1&langue=fr/> accessed 11 November 2011.

²⁵⁹ Ibid.

²⁶⁰ Current day, Burkina Faso.

²⁶¹ Jean-Pierre Chauveau and Paul Richards, 'West African Insurgencies in Agrarian Perspective: Côte d'Ivoire and Sierra Leone Compared' (2008) 8 *Journal of Agrarian Change* 515, 552.

flow of immigrants in the country. Most of the immigrants eventually came along with their families and consequently introduced the children to the farming activities.

At the height of the rural exodus²⁶² in the 1960s and 1970s in Ivory Coast, the need for more labour force became evident, and this was a matter of serious concern for the authorities since cocoa and coffee farming constituted the principal foundation of the economy. Indeed, in the 1970s the economy of the country was booming. This state of the buoyant economy in the history of post-independence Ivory Coast is known as '*miracle economique*.' As Cohen observes, it became evident that:

The Ivory Coast development strategy is based on the productivity of cash crop agriculture to support a modern urban industrial sector. This strategy requires cheap agricultural labour to maximize agricultural earnings and trained manpower to operate and manage the methodology of industrial growth. The Ivory Coast has encouraged foreign African labour to work on coffee and cocoa plantations and trained Europeans, mostly French, to organize and expand the enterprises of modern commerce and industry.²⁶³

Since the economic orientation is clearly defined, preference for a typology of labour force was less preoccupying for Ivory Coast; hence, the floodgate of children's labour was open to fill the gap of insufficiency in able-bodied adult labourers. The recruitment of child labourers was, therefore, made beyond the family circle. Instead of their children the first immigrant labourers resorted to other family member's children. They relied on the strong kinship in African communities. The recruiters also sought for child labourers in families of any acquaintances they may have had. This practice later became the source of income for various criminal in the form of child trafficking across West Africa.²⁶⁴

As noted hereinbefore, child labour in the post-independence Ivory Coast reached a culminating point in the mid-1990s, and this was paradoxically in the era of the World Trade Organisation (WTO). The Ivory Coast has been a WTO member since 01 January 1995. The WTO's being the supervision and liberalisation of International trade, Ivory Coast hence

²⁶² Michael A Cohen, '*Urban Policy and Political Conflict in Africa: A study of the Ivory Coast*' (The University of Chicago Press, Chicago 1974) 156.

²⁶³ Michael A Cohen, '*Urban Policy and Political Conflict in Africa: A study of the Ivory Coast*' (The University of Chicago Press, Chicago 1974) 24.

²⁶⁴ Kate Manzo, 'West Africa's Children: Trafficking, Slavery and Uneven Development' (2005) 37 Area 393, 401.

accepted to abide by its rules. However, the state of the child labour practice in Ivory Coast within a decade of becoming WTO member was alarming.²⁶⁵ This setback unveils the contradiction of Ivory Coast's attitude towards the phenomenon with the principles it promised to comply with through its WTO membership.

Indeed, the type of child labour currently practiced on Ivory Coast's cocoa farms is characterised as the *worst form* of child labour by ILO Convention No 182. At the same time, the principle of fair competition promoted by the WTO is permanently violated by Ivory Coast. The use of child labour in any trade that has international implications in the WTO context, uncontestedly infringes fair competition principles promoted by the organisation.

The stagnation of Ivory Coast's economy caused the 1980' economic crisis lasted until the early 1990s. Therefore, it became urgent for the country to increase its volume of foreign exchange. Hence, the yield of cash crops has to increase at low cost. Most significantly, the production of cocoa and coffee, the two principal raw materials produced by the country, was to increase thereby.

Although the authorities' initiative was appropriate for economic growth, in practice it was done in breach of the basic competition rules. Child labour has triggered the ILO to reignite the debate. Hence, after more than 20 years of legislation the ILO was constrained to adopt a new approach. As a result, the Convention on the Worst Forms of Child Labour was adopted in 1989. Child labour is no more performed in its traditional form; that is the use of children on family farms or plantations for the purposes of training them for the future.

The post-independence child labour in Ivory Coast can be clubbed into one of the following three categories:

- a. Children trafficked from countries with shared borders like Ghana, Mali and Burkina Faso and forced to work at very little or no remuneration at all. Such children do not have any kinship, family or communal ties to the farm household in which they work.

²⁶⁵ A survey carried out by ILO/IPEC and published in July 2002 found that out of 284 000 children found to be working in Cameroon, Ivory Coast, Ghana, and Nigeria as child labourers 200 000 were employed in Ivory Coast alone. Information available at http://www.ilo.org/public/english/standards/ipec/themes/cocoa/download/2005_02_cl_cocoa.pdf, accessed 27 July 2014.

- b. Family labour performed with the help of the children of the farmer or that of close relatives of the farmer who live on the farm.
- c. Foster labour performed by children with well-established kinship or communal ties to the household.

2.2 Identifying the Typology of Child Labour

2.2.1 The Forms of Child Labour

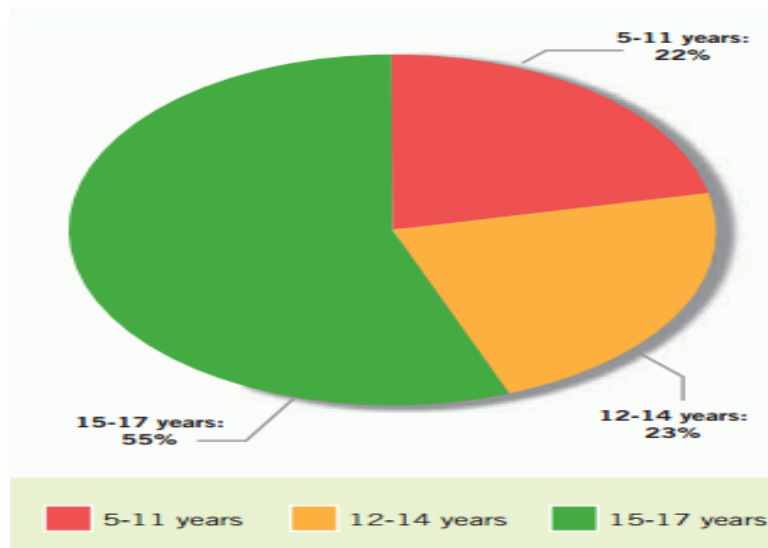
The ILO and UNICEF have identified eight main types of exploitative child labour. They are the hazardous working condition, the domestic work, the street children, child labour in the informal economy, child slavery, trafficking and commercial sexual exploitation, children in armed conflict and children in illicit activities. Although the ILO has recognised the exploitative nature of these works, the focus of attention in the combat against children's work for the purpose of a complete elimination is mainly on the types of work describe by the institution as 'unconditional worst form of child labour.'²⁶⁶ From a logical standpoint, the fact that ILO has chosen to single out certain types of works in order to appeal for a complete change of attitude worldwide is, *per se*, noble but the problematic of children works remains a social debate that need refocusing.

Undoubtedly, child slavery, child trafficking and commercial exploitation, children in armed conflict and children in illicit activities (classified by the ILO as unconditional worst form of child labour) are indeed dangerous and immoral but the tolerant attitude towards the engagement of children may not be a risk-free. The ILO is aware of certain grave abuses, for instance children in domestic works being among the most exploited of all. Many of them work in almost total isolation for several hours per day, frequently unpaid. They are often subjected to physical, emotional and sexual abuse.²⁶⁷ Moreover; the children working in the informal economy are not recognised or protected. In the light of detrimental effects of the involvement of children in other types of works identified by ILO as exploitative child labour; it could be argued that there is an element of discrimination in the '*typologisation*.'

²⁶⁶ ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

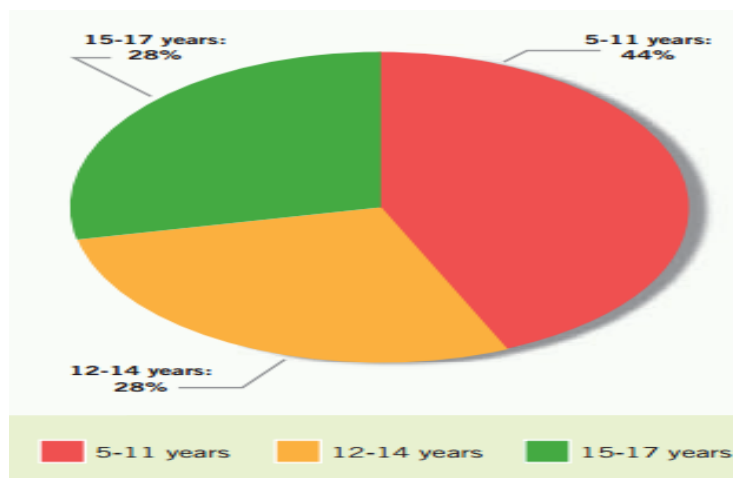
²⁶⁷ ILO, Child Labour, *Targeting the Intolerable*, International Labour Conference 86th Session 1998, Report VI (1) p5.

Figure 2.2: Hazardous work distribution by age group, 2012



Source: ILO, Making progress against child labour: Global estimates and trends 2008-2012

Figure 2.3: Child labour distribution by age group, 2012



Source: ILO, Making progress against child labour: Global estimates and trends 2008-2012

2.2.2 The Characteristics of the Practice

The adoption of Convention No 182²⁶⁸ helped to focus on the urgency of actions to eliminate, as a priority, the worst forms of child labour, which it defines as:

²⁶⁸ ILO, Convention concerning the prohibition and immediate action for the elimination of the worst form of child labour, adopted by the ILO conference at its eighty-seventh session, Geneva, 17 June 1999.

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) The use, procuring or offering of a child for prostitution, for the production of pornography or pornographic performances;
- (b) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (Article 3).

A distinction can be drawn between the two categories of the worst forms of child labour:

- the “unconditional” worst forms of child labour, referred to in Article 3(a)-(c) of Convention No. 182, that are so fundamentally at odds with children’s basic human rights that they are absolutely prohibited for all persons under the age of 18;
- Hazardous work, as defined by national legislation, that may be conducted in legitimate sectors of economic activity but that is nonetheless damaging to the child worker. The unconventional and hazardous nature of works performed by children appear to be the triggering factors for mankind to “take the bull by the horns” at international level. The working conditions of children across the globe could not be justified in any modern and civilised society that appears innocuous, such as heatstroke incurred through long hours herding animals or exposure to agrochemicals through vegetable cultivation.²⁶⁹

The analysis of these general patterns of health hazards encountered by children while undertaking diverse works leads to the conclusion that children are an endangered social category in any place of the globe where child labour is practiced. The particular case of child labour on cocoa and coffee plantations in Ivory Coast, which constitutes the central topic of this research, does not constitute an exception.

²⁶⁹ See The report of the director-general, ‘*A Future without Child Labour*’, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, (International Labour Office, Geneva 2002).

2.2.3 The magnitude of child labour

Surveys and reports from different organisations in an attempt to provide a comforting estimate of child labourers in Ivory Coast are the only information relied upon. The challenges to providing an exact number of children trapped on some remote cocoa fields across the Ivorian jungle are serious; therefore, it must be addressed accordingly.

A significant observation regarding the determination of the magnitude of child labour reveals that school attendance rates reflect the engagement of children in what their main activity should be. Absence from school does not necessarily imply that a child is working as children who attend school may also be engaged in child labour. Nevertheless, where there are no adequate data collections systems about child labour. Indeed data on children out of school can provide useful information on children who may be trapped in child labour.²⁷⁰ In 2002, the Sustainable Tree Crops Programme of the Institute of Tropical Agriculture estimated that there were at least 284,000 children engulfed in the forced labour in the West African cocoa industry. The Ivory Coast cocoa industry is said to exploit 200,000 of these children.²⁷¹ The institute's estimates appear to be the most reliable information about the magnitude of child labour in the sub-region. There is no record that institutes for statistics in the countries of the sub region have not contradicted the 2002 report.

More importantly, the ILO did not dismiss this report rather it considers them as part of the evidence that the magnitude of child labour in Ivory Coast cocoa industry has become alarming for the world community. The concurring views are explained by the fact that in the previous year; the ILO issued its estimates claiming that there are approximately 378,000 working children in Ivory Coast alone. It is worthwhile noting that when accusations were first made regarding child labour on its cocoa farms, Ivory Coast was not a party to the ILO Minimum Age Convention and Ivorian minimum age laws did not agree with international legal standards. However, there has been a considerable evolution on that issue.

The most recent estimates provided by the United States Department of Labour (USDOL) in 2011 relates to the worst forms of child labour in Ivory Coast. It is estimated that 39.8

²⁷⁰ ILO, Report of the Meeting of Experts on Labour Statistics Part I. Child labour statistics Part II. Measurement of working time (ILO, Geneva 2008).

²⁷¹ See 'Child labour rife in cocoa sector' *BBC News* (1 August 2002) <<http://news.bbc.co.uk/1/hi/business/2166032.stm/>> accessed 11 February 2013.

percent (2,181,894) of children aged 5-14 years are working in Ivory Coast. The USDOL notes that in the cocoa sector alone, 50.6 percent or an estimated 414,778 children report injuries from dangerous activities according to a report by Tulane University that assessed data collected during the 2008-2009 harvest. A government report released in 2010 estimated over 30,000 children in conditions of forced labour in rural areas of Ivory Coast.²⁷²

Indeed, the Payson Centre at Tulane University, in its “2009 Assessment of Child Labour in the Cocoa Supply Chain in Côte d’Ivoire and Ghana,” found that children are involved in weeding, plucking, gathering and heaping cocoa pods and other cocoa-growing activities on a regular basis. It also reported that 15 percent of children surveyed reported forced or involuntary work in the past twelve months. In addition, it found that nearly 50 percent of children working in cocoa farms in Côte d’Ivoire and over 50 percent in Ghana reported injuries from their work in the past year.²⁷³

The Ivory Coast lacks contemporary data on the number of child labourers. National Survey on Household Living Standards 2008 (NSHLS 2008) identified 1,570,103 children as economically active in the agriculture sector, out of which 1,202,404 or 91.1 percent were involved in hazardous work, and 3,364 were 15 victims of trafficking. Furthermore, it found that 1,237,911 children aged 5 to 17 years in all regions of the country are forced to do jobs that should be banned.²⁷⁴

2.2.4 The Nature of the Problem

Child labour is viewed as the single most common form of child abuse and neglect in the world today.²⁷⁵ Child labour practice on Ivory Coast’s cocoa farms and other areas of the economy plays a destructive role in the fulfilment of the country’s desire to become an

²⁷² See US Department of Labour at http://www.dol.gov/ilab/reports/child-labour/cote_divoire.htm, accessed 2 July 2014.

²⁷³ See Fourth Annual report, Oversight of Public and Private Initiative to Eliminate the Worst Forms of Child Labour in the Cocoa Sector in Cote d’Ivoire and Ghana, September 30, 2010.

See, http://www.childlabourpayson.org/Annual%20Survey%20of%20Child%20Labour%20in%20the%20Cocoa%20Growing%20Areas_June2009.pdf/ See <http://www.childlabour-payson.org/> accessed 12 February 2013.

²⁷⁴ See US Department of Labour at http://www.dol.gov/ilab/reports/child-labour/cote_divoire.htm, accessed 2 July 2014.

²⁷⁵ See David Sharp, ‘Child labour versus child work’ (1996) 348 *The Lancet* 539.

emerging nation in West Africa. Indeed, the practice is a hampering factor to any development agenda in modern societies.²⁷⁶ Thus, Ivory Coast cannot embark on a genuine economic development if rural communities and the authorities alike turn a blind eye to the child labour practice in the country.

Child labour is intrinsically evil. It has calamitous impacts on the rights of the child as enshrined in the Convention of the Rights of the Child and other legal instruments. In practical terms, child labour can be counterproductive in the development process of countries that tolerate the practice. Child labour being the most adverse practice towards better education, McKelway admits that ‘Whatever interferes with the proper education and nurture of the child contradicts the best interests of the nation.’²⁷⁷ Children work when they are supposed to be in school. Moreover, they are often forced to work when they should be in school. The general observation is that children work to eat, but they do not get the education that could get them a better job in the future. Generations, therefore, get trapped in child labour and rural poverty.

In a family or community, child labour is counterproductive in that the child will not be able to play a decisive role in the next generation. The child’s chances to be educated through schooling and mainstream social hubs are in jeopardy. As a result, the child would have missed the opportunity to become a complete adult and a befitted citizen. As an adult, he will lack the abilities to participate effectively in the life of his community and the nation. More importantly, chances of employability of the child become null during his adulthood. In a nutshell, child labour is so evil in nature that it holds no future for the child and those who resort to it.²⁷⁸

Child labour friendlies often portray the practice as a means to teach some social and cultural abilities to the child in preparation for his adult life.²⁷⁹ Another prevailing argument is that when there is no possibility of schooling, it is better for children to work in dignity than

²⁷⁶ See Basu Kaushik and Zafiris Tzannatos, ‘Child labour and Development: An introduction’ (2003) 17 World Bank Economic Review 145.

²⁷⁷ Alexander J McKelway, ‘Child labour and its attendant Evils’ (1908) 16 The Sewanee Review 214, 227.

²⁷⁸ See James A Robinson and Jean-Marie Baland, ‘Is child labour inefficient?’ (2000) 108 The journal of political economy 663, 679.

²⁷⁹ See Puleng Letuka, ‘The Best Interests of the Child and Child Labour in Lesotho’ in Welsham Ncube (ed) ‘*Law, Culture, Traditions and Children’s Rights in Eastern and Southern Africa*’ (Ashgate-Dartmouth, Aldershot 1998) 203, 223.

hangout in streets.²⁸⁰ Although some children movements contested United Nations policy to abolish child labour, there can be no justification in the new globalisation trend. It is evident that the rampant high-rate of child mortality coupled with child labour will pose serious threats to the establishment and sustainability of the next generation of Ivoirians. In the context of globalisation, this state of affairs can also be detrimental to the world's progress.

The tolerance of child labour practices on Ivory Coast's cocoa farms, as well as child labour in other sectors of the economy, is the evidence of moral, social, and economic failure. The current status quo about the issue demonstrates a lack of ambition for a country claiming to pursue social and economic development. Child labour violates the child's human rights. The practice of child labour on Ivory Coast's cocoa farms entails unfair competition practices. Child labour is immoral, and it is viewed as a cowardly way of cutting corners for the purpose of economic glory and profits. More significantly, child labour on Ivory Coast's cocoa farms is sustained by child trafficking that is itself another evil. Therefore, the Ivory Coast should understand the degree of its involvement in evil practices, practices that have no valid justification in modern and civilised societies.

2.3 Facing up the Reality

2.3.1 Economic Rationale for Child Labour in Ivory Coast

The choice for increased profits appears to underpin the argument of economic rationale for child labour in Ivory Coast's cocoa industry. Indeed stakeholders are principally focused on the benefits produced by the practice. However, child labour principally benefits the State and Multinational Corporations (MNCs) trading in Ivory Coast's cocoa industry. Like other issues examined in this section, the stakeholder must face up the reality that child labour as currently practiced on coca farms has the sole purpose of maximising profits for the principal actors. In such context, the question of fraudulent and persisting collusions between the State and MNCs is raised.²⁸¹

²⁸⁰ See Sophie Boukhari, 'Child labour a lesser evil?' (1999) 52 *The UNESCO Courier* 37.

²⁸¹ See Olatunde J Otusanya, 'The role of multinational companies in tax evasion and tax avoidance: The case of Nigeria' (2011) 22 *Critical Perspectives on Accounting* 316, 332.

The Ivory Coast's approach to the issue has never been clearly understood. However, the ostensible approach of the authorities to cash crop economy based on coffee and cocoa has always been regarded as a success story while the plights of child labourers behind this success remain unknown to the outside world. Berg observes that: 'In the Ivory Coast, gradualist policies prevailed, involving a limited role for the State in directly productive activities, export orientation, continued reliance on foreign capital and skill. Under these policies, Ivory Coast has enjoyed one of the highest economic growth rates in the world; a rapid rate of monetization of the economy.'²⁸²

Indubitably, child labour is a contributing factor to the economic success. However, the determination and the consistency of Ivorian cocoa farmers, of course with the background encouragements from the authorities consistent with its gradualist policies, have helped the country maintain its position as the world leader in cocoa export. Indeed the determination was already present in the population since the colonial epoch. In that respect, Zolberg writes that 'in the 1950's, although Ivory Coast had only 13 percent of the federation's population (French West Africa), its share of the gross product of French West Africa was 26 percent. Another important indicator of the degree to which the Ivory Coast outdistanced other territories is its share of the total external trade of French West Africa.'²⁸³

In a comparative analysis of the potentials of Ghana and Ivory Coast in the cocoa industry, Maclean pertinently observes that: 'surprisingly, even though farmers in Ghana and Côte d'Ivoire have faced quite similar ecological and economic challenges, they have responded differently with divergent crop production strategies. In Ghana, many farmers are abandoning cocoa for tomato farming while in Côte d'Ivoire farmers continue to expand their existing cocoa plantations and establish new ones. The situation in Ghana constitutes a dramatic shift in local-level production, with far-reaching implications for social relations.'²⁸⁴

²⁸² Elliot J Berg, 'Structural transformation versus gradualism: recent economic development' in Philip Foster and Aristide R Zolberg (eds) '*Ghana and the Ivory Coast, Perspective on Modernization*' (The University of Chicago Press, Chicago 1971) 228.

²⁸³ Aristide R Zolberg, '*One- party Government in the Ivory Coast*' (Princeton University Press, New Jersey 1969) 158.

²⁸⁴ Lauren M MacLean, 'Empire of the Young: The Legacies of State Agricultural Policy on Local Capitalism and Social Support Networks in Ghana and Côte d'Ivoire' (2004) 46 *Comparative Studies in Society and History* 469, 496.

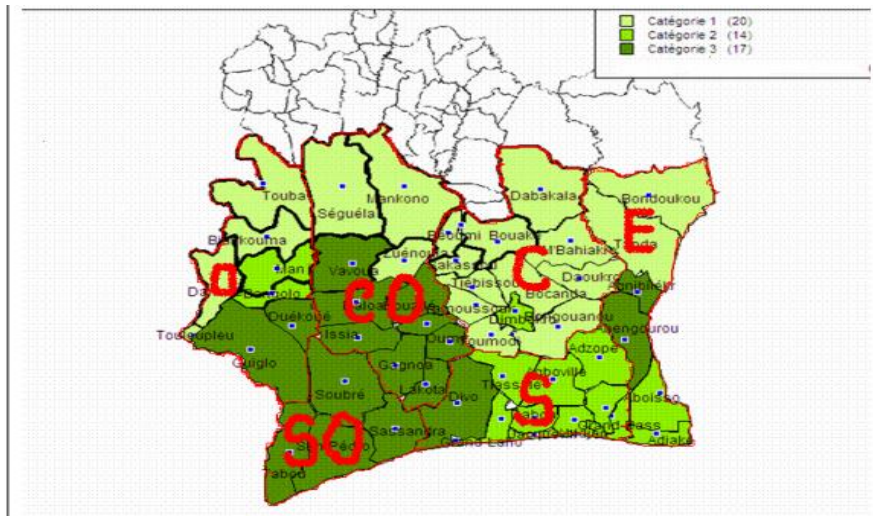
The political and social unrest experienced in Ivory Coast over the last decade has significantly hampered the economic development of the country. Meanwhile, there has not been a shift in the position as the world leading cocoa producer (see figures below for the most recent reports). This could be explained by over fifty years of a sustained agrarian policy put in place by the Ivorian authorities as well as the considerable amount of work achieved by cocoa farmers to expand the farming zone from the east and the south to the west of the country (See figure 2.4 below). Chauvaeau and Richards write that ‘At full independence (1960), what was at stake was clearly the expansion of the western agricultural frontier (the plan for the *‘mise en valeur de l’Ouest’*) free as much as possible from claims by autochthons over settlers. This was clearly the case in the Oumé region, at the time one of the most important places for new planting.’²⁸⁵

The successive governments in Ivory Coast have privileged the cash crops economy based upon coffee and cocoa agriculture. Obviously, this economic orientation is an economic pattern inherited from French colonial administration. While the French colonial administration in its policy making has privileged the employment of adult labourers from other French colonial territories, Ivory Coast governments have done nothing to regulate employments in the sector. The policies and actions towards coffee and cocoa farming were principally aimed at increasing revenues from the trade.²⁸⁶

²⁸⁵ Jean-Pierre Chauvaeau and Paul Richards, ‘West African Insurgencies in Agrarian Perspective: Côte d’Ivoire and Sierra Leone’ (2008) 8 *Compared Journal of Agrarian Change* 515, 552.

²⁸⁶ The setting of a national bank for farmers (BNDA), the institution of National award of the best farmer (Coupe Nationale du Progrès), and the cocoa board (CSSPPA) required law and policies to maximise the cocoa production and foreign exchange in Ivory Coast.

Figure 2.4: Cocoa Production Zones in Ivory Coast



Source: Cabinet du Premier Ministre

2.3.2 Child Labour and Moral

Veneziani observes that ‘the concept of exploitation is central in social and political theory, but there is no precise widely accepted definition. Indeed, the notion of exploitation is prominent in the social sciences and political discourse. It is central in a number of debates ranging from analyses of labour relations, especially focusing on the weakest segments of the labour force.’²⁸⁷ In that respect, child labour and exploitation are interweaved concepts. However, exploitation in child labour is peculiar because the child’s consent is inexistent in a labour relation with the adults using him. The lack of consultation and agreement brings in the debate about the morality of the adult’s decision to engage the child in an activity that could be detrimental to his existence as a human being.

The adult as parent or guardian of the child is the guarantor of his welfare. Hence, he has a moral and social responsibility to provide the appropriate conditions for the realisation of the child development. Exploitation can be carried out by individuals, or the community. Child labour is morally problematic.²⁸⁸ When individuals fail to assume their moral duty owed to

²⁸⁷ See Roberto Veneziani, ‘Exploitation, inequality and power’ (2013) 25 *Journal of Theoretical Politics*, 526, 545.

²⁸⁸ See Valerie L 'Herrou ‘Coining Children's Blood into Capital’: Can Precepts of International Law End Economic Exploitation of Children?’ (2006) 10 *Richmond Journal of Law and the Public Interest* 97,126.

children, the law is brought in to redress the distorted course of life.²⁸⁹ As Langford summarises, exploitative child labour is emphasised in Article 32 of the United Nations Convention of the Rights of the Child.

Langford observes that ‘employers prefer children to adults because they possess little legal and political power. Indeed, they are easier to exploit than adults because they perform monotonous work without complaining and are easily intimidated. Most significantly, they are targeted in particular regions and countries because they cannot form unions, do not receive social security, are ignorant of their legal rights, and can be discharged easily.’²⁹⁰ Exploitative child labour is the direct result of the denial to a child of his or her other rights. The right to an adequate standard of living, set out in Article 27; the right to benefit from social security, the subject of article 26; or the right of children without families to protection, referred to in Article 20.

Furthermore Langford indicates that ‘this appalling game of "consequences" continues for the economically exploited child because a working child may be deprived of the right to education, as described in Article 28; exploitation at work may also deprive the child of the right to leisure, recreation, and cultural activities, set out in article 31; certain employment may contravene the child's right to protection from sexual exploitation and abuse, described in article 34, and neglect, described in Article 19.’²⁹¹ Finally, he notes that ‘there are also certain kinds of labour, for example, some agricultural work which exposes children to the toxic effect of pesticides, or shoemaking, where the children inhale a harmful type of glue. These deny the child the right set out in article 24, to the highest possible standard of health. Where a child is killed in an occupational accident, this arguably constitutes a denial of article 6, concerning the child's inherent right to life, survival, and development.’²⁹²

The relation between moral and child labour in this context is indefensible. Given the nature of the child labour practice it is considered wrong and unacceptable by most people. The

²⁸⁹ See Debra Satz, ‘Child Labour: A Normative Perspective’ (2003) 17 *The World Bank Economic Review* 297, 309.

²⁹⁰ See Anjali Garg, ‘A child labour social clause: analysis and proposal for action’ (1999) 31 *New York University Journal of International Law and Politics* 473.

²⁹¹ See Michael Langford, ‘Family Poverty and the Exploitation of Child Labour’ (1995) 17 *Law and Policy* 471, 482.

²⁹² *Ibid.*

Oxford dictionary defines moral as ‘standards of behaviour considered acceptable and right by most people.’²⁹³ From this definition, it derives that all people are not included in the consideration of given standards as acceptable and right. Considering standards as set of values to refer to in a value system, the discourse of cultural relativism becomes relevant. From this standpoint, the child labour practice does not pose any moral problem in some societies. Moreover the judgemental attitude towards those who practice child labour could be regarded as pointless and excessive. The question therefore, is that have those who practice child labour less moral values than those who do not?

The discourse about the immorality of child labour appears to be held by most developed societies in the west.²⁹⁴ However child labour has sustained the English industrial revolution²⁹⁵ and the economic boom of the United States. Equally, in the wake of the Declaration of Philadelphia, segregation and inequalities in labour relations were common sight in the United States.²⁹⁶ The level of development of the United States, for example has permitted the enactment of the Child Labor Deterrent Act (CLDA) in 1995.²⁹⁷ While child labour is deemed immoral because it has adverse effects on the child development and his fundamental rights, the stigmatisation of those who still practice it does not facilitate the quest for a definite answer to the phenomenon.

²⁹³ Oxford Advanced Learner Dictionary of Current English, (Oxford University Press, 6th edition, Oxford2000).825, 826.

²⁹⁴ See Hugh D Hindman and Charles G Smith, ‘Cross Cultural Ethics and the Child labour problem’ (1999) 19 Journal of Business Ethics 21, 33.

²⁹⁵ See Jane Humphries, ‘Childhood and Child Labour in the British Industrial Revolution’ (Cambridge University Press, Cambridge 2010).

²⁹⁶ The ILO Declaration of Philadelphia was adopted on 10 May 1944 in Philadelphia. It is concerned with the aims and purposes of the International Labour Organisation. However, social inequalities and racial segregation were persisting facts in the United States before and long after the Declaration of Philadelphia. Knowing that social justice is the core of the ILO’s principles it appears paradoxical to see acute social predicaments among the American population. See Vivienne Sanders, ‘Access to History: Civil Rights in the USA 1945-1968’ (Holder Education, London 2008).

²⁹⁷ S. 706, 104th Cong., 1st Sess. (1995). See also Timothy P. Jr McElduff and Jon Veiga, ‘The child labor deterrence act of 1995: a choice between hegemony and hypocrisy’ (1996) 11 St. John’s Journal of Legal Commentary581.

2.3.3 The Competition Issue

From Liang's analysis, it appears that the globalisation of production brought about by a reduction in trade and investment barriers, together with the development in transport and communication, have encouraged developing countries to enter the export market. Indeed their access to export markets, particularly in labour-intensive consumer goods where low labour cost, give them a competitive advantage. As labour-intensive exports from developing countries have increased, competing industries in developed countries have faced intense competition.²⁹⁸

The issue of antitrust and fair dealing which underpins the concept of free competition is also stated in Section 7 of the code.²⁹⁹ Indubitably child labour practice poses the problematic of free competition. Although its involvement is not direct, Nestlé has to address unfair competition issues. The use of child labour on Ivory Coast's cocoa farms raises without doubt the debate on fair dealings. The cheap or free labour used in the cocoa production reduces the overall production cost for Ivory Coast in comparison to a given cocoa producing country that employs adult workers. Whereas a competitor trades in conformity with the labour rules and regulations in place, Ivory Coast gains considerable competitive advantages by using child labour in its coca industry.

The globalisation trend and the transformation of the global economy allow multinational corporations expand across borders. In that context, countries often compete for jobs, investment, and industry. International competition sometimes slows child labour reforms by encouraging corporations and governments to seek low labour costs by resisting enforceable international standards and repressing trade union activism.³⁰⁰ Indeed many labour unions and other organisations are concerned that this global "race to the bottom" increases poverty while lowering labour standards. Since the 1980's, incomes of the richest 20 percent of the

²⁹⁸ Yang Liang, 'China's Technological Emergence and the Loss of Skilled jobs in the United Sates: Missing Link Found?' (2007) 41 *Journal of Economic Issues* 399, 408.

²⁹⁹ See Nestlé Code of Business Conduct at http://www.nestle.com/assetlibrary/documents/library/documents/corporate_governance/code_of_business_conduct_en.pdf, accessed 30 July 2013.

³⁰⁰ See Child labour Public education project at http://www.continuetolearn.uiowa.edu/labourctr/child_labour/about/global_economy.html, accessed 3 January 2014.

population in nearly every nation have grown while incomes of the middle and lower classes have stagnated or declined.³⁰¹

More importantly, export expansion in developing countries has triggered a protectionist response in developed countries. Protectionist groups in the west argue that due to poor labour standards in developing countries, including child labour practices, they are unable to compete with these countries in labour –intensive products.³⁰² In such context, Ivory Coast maintaining poor labour standards obtains inherent comparative advantage in international trade and investment. Some developed countries have sought to counteract what they see as unfair competition faced by their domestic industries arising from the employment of child labour in the production of consumer goods in developing the country by including a ‘social clause’ in the World Trade Organisation (WTO) charter.³⁰³

2.4 Can Theories Defend the Practice?

2.4.1 Applying the Utilitarian Approach to Child Labour

The theory of utilitarianism will be examined with a view to comprehending how Jeremy Bentham’s utilitarian³⁰⁴ approach can be used in an attempt to understand child labour in human society in general and in Ivory Coast in particular. It could be asserted that the use of children in an unregulated and a non-restrictive way in African communities defies human morals.³⁰⁵ However, it is important to assess the problematic within the philosophical context of utilitarianism. An analysis of the concept of utilitarianism in this context seeks to understand, other than the cultural rationale put forward to justify children’s active involvement in community sustainability, the possible utilitarian basis to the perception of

³⁰¹ Ibid.

³⁰² Kishor Sharma, ‘Labour standards and WTO Rules: Survey of the Issues With Reference to Child Labour in South Asia’ (2009) 43 *Journal of Economic Issues* 29.

³⁰³ Kishor Sharma, ‘Labour standards and WTO Rules: Survey of the Issues With Reference to Child Labour in South Asia’ (2009) 43 *Journal of Economic Issues* 29.

³⁰⁴ See John S Mill, *Utilitarianism: and, On liberty: including Mill's Essay on Bentham and selections from the writings of Jeremy Bentham and John Austin* (Blackwell Publishing Ltd, London 2005).

³⁰⁵ See Line Eldring, Sabata Nakanyane and Malehoko Tshoaedi, ‘Child Labour in the Tobacco Growing Sector in Africa’. Report prepared for the IUF/ITGA/BAT Conference on the Elimination of Child Labour, Nairobi 8-9th October 2000 at <http://www.fafu.no/pub/rapp/654/654.pdf>, accessed 26 February 2014.

African societies in regard to children works. The aim of this endeavour is not to bring in the utilitarian theory as justification for the ‘abusive’ exploitation of children in African societies.

Upon the incontestable universality and sociologic need to establish a stable and well stratified community in order to avert possible adverse effects of both endogenous and exogenous factors or even from the wrath of nature, every human society has its ways of proceeding according to the value system in place.³⁰⁶ Bentham argued that the interest of the community is one of the most general expressions that can occur in the phraseology of morals.³⁰⁷ He emphasises that the interest of the community is the sum of interests of the several members who compose it.³⁰⁸ This view having a universal element of truth; some societies would not engulf themselves in a cognitive exercise deemed counter-productive. Since they do not see anything immoral with involving children in the communal activities at their very young age, for some activities that could be regarded as dangerous, it would be absurd to brand their attitude immoral.

While citing Charles Taylor, Scarre observes that:

There is something undeniably appealing in the classical utilitarian notion that actions are ethically justified when they lead to happiness, or diminish misery: ‘You count the consequences for human happiness of one or another course, and you go with the one with the highest favourable total.’³⁰⁹

Happiness is sought by every human society. Hence, in applying the utilitarian approach to societies that practice child labour, it could be argued that they resort to it in the utilitarian perspectives. The actions of most indigenous societies with regards to children’s participation to work could be justified by the fact such actions have the purpose of seeking the welfare and happiness of the community. Since intensive work and productivity surely create wealth and happiness, obviously any mean to attain those ultimate goals cannot be rejected. Scarre

³⁰⁶ See Pan Wei, ‘Core Social Values in Contemporary Societies’ (2009) 56 *Diogenes* 56, 73.

³⁰⁷ Jeremy Bentham, ‘*The Principles of Morals and Legislation*’ (Prometheus Books, New York 1988) 3 See Jimmy H Burns, and Herbert L A Hart, ‘*The collected Works of Jeremy Bentham: An Introduction to the Principles of Morals and Legislation*’ (Clarendon Press, Oxford 1995) 12.

³⁰⁸ *Ibid.*

³⁰⁹ Geoffrey Scarre, ‘*Utilitarianism*, (Routledge, London 1996) 1 See C Taylor, ‘The diversity of goods’, in Amartya Sen and Bernard Williams (eds) ‘*Utilitarianism and Beyond*’ (Cambridge University Press, Cambridge 1982) Jonathan Glover, ‘*Utilitarianism and its Critics*’ (Macmillan Publishing Company, London 1990) Robert E Goodin, ‘*Utilitarianism as a Public Philosophy*’ (Cambridge University Press, Cambridge 1995) see also Alan Ryan, ‘*John Stuart Mill and Jeremy Bentham: Utilitarianism and other Essays*’ (Penguin Books, London 1987).

notes that ‘the utilitarian theories have been welfarist, consequentialist, aggregative, and maximising.’³¹⁰ Scarre’s detailed analysis of the five elements that compose utilitarianism provides a strong backing to the assumption that utilitarianism could be another justification of children’s full involvement in the life of several communities across the world in general and particularly in Africa.

2.4.2 Applying the Functionalist Perspective

Defining an institution as custom, practice, or behavioural pattern of importance in the life of a community or society, child labour can be regarded as an institution deeply rooted in many traditional communities or societies. Institutions are established for the good functioning of communities and societies. Although, child labour is characterised as an evil practice in that it degrades the humanity of the child, societies that practice it do not understand it this way. They have the perception that children’s participation in work at all levels plays an important part in the sustainability of the community or society.³¹¹ Such sociological approach leads to the application of Emile Durkheim’s functionalist perspective³¹² to the child labour practice within traditional communities.

According to functionalist theories, institutions come about and persist because they play a function in society, promoting stability and integration.³¹³ Hence, it attempts to explain social institutions as collective means to meet individual and social needs.³¹⁴ As indicated hereinbefore, every society adopts customary practices and establishes institutions in the pursuit of the collective good and stability. An attempt to understand the child labour practice in traditional communities on the ground of the functionalist perspective will certainly provide the answer that these societies need to resort to for their stability. Stability in this context could be maintained by the abundance of crops and harvest yield with the participation of children in the farming process. In other words, the lack of labourers could lead to a reduced harvest. It is a fact that an insufficient harvest or poor quality crops create a

³¹⁰ Ibid.

³¹¹ See Kaushik Basu and Pham Hoang Van, ‘The Economics of Child Labour’ (1998) 88 *The American Economic Review* 412, 427.

³¹² See Whitney Pope, ‘Durkheim as a Functionalist’ (1975) 16 *The Sociological Quarterly* 361, 379.

³¹³ Ibid.

³¹⁴ James L Peacock, ‘Durkheim and the Social Anthropology of Culture’ (1981) 59 *Social Forces* 996-1008.

situation of famine in the community. Hence, traditional communities will resort to methods available to them for a better functioning of their social structure.

For example, a situation of famine in communities that solely rely on seasonal agriculture can be distorting. Such situation could distort the functioning of the community. The functionalist approach to the practice of child labour in societies that unavoidably need it to function could have its merits.³¹⁵ However in the current modern and global context child labour practice cannot be justified.

2.5 An Overview of the Phenomenon of Child Trafficking

2.5.1 Characterising a Challenging Underlying Phenomenon

Child trafficking cannot be left out in addressing the issue of child labour in Ivory Coast context. The two phenomena have been linked since the early years of the country's independence. Child trafficking determines the particular method of providing labourers in the cocoa production zones. Indeed, the case of Ivory Coast is exceptional because trafficking accounts for almost 70 percent in the manning of cocoa plantations for labour purpose.³¹⁶

Trafficking of children within the borders of Ivory Coast is a problem. Boys are trafficked for agricultural labour especially cocoa plantations and the service sector, while girls are trafficked in domestic work and commercial sexual exploitation (USDOL 2011, US Trafficking in Persons Report 2012).³¹⁷ Children, primarily boys are trafficked from neighbouring countries, Ghana, Mali, Burkina Faso, Benin and Togo and are found in forced agricultural labour, including in cocoa, coffee, pineapple and rubber farms, in the mining sector, and in carpentry and construction (US Trafficking in Persons Report 2012).³¹⁸

In terms of child rights corrosion, the two phenomena are connected, and they produce the same results. Hence, analysis of child trafficking is deemed necessary in this chapter. The work of children constitutes the backbone of the labour force on cocoa and coffee plantations

³¹⁵ Child labour practice in the British industrial revolution has played a significant in the economic and social stability.

³¹⁶ See US Department of Labour at http://www.dol.gov/ilab/reports/child-labour/cote_divoire.htm, accessed 2 July 2014.

³¹⁷ Ibid.

³¹⁸ Ibid.

and farms in Ivory Coast. Like other developing countries that practise child labour, there is usually high demand for labourers, and this has often triggered trafficking in persons.

The thriving nature of child labour on Ivory Coast's cocoa farms is greatly owed to child trafficking hence the strong assumption that child trafficking constitutes the underlying problem. Differentiating child trafficking from child labour is vital as the former is the first stage of an odyssey and the latter, the first step into a tragedy. Thus, trafficking is the only means to an end that is indubitably called exploitation. Movement is, therefore, the characteristic element of trafficking as traffickers, agents and transporters from Mali, Burkina Faso move children from their native countries to Ivory Coast for exploitation, on cocoa and coffee plantations and farms. In the Ivorian context of the cocoa industry, child trafficking and child labour are intrinsically linked phenomena. Therefore, child trafficking remains a challenging issue for Ivory Coast in the fight against the worst forms of child labour.

Though trafficking in human beings is an age-old phenomenon, it was not until December 2000 that the international community reached a consensus on a common normative definition on trafficking in human beings. The new paradigm was materialised in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. It is a UN Convention against Transnational Organized Crime, called the Palermo Protocol.³¹⁹

The definition of trafficking in persons, now enjoying almost universal acceptance, is contained in the Trafficking Protocol of 2000. This instrument aims inter alia to distinguish the offence of trafficking from that of smuggling. Trafficking refers to the recruitment, transport, transfer, harbouring or receipt of a person by such means as threat or use of force or other forms of coercion, of abduction, of fraud or deception "for the purpose of exploitation. Exploitation includes, as a minimum, "the exploitation of the prostitution of

³¹⁹ UNICEF Innocenti Research Centre, Trafficking in human beings, especially women and children, in Africa Innocenti Insight, 2003. UNICEF Innocenti Research Centre, Child Trafficking in West Africa. Policy Responses. Innocenti Insight, Florence, 2002, UNICRI, Common Platform for Action of the Sub-Regional Consultation on the Development of Strategies to Fight Child Trafficking for Exploitative Labour Purposes in West and Central Africa, 22-24 February. Libreville, 2000, available at <http://www.unicri.it>, accessed 29 October 2011.

others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (Article 3(a) of the Protocol).³²⁰

2.5.2 The Magnitude of Child Trafficking

Although no precise figure exists, the ILO (in 2005) estimated that 980,000 to 1,225,000 children both boys and girls- are in forced labour situation as a result of trafficking.³²¹

Although the ILO could not provide a worldwide estimated number of child victims of trafficking for all categories of exploitation, the estimated number of children trafficked for exploitation in unconditional worst forms of child labour was 1,2000 in 2002.³²² Child trafficking appears to be complex for most statistics institutes in terms of determining a reliable data that could give a better understanding of the scale of the problem. Even though the U.S department of States has classified Ivory Coast as one of the three special cases in its report on Trafficking in person for the year 2011, there is no mention of the number of children trafficked in the country for exploitative purposes.

The report shifted the blame on the authorities by indicating that:

Law enforcement authorities did not demonstrate adequate efforts to proactively identify trafficking victims among vulnerable groups, such as foreign children entering the country without their parents or working in agriculture, though some victims were identified and referred to NGOs for care.³²³

In the light of this assertion, it appears that the lack of reliable data in regard to trafficking remains a challenge for the country. As far as child trafficking is concerned in Ivory Coast, figure can be estimated in accordance with the number of children working on cocoa plantations. The fact is that, trafficking is not an outrage to the social construction in most West African communities, but an analysis of each stage of the practice gives a clear

³²⁰ See Report of the Director-General (2005) A global alliance against forced labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Office , Geneva <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>, accessed 1 November 2011.

³²¹ See ILO at <http://www.ilo.org/ipecc/areas/Traffickingofchildren/lang--en/index.htm>, accessed 12 November 2011.

³²² IPEC/ SIMPOC, ‘*Every Child Counts, New Global Estimates on Child Labour*’ (International Labour Office Geneva 2002).

³²³ U.S Department of States, Trafficking in Person Report 2011, available at <http://www.state.gov/g/tip/rls/tiprpt/2011/164234.htm> , accessed 8 November 2011.

understanding of the depth of each participant's role in the process. The analysis is necessary because it can also help in determining legal responsibilities in a bid to punish any offender.

2.6 Some Particular Governance Issues

2.6.1 Failure to Address Inequality Issues

The growing social inequalities among the population of Ivory Coast have never been adequately addressed by successive governments. Inequalities in the Ivorian society play an important role in the occurrence of some despicable practices. The socio-politic setback encountered by the country for the last decade has not helped for a shift in perception either. Indeed the development programme of the country has been centred on the south. Hence, the northern part of the country has been less privileged in terms of urbanisation and infrastructures. The main argument put forward by the rebel movement, mainly composed of natives of the northern Ivory Coast was premised on the state of social injustice in the country.³²⁴

In terms of school infrastructures, the north was less equipped. Consequently, the agrarian tradition has prevailed over the indecisive attitude of the authorities. The unbalanced development programme adopted by the authorities was among others a reason for mass migration from north to south. The deprived northern region lacked foreign investments, industries and, employment. Therefore, labourers and their families migrated to find work in the forested south, where cocoa and coffee farming takes place. Unfortunately, most of the migrant workers allowed their children to participate in the production process.

Although, children employed on cocoa farms are trafficked from Mali and Burkina Faso, a considerable number of child labourers are natives of Ivory Coast. The complex nature of the problem and the apparent lack of adequate responses raise the crucial question of the authorities' management of social issues. It could be argued that unemployment in the country has reached a record high in recent years due to the socio-political crisis but it is worth admitting that the inexistence of a practical social policy is blamed on the social and politic culture. Indeed the general pattern of the socio-politic environment has been identified since the 1980s. The American Congress writes that:

³²⁴ Robbie Corey-Boulet, 'Ivory Coast: Victor's Justice' (World Policy institute, 2012) available le at <http://www.worldpolicy.org/journal/fall2012/ivory-coast-victors-justice>> accessed 24 March 2014.

Through the 1980s, Côte d'Ivoire shared the concerns over poverty, unemployment, and crime that plagued the developing and industrial countries alike. Human resource management was complicated by the large urban-rural ratio, however, and by population growth and economic recession. The cultural expectation of assistance through the extended family helped offset problems of unemployment, but high mobility within the workforce resulted in more dispersed families, and this dispersal, in turn, contributed to rising problems of poverty and unemployment.³²⁵

The successive governments of the country are aware of the situation yet for nearly four decades the question of human resource management remains unsolved. The state could adopt a defensive approach to the problem by initiating particular actions towards social inequalities and the unequal redistribution of wealth. The enactment of a social code could be a possible answer to social inequalities. The most recent statistics provided in table 2.3 below indicate that in 2008, over 42 percent of the population lived below the poverty line.

Table 2.3: Poverty headcount ratio at national poverty line (% of population)

42.7%	2008
40.2%	2002
36.4%	1998
34.6%	1993
10.1%	1985

Source: The World Bank³²⁶

2.6.2 The State of Corruption

The level of corruption in Ivory Coast's social and political system cannot be overshadowed in a serious debate such as child labour.³²⁷ Indeed, corruption in the political sphere is evidenced by countless cases; the recent toxic waste scandal is testimonial of the authorities'

³²⁵ See Country data at <http://www.country-data.com/cgi-bin/query/r-6951.html>, accessed 9 July 2013.

³²⁶ See World Bank, Côte d'Ivoire at <http://data.worldbank.org/country/cote-divoire>, accessed 2 July 2014.

³²⁷ According to Transparency International, Ivory Coast is ranked 130/176 on the list of the most corrupted countries in the world. See <http://www.transparency.org/country#CIV>, accessed 8 July 2013.

disregard to the human rights values.³²⁸ The mismanagement of public wealth and the opacity in the head of state's management of public funds are detrimental to the realisation of development programmes.

The concern about child rights violations on cocoa and coffee farms can only grow when the government structure established to address the issue was entrusted in the hands of the first lady.³²⁹ The current head of state in Ivory Coast and the first lady are known by human rights organisations to have the most tragic record of human rights abuses in the history of Ivory Coast.³³⁰ The project to eliminating child labour in Ivory Coast seems unachievable because, in practice, human rights protection has never been a priority for the authorities. Moreover, it is argued that given the state of corruption at the highest level of the administration, such a sensitive institution should be chaired by an independent body.

Corruption is the core issue in the debate about bad governance. It could be agreed with Fraser-Moleketi that 'corruption engenders perverse political dependencies, lost political opportunities to improve the general wellbeing of the citizen and fosters a climate of mistrust particularly of public officials. The losses that accrue from a culture of permissiveness with respect to corruption include a loss of revenue, loss of trust, loss of values, loss of credibility and legitimacy and a loss of the democratic ethos and impulse within institutions and organizations.'³³¹

It is problematic in the sense that enforcement authorities often fail to act on several cases upon receipt of bribes.³³² In such sociological environment, the plight of millions of children

³²⁸ See David Leigh, 'Corruption fears over Ivory Coast toxic waste victims' £30m Trafigura payout: Compensation cash for 30,000 people is frozen, Lawyers say that money may 'simply disappear' *Guardian* (4 November 2009) see also 'Ivory Coast probes Trafigura waste fund theft' *BBC NEWS AFRICA* (1 June 2010) <<http://www.bbc.co.uk/news/10366945>> accessed 9 July 2013.

³²⁹ A National Oversight Committee for Actions to Fight against Trafficking, Exploitation and Child Labour was created on 3 November 2011, which will oversee the new Joint Ministerial Committee, and is composed of international and national organisations working in the field of child protection. This Oversight Committee is chaired by the First Lady of Ivory Coast, Mrs Dominique Ouattara.

³³⁰ See Amnesty International 'Annual report: Côte d'Ivoire 2013 available at <http://www.amnestyusa.org/research/reports/annual-report-cote-d-ivoire-2013>, accessed 6 March 2014.

³³¹ Geraldine Fraser-Moleketi, 'Towards a Common Understanding of Corruption in Africa'(2009) 24 *Public Policy and Administration* 331, 338.

³³² Addison Wrage, '*Bribery and Extortion: Undermining Business, Governments, and Security*' (Library Congress Catalogue, 2007) 97.

is ignored. Since there is no culture of resentment for child rights violation, any such violation can be settled through bribes and arrangements. The government often collude with some private actors. As a result, they turn a blind eye to human rights violations and other forms of child abuse. As stated elsewhere, education is a fundamental human right and the principal driver of human and economic development. Corruption hurts many and only benefits a few. It inhibits the ability of government to respond to citizens' needs and to utilise scarce resources in the most efficient and effective manner. It takes away resources from priority areas such as health, social development and education.³³³

Since education typically comprises 20-30 percent of the country's budget, it is critically prone to corruption from national education ministries to local school authorities and universities.³³⁴ Moreover, the cost of corruption is high. Indeed, stolen resources from education mean overcrowded classrooms and crumbling schools or no schools at all. Such a scene has often discouraged some parents in rural areas from sending their children to school. They would rather capitalise on training their children in farming practices that often result in transforming the children to child labourers. Scandals for embezzlement of education budget occurred on several occasion in Ivory Coast. The most recent scandal is that of 2012 where a total of FCFA 40 billion (approximately US \$80 million) was reportedly embezzled at the Ministry of Higher Education.³³⁵

More significantly, in a presidential system as it is in Ivory Coast, the strong influence of the executive tends to concentrate most of the political power to the head of state.³³⁶ In April 2013, Ivory Coast parliament granted the head of state decree power over the economy.³³⁷ The recent move could be seen as a threat to economic and social stability due to the state of

³³³ See Draft Speech for Minister Fraser-Moleketi to be presented at the African Forum on Anti-Corruption 28 February 2007, 'Towards a common understanding of corruption in Africa' available at http://www.nacf.org.za/events/SPEECH%20BY%20MPSA%20AFRICA%20FORUM.pdf_br, accessed 22 August 2014.

³³⁴ See Côte d'Ivoire: Higher Education Minister Cisse Bacongo's Right-Hand Man Fired Over Financial Scandal' *All Africa* (3 August 2012) < <http://allafrica.com/stories/201208070944.html>> accessed 9 July 2013.

³³⁵ Ibid.

³³⁶ See Ivorian Constitution (1st August 2000).

³³⁷ See 'Ivory Coast leader gets decree power over economy' *Reuters* (10 April 2013) <<http://www.reuters.com/article/2013/04/10/us-ivorycoast-president-idUSBRE9390Y420130410>> accessed 6 March 2014.

corruption among the authorities. The lack of accountability underpins the critical issue in the debate of governance in Ivory Coast. There is no institution to question or to challenge the government's actions. That amounts to a democratic deficit.

At the lower strata of the administration, other government agencies as well as the police cannot function efficiently because not only are they plagued by corruption, but they are also not independent.³³⁸ Worst of all, the judiciary is usually not independent.³³⁹ As a result, many economic actors are not prosecuted for their wrong doing by using child labour in the production process or engaging in inappropriate business practices. There is an implied consensus about the idea that multinational and private investors should not be put off for any reason. This theory was prominent in the first three decades after the independence of the country, and one of the main features was that foreign investors enjoyed tax exemption for ten years from the start of their business in the country.³⁴⁰

Meanwhile, the U.S. Department of State has established in its 2012 report that there are some limitations on foreign investment worth noting. The report indicates that many foreign investors see corruption, especially in the judicial system, as a major impediment to investment in Ivory Coast. Some foreign investors have described extraordinary difficulty and lengthy delays in establishing investment in Ivory Coast. The World Bank's 2011 "Doing Business" report ranks Ivory Coast 167 out of 183 countries evaluated. There are restrictions on foreign investment in the health sector, law and accounting firms, and travel

³³⁸ See, 'Ivorian security plagued by corruption' *International United Press* (1 July 2013) <http://www.upi.com/Top_News/Special/2013/07/01/Ivorian-security-plagued-by-corruption/UPI-25831372689936/> accessed 9 July 2013.

³³⁹ Judicial Independence is an indicator in the Global Competitiveness Index produced by the World Economic Forum. It measures the perceived extent in which the judiciary of the country is independent from influences of members of government, citizens, or firms.

³⁴⁰ Direct foreign investment plays a key role in the Ivoirian economy, accounting for between 40% and 45% of total capital in Ivoirian firms. France is overwhelmingly the most important foreign investor. In recent years, French investment has accounted for about one-quarter of the total capital in Ivoirian enterprises, and between 55% and 60% of the total stock of foreign investment capital. See Ivory Coast Business Mission Fact Sheets at <http://nl.nabc.nl/Portals/0/docs/Country%20information%20pdf/ivory%20coast%20Fact%20Sheet.pdf>, accessed 10 July 2013. In recent years, the change in the economic politic and the social-politic crisis have lead the authorities to shift their approach to tax exemption for foreign investors. For instance the tax schedule, as revised in 2006, includes fiscal measures to reduce the corporate tax burden and stimulate economic activity. These measures include: A corporate income tax of 27 percent and the awarding of a three-year corporate income tax exemption and free tax registration for the return of companies that left the country as a result of the crisis. In 2011, the post crisis tax incentives included a suspension of the 2011 road tax, a 50% reduction in trade tax, a 50 % reduction in the land tax and the cancellation of income tax arrears collected before January 1, 2010. See U. S. Department of State's 2012 report on Investment climate in Ivory Coast at <http://www.state.gov/e/eb/rls/othr/ics/2012/191133.htm>, accessed 10 July 2013.

agencies³⁴¹, but such scenario is unlikely for corporate multinational in developing countries in general and in particular Ivory Coast.

Conclusion

Problematising child labour in Ivory Coast necessitates the analysis of the serious social issue often ignored by many observers and scholars in the debate about child labour in Ivory Coast. Education is not compulsory by law, although it is officially free. In practice, some parents are still required to pay fees for teachers' salaries and books. For some schools, birth certificates are also a requirement for continued enrolment. Since many children do not have birth certificates, they are consequently prevented from attending school. Teachers also reportedly demanded sexual favours from students in exchange for grades or money.³⁴²

Loukimane observes that 'the redistribution of wealth is almost inexistent, and this results in social crisis that threatens the social cohesion.'³⁴³ The general issue of governance has long been an underpinning factor to the slowness in the development of the country. In terms of economic governance, Ivory Coast was unable to manage the public companies it created in pursuance of its development plan. Therefore, it has to opt for privatisation or dismantle those public companies altogether.³⁴⁴ It could be agreed with Kirat that 'developing countries that have inherited the legacy of French laws are characterised by poor public governance and, correspondingly, the existence of social regulation mechanisms as palliative of failures of the State.'³⁴⁵ It must be noted that the shortcoming of good governance in Ivory Coast plays an important part in the thriving of child labour.

³⁴¹ See U S Department of State's 2012 report on Investment climate in Ivory Coast at <http://www.state.gov/e/eb/rls/othr/ics/2012/191133.htm>, accessed 10 July 2013.

³⁴² 2011 Findings on the worst forms of child labour, United State Labour's Bureau of International Labour Affairs.

³⁴³ Camara Loukimane, 'Marché, gouvernance et pauvreté: le cas de la Côte d'Ivoire' (L'Harmattan, Paris 2013) 148.

³⁴⁴ *Ibid* at 149.

³⁴⁵ Thierry Kirat, 'Legal tradition and quality of institutions: Is colonization BY French countries distinctive?' (2013) 11 *Criterio Libre* 26.

A particular level of understanding the different mechanisms in the cocoa industry would have helped a considerable number of farmers to depart from child labour practices. The lack of professionalism and organisation has been a major handicap for the small producers in optimising their revenues and creating economic opportunities. Often, the price by a professional exporter to a producer does not reflect the guaranteed price. The current *status quo* compels producers to regroup into workable cooperatives in order to generate more revenues. More importantly, improved socio-economic conditions of farmers would have created an environment of financial security that would have stopped them from resorting to low-cost labour.

Child labour seen through the principal epochs of Ivory Coast's history has changed in its practical aspects. Apart from the cultural argument of supporting the enduring child labour practice in Ivory Coast, society has also indirectly accepted the practice because of its long history within communities. From a mere participation to the family production of subsistence crops that is also a way of training a child for adult life, child labour is practiced in its brutal form brutal in the WTO era. Hence, the brutal form of child labour in current modern days remains a serious challenge for both domestic and international lawmakers. Because child labour severely impacts fundamental rights of the child it become a matter of urgency to analyse the legal and institutional environment of labour relations in general and child labour in particular in Ivory Coast. The analysis will be an attempt to identify the existing laws and policies to combat all forms of child labour in Ivory Coast in general and the worst forms of child labour on the cocoa farms in particular.

Chapter 3

Child labour in Ivory Coast: The Legal and Institutional Environment

‘‘ There can be no keener revelation of a society’s soul than the way in which it treats its children ’’,³⁴⁶

Introduction

This chapter examines the legal reforms undertaken by Ivory Coast in compliance with the International Labour Standards (ILS). It explores the general labour environment of Ivory Coast with the aim to determine the status of children in employment related issues. The enduring nature of child labour on Ivory Coast’s cocoa farms makes it a challenging issue for the country.³⁴⁷ Consequently, this chapter examines the legal frameworks established to combat and eradicate the phenomenon. This chapter examines the role of the US government in the transformation of Ivory Coast legal framework for child labour.

This chapter also examines the legal framework of child trafficking in Ivory Coast. As indicated in chapter two, child trafficking is an underlying issue to the perpetuation of the child labour practice on cocoa farms.

3.1 The Ivory Coast in the International Labour Environment

3.1.1 The Transformation of Ivory Coast Legal Framework for Child Labour: The Role of the US Government

In June 2004, the Ivorian government published a Memorandum³⁴⁸ in response to a request made by the US Department of labour regarding child labour in Ivory Coast’s cocoa farms.

³⁴⁶ Nelson Mandela, President of the Republic of South Africa (10 May 1994 – 14 June 1999).

³⁴⁷ See Laura Burke, ‘Child labour Still Issue on Ivory Coast Cocoa Farms’ *Associate Press* (29 June 2012) <<http://cnsnews.com/news/article/child-labour-still-issue-ivory-coast-cocoa-farms> > accessed 28 February 2014.

³⁴⁸ See Document: Memorandum présenté par le Gouvernement de la République de Côte d’Ivoire: en reponse a la requête faite par le Ministere Americain du travail sur des informations relatives au travail des enfants dans

Apart from the impact of the extensive media coverage about the issue and accusations made against the Ivorian government for turning a blind eye to the worst form of child labour, the US government stepped up its actions. Stepping in the debate was deemed necessary by the US given the fact that most of the Multinational Corporations involved in Ivory Coast cocoa industry are Americans, and most importantly the suspected child labour products to a great extent are directed to the American market. The Memorandum highlights four main points that have been underscored by the US government. The Ivorian government observed that, from the reading of the request made by the US administration, it is important to note the following four points:

- 1- The focus on the worst forms of child labour allegedly found in Ivory Coast is based on research, journal articles and a recent television documentary.
- 2- The finding of inadequate legal framework, however, there are laws prohibiting the employment of children under 14 years and 18 years, specific laws on child labour in cocoa production are inexistent.
- 3- In terms of enforcement, no record of prosecution exists.
- 4- Recent efforts by the Government of Ivory Coast to address the issue of child labour on cocoa farms are acknowledged.³⁴⁹

In its response to the request, the government of Ivory Coast appears very critical of what it implicitly regarded as false accusation. The government denied the fact that all children in the rural area are child labourers. It stated that although there are thousands of children living in rural areas, it is inappropriate to conclude that they all work on cocoa farms without producing credible sources for such allegation. In regard to the dangerous nature of the tools used in the farming process, the government emphasised that these tools are dangerous for anyone using them since cocoa farming is not motorised.

The government also denied the allegation that school attendance in cocoa farming zones of the country is very low. The government indicated in that respect that: 'the enrolment rates in areas of cocoa production were highest in Ivory Coast 70 percent against 56 percent nationally.' The government appeared stunned by the allegation that children work 10 to 20

la cacao culture en cote d'ivoire at <http://www.cacao.gouv.ci/commun/documents/MEMORANDUMtravaildesenfantsjuin2004français.pdf>, accessed 1 February 2014.

³⁴⁹ Ibid.

hours per day. They found such allegations unrealistic since according to them, cocoa farms are not electrified, therefore, work cannot take place in the dark.

According to the government, the meaning of plantation in the US is not the same in Ivory Coast. Whereas plantations in Ivory Coast are small plots of land (five acres) exploited by families, in the US plantation are large exploitation of hundreds of acres. The government emphasised that in family farms, there is no salary to be paid to any member of the family that works there since the person will be taken in charge by the farm owner. Most importantly, the government justified presence of children on cocoa farms by the fact that in rural areas there are no nurseries, therefore, parents take their little ones with them on the plantations.³⁵⁰

From Ivory Coast government's response, it appears that the authorities felt uncomfortable with the US government's report about the worst forms of child labour in the cocoa industry. The discomfort of the authorities was expressed by the then Ivory Coast ambassador to the UK in the wake of the documentary shown on British television station, Channel 4 on the 28th September 2000. According to the diplomat, the claim that 90 percent of cocoa farms use child labourers is unfounded and such claim amount to a lack of knowledge of the Ivory Coast's cocoa farming mechanisms.³⁵¹ However, the worldwide media account of the problem is regarded as one of the triggering factors for the setting of a comprehensive legal framework and increasing actions towards child labour in the country. Indeed, legal and institutional reforms were needed as a starting point for Ivory Coast's contribution to the global fight against the worst forms of child labour.

3.1.2 The Ivory Coast and ILO Conventions

Record of ILO Fundamental Conventions Ratification

Ivory Coast became a member of the International Labour Organisation on 21st November 1960.³⁵² Since Ivory Coast joined the ILO, there have been significant efforts in establishing

³⁵⁰ Ibid.

³⁵¹ See BBC News Africa, 'Cocoa farm slavery 'exaggerated'' BBC NEWS AFRICA (29 September 2000) <<http://news.bbc.co.uk/1/hi/world/africa/948876.stm>>, accessed 4 September 2014.

³⁵² See ILO country profile at <http://www.ilo.org/dyn/normlex/en/f?p=1000:11003:0::NO::>, accessed 28 February 2014.

a sound relationship. Meanwhile, the recurring phenomenon of child labour in the country appears to obliterate the genuine nature of the political will to eradicate the social and moral plague suffered by millions of children in the West African country. Obviously, the newly independent country from French colonial rules³⁵³ was seeking to conform to the international legal and institutional harmony. Whether this approach was intended to please the *unavoidable* international community or to dissipate the complex of a latecomer, such move ought to be thoroughly gauged.

Chigara writes ‘that the ILO has transformed and renewed its labour code in a way that has enabled latecomers to the organization to appropriate its standards fully.’³⁵⁴ Indeed, as he emphasises, ‘without these ‘renewal seeking intervention,’ the latecomers to the ILO would have remained objects of the international Labour Code. Such move could only be driven by a complex felt by these countries designated as third-world countries then. When the wind of decolonisation blew in western colonies in Africa, Asia and Latin America, the new sovereign countries not only were numbering more than half of the organisation’s membership but they had also played no part in the creation of nearly two-thirds of the current International Labour code.’³⁵⁵ Therefore, they had more to gain in shaking up the existing international order.

The current state of affairs in regard to ratification is that, Ivory Coast has ratified eight Conventions out of the eight ILO fundamental Conventions.³⁵⁶ On 21 November 1960, Convention No 29³⁵⁷ and Convention No 87³⁵⁸ were ratified by Ivory Coast, and the legislative enshrinement was achieved through ‘*Décret du 21 novembre 1960 portant*

³⁵³ From 1893 to 1960 Ivory Coast was under French colonial rules. On 07 August 1960 France grants independence under President Felix Houphouët-Boigny. He holds power until he dies in 1993. See BBC, <http://www.bbc.co.uk/news/world-africa-13287585>, accessed 12 March 2013.

³⁵⁴ Ben Chigara, ‘Latecomers to the ILO and the Authorship and Ownership of the International Labour Code’ (2007) 29, *Human Rights Quarterly* 706, 726.

³⁵⁵ *Ibid.*

³⁵⁶ See ILO, Ratifications for Ivory Coast at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103023, accessed 12 March 2013.

³⁵⁷ Forced Labour Convention, 1930 (No. 29). Adoption: Geneva, 14th ILC Session (28 June 1930) - Status: Up-to-date instrument (Fundamental Convention).

³⁵⁸ Freedom of Association and Protection of Rights to Organise Convention, 1948 (No. 87) Adoption: San Francisco, 31st ILC session (09 Jul 1948) - Status: Up-to-date instrument (Fundamental Convention).

*signature de la Convention N ° 29 de l'OIT du 28 Juin 1930 relative au travail forcé.*³⁵⁹ This ratification constitutes the first of its kind in Ivory Coast- ILO relationship. From a historical and colonial viewpoint, Ivory Coast has experienced the harshness of forced labour during the French colonial rule. Arguably in the wake of the political independence from France there was an eagerness to eliminate all forms of such practices in the new and free society.

Indeed, the ILO convention No 29 Concerning forced or compulsory labour, more than a mere formality to comply with a member of the organisation, it is a Convention addressing the recent harsh history of most newly independent African countries. Article 2 of the Convention stipulates that: 'For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily''. Indubitably, such practice framed by the ILO for elimination was what indigenous communities have endured through the practice called '*travaux forcés*' during French colonisation of Ivory Coast.³⁶⁰

As well as Convention No 29, Ivory Coast did not make any observation in ratifying Convention No 87. The spirit of the ILO Convention concerning Freedom of Association and Protection of the Right to Organise was in sharp contrast with the social condition of the indigenous communities. This approach is a logical continuum of the prevailing argument about the rationale behind Ivory Coast's endeavour, not only to ratify these ILO instruments, but also to keep them in force. Arguably, the same rationale could be the underlying approach to the ratification of four more ILO fundamental Conventions in 1961, one year after the independence.

The most recent ratifications from Ivory Coast in the category of the fundamental Conventions were made in 2003. Convention No 138 was ratified on 7 February 2003 by decree: '*Décret N° 2002-53 du 21 janvier 2002 portant signature de la Convention N ° 138 de l'OIT du 26 juin 1973, relative à l'âge minimum d'admission à l'emploi*'³⁶¹ Convention No

³⁵⁹ See the Ivory Coast government website for cocoa information at <http://www.cacao.gouv.ci/index.php?rubrique=1.1.1&langue=fr/>, accessed 11 November 2011.

³⁶⁰ The public works programs undertaken by the Ivoirian colonial government and the exploitation of natural resources required massive commitments of labour. The French therefore imposed a system of forced labour under which each male adult Ivoirian was required to work for ten days each year without compensation as part of his obligation to the state. See the library of congress <http://lcweb2.loc.gov/frd/cs/citoc.html/>, accessed 20 January 2013. See Jean- Pierre Cheveau and P Richards, 'West African Insurgencies in Agrarian Perspectives: Côte d'Ivoire and Sierra Leone compared' (2008) 8 Journal of Agrarian Change 515, 552.

³⁶¹ *Journal officiel, 2002-03-28, no 13, p. 213.*

182 was also ratified on 7 February 2003 by decree: '*Décret N° 2002-55 du 21 janvier 2002 portant signature de la Convention N° 182 de l'OIT du 17 juin 1999, relative à l'interdiction des pires formes de travail des enfants*'.³⁶²

In Pursuance of the provision of article 2 of Convention No 138,³⁶³ the Ivory has specified 14 years as the minimum age for admission to employment or work. The 14-year minimum age is one year below the minimum age specified by neighbouring Ghana, which also faces the troubling issue of child labour. The option for a lower age for admission to employment or work in both countries could be revealing when it is noted that the UK has set 16 as the minimum age for admission to employment work upon ratification of the same convention.³⁶⁴

It is not insinuated that the choice for lower age is peculiar to developing countries given that Burundi has set 16 years as the minimum age for admission to employment and work.³⁶⁵ Rather, it is insinuated that Ivory Coast being a country in the centre of the worst forms of child labour in the cocoa and coffee industry, the option for lower age could be a matter of serious concern.

For example, despite setting the minimum age to 15 years upon ratification of Convention No 138 on 15 December 1999, Senegal clearly indicates that 'the Government declared in conformity with Article 5, paragraph 2, of the Convention that the provisions of the Convention do not apply to traditional pastoral or rural work without remuneration carried out in a family setting by children of less than 15 years of age and which aims at better integrating them in their social surroundings and the environment.'³⁶⁶

³⁶² *Journal officiel, 2002-04-04, no 14, p. 227.*

³⁶³ Article 2 of the ILO Convention No 138 stipulates that: 'Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation'.

³⁶⁴ See ILO (Ratification by Country) at <http://www.ilo.org/dyn/normlex/en/f?p=1000:11001:0::NO>, accessed 20 March 2013.

³⁶⁵ See ILO, Ratifications for Burundi at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103466,a accessed 13 March 2013.

³⁶⁶ See ILO, Ratifications for Senegal at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103013, accessed 13 March 2013.

Governance Conventions and Technical Conventions

Out of the four ILO Governance Conventions, Ivory Coast has ratified three. On 7 June 1987, Labour Inspection Convention 1947 (No. 81), Labour Inspection (Agriculture) Convention 1969 (No. 129), and Tripartite consultation (International Labour Standards) Convention 1976 (No 144) were ratified. The non-ratification of the fourth-governance Convention, Employment Policy Convention 1964, (No.122) is less surprising for any government of a country where employment opportunities are scarce, to fulfil the requirement of article 1 of the Convention which stipulates that:

With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.

1. The said policy shall aim at ensuring that--
 - (a) There is work for all who are available for and seeking work;
 - (b) Such work is as productive as possible;
 - (c) There is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.
2. The said policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices''

The UK has ratified Convention No 122 on 27 June 1966. From a comparative approach, the level of industrialisation of the UK hence the capacity of the country to fulfil, to a considerable extent, the stipulations of the Convention, could be regarded as an explanatory element in the choice to ratify the Convention. Consequently, the non-ratification by Ivory Coast could be regarded as a more realistic approach to the economic context. Meanwhile, the ratification of Convention No 122 by Burkina Faso on 29 October 2009 cannot be

regarded as the capacity of the country to fulfil the requirements set in the Convention. Out of the 177 ILO Technical Conventions, Ivory Coast has ratified only 23 Conventions.

3.1.3 Contextual Approach to Convention No 138 and Convention No 182

Convention No 138 and Recommendation No 146

The significant feature of Convention No 138 remains its flexibility, most importantly for developing countries. Convention 138 has taken into account the level of development of countries members, their economic and educational facilities. Hence, Paragraph one of Article 7 provides that:

‘National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is:

- (a) Not likely to be harmful to their health or development; and
- (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

However, exceptions are allowed for sectors such as non-commercial agriculture, limited categories of work, education and training as well as artistic performances, the contextual approach to strict compliance to the letter and the spirit of Article 7 depends exclusively on the authorities. In terms of ratification, it is well-documented that overall, Ivory Coast has a satisfactory ratification records concerning ILO instruments. Meanwhile, child labour and other labour issues are still in stunning states of stagnation in the country.³⁶⁷

Furthermore, Paragraph two of Article 7 stipulates that: ‘National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph one of this Article.’ The paradox is that, from a realistic approach to educational frameworks, Ivory Coast scarcely enforces the compulsory schooling age requirement.³⁶⁸ Therefore, the employment of a 15 years old child claimed to

³⁶⁷ Humphrey Hawksley, ‘Ivory Coast cocoa farms child labour: Little change’ *BBC NEWS AFRICA* (10 November 2011) < <http://www.bbc.co.uk/news/world-africa-15681986>> accessed 13 November 2011.

³⁶⁸ According to UNESCO, 39% of children who are of primary school-age were out of school in 2009. See UNESCO:http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF_Language=en&BR

have been conducted in accordance with the provision of Article 2 paragraph 2, may not reflect the real facts.

The fundamental obligation for ILO member states for the ratification of Convention 138 is the specification of a minimum age for admission to employment. In that perspective, the Convention outlines three categories in which country members can legislate in accordance with their internal circumstances.

The first significant point is that country members must not adopt a minimum age less than the age of completing compulsory schooling, and in no circumstances this should not exceed 15 years of age. Emphasis on the permission for countries with less developed economies and educational facilities to opt for 14 years as age for admission to employment is characteristic of the desire of the ILO to take into account internal circumstances of most developing countries.

From a critical viewpoint, in the ILO's legal frameworks approach to the issue of children's work it ought not to place emphasis solely on the health or developmental impacts on children. When the ILO leaves the choice to country members to appreciate its Conventions according to their realities, the margin of manoeuvre for the countries to do so is often not clearly defined or not fully apprehended by the ILO itself. Knowing the political environment and the socio-economic circumstances of most developing countries,³⁶⁹ the latitude given by the ILO could complicate the efficiency of its efforts to eliminate child labour and other related issues. Indubitably, the ILO has a democratic approach to all levels of its mechanisms,³⁷⁰ but there is more to gain in establishing a firm foundation for its success and credibility in the international labour sphere.

The second category outlined by the ILO is the hazardous work. In this category, the ILO has set the minimum age itself. The minimum age of 18 according to the provision of article 7, is set for work that is by nature or the circumstances in which such work is performed is highly likely to jeopardise the health, safety, and morals of the child. Arguably the risk factor has lead the ILO to determine itself a higher minimum age, but again, it is left to the individual countries to determine what hazardous work is. In such context, would Ivory Coast, at least in

_Country=3840/, accessed 12 February 2013. The high percentage of primary school-age children out of school indicates the lack of the authorities control over the whole system of birth and death registry.

³⁶⁹ John Echeverri-Gent, 'New Approaches to the Politics of inequality in Developing Countries' (2009) 42 *Political Science and Politics* 629, 631.

³⁷⁰ William R Simpson, 'The ILO and tripartism: Some reflexions' (1994) 177 *Monthly labour Review* 40.

practice, precisely determine that thousands of children working with machetes and others sharp tools, as well as pesticides,³⁷¹ do so in hazardous conditions? However, recommendations No 146 provides guidance on the criteria that should be taken into account in determining what hazardous work is.

Although the hazardous nature of work is determined after consultation with employer and workers' organisations, the ultimate goals of such process are hardly reached in the contextual handling of the cocoa and coffee industry of Ivory Coast. The quasi inexistence of structured systems of registration of farmers and labourers³⁷² contributes to the complexity of giving any real meaning to the provision of Article 7.

The third category is concerned with light work. Light works are deemed activities that are not likely to harm children's health, impede their development or to jeopardise their school attendance. In this category, whereas other countries must set 13 years, a country like Ivory Coast that has initially set 14 years as minimum age are permitted to set 12 years for the purpose of light work. The general argument sustained for children's involvement of children in agricultural works is their initiation to social life and ability to a more prosperous adult life. Therefore, rural communities would not perceive what is harmful in the initiation of their children, often as young as five, to activities that have always sustained the social structure.

Convention No 182 and Recommendation No 190

Unlike Convention 138 in the category of ILO fundamental Conventions, Convention No 182³⁷³ has a straightforward approach to child labour as it calls for an immediate and total prohibition of the worst forms of the practice. However, the worst form of child labour is the one target for elimination. Article 1 stipulates that: 'Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.' The endemic nature of child labour in the 1990s has prompted the ILO to qualify the worst forms as a matter of

³⁷¹ Michael Peel, 'Bitter chocolate for children: Michael Peel visits a cocoa farm in Ivory Coast to see a group of multinational manufacturers is trying to stamp out child labour' *Financial Times*, (London 21 December 2004) 13.

³⁷² The difficulties associated with the determination of the exact number of children involved in the worst forms of child labour in the Ivory Coast is the lack of proper mechanisms to register cocoa farmers. This could have allowed the authorities to have clear statistics instead relying on estimates.

³⁷³ ILO, Worst Forms of Child Labour Convention, 1999 (No. 182) Adoption: Geneva, 87th ILC session (17 Jun 1999). Up-to-date instrument (Fundamental Convention).

urgency hence ripe to be immediately eliminated. Country members were urged to enact laws; regulations and standards alike to efficiently address the phenomenon that plagues the world in general and the developing world in particular.³⁷⁴ The seriousness of the matter has left no choice to the ILO than to require elimination for all ages under 18 years.³⁷⁵

On the 17 January 2013, there were 177 countries that have ratified Convention No 182. No country has denounced the Convention. Meanwhile, Cuba, Eritrea, India, Marshall Islands, Myanmar, Palau Somalia and Tuvalu have not ratified the Convention.³⁷⁶ Among these countries, India remains one of the countries in the world with a considerable number of child labourers. Although the country has improved its legislation towards child labour in recent years, there are still many challenges, mostly posed by stakeholders themselves, on the path to a complete elimination.³⁷⁷

Article 3 provides that: ‘for the purposes of this Convention, the term the worst forms of child labour comprises:

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

Equally, Recommendation No 190 is significant in that it constitutes a framework to implementation of national programmes of action which focuses on identification and

³⁷⁴ Ellen Webbink, Jeroen Smiths and Eelke de Jong, ‘Hidden Child labour: Determinants of housework and Family Business Work of Children in 16 Developing Countries’ (2012) 40 World Development 631. 642.

³⁷⁵ Article 2 of Convention No. 182 provides that: ‘For the purpose of this Convention, the term child shall apply to all persons under the age of 18’.

³⁷⁶ See: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312327:NO, accessed 17 January 2013.

³⁷⁷ Sadaf Qureshi, ‘Blood chocolate: Just a dessert?’ (2008) 68 Humanist 11, 13.

denunciation of the worst forms of child labour. Most importantly, the recommendation is also aimed at the removal from work, the rehabilitation and the social integration of the children involved. The recommendation urges country members to take measures that address the educational, physical and psychological needs. Moreover, as set in the programmes of action, special attention should be given to younger children, girls, hidden works in which girls are at high risk, children with special vulnerabilities and needs.³⁷⁸ This situation is appealing to the Ivorian authorities and governments of most developing countries where social integration schemes are inexistent.

Article 3 (d) of Convention No 182 and Article 3(e) of Recommendation No 190 are concerned respectively with harm to the health, safety and morals of children, and work under difficult conditions such as work for long hours, and they fall perfectly within the ambit of children's work on cocoa and coffee plantations in Ivory Coast.

Children work in genuinely hazardous conditions. From the care work on young cocoa plants until the harvesting of cocoa pods, there is an imperative need to use pesticides and other chemicals. Hence, it is evident that the constant handling of such harmful products will affect the health and development of the children involved.³⁷⁹

The ratification of Convention No. 182 by Ivory Coast was deemed a revolutionary move in the on-going debate on a lingering issue that tarnishes the reputation of the whole cocoa industry. Meanwhile, the lack of results following numerous attempts to eradicate the plight of thousands of children in remote and harsh forests cast doubt on the ostentatious willingness of the authorities to make child labour a history.

It is nearly ten years since Ivory Coast has ratified Convention No 182 and, the prospect of any denunciation, as per the provision of Article 11,³⁸⁰ is unlikely. However, the poor results in achieving most of the 'development prompting' measures enshrined in some

³⁷⁸ ILO, Worst Forms of Child Labour Recommendation, 1999 (No. 190) Adoption: Geneva, 87th ILC session (17 Jun 1999). Up-to-date instrument (Technical Convention).

³⁷⁹ Paola Roddero, Viviana Mangiaterra, Flavia Bustreo and Furio Rosati, 'The Health Impact of Child Labour in Developing Countries: Evidence from Cross-Country Data' (2007) 97, *American Journal of Public Health* 271, 275.

³⁸⁰ Article 11(1) stipulates that: 'A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered'.

articles of Convention No 182, heralds a failure in Ivory Coast's actions against the worst forms of child labour.

3.1.4 Compliance with the ILO Regular Reporting System

Noteworthy, once a country has ratified an ILO Convention; it has an obligation to report on a regular basis, on measures it has taken to implement the said Convention. Every two years governments must submit reports detailing the steps they have taken in law and practice to apply any of the eight fundamental and four priority Conventions they may have ratified. For all other Conventions, reports must be submitted every five years, except for Conventions that have been shelved (no longer supervised on a regular basis). Reports on the application of Conventions may be requested at shorter intervals. Governments are required to submit copies of their reports to employers' and workers' organisations. These organisations may comment on the governments' reports; they may also send comments on the application of Conventions directly to the ILO.³⁸¹

The committee of Experts (Committee of Experts on the Application of Conventions and Recommendations), set up in 1926, is composed of 20 eminent jurists from different geographical regions, legal systems and cultures. They are appointed by the governing body of the International Labour Office for three-year terms. The committee has the duty of providing an impartial and technical evaluation of the state of application of international labours standards. When examining the application of international labour standards, the Committee of Experts makes two kinds of comments: observations and directs requests. Observations contain comments on fundamental questions raised by the application of a particular Convention by states whereas direct requests relate to more technical question or requests for further information.³⁸² The relations of Ivory Coast with the Committee of Experts for the purpose of regular reporting have sometimes been distorted.

In the 2012 Reports requested and replied to CEACR, published by the ILO, it is indicated in the Report Status section that nine reports from Ivory Coast were received by the Committee.

³⁸¹ See ILO at <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm>, accessed 18 January 2013.

³⁸² See ILO (CEACR) at <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm>, accessed 18 January 2013.

Meanwhile, six reports were subjects either to direct request or to observations. The Direct Request (CEARC) adopted in 2011 and published at the 1001st ILC session (2012) relates to part V of the report concerned with the application of Convention No. 19.³⁸³ It is summarised as follows:

The Committee notes the Government's indication that the information requested previously concerning the application of the Convention in practice is to be provided in the near future by the National Social Insurance Fund (CNPS). The Committee therefore, hopes that the Government will provide that information, including statistics, with its next report so as to enable it to assess the manner in which the Convention is applied in practice with an indication, for instance, of the number, nationalities, and occupational distribution of foreign workers who are in the country, the number of employment accidents suffered by them, and the amount of the benefits which have been paid to them or their dependants.³⁸⁴

In the context of another Direct request also adopted at the 101st ILC, which is related to the Equal remuneration Convention, 1951 (No. 100), the committee referring to article 2(2) (a) of the Convention, writes:

The Committee notes that according to the provisions of the draft Labour Code sent by the Government, the principle of equal remuneration for men and women for work of equal value will be included in the new Labour Code. The Committee asks the Government to provide information on the state of progress of work on the revision of the Labour Code and to send a copy of the Labour Code once it has been adopted.³⁸⁵

Moreover, upon the assessment of Ivory Coast government's report on Parts III and V of the report form related to the application of equality of remuneration in practice, statistics and labour inspection, the committee indicates that the report does not contain any information in reply to its request. It is indicated as follows:

In order to be in a position to assess the application of the Convention in practice, the Committee asks the Government once again:

(i) To provide the data available on the wage levels of men and women by sector of activity and occupation, in both the public and private sectors;

³⁸³ ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No 19). Convention ratified by Ivory Coast on 5 May 1961.

³⁸⁴ ILO, Direct Request (CEACR) – adopted 2011, Published 101st ILC session (2012). See, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:2698013:NO, accessed 15 January 2013.

³⁸⁵ ILO, Direct Request (CEACR) – adopted 2011, Published 101st ILC session (2012). See http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:2699118:NO, accessed 15 January 2013.

(ii) To indicate the steps taken or envisaged, in particular through specific training, to enable labour inspectors to be in a better position to detect pay discrimination and to deal with it effectively, and⁷

(iii) To provide the information available on the results of the inspections carried out, particularly statistics on the number of establishments inspected and the number of men and women workers covered, the violations reported with regard to the principle of equal remuneration and any penalties imposed.³⁸⁶

In these two particular contexts, although Ivory Coast has submitted its reports to the ILO committee of Experts there has been noticeable failures in providing essential information relevant to its work. There is an imperative for the committee to provide a full and clear report to the International Labour Conference's tripartite committee on the Application of Conventions and Recommendations.³⁸⁷ Hence, the failure for a country member to provide the requested information could impede the works of the whole organisation. Therefore, Ivory Coast's attitude is not appropriate in a context where not only ratification of ILO Conventions is important but strict compliance is also a high priority.

Seven years after the ratification of Convention No 182, Ivory Coast has adopted Act No. 2010-272 of 30 September 2010 prohibiting the trafficking and worst forms of child labour. This move was achieved further to several comments and requests from the Committee of Experts in that regard. Although the committee was satisfied with the adoption of the said Act, it has requested the government to provide information on the application in practice of Act No.2010-272 of 30 September 2010. This information must include statistics on the

³⁸⁶ Ibid.

³⁸⁷ The annual report of the Committee of Experts, usually adopted in December, is submitted to the International Labour Conference the following June, where it is examined by the Conference Committee on the Application of Standards. A standing committee of the Conference, the Conference Committee is made up of government, employer, and worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question. In many cases the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the situations examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report. See ILO, <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/conference-committee-on-the-application-of-standards/lang-en/index.htm>, accessed 19 January 2013.

number and nature of the violations reported, investigations, prosecution, convictions and penal sanctions applied.

Despite the fact that the requested information is to be provided by 2014, it is unlikely that Ivory Coast will be capable of providing any record of prosecution or sanctions. In the light of the current socio-political challenges laid before the Ivorian authorities, there is no doubt, child labour and its underlying issue of child trafficking will persist on cocoa and coffee farms in the country.³⁸⁸ In its observations about the overall picture of children's condition, the Committee of Experts even writes:

While taking due note of the adoption of the new legislative provisions prohibiting and penalizing the worst forms of child labour, the Committee observes that a large number of children are victims of trafficking and are engaged in hazardous activities, and it, therefore, urges the Government to pursue its efforts to ensure the protection in practice of children against these worst forms of child labour. It also requests it to provide the statistics gathered in the context of the ENV 2008 survey as soon as the results have been validated. To the extent possible, all information provided should be disaggregated by sex and age.³⁸⁹

The Committee of expert is put in a situation where it has to give strict guidelines to Ivory Coast in the way information should be provided. The working practices are not unknown to Ivory Coast authorities since they have the guidelines related to the submission of regular reports to the Committee of Experts. The complicated relations between The ILO and Ivory Coast at this instance could be explained by the fact that the country does little in terms of implementation and enforcement of Treaties.

An analysis of the triggering factors for legal and institutional reforms in Ivory Coast labour environment shows that when the account of the worst form of child labour on the country's cocoa farms was first brought to light, the authorities rejected all allegations. However, they initiated actions to gather enough facts about the issue in order to provide their own account

³⁸⁸ The 'Ethnic catch up' and the prosecution of all close allies to former President Laurent Gbagbo appears to be the main priority of the authorities today. This is manifest in such a way that the real socio-economic issues seem to be relegated to the second place on the government's agenda.

³⁸⁹ ILO, Observation (CEACR) –adopted 2010, published 100th ILC session (2011) See http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:2335155:NO, accessed 15 January 2013. The ENV 2008 survey alluded to by the committee of expert is a new national survey was undertaken by the Government of the Ivory Coast. It is the household standard of living survey carried out in 2008.

of the question.³⁹⁰ For instance in early 2005 Ivory Coast government instructed its investigations across the cocoa production zones in the country. By mid-June 2005, a detailed report showed that child labour was indeed an urgent issue for Ivory Coast in regard to the magnitude and the outrageous working conditions of children.³⁹¹

The latecomers to the ILO have created a historic opportunity to have their say in the conduct of the international labour issues. The new paradigm is indeed an exceptional move within the United Nations. Such opportunity could have been better exploited by the latecomers that are mostly developing countries. They could have effectively implemented International Labour Standards and enforced the domesticated laws. Given that ILO Conventions, derive from tripartite consultations and, therefore, strict compliance should animate member states designated as latecomers by Chigara.³⁹² It appears that the relation of most developing countries with the ILO remains strained due to their lack of consistency and rigour in addressing the pressing labour issues in their jurisdictions. However most developing countries ratified ILO Conventions, the general observation is that there are some difficulties in the implementation and enforcement of the legal frameworks.

In the particular case of Ivory Coast, it is understood that the country has ratified the majority of the Conventions and most importantly Convention No 182. However, child labour is still practiced in its worst forms on the country's cocoa and coffee farms. It is not surprising to note that Ivory Coast has some difficulties in providing regular reports to the Committee of Experts on the Application of Conventions and Recommendations. A shift in approach to the relation with the international organisation and a commitment to the international obligations could pave the way to setting a framework for sustainable development.

The whole idea of the obligation to report on a regular basis, on measures a country has taken to implement the ratified Conventions is to create a transparent environment that is

³⁹⁰ In mid June 2005 the office of the Prime Minister published a document title '*Premières données du terrain*'. The document provides the very first data acquired by the authorities as a result of their own investigations about child labour on Ivory Coast's cocoa farms. See document at <http://www.cacao.gouv.ci/commun/documents/clmswashsv.pdf>, accessed 1 February 2014.

³⁹¹ Ibid.

³⁹² See Ben Chigara, 'Latecomers to the ILO and the Authorship and Ownership of the International Labour Code' (2007) 29, *Human Rights Quarterly* 706, 726.

necessary to the achievement of the ILO's goals. The failure to submit regular reports could be understood by Ivory Coast incapacity to implement properly and enforce ILO Conventions. Given the fact that child labour is a phenomenon deeply rooted in farming communities, it becomes evident that the relations of Ivory Coast and the ILO in the context of regular reporting could still be marred by some distorting episodes. Meanwhile, the Ivory appears to be mindful of strict compliance in regard to the regular reporting requirements.

In the light of the most recent developments about actions against the exploitation of children, it is worth noting that according the "*National Action Plan 2012-2014 For the Fight against Child Trafficking, Exploitation and Labour*" the legislative and regulatory framework for combating child trafficking, exploitation and labour has been enriched. The prevailing argument in that respect is that at the international level, the Government of the Republic of Ivory Coast has ratified The African Charter on the Rights and Welfare of the Child (ACRWC) in 2003; ILO Conventions No 138 on the minimum age of employment and No 182 on worst forms of child labour in 2003; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict with an aim to repress and punish trafficking, particularly women and child trafficking in August 2011; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and pornography of children in September 2011.³⁹³

3.2 The National Legal Environment and the Attitude towards International Treaties

3.2.1 The Labour Environment and the Legislation in Ivory Coast

An Overview

The Ministries of Public Health, those of Employment, Public Service, and Social Security sought to safeguard the welfare of children, and the Government also encouraged the formation of NGOs such as the Abidjan Legal Centre for the Defence of Children. The Government and the ILO continued to implement their "West African Project Against Abusive Child Labour in Commercial Agriculture" (WACAP), with some interruptions due to security concerns. WACAP was eventually to include 30 pilot projects reaching 6,000

³⁹³ This evidenced the satisfactory record of ratification of international and regional legal instruments. However the domestication of those instruments and subsequent implementation remain critical in the debate about Ivory Coast efforts to bring about the change regarding child labour and child rights.

displaced children in the country. The projects aimed to increase farmers' awareness, improve schooling for children, and provide better social services to families.³⁹⁴ It targets to educate about 9,700 children who were withdrawn from work in order to give them the right to education instead of having them suffer the burden of work at their young age. Since the inception of WACAP, several developments have been noted in the condition of child labour in Ivory Coast such as through the Cocoa Task Force, which aims to resolve the said problem.³⁹⁵

The Constitution and statutes provide for the right to strike, and workers put this right to practice. However, the Labour Code requires a protracted series of negotiations and a 6-day notification period before a strike may take place, making legal strikes difficult to organise. Workers in the private and government sectors continued to strike over working conditions and terms of employment, and the Government tolerated the strike. The Constitution and the Labour Code grant all citizens, except members of the police and military services, the right to form or join unions, and workers exercised these rights extensively. Collective bargaining agreements were in effect in many major business enterprises and sectors of the civil service. In most cases in which wages were not established in direct negotiations between unions and employers, the Ministry of Employment and Civil Service established salaries by job categories.³⁹⁶

The Labour Administration

The highest organ of the labour administration is *Le Ministere de la fonction Publique et de l'emploi*, the Ministry of labour. The ministry of labour had an important mission in the 1980s when there was a need to train more Ivory Coast nationals in order to make them employable as qualified or white collar workers in the high administration. The labour market was occupied by French citizens and other foreign workers from West African French territories,

³⁹⁴ See US Department of State, Bureau of Democracy, Human Rights, and Labour, February 28, 2005. <http://www.state.gov/j/drl/rls/hrrpt/2004/41599.htm/> accessed 20 November 2011.

³⁹⁵ Tiaji Salaam-Blyther, Charles Hanrahan and Nicolas Cook, 'Child Labour in West African Cocoa. Production: Issues and U.S Policy' (2005) See document at <http://www.nationalaglawcenter.org/assets/crs/RL32990.pdf>, accessed 14 March 2011.

³⁹⁶ See Report of the Bureau of Democracy, Human Rights, and Labour (U.S Department of State) 28 February 2005, <http://www.state.gov/j/drl/rls/hrrpt/2004/41599.htm>, accessed 1 February 2013.

such as Dahomey³⁹⁷ and Togo. This trend, initiated by the French colonial administration has led to frustrations and criticisms among Ivory Coast nationals. Cohen writes that: ‘The first xenophobic riots occurred in October 1958 when the Ligue des Originaires de Côte d’Ivoire (LOCI) incited attacks on Dahomeyans and Togolese.’³⁹⁸

In the context of the anti-foreign situation, sentiments sprang up in the colonial era. Cohen remarks that ‘throughout the first decade of the independence there were repeated demands for rapid africanization and, later ‘Ivoirization’ of jobs in both public and private sectors.’³⁹⁹ The coal mining point of the growing demands and campaigns has been the shaping of a special ministry called: ‘*Ministere du travail et de l’ivoirisation des cadres*’,⁴⁰⁰ for the purpose of staffing all sectors of the Ivorian administration with qualified Ivorian nationals. There was also increased pressure on employers in the private sector to recruit more Ivorian nationals. Felix Houphouet-Boigny, the then president of Ivory Coast, even urged the Lebanese community (the leading investors in the country) to ‘*Ivoirise*’ their enterprises within six months.⁴⁰¹

In the early 1990s, arguably, having met the target of mass ‘*ivoirisation*’ of the administration, the Ministry of labour was reorganised by presidential decree: ‘*Décret no 92-286 du 21 Avril 1992 portant réorganisation du ministère de l’Emploi et de la Fonction publique*.’⁴⁰² In addition to the central services, the new administration includes a number of committees. A committee for the promotion of employment and labour advisory, a committee responsible for addressing general labour issues as well as the regulation of collective agreements were set to help adapt the labour administration to the new social realities of the country. Subsequent adaptations were made over the next two decades.

³⁹⁷ Dahomey is the present day Benin.

³⁹⁸ Michael A Cohen, ‘Urban Policy and Political Conflict in Africa: A Study of the Ivory Coast’ (The University of Chicago Press, Chicago 1974) 72.

³⁹⁹ Ibid at 76.

⁴⁰⁰ *Journal officiel*, 1978-11-09, no53, p.2233.

⁴⁰¹ Michael A Cohen, ‘Urban Policy and Political Conflict in Africa: A Study of the Ivory Coast’ (The University of Chicago Press, Chicago 1974) 128.

⁴⁰² *Journal officiel*, 1992-05-28, no 22, pp. 463-465.

Among other vital structures established within the Ministry of labour, ANARREC was established by presidential decree: ' *Décret n° 2008-93 du 28 février 2008 portant création, attributions, organisation et fonctionnement de l'Agence nationale de la réinsertion et de la reconstruction en abrégé "ANARREC,*'⁴⁰³ the National Agency in charge of Reinsertion and Reconstruction. Article 3 of the decree outlines the mission of the agency which is in charge of government's reconstruction, development and, reinsertion projects.⁴⁰⁴

The Ministry of Labour is responsible for enforcing labour laws. It has employed approximately 200 labour inspectors for this purpose. Twenty-five of these inspectors are focused on child labour. Labour inspectors are trained to inspect all sectors and may conduct surprise inspections of any establishment.⁴⁰⁵ As remarked hereinbefore, the post-Harkin Engel protocol years as well as the post-Chanel 4 reports on child labour on Ivory Coast cocoa plantations have seen a noticeable shift in the attitude of the Ivorian authorities toward child labour. The Office of Inspector General, a highly significant structure within the Ministry of Labour, was established by '*Arrêté no 9 MTIC. CAB du 2 mai 1984 relatif aux attributions de l'inspecteur général des Services du Travail et de l'Emploi.*'⁴⁰⁶ The Inspector General acts as the overseer of the adequate functioning of the labour administration. He may also decide on employment related cases or any matter within the competence of the Minister of Labour.

The Labour Code

Apprenticeship

The Ivorian labour code of 1995 addresses several issues ranging from forced labour, children's work, the right to join a trade union, as well as other issues related to workers' rights. Sections 12(2) to 12(11) of the Labour Code govern apprenticeships. Article 3 provides that forced or compulsory labour is prohibited. The term forced, or compulsory

⁴⁰³ See document at Ministère de la construction et de la réinsertion at http://www.reconstruction.gouv.ci/fichier/arrete_anarec11sep2009.pdf, accessed 20 February 2013.

⁴⁰⁴ *Journal officiel, 2009-01-15, n° 3, pp. 35-38.*

⁴⁰⁵ Ibid.

⁴⁰⁶ *Journal officiel, 1984-06-21, no 26, p. 377.*

labour is any work or service obtained from any person, under threat of a form of penalty.⁴⁰⁷ The first-labour code, general labour and employment acts were enacted in the early years of the independence, precisely in 1964.⁴⁰⁸ The prohibition of forced labour was then an important issue. As indicated hereinbefore, the colonial memories of forced and compulsory labour were still rife among the population hence the emphasis on such issue was prioritised by the Ivorian legislator. The 1964 labour code was eventually repealed, and a new code was enacted in 1995.

More significantly, the 1995 labour code provides considerable rules in regard to children's work and employment. For instance, Article 12(4) of the labour code prohibits the employment of a child for the purpose of apprenticeship unless the employer is 21 years old.⁴⁰⁹ As explicitly stated, the law does not permit the engagement of a minor in an apprenticeship relation with an employer who is under 21 years of age. Although the age of majority in Ivory Coast is 18 for most legal responsibilities, there is here a sense of increased awareness vis-à-vis the rights of children in a work environment.

Furthermore, Article 14 (5) provides that under no circumstances can an employer accommodate minor girls at his home or his workshop as an apprentice.⁴¹⁰ The letter and the spirit of this provision are in line with the legislators' objective to protect in all circumstances minor girls that may be engaged in any apprenticeship. In the same perspective, Article 5(6) bans any individual convicted for crime or offences against morality from hiring a minor as apprentice.⁴¹¹

Duty of care

More responsibilities rest with the employer in circumstances where he hires an illiterate apprentice. Article 12(8) compels an employer to provide the means of education in order to allow the apprentice to learn to write and read. Indeed the employer is expected to act as a

⁴⁰⁷ *Loi no 95-15 du 12 janvier 1995 portant Code du travail. Journal officiel, 1995-02-23, no 8, pp. 153-177.*

⁴⁰⁸ *Loi no 64-290 du 1er août 1964 portant Code du travail. Journal officiel, 1964-08-17, no 44 spécial, p. 1059.*

⁴⁰⁹ The minimum age of 21 is set to comply with Article 488 of the Ivorian Civil code that stipulates that: The Majority is 21 years of age, at this age one is capable of all acts of civil life.

⁴¹⁰ This provision is purposed to protect children from abuses, chiefly sexual abuse.

⁴¹¹ The rationale behind this provision is also to prevent former convicted from committing subsequent crimes. It also protects children from possible abuses.

good father towards the apprentice. Should the apprentice fall sick or fail to attend a workshop, the employer is expected to inform the biological parents or next of kin of the apprentice immediately.

Some guarantees

The Ivorian labour code safeguards the rights to future employment for any worker in an existing employment contract. Article 15(5) prohibits the insertion of a ‘non-employment clause’ after the expiration of an employment contract. In practical terms, the employment contract cannot include, ‘should that occur the contract will be deemed null,’ a clause preventing the employee from taking another employment after he has ceased trading with an existing employer upon expiration of the employment contract.

Article 15(10) provides that: ‘the rights of mobilised workers are guaranteed, in any event, by the law in force.’ This established rule safeguards the rights of unions in a context where employers often tend to seize an extensive margin of manoeuvre in the decision-making process. The freedom for employees to form trade unions is emphasised by Article 51(1) wherein employees can freely form unions of their choice in industries and geographic areas they determine. They have the right freely to adhere a union of their choice. They are even permitted to participate to the activities of the union for the duration of one year after they have left their employment.

Moreover, Article 21(1) provides that: ‘Duration and hours of work are fixed by the employer in accordance with the rules laid by this Code and its implementations texts. Time and work schedule are posted at the workplace and communicated to the Inspector of Labour and Social Legislation.’ In addition, Article 23(1) states that the nature of work prohibited for women, pregnant women and children alike is determined in conditions laid down by law. The significance of an established framework lies in the overall vision of the legislator for a stable and prosperous legal environment for every category of workers.

The Code and Working Children

Chapter three of the Labour Code is concerned with the work of women and children. Article 28(8) provides that: ‘Children cannot be used in an enterprise, even as apprentices, before the age of 14, unless otherwise enacted by regulation.’ Although this provision is in

conformity with the Minimum Age Convention⁴¹² in that Ivory Coast has set 14 years of age as the minimum age for employment, the dominant issue lies in the agricultural sector where these legal requirements are not observed.

The Code recognises the rights for minors over the age 16 years to join trade unions. Article 51 (7) is specific in the context of minors engagement in trade unions activities. Not only must they be over 16 years of age to join but there also needs to be zero opposition from their parents or guardians.

Additionally, under sections of Decree No. 96-204 of 7 March 1996 concerning night work, children under 14 years of age engaged in an apprenticeship or pre-vocational training may not undertake work under any circumstances during the limitation period for night work or in general during a period of 15 consecutive hours from 5 p.m. to 8 a.m. Moreover, under section 19 of Act No. 2010-272 of September 2010, anyone who has a child in their care or supervises a child they are in charge of the child's education or his or her intellectual or professional development. Thus, a person who knowingly forces or allows that child to carry out hazardous work shall be liable to a prison sentence of between one and five years. Section 6 provides that hazardous work shall mean work included on the list of the Ministry of Labour Order No.2250 of 14 March 2005.

The Collective Agreement (Covenant)

In summer 1977, the trade unions, unions of employers, and the general union of workers agreed to sign a covenant known as '*La Convention collective interprofessionnelle du 19 Juillet 1977.*' This agreement signed between L'Association interprofessionnelle des Employeurs de Cote d'Ivoire (A.I.C.I) and l'Union General des Travailleurs de Côte d'Ivoire (UGTCI) in accordance with the labour code of 1st August 1964⁴¹³ and later adapted to the new labour code of 12 January 1995. This agreement is intended to strengthen the professional relations between employers and workers affiliated to the two collectives of unions in a bid to guarantee a sound, democratic and, prosperous working environment.

⁴¹² ILO Minimum Age Convention, 1973 (No. 138).

⁴¹³ The legal framework for an internal convention between unions of employers and collective of trade unions was set by presidential decree: '*Décret No 65-124 du 2 avril 1965 portant disposition du code du travail relative a la convention collective de travail*'. Journal officiel, 1964-04-19, no19, p.419.

Article 9 of the Convention provides that:

The Contracting Parties recognize the right of workers to associate freely and to act for the collective defence of their occupational interests,

Employers commit not to take into account the fact that a worker belongs to a union or not, whether the worker exercises trade union functions or not; not to take into account the political, philosophical, religious beliefs, social origin or racial particulars of workers to make decisions regarding hiring, leadership, division of labour, disciplinary measures, termination or advancement. They further undertake to exert no pressure or coercion against members of a trade union.

Workers on their side commit:

-respect the views of other workers in the workplace

-not to question their membership in a union

They exercise the right to organise in accordance with the laws and practices of the profession.

If the dismissal of an employee was in violation of trade union rights, as defined above, the parties will, at the highest level, to obtain reinstatement of the worker in the company.

In the case of disagreement, the parties will comply with the decision of the judicial authorities, and the worker shall be reinstated if the violation of trade union rights has been recognised by this authority.

In furtherance of better employment relation and labour conditions, Ivory Coast has adopted the tripartite approach to the labour related issues. As earlier as 1995, a tripartite comity on issues related to the International Labour Organisation, was created.⁴¹⁴ The following year a permanent secretary in charge of tripartite consultations for social relations was established by Ministerial decision, *Arrêté no 15732/MEFPPS du 9 octobre 1996 portant création d'un*

⁴¹⁴ *Arrêté n° 834/EFP/CAB.1 du 26 janvier 1995 portant création d'un comité tripartite sur les questions concernant l'Organisation internationale du Travail.*

*secrétariat permanent chargé de la coopération tripartite et des consultations en matière de relations sociales*⁴¹⁵.

Although the 1995 tripartite comity has been dissolved, a repealing ministerial decision, *Arrêté n° 61 TPF.DRT du 9 janvier 2003 portant création d'un Comité tripartite sur les questions concernant l'Organisation internationale du Travail*,⁴¹⁶ was issued to consolidate the tripartite culture in the Ivorian labour environment. Furthermore, the National Council of Labour was set up in 2007 by presidential decree, *Décret n°2007-608 du 8 novembre 2007 instituant le Conseil national du travail*. Article 2 of the decree provides that: 'The National Council of Labour is a tripartite organ for dialogue and permanent reflexions between social partners, the government, employers and, Workers, on any issue related to the world of work.'⁴¹⁷ The Council's mission is predominantly the promotion of social dialogue.

3.2.2 Response to Child Labour: The Emergence of Legal and Institutional Frameworks

Legal Frameworks

From a constitutional perspective, the protection of children is seen as a priority in Ivory Coast. The Ivorian constitution of 1st August 2000 has reaffirmed the necessity of protecting children, the elderly and the disabled alike. Hence, Article 3 of the constitution provides that: 'are prohibited and punished by law forced labour, inhuman treatment and cruel, degrading and humiliating the physical or mental torture, physical violence and mutilation and all forms of degradation of the human being''. Article 6 of the constitution provides that: 'The State assures the protection of children, the aged and the handicapped.'⁴¹⁸

Previous legislations have made the protection of children an important issue both for parents or guardians and, the State. The 1970 Minority Act contains a considerable number of provisions compelling parents to protect their children. In a cultural and traditional context where the concept of childhood appears inexistent or contrary to the developmental and self-

⁴¹⁵ *Journal officiel*, 1997-03-20, no 12, p. 294.

⁴¹⁶ *Journal officiel*, 2003-01-16, no 3, pp. 43-44.

⁴¹⁷ *Journal officiel*, 2008-05-15, n° 20, pp. 308-310.

⁴¹⁸ *Constitutions of the Countries of the World, 2000-09, no 6, pp. 21-43.*

fulfilment of the child, the interest of the law and policy makers in setting workable frameworks for safeguards and security was paramount. This approach is preferable for a country seeking to play a significant role in the global and modern environment.

For the purpose of better protection for children, Article 365 of the 1970 Ivorian Penal code punishes the abandonment of a child while article 370 punishes the abduction of children. Hence, great emphasis was placed on these provisions in the new penal Code enacted in 1981.⁴¹⁹ Notwithstanding that the legal environment in Ivory Coast was favourable to child protection, the growing criticism and campaigns against child labour on cocoa plantations and the adverse publicity for the chocolate industry has changed the legal trend in the country. The most important pre-Harkin-Engel protocol⁴²⁰ reaction of the Ivory towards child protection, at the international level, is the signature of the United Nations Convention on the Rights of the child. The signature was materialised by presidential decree. '*Décret N° 90-1162 du 28 septembre 1990 portant signature de la Convention des Nations Unies Relative aux Droits de l'Enfant du 20 novembre 1989.*' In a later stance to conform with the international trend, there has been a bilateral agreement between Mali and Ivory Coast in September 2000 to combat the transborder phenomenon of child trafficking. Bass writes that 'the Ivorian government also notes that a bilateral agreement signed in September 2000 allows Cote d'Ivoire to repatriate alien children found working there.'⁴²¹

The Harkin-Engel protocol, regarded as a revolutionary step in attempts to eliminate child labour in its worst forms (as described by ILO Convention No 182), is an agreement reached between representatives of the cocoa industry and a number of trade unions, consumer and NGO on the incidence and the nature of the Worst Forms of Child Labour as well as Adult Forced Labour. Senator Tom Harkin and Representative Elliot Engel, two prominent members of the United State Legislature, are among those who have raised concerns in a context where constant negative media reports about the possible use of child labour in the West African cocoa production were threatening the cocoa industry. Hence, they initiated a series of discussions among stakeholders. The agreement was signed by representatives of

⁴¹⁹ *Loi no 81-640 du 31 Juillet 1981 instituant le Code pénal.*

⁴²⁰ Protocol for the Growing and Processing of Cocoa Beans and their Derivatives Products in a Manner that Complies with ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

⁴²¹ Loretta E Bass, 'Child Labour in Sub-Saharan Africa' (Lynne Rienner Publishers Inc, Boulder 2004) 158.

major stakeholders in the cocoa industry. The protocol involved companies from countries, such as, the United Kingdom, Europe, the United States and Canada.

On September 19, 2001, the Harkin-Engel Protocol⁴²² was signed calling on companies to:

1. Issue a public statement of need for and terms of an action plan;
2. The formation of multi-sectorial advisory groups;
3. Sign a joint statement on child labour to be witnesses at the UN's International Labour Organization (ILO);
4. Develop a binding memorandum of cooperation among major stakeholders to establish a joint

Program of action to enforce the internationally recognized and mutually agreed-upon standards

To eliminate the worst forms of child labour in the growing and processing of cocoa beans and their

Derivative products and to establish independent means of monitoring and public reporting on compliance with those standards;

5. Establish a joint foundation to oversee and sustain efforts to eliminate the worst forms of child labour in the growing and processing of cocoa beans and their derivative products; and
6. Develop and implement credible, mutually acceptable, voluntary, industry-wide standards of public certification, consistent with applicable federal law, that cocoa beans and their derivative products have been grown or processed without any of the worst forms of child labour by July 1, 2005.

⁴²² See protocol at <http://www.cocoainitiative.org/images/stories/pdf/harkin%20engel%20protocol.pdf/> accessed 12 October 2012.

July 1, 2005: Industry fails to complete the certification program for cocoa, but agrees to develop a certification program that will cover 50 percent of the cocoa growing areas of Côte d'Ivoire and Ghana by July 1, 2008.

July 1, 2008: Industry commits to working with the governments of Côte 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.

Indeed, the protocol establishes a set of predetermined specific actions, which should ensure the development and implementation of a credible certification scheme, mutually acceptable. A commitment was made to meet industry –wide standards of public certification by the 1st of July 2005 with the aim of producing public reports on labour practices in cocoa production. The lack of progress in the elimination of child labour in Ivory Coast, four years after the signature of the protocol, has prompted a three-year extension for implementing the Harkin-Engel protocol. The most recent reports on child labour on cocoa plantations are consistent about the on-going practice.

As Bavier puts it ‘ it created a certification program that would allow buyers in the United States, the world's biggest cocoa consuming country, to know whether the chocolate they bought in the supermarket was the product of child labour. The world's major cocoa producing countries agreed to the protocol.’⁴²³

It must be emphasised that, although some considerable actions were taken by the Ivorian authorities toward child labour, the country's efforts to establish workable legal frameworks have increased in the post Harkin-Engel protocol years. A decree signed by President Laurent Gbagbo in July 2001, *Décret N° 2001-467 du 25 Juillet 2001 portant Création du Comité National de Lutte contre le Trafic et l'Exploitation des Enfants (CNLTEE), composé de neuf (9) ministères techniques, d'ONG nationales et internationales, de la société civile et de partenaires au développement,*⁴²⁴ establishes a national inter-agency organisation to combat child trafficking. The National committee helps the government implement policy and

⁴²³ Joe Bavier, ‘Ivory Coast's Child Workers Suffer Despite US Legislation’ *Voice of America*, (28 October 2009) <<http://www.voanews.com/content/a-13-2005-07-04-voa27-66931222/264172.html>> accessed 1 February 2013.

⁴²⁴ *Journal officiel*, 2001-08-23, no 34, p. 713.

measures against child trafficking. Their functions also include helping the state to ensure that it respects international agreements and treaties that relate to child trafficking. The committee comprises government officials, representatives of the UN Children's Fund and other child-protection organisations and the Ivorian women parliamentarians.⁴²⁵

The ILO's International Programme on the Elimination of Child Labour (IPEC) was created in 1992 with the overall goal of the progressive elimination of child labour, which was to be achieved through strengthening the capacity of countries to deal with the problem and promoting a worldwide movement to combat child labour. IPEC currently has operations in 88 countries, with an annual expenditure on technical cooperation projects that reached over US\$61 million in 2008. It is the largest programme of its kind globally and the biggest single operational programme of the ILO.⁴²⁶ The Ivory Coast has initiated a series of actions and is working closely with the ILO in order to achieve total elimination. In 2003, a memorandum, *'Mémorandum d'accord Côte d'Ivoire – OIT du 25 Août 2003 pour la participation au programme IPEC (Programme International pour l'Élimination du Travail des Enfants), dans le cadre de la mise en œuvre de la convention N° 182,'* was issued to assert the country's commitment to the objectives of the IPEC. A complementary ministerial decision, *'Arrêté N°10915 du 28 septembre 2004 du MFPE, portant nomination des membres du Comité Directeur National du Programme IPEC/Côte d'Ivoire,'* was later issued to appoint the members of the Implement and Supervision Committee of the IPEC programmes in Ivory Coast.⁴²⁷

Three years after its entry in force, Ivory Coast endeavoured to ratify the African Charter on the Rights and Welfare of the Child of 1990⁴²⁸. The decision was put into practice by presidential decree: *'Décret N° 2002-47 du 21 janvier 2002 portant signature de la Charte Africaine des Droits et du bien être de l'Enfant, adoptée par la vingt-sixième Conférence des Chefs d'Etat et de Gouvernement de l'Organisation de l'Unité Africaine, en juillet 1990 à*

⁴²⁵ See <http://www.irinnews.org/Report/24030/www.irinnews.org/Africa.xml>, accessed 1 February 2013.

⁴²⁶ See ILO, <http://www.ilo.org/ipecc/programme/lang--en/index.htm>, accessed 1 February 2013.

⁴²⁷ *Journal officiel*, 2005-02-03, n° 5, pp. 77-78.

⁴²⁸ See OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

*Addis-Abéba.*⁴²⁹ As remarked hereinbefore, the post-Harkin-Engel protocol years as well as the post-Chanel 4 report on child labour on Ivory Coast's cocoa plantations have prompted a noticeable shift in the attitude of the Ivorian authorities toward child labour.

Institutional Framework

Le Comité National de Surveillance (The National committee for monitoring actions against Trafficking and Child labour) is composed of members cabinet of the first lady, experts, national and international organisations chosen for their actions in favour of children. The committee actively works to resolve the problems related to child labour in collaboration with the government, through the Inter-Ministerial Committee and all stakeholders. The committee is the most recent institutional framework set by the Ivorian authorities to stretch the actions against child labour and child trafficking to the most remote part of the country. In a launching speech given by the First lady of Ivory Coast, she confides that, on November 03, 2011 she was entrusted with a high responsibility to chair the National Monitoring Committee to monitor and evaluate the actions of the Government in the fight against trafficking, exploitation and labour of children.⁴³⁰ Since its inception, the committee has initiated several meetings and workshops with the district governors and local communities to educate a large section of the population concerned with the phenomenon.

3.2.3 Legal and Institutional Frameworks of Child Trafficking in Ivory Coast

After bowing to the evidence of child trafficking in Ivory Coast, in the first quarter of 2000, the government took some measures such as the creation in October 2000 of the Ministry of Family, Women and Children. A Department for Regulation and protection was established in order to coordinate actions to protect children. In addition, the Ministry of Human Rights was created with a sub-directorate in charge of vulnerable people including children.

For more effectiveness in the fight against trafficking and exploitation of children, the Ivorian government created, by Decree No. 2001-467 of 25 July 2001, the National Committee for the Fight against Trafficking and Exploitation of Children (CNLTEE). The committee

⁴²⁹ *Journal officiel*, 2002-04-11, n° 15, pp. 248.

⁴³⁰ Speech delivered on 15 February 2012 in Abidjan by the first lady of the Ivory Coast available at <http://www.connectionivoirienne.net/actions-contre-la-traite-lexploitation-et-le-travail-des-enfants-le-discours-de-dominique-ouattara/> accessed 1 February 2013. The committee is an institution established by the government on 3 November 2011. The first lady of Ivory Coast is appointed by the Government to chair the committee.

composed of nine (9) ministries, national NGOs and international organizations, civil society and development partners.

It is responsible for:

- Assisting the MFFE in the definition of policies, programs and actions against trafficking and exploitation of children;
- Monitoring the implementation of the cooperation agreements signed between the Ivory Coast and other countries in the fight against trafficking and exploitation of children;
- To give advisory opinions or make recommendations on any other matters concerned with trafficking and exploitation of children

Despite the absence of a specific law against trafficking of children, the jurisdictions refer to Article 370 of the Ivorian Penal Code to penalise traffickers. According to the government report, upon the strict application of the penal code, about 200 traffickers were arrested and imprisoned to date. Despite this achievement, there were continued criticisms against the government for the absence of sanctions against child traffickers. The growing criticisms prompted the Ivorian government to release a list of cases delivered by different courts across the country. Two of them are as follows:

1-Case numbers 205/2000 of 31 May 2000 and 216/2001 of 20 June 2001. The Court of Bondoukou section condemned an Ivorian, a Togolese and a Ghanaian, for their role in trafficking minors, to prison sentences and fines pursuant of Act 371 paragraph 1 of the Criminal Code. They were accused of trafficking children from neighbouring countries to the Ivory Coast.

2- Case No. 270/2002 of 8 May 2002. The section of the court of Soubré condemned a Beninese national to a prison sentence and fines for abduction, Convention designed to alienate the freedom of third and taxation a job to another at the end of sections 370, 376, 378 AND 379 of the Penal Code. He is alleged to have brought the children of Benin through traffic that lasts for years 1998/1999, of making them work for compensation against

compatriots and often against their will.⁴³¹ Subsequent Police actions have resulted in an interception, according to data from the Directorate of Territorial Surveillance (DST), of 700 children from Burkina Faso, Mali, Togo, Benin, Niger, Ivory Coast, all victims of trafficking.⁴³²

The most significant shift in approach to combating child trafficking is evidenced by the empowerment of Ministry of Interior's national police that runs an anti-trafficking unit, overseen by the police chief and staffed by four-police officers and two social workers. This unit investigates cases of child trafficking. New monitoring brigades established as part of the new National Monitoring Committee for Actions to Fight against Trafficking, Exploitation and Child Labour in 2011 also are responsible for investigating trafficking. These brigades, composed of security forces, are tasked with dismantling trafficking networks and rescuing exploited or trafficked children. The ILO Committee of Experts has observed that there is weak enforcement of the laws governing the worst forms of child labour, particularly trafficking, in Côte d'Ivoire. In 2010 and 2011, statistics were not collected systematically; records related to the number of children rescued, offenders prosecuted, or sentences issued for trafficking and any of the worst forms of child labour may have been destroyed because of the crisis.⁴³³

3.2.4 Understanding Treaties Ratification Procedure in Ivory Coast

Article 58 of the Ivorian Constitution stipulates that the parliament is composed of a unique chamber called National Assembly. Article 84 of the Constitution provides that the president of the republic negotiates and ratifies treaties and international agreements. However, Article 85 stipulates that peace treaties, treaties related to International organisations or treaties that trigger the modification of internal laws must imperatively be submitted to parliament

⁴³¹ Cabinet du Premier Ministre, Memorandum Presente par le Gouvernement de la Republique de Côte d'Ivoire, en reponse a la requête faite par le Ministere Americain du Travail sur des Informations Relatives au Travail des Enfants dans la Cacao Culture en Cote d'Ivoire. See document at <http://www.cacao.gouv.ci/commun/documents/MEMORANDUMtravaildesenfantsjuin2004français.pdf>, accessed 20 November 2011.

⁴³² Ibid.

⁴³³ See US Department of Labour at http://www.dol.gov/ilab/reports/child-labour/cote_divoire.htm, accessed 2 July 2014.

through a draft law. In the Ivorian legal system, Article 42 of the Constitution allows parliament and the president of the republic to submit draft laws.⁴³⁴

A draft law submitted by the president is called “*projet de loi*” whereas the draft law submitted by the parliament is called ‘*proposition de loi*.’ However, the passing of all laws is in the sole competence of the parliament.⁴³⁵ The functioning of the parliament is regulated by *Resolution n° 006 a du 1er juin 2006 portant modification du reglement de l’Assemblée Nationale de Côte d’Ivoire*.⁴³⁶ Under Article 83(1) of the law, parliament is requested to vote or reject the law drafted in relation to a treaty or international agreement. Noteworthy, the parliament is not allowed to amend the proposed law. Consequently, should the parliament decide to proceed with an outright vote they will do so without comments.⁴³⁷ In the situation of outright vote by parliament, the president ratifies the treaty or international agreement.

Where there is a clarification to make in regard to the conformity of a clause of the international instrument to the Constitution, parliament submits the draft law, to the Constitutional Council. In that case, parliament would suspend any debate over the draft law, and all related procedures are halted thereby.⁴³⁸ At a further stage, the parliament is given permission by the Constitutional council to proceed with the vote if the international instrument does not contain a clause contradictory to the Constitution.⁴³⁹

The purpose of this procedure is to ensure that, when contradiction between an international instrument and the constitution is noticed, the parliament modifies the constitution before a treaty or international agreement is ratified. However, Article 84 (1) stipulates that peace treaties, treaties related to International organisations or treaties that trigger the modification of internal laws must imperatively be submitted to the Constitutional Counsel either by the president of the republic, the president of the National Assembly or ¼ of the members of

⁴³⁴ Ivorian Constitution. See document at the National Assembly website: <http://www.assnat.ci/docpdf/constitution.pdf>, accessed 31 Janvier 2014.

⁴³⁵ Article 71 Ivorian Constitution.

⁴³⁶ See document at the National Assembly website: <http://www.assnat.ci/docpdf/RESOLUTION%20REGLEMENT%20A.N.%202006.pdf>, accessed 31 Janvier 2014.

⁴³⁷ Article 83(1) 83(2).

⁴³⁸ Article 83(3) 83(4).

⁴³⁹ Article 83 (5).

parliament. This procedure again is necessary to determine the constitutionality of the proposed treaty or international agreement.

The mechanisms to incorporate treaties in the national legal system are clearly established either by the Constitution or specific dispositions. The clarity of the mechanism has allowed Ivory Coast to ratify most of the international legal instruments related to human rights in general and children in particular. In that respect, the legal and institutional frameworks for combating child labour in Ivory Coast appear well structured and well established. The different provisions clearly identify the issues pertaining to labour rights in general and child labour in particular. Implementation and enforcement mechanisms, on the other hand, are not clearly defined. Where international legal or regional legal frameworks are willingly domesticated, the crucial issue remains the enforcement of the laws that derive from the process.

The Harkin-Engel protocol has played a vital role in improving Ivory Coast perception about child labour. Meanwhile, different legislations do not contain tougher punishment for child trafficking and child labour. The country could have done enough to show that other than the ratification, domestication of international legal frameworks, there is an endeavour to create an environment of a swift and definite elimination of child labour. Additionally, Ivory Coast should demonstrate that significant progress have been made in the fight against child trafficking that also was the subject of a treaty between Mali and the Ivory Coast.

Conclusion

Over a decade ago, the phenomenon of child labour on Ivory Coast cocoa farms was brought to light by the western media.⁴⁴⁰ The current situation of child labour on Ivory Coast's cocoa farms is that children as young as five are enslaved and exploited daily. In regard to the problem, criticism first came from the US government and most child rights campaign groups. Apparently awareness was raised from the west because 40 percent of the world's cocoa production processed and destined for the markets of the major western countries,

⁴⁴⁰ See Liz Blunt, 'The bitter taste of Slavery' *BBC News Africa* (28 Septembre, 2000) <<http://news.bbc.co.uk/1/hi/world/africa/946952.stm>> accessed 11 February 2013. See also Kate Manzo, 'Modern Slavery, Global Capitalism and Deproletarianisation in West Africa' (2005) 32 *Review of African Political Economy* 521. 534.

come from Ivory Coast⁴⁴¹, and also the leading manufacturers of chocolate are domiciled in the west.⁴⁴² In the wake of the international reactions, Ivory Coast government had no other choice than embark on the setting of a legal framework and comprehensive regulations to conform to international legal standards. The country's policy response was seen as a progress on the path to eradicate child labour altogether.

In the light of the satisfactory record of ratification of the fundamental ILO Conventions, Ivory Coast could be seen as one of the "good students" within the International Labour Organisation. The significant legal and institutional reforms have obviously put the country in phase with the existing International Labour Standards. However, the enduring nature of the child labour practice in the country remains a major challenge for the authorities. Child labour is deeply rooted in rural cocoa communities thus dealing with the issue requires the government's shift in approach. The issue not only eroded the reputation of Ivory Coast in recent years, but it also jeopardises the achievement of the Millennium Development Goals.

Challenges such as the remoteness of most cocoa farms from villages and cities and the difficult access to plantations have been recognised by the US State Department when they state, 'there is no way to monitor a supply chain effectively without tracing it all the way down to the raw material.'⁴⁴³ This concern is determining in the possible assistance Ivory Coast could get from developed countries to find the right solutions to the problem.

A contextual analysis of the child labour practice on Ivory Coast's cocoa farms unveils several other challenges. Although there is an apparent willingness on the side of most stakeholders to address the issues efficiently, they have yet to adopt a paradigm shift in approach to the crucial questions relating to the phenomenon. The particular circumstances of the country, the rights of the child, the cultural context, the development goals of the country, and all other socio-economic aspects need to be taken into account. These are crucial steps in

⁴⁴¹ Sumana Chatterjee, 'Chocolate firms Launch fight Against 'Slave Free Labels'' *The Philadelphia Inquirer* (1 August 2001) <<http://www.commondreams.org/headlines01/0801-03.htm>> accessed 15 February 2013.

⁴⁴² See the International Cocoa and coffee Organisation (ICCO) at <http://www.icco.org/about-cocoa/chocolate-industry.html>, accessed 28 February 2014.

⁴⁴³ See US Department of State. "Breaking the (Supply) Chain. "Washington, DC: June 2010 available at <http://www.state.gov/g/tip/rls/tiprpt/2010/142750.htm>, accessed 27 February 2013.

a global context where the requirement to subscribe to specific standards becomes the essential condition to survive as a nation.

The Ivory Coast has initiated a series of actions and endeavoured to work closely with the ILO in order to achieve total elimination. In 2003, a memorandum '*Mémoire d'accord Côte d'Ivoire – OIT du 25 Août 2003 pour la participation au programme IPEC (Programme International pour l'Élimination du Travail des Enfants), dans le cadre de la mise en œuvre de la convention N° 182,*' was issued to assert the country's commitment to the objectives of the IPEC. A complementary ministerial decision, '*Arrêté N°10915 du 28 septembre 2004 du MFPE, portant nomination des membres du Comité Directeur National du Programme IPEC/Côte d'Ivoire,*' was later made to appoint the members of the Implementation and supervision committee of the IPEC programmes in Ivory Coast.⁴⁴⁴

Three years after its entry in force, Ivory Coast ratified the African Charter on the Rights and Welfare of the Child of 1990⁴⁴⁵ by presidential decree: '*Décret N° 2002-47 du 21 janvier 2002 portant signature de la Charte Africaine des Droits et du bien être de l'Enfant, adoptée par la vingt-sixième Conférence des Chefs d'Etat et de Gouvernement de l'Organisation de l'Unité Africaine, en juillet 1990 à Addis-Abéba*'.⁴⁴⁶

It is worth noting that the Ivorian Constitution prohibits forced labour and slavery. The Trafficking and Worst Forms of Child Labour Law extends this prohibition to include debt bondage or servitude and the sale or trafficking of children. It calls for life imprisonment when trafficking or the worst forms of child labour results in the death of a child and introduces other strict penalties. This law also prohibits all forms of prostitution, the use of children for illicit purposes and the involvement of children in armed conflict. The minimum age for both voluntary and compulsory recruitment into the military is 18. On August 3, 2011, the Government of Ivory Coast ratified the Optional Protocol on Children in Armed Conflict, and on 7 September 2011, it ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.⁴⁴⁷ From the analysis of the legal and institutional environment of child labour it derived that a comprehensive set of regulations have emerged

⁴⁴⁴ *Journal officiel*, 2005-02-03, n° 5, pp. 77-78.

⁴⁴⁵ See OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

⁴⁴⁶ *Journal officiel*, 2002-04-11, n° 15, pp. 248.

⁴⁴⁷ www.dol.gov/ilab/programs/ocft/2011TDA/CotedIvoire.pdf, accessed 27 February 2013.

since the issue was brought to the knowledge of the world community over a decade ago. However, well-documented evidences of persisting worst forms of child labour in the cocoa industry are made available. It appears that the law and policy response from Ivory Coast authorities does not meet the expectation of scholars and observers concerned by the dynamic problem of child labour. Issues such as child rights violations and unfair competition persist through the child labour practice. This state of quagmire leads to the analysis of some factors underpinning the enduring practice.

Chapter 4

The Enduring Child Labour Practice in Ivory Coast: Grasping the Underpinning Factors

“Few human rights abuses are so widely condemned, yet so widely practised. Let us make (child labour) a priority. Because a child in danger is a child that cannot wait.”⁴⁴⁸

Introduction

Chapter 3 showed that there has been a law and policy response to the child labour practice on Ivory Coast’s cocoa farms. Equally the law and policy response was aimed at other forms of child labour in the country. However child labour practice on Ivory Coast’s cocoa farms endures despite such significant actions undertaken at various levels of law making institutions and NGOs. It appears that the child labour debate in Ivory Coast is primarily centred on eliminating the phenomenon through legislative action. While such an approach *per se* is understandable, seemingly, the causes of the perpetuation of the phenomenon are scarcely addressed. The unique nature of child labour practiced on Ivory Coast’s cocoa farms requires a different approach in the attempts to eliminate the phenomenon. This chapter examines the unique nature of child labour in Ivory Coast.

It analyses the different arguments underpinning the perpetuation of child labour practices on Ivory Coast’s cocoa farms. The chapter shows that although the cultural argument remains the most significant in the current study, there is no concrete action to dissipate the hampering effects of culture and customs. In the same vein, the chapter shows that the socio-economic and developmental arguments are less underscored in the ongoing debate about the worst form of child labour on Ivory Coast’s cocoa farms. This is appealing in a better management of the issue would have led law and policy makers to the understanding that child labour in Ivory Coast is a mixture of economic realities and societal practices.

Despite remarkable efforts from Ivory Coast authorities to domesticate the relevant international legal instruments and their determination to implement them, cultural and customary considerations appear to be hampering factors to achieving the ultimate goal of elimination of child labour in the cocoa industry. This chapter places an emphasis on the

⁴⁴⁸Kofi Annan, United Nations Secretary-General (1 January 1997 – 31 December 2006).

substantive argument and the procedural arguments to highlight the evidence of an existing adequate legal environment. The chapter also examines some particular issues related to the authorities' failure to adopt a much ambitious politic in the coca farming sector as well as an efficient mechanism of birth and death registration.

4.1 The Unique Characteristic of Child Labour in Ivory Coast

Ideally, the nature of the problem determines the right approach to adopt in addressing the whole issue. The problem is likely to be overcome by applying the right remedy. As Bhargava rightly puts it, 'any action undertaken in the area of elimination of child labour must necessarily be preceded by first-hand survey of the situation.'⁴⁴⁹ Child labour as indicated in the previous chapter has many facets. A combination of several factors makes child labour in Ivory Coast unique. Child labour in this context could be regarded as a problem with many equations to resolve. Indeed, the uniqueness of the problem requires an approach matching that characteristic in attempts to eradicate the phenomenon.

The major challenge remains the scale of the problems relating to the child labour practice. For instance, the Ivorian authorities do not seem to apprehend the extent of unregistered birth in the country. There are no available figures in regard to children born in rural areas who were registered on the civil registry. The process of birth registration is concerned with two steps; firstly, the record of the birth by a midwife or a health centre and secondly, the registration of the birth in the civil registry. It is evident that if the former has not been followed, it becomes impossible for the authorities to grasp the exact number of children born in rural areas. Moreover, due to the lack of farmland registration and the lack of regulations in cocoa farming, farm owners are under no obligation to follow modern labour relations rules. Thus, practices contrary to moral values and legal principles become regular practices.

4.1.1 Cultural argument

The cultural or traditional rationale for children's involvement in work and exploitation does vary from one society to another. Children's participation to work is a worldwide problem in that the practice exists in almost every country across the globe. It is hard, though, to admit the claim of some countries that they have eradicated the phenomenon. The lack of complete

⁴⁴⁹ See Pramilah H Bhargava, *The Elimination of Child Labour: Whose Responsibility?*(Sage Publications, New Delhi 2003) 52.

elimination confirms the universal dimension of the subject. It is inherent to every human society. If some societies have resorted to children's work as a means to sustain the labour market and the economic growth, due to a lack of adult labourers, some consider it, usually irrelevant of the very tender age of the child claiming that it prepares that child for the adulthood. The latter view is common in most African societies. Again, the cultural relativism debate can stand in this context. The term "culture" is broad and vague: the concept of culture can refer to many things, varying from cultural products, such as art and literature, to the cultural process or culture as a way of life.⁴⁵⁰

Anthropologists commonly use the term 'culture' to refer to society or group in which many or all people live and think in the same ways.⁴⁵¹ Culture includes "inherited idea, beliefs, values and knowledge which constitute the shared bases of social action."⁴⁵² During the General Discussion on the Rights to take part in cultural life, held by the Committee on Economic, Social and Cultural Rights (CESCR) at its seventh session in 1992, it was stated that culture meant 'way of life.'⁴⁵³ Moreover, Feinberg and Ottenheimer's account of Schneider's position about culture note that 'Fundamental to Schneider's position is characterisation of culture as a system of symbols. Since the connection between a symbol and its referent, by definition, is arbitrary, the variation among cultural categories and systems is restricted only by the limits of human imagination.'⁴⁵⁴

In agrarian societies or most African rural communities, schooling is regarded as something that does not guarantee better jobs for children. Therefore, parents find it worthless to send their offspring to school. It is rather preferable to teach a trade to children in order to allow them to 'fend for themselves' in the future.⁴⁵⁵ It is challenging to assert that these societies

⁴⁵⁰ See Yvonne Donders, 'Cultural Life in the Context of Human Rights' UN Doc E/C 12/40/13 (9 May 2008).

⁴⁵¹ Frances Raday, 'Culture, religion and gender' (2004) 1 International Journal of Constitutional Law 663, 715.

⁴⁵² See Collins English dictionary (Harper Collins, 1999) 385.

⁴⁵³ UN Doc. E/C, 12/1992/2, para.213.

⁴⁵⁴ Richard Feinberg and Martin Ottenheimer, *The cultural analysis of kinship: The legacy of David M. Schneider* (University of Illinois Press, Champaign 2001) 10, 11.

⁴⁵⁵ See, Gerd Spittler, Michael Bourdillo, '(2012) *African children at work: working and learning in growing up for life*' (LIT VERLAG GmbH & Co KG Wien, Berlin 2012).

are aware of the concept of childhood and work as well as the developmental aspect of children.

In these societies, it might not be clear how to define a child, whereas, in the west, it is customary to do so by chronological age. Their exclusive reliance on cultural and social factors is undeniable. It is widely recognised that the evolution of a child to adulthood will be achieved through socially and biologically determined phases. This view is present in many African societies, and it is a determinant in the decision of the parents to decrease the dependency and protection of the child. Hence, children's involvement in work would not be regarded as detrimental in such circumstances. Rather, it is part of the socialisation process which gradually introduces the child into work activities and teaches him survival skills. Considering the challenges and contextual realities, the sooner the child can engage in the development of the community, the better. For instance, 'in the Kwara Fulani community (in West Africa) where the source of subsistence is cattle, male children and adolescents are herdsmen. When they are young, young boys' work around the home is helping both parents with miscellaneous tasks, but from about the age of seven, sons help in the herding of cattle until they are themselves married.'⁴⁵⁶ This traditional practice indicates how early children are introduced to such important social responsibility in most developing countries.

Where children are considered to play an important role in the survival of the community, the traditional or cultural view that, large families with many children are better off in terms of wealth and land exploitation, is prevalent in rural and agrarian societies. For instance, while, for the *wataita* tribe of Kenya, all children were 'God's gift,' male children were more highly valued. The underlying assumption is that, the accumulation of male children could be achieved through polygamy, remain well established in those communities. Women in the polygamous households not only contribute immensely to the land cultivation process but most importantly, the land of their husband serves as a kind of insurance against the failure of crops grown by them.⁴⁵⁷ Although some scholars argue that polygamy is implicitly

⁴⁵⁶ Johnson A Ekpere , F P A Oyedipe and R O Adegboye 'Family, Role Differentiation within the Kwara Nomadic Fulani' in C Opong, G Adaba, Bekombo-Priso and J Moge (eds) *Changing African Family Part I, Marriage, Fertility and parenthood in West Africa* (The Australian National University, Canberra 1978) 60, 61.

⁴⁵⁷ Katama G C Mkangi, *The Social Cost of Small Families and Land Reform: A case Study of the Wataita of Kenya*, (Pergamon Press, Oxford 1983) 32, 34.

considered favourable to birth spacing and serves as a longer sexual abstinence⁴⁵⁸, the refutable underlying social and cultural argument remain family enlargement and land control which subsequently stabilise wealth in the family.

This view is well-shared among most rural communities in developing countries in general and in particular in Ivorian rural communities where cocoa and coffee farming requires quite a significant population of labourers. It is understood that the relationship between fertility, household size and child labour also depends on the amount of land holdings.⁴⁵⁹ In the light of these cultural conceptions, it is undeniable that each society tends to establish that its ways of raising or bringing up children is the most adequate and justified. As a result, they do not perceive the involvement of children in the various ranges of social and economic activities as any moral wrongdoing, given that such enterprise is immensely beneficial to the developmental aspects of the child within his community. Mbiti argues that ‘another significance of the rites is to introduce the candidates to adult life.’⁴⁶⁰ Putting into context the approach of child labour exhibited by UNICEF and the ILO, the apparent gap in perceptions of child work, seems to have instituted a serious misunderstanding at the international level. The cultural element and traditional conservatism are viewed as the hindering factors to a common language, thus, remain the main challenges yet to overcome.

The prevailing idea in putting social customs and attitudes forward as an impediment to the eradication of child labour is that in some countries, powerful elites or majority ethnic groups consider that working is the proper and natural occupation for the children of the poor or children of ethnic minorities. They have no commitment to ending child labour and indeed want to continue exploiting these children for the cheap labour they represent.⁴⁶¹ In other cases, when parents have little money to spend on education, they choose to educate the boy

⁴⁵⁸ Alfred Schwarz, ‘Fertility and child Mortality among the Krou of Ivory Coast in C Opong, G Adaba, Bekombo-Priso and J Moge (eds) *Changing African Family Part1, Marriage, Fertility and parenthood in West Africa*’ (The Australian National University, Canberra 1978) 471.

⁴⁵⁹ See Mohammed Sharif, ‘Child participation, nature of work, and fertility demand: a theoretical analysis’ (1993) 40, 4 *The Economic Journal*. See Osita Agbu, ‘*Children and youth in the labour process in Africa*’ (Council for the Development of Social Science Research in Africa, Dakar 2009) see also Anne Kielland and Maurizia Tovo ‘*Children at work: child labour practices in Africa*’ (Lynne Rienner Publishers, London 2006).

⁴⁶⁰ John S Mbiti, ‘*African religions and Philosophy*’ (Heinemann, London 1970) 121.

⁴⁶¹ See ITC-ILO, ‘The International Labour Movement’ available at http://actrav.itcilo.org/courses/2008/A1-01020-1/resources/labour_education_textbook_provisional.doc_br, accessed 23 August 2014.

child, so girls rarely get any schooling.⁴⁶² Ncube observes that ‘there is a significant body of scholarship that remains convinced that children’s rights have to be interpreted and applied with sensitivity and due regard to the diversity of cultural norms and values.’⁴⁶³

Referring to Bart Rwezaura’s caution, Ncube notes that ‘the Convention on the Rights of the Child notwithstanding its near universal acceptance must in many respects be viewed as a promising starting point on the long and winding road to the global improvement of the status of children. The reason for this caution as he argues is that the world community, being so diverse socially, economically, and culturally, cannot understand the Children Convention the same way.’⁴⁶⁴ Himonga writes that ‘respect’ which can translate itself into culture of silence on the part of children underpins the cultural distance between adults and children.’⁴⁶⁵ The culture of respect also means that some children do not associate with adults: they cannot stay in the company of adults, eat with them or talk to them as they would do with their friends. This culture of social distance between children and adults not only widens the barrier between the two but may also lead to children seeing the world of adults as separate from their own. The result might be that those decisions concerning children emanating from the adult world will be treated by children as being out of their competence to question.⁴⁶⁶

Participation in decision-making is limited to consultation, rather than to the actual making of a decision. While expression of views by children is in accordance to the Convention’s requirement for children to express those views freely,⁴⁶⁷ it does not appear to go as far as

⁴⁶²See Trade Unions and Child Labour, Booklet 2: Union Policies and Action Plans to Combat Child Labour, at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_116635.pdf, accessed 5 February 2014.

⁴⁶³ See Welsham Ncube, ‘Prospects and Challenges in Eastern and Southern Africa: The interplay between international human rights norms and domestic law, tradition and culture’ in Welsham Ncube (ed) *Law, Culture, Traditions and Children’s Rights in Eastern and Southern Africa* (Ashgate-Dartmouth, Aldershot 1998) 1.

⁴⁶⁴ Ibid.

⁴⁶⁵ See Chuma Himonga, ‘The Rights of the Child to Participate in Decision Making: A perspective from Zambia’ in Welsham Ncube (ed) *Law, Culture, Traditions and Children’s Rights in Eastern and Southern Africa* (Ashgate-Dartmouth, Aldershot 1998) 114.

⁴⁶⁶ Ibid. at 115.

⁴⁶⁷ Article 12 CRC.

the requirement that children's views be given due weight in accordance with the age and maturity of the child (Article 12).⁴⁶⁸

How will this be implemented if the cultural context is opposed to or is in sharp contradiction to the cultural context? State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity.⁴⁶⁹ The right of children to information Article 17 states that: 'all children have a right to accurate and beneficial information. This includes learning to understand the hidden messages in certain sources of information.'⁴⁷⁰

Due to the scarcity of resources, poor parents make decisions concerning the education and care of their children in which the children have no chance of expressing an opinion. These involve fostering arrangements for children made between the parents who are unable to support their children and their relatives who assist in caring for the children.⁴⁷¹ Indeed peasants themselves often stress the economic utility of their children in activities around the home and family farm. They also speak of the economic difficulties they would encounter with fewer offspring.⁴⁷²

One of the most important ways in which participation and empowerment might be facilitated is through access to accurate, timely, and appropriate information to enhance decision making and promote personal, social and cognitive skills. Children and young people have the right to correct information allowing decision making to take place. Both mental health and sexual health issues can be difficult for young people to seek information about due to

⁴⁶⁸ See Chuma Himonga, 'The Rights of the Child to Participate in Decision Making: A perspective from Zambia' in Welsham Ncube (ed) *Law, Culture, Traditions and Children's Rights in Eastern and Southern Africa* (Ashgate-Dartmouth, Aldershot 1998) 115.

⁴⁶⁹ Article 13(1) CRC.

⁴⁷⁰ Don Harrison, *Regardless of frontiers: children's rights and global learning* (Trentham Books, Stoke on Trent 2008) 15.

⁴⁷¹ See Chuma Himonga, 'The Rights of the Child to Participate in Decision Making: A perspective from Zambia' in Welsham Ncube (ed) *Law, Culture, Traditions and Children's Rights in Eastern and Southern Africa* (Ashgate-Dartmouth, Aldershot 1998) 121.

⁴⁷² Tim Dyson, 'Child Labour and Fertility: An Overview, an Assessment, and an Alternative Framework' in Ramesh Kanbargi (ed) *Child Labour in the Indian Subcontinent: Dimensions and Implications* (Sage Publications, New Delhi 1991) 96, 97.

embarrassment. Right to information means that innovative ways of accessing health information anonymously can be helpful, for example, making use of the internet and telephone advice/ help lines, which can overcome barriers to information.⁴⁷³

It is tempting to conclude that the African child charter and the Convention complement each other in their conception of childhood and the rights of children which flow from such conception. Ncube observes that ‘after all, the African Child Charter in its preamble reaffirm adherence to the principles of the rights and welfare of the child as claimed in inter alia the Convention. However, behind the apparent harmony lie ideological and conceptual differences between the two documents, which may suggest, at the very least, that there remain unanswered questions on the conceptual understanding of the essence of both the context and substance of the rights of the child.’⁴⁷⁴

Most of the modern international human rights laws on children are based on the assumption that there are certain basic universal values and norms on the rights of children held by the international community as a whole around which the normative consensus reflected in these international instruments has been constructed. However, behind the normative consensus lies a conceptual and substantive claim of cultural and contextual diversity.⁴⁷⁵ Jones and Welch note that:

One of the themes involves the kinds of responses that have occurred within different countries as an international convention comes into contact with the enthusiasm and frustrations created by national government or localized practices and attitudes. The CRC may make a series of statements in its Articles, but they are only as good as the way an individual country or society responds to them. Different phenomena come into play within these responses: the idea of child rights for example, does not exist in a pure vacuum of ideal and child centred philosophy. Within individual countries, and in cultures and communities that makeup those countries, research is revealing different issues that are fore grounded in

⁴⁷³ Phil Jones and Gary Walker, ‘*Children’s Rights in practice*’ (Sage, London 2011) 151.

⁴⁷⁴ Welsham Ncube, ‘The African cultural fingerprint? The changing concept of childhood’ in Welsham Ncube (ed) ‘*Law, Culture, Traditions and Children’s Rights in Eastern and Southern Africa*’ (Ashgate-Dartmouth, Aldershot 1998) 12, 13.

⁴⁷⁵ See Welsham Ncube, ‘Prospects and Challenges in Eastern and Southern Africa: The interplay between international human rights norms and domestic law, tradition and culture’ in Welsham Ncube (ed) ‘*Law, Culture, Traditions and Children’s Rights in Eastern and Southern Africa*’ (Ashgate-Dartmouth, Aldershot 1998) 5.

children's lives and the ways in which ideas of child rights have developed their own localised meaning and drivers for change.⁴⁷⁶

The birth of the CRC was celebrated and, it was even hailed to be the perfect international legal instrument that crowned the efforts of several campaigners and human rights lawyers. Meanwhile, more than two decades after the adoption of the Convention, serious challenges mar the path of the well celebrated Convention, the most challenging element being culture. Children rights are entrapped in cultural considerations, and this remains the most challenging issue today. The increasing influence of culture in the child rights debate leads to enquire whether culture is always right? Dyregrov et.al, answer that:

Culture is not always right. In Africa, the culture has produced one massacre after another. It has led to a breakdown of the social fabric and to ethnic and political conflicts in countries such as Rwanda, Burundi and Zaire. In our part of the world, our western culture has brought us the atomic bomb, laser-weapons, surgical bombing, chemical warfare and McDonalds that spread to all corners of the world. If negative products of culture had not been challenged, we would still have denied sexual and physical abuse and exploitation of children worldwide; many of our taboos would continue to work as before, women would have no voting rights, and we would go on denying children the right to information concerning loss and trauma.⁴⁷⁷

In this analysis, emphasis is placed on the African context of cultural perception because it is the *locus* where child rights issues remain highly critical in the labour environment. Other elements of child human rights are invoked, but the child labour aspect is the point of interest in pursuance of this thesis. The child as the centre of interest in African societies is primarily perceived as a source of wealth. It is worth to note that the core of the debate rests with this philosophy. Hence, Le Vine et al. emphasise that:

The desire for children in Africa has its roots in the economic, social, and spiritual goals of parents. African agriculture and animal husbandry are labour intensive, and there are many tasks that can be performed by children, to the benefit of the family. In adulthood, children are expected to provide their aging parents with a level of security and protection that could not be expected from others. Furthermore, kin groups based on descent can survive only if

⁴⁷⁶ See Phil Jones and Sue Welch, *Rethinking Children's Rights: Attitudes in Contemporary Society* (Continuum International Publishing Group, London 2010) 4, 5.

⁴⁷⁷ Atle Dyregrov, Leila Gupta, Rolf Gjestad and Magne Raundalen 'Is the Culture Always Right?' (2002) 8 *Traumatology* 135, 145.

they acquire new members in each generation, and the defence of their collective resources (usually land and cattle) requires able-bodied men.⁴⁷⁸

Le Vine et al. goes further to write that indigenous conceptions of parenthood do not distinguish sharply among economic, social, and spiritual reasons for reproduction; one type of reason implies the others in local thought. Childbearing becomes the final common pathway for diverse human motives, conferring wealth, security, prestige, and immortality - virtually everything valuable – on parents.⁴⁷⁹

The diversity of culture and the difficulty to reconcile tightly anchored perceptions can only fuel the debate on cultural relativism. There are universal patterns of human rights. It is interesting to note that very often, when the western patterns are not present; the debate usually becomes overheated.⁴⁸⁰ Different approaches to social-structural and cultural values are in conflict. For instance, Pluralists believe that there are many reasonable conceptions of good life and many reasonable values upon which the realisation of good lives depend on.⁴⁸¹

As to the specific characteristic of relativism, Freeman writes that ‘relativists regard all values as the products of the customs, practices and beliefs which have as a matter of fact developed within a particular tradition. They deny that any value has any authority epistemological or moral, outside of this cultural context. They demand of us that we ask not whether social practices like child marriage or female circumcision or for that matter purdah, suttee or polygamy, are justified by the moral consideration, that we find content, but rather whether they are sanctioned by the relevant social understandings of the cultures within which they are practiced.’⁴⁸²

This reasoning is pertinent in that it underpins the core issue of value system. It is understood that the value system is a set of consistent ethical values accepted by a group, community or society. It is also understood that a society that has adopted a set of values will

⁴⁷⁸ Robert A LeVine et al. ‘*Child care and culture: Lessons from Africa*’ (Cambridge University Press, Cambridge 1994) 31, 32.

⁴⁷⁹ Ibid.

⁴⁸⁰ The tendency to present western culture as the model and the standard does not facilitate the squaring of the problem.

⁴⁸¹ Michael Freeman, ‘Children and Cultural Diversity’ in Deirdre Fottrell(ed) *Revisiting Children’s Rights: 10 years of the UN Convention on the Rights of the Child*, Kluwer Law International, Boston 2000) 20, 21.

⁴⁸² Ibid at 22.

regard them as a standard to guide their behaviour in preferences in all situations. The significance of such approach is underscored when Rwezaura writes that ‘field studies on African social systems have identified something akin to the glue that binds people together. This bond is contained in the notion of filial respect and in turn reinforced by the ethics of dominance, whereas kinship provided a framework for social organization and for economic cooperation in most communities of Africa, children ensured the continuity of the group through marriage and procreation and by supporting the older generation. Besides being gender fixed, economic tasks were also status oriented. Thus, a person had status as a parent, as son or daughter, as wife or husband and, more generally, as a member of a kinship group.’⁴⁸³

These are genuine facts, of course, not ignored in the debate, but there seems to be a lack of willingness to adopt a realistic approach to the issue. Nothing can be founded on bad cultures as long as they are universally recognised as such. This fact is pertinent in that a cultural practice abhorred by all human communities and, therefore universally proscribed, cannot be defended whatsoever. However, it cannot pertinently and successfully be argued that others cultures are wrong, just because they are estranged to a distinct society.⁴⁸⁴

Does the perception of child rights fit under this umbrella? Are child rights issues a matter of cultural relativism or universalism? Should the Universalist approach to child rights prevail, there would be a need to desegregate opinions about the child’s social status in most indigenous communities. In that respect, the rights of the child will be seen as an exact science that needs to materialize. Indeed Bachelard writes that: ‘science is totally opposed to opinion, not just in principle but equally in its need to come to full fruition.’⁴⁸⁵

The world communities are almost interconnected in this 21st century. In such global context, there are opportunities for nations to appreciate best practices and imitate counterparts that

⁴⁸³ Bart Rwezaura, ‘The Duty to Hear the Child: A view from Tanzania’ in Welsham Ncube (ed) ‘*Law Culture, Traditions and Children’s Rights in Eastern and Southern Africa*’ (Ashgate, London 1998) 59.

⁴⁸⁴ Analysing certain customs such as polygamy and human sacrifice he asks a series of questions about the legitimacy of judgements made about a particular customary practice, Tilley states that: ‘Can anyone say that only some of these customs are right, that all of the others are wrong? Can anyone reasonably think that from this vast array of accepted customs, only a few warrants the label “moral,” the others being immoral or evil? Surely not; hence we should grant that right and wrong vary with culture.’ See John J Tilley, ‘Cultural Relativism’ (2000) 22 *Human Rights Quarterly* 501, 547.

⁴⁸⁵ Gaston Bachelard, (2002) ‘*The Formation of the Scientific Mind*’ (Clinamen Press, Manchester 2002) 25.

are models of success. Therefore, societies that deny rights for children can refer to existing patterns or available models, to understand or uncover the gravity of their act. It will be hard to admit that in a democracy, adults can on good grounds, assume their personal freedom and human rights, but children cannot. Children are often expected to show unconditional obedience and loyalty, as well as physical and mental subordination to parents and teachers.⁴⁸⁶

The children, whose rights are denied based on culture, are like the adults themselves victims of deeply rooted beliefs. However, whereas the children have no power to free themselves from the cultural trap, the adults are faced with an epistemological obstacle. There is a converging view that children must have their human rights recognised and protected everywhere in the globe. There are international legal frameworks to guide states in making domestic laws in that respect. Some countries permit outrageous practices that systematically violate children's substantive rights.

The assumption that cultural belief or opinion is an epistemological obstacle,⁴⁸⁷ rest upon the theory that cultural practices that are universally seen as bad should be destroyed in order to establish the best practice that value child rights. Much credit could hence be awarded to the monist or universalist approach to culture which, as Freeman puts it, 'is committed to there being an overriding value or set of values and, if the latter, a ranking scheme on the basis of which values can be compared, in a way, that all reasonable people would find acceptable.'⁴⁸⁸

The practice of child fostering *per se* is a cultural value well accepted in many countries across the globe. It is a practice that all reasonable people would find acceptable. In the UK for instance, there are regulations relevant to the placement of children in foster care.⁴⁸⁹ In the West African context, there is the practice of kinship fostering, in which children are sent to

⁴⁸⁶ Ann Quennerstedt, 'Balancing the Rights of the Child and the Rights of Parents in the Convention on the Rights of the Child' (2009) 8 *Journal of Human Rights* 162, 176.

⁴⁸⁷ *Ibid.*

⁴⁸⁸ Michael Freeman, 'Children and Cultural Diversity in Deirdre Fottrell (ed) *Revisiting Children's Rights: 10 years of the UN Convention on the Rights of the Child*' (Kluwer Law International, Boston 2000) 21.

⁴⁸⁹ To strengthen the system, the Fostering Services (England) Regulation 2011, was brought in and this stand firm as Basis of the regulatory framework under the care Standards Act 2000 for the conduct of fostering services.

live with their relatives, often at a distance and for a long period. In many places, children are sent only when they are over five years of age, but among the Mende of Sierra Leone, fosterage of children under two is quite common.⁴⁹⁰

Particularly in West Africa, childless women are entitled to request children from their kin, and they have a socially accepted role as foster parents.⁴⁹¹ Indeed, the custom of child fostering is peculiar to the West African context, the practice of child fostering has often led to serious child rights violations and all manner of abuses. The relatives will systematically exploit and abuse the weakness of the practice. This situation will, of course, facilitate the luring of children (with parental consent) by Pied Piper figure- the modern trafficker who may be a blood relative or family friend as well as a seller of children.⁴⁹² Thus, as noted by Astill, “the Pied Piper, who leads the children away with their parents’ blessing, is commissioned to take full advantage of the extended family and of the poor man’s assumption that anywhere is better than here.”⁴⁹³

The west should have had a better understanding of the custom fostering pertaining to West African societies through the landmark case of Victoria Climbié that occurred in the United Kingdom in early 2000. Victoria Climbié was born in November 1991 in Ivory Coast. She died in February 2000 in London aged eight. To escape the poverty of Africa, her parents entrusted her to her great aunt who brought her to Europe. Victoria was tortured to death by that great-aunt, Marie Therese Kouao, and the woman's boyfriend Carl Manning.⁴⁹⁴

The Siliadin case is also a pertinent example of custom fostering peculiar to West African societies. From the facts of the case, *‘The applicant was born in 1978 and lives in Paris. She arrived in France on 26 January 1994, aged 15 years and 7 months, with Mrs. D., a French national of Togolese origin. She had a passport and a tourist visa. It had been agreed that*

⁴⁹⁰ Robert A LeVine et al. *‘Child care and culture: Lessons from Africa’* (Cambridge University Press, Cambridge 1994) 35.

⁴⁹¹ *Ibid* at 32.

⁴⁹² See Loretta E Bass, *‘Child Labour in Sub-Saharan Africa’* Lynne Rienner, 2004).

⁴⁹³ James Astill, ‘The terrible truth about the ship of slaves’ *Guardian* (21 April 2001 <<http://www.guardian.co.uk/world/2001/apr/21/jamesastill>> accessed 7 November 2011.

⁴⁹⁴ Sue Littlemore, ‘Victoria Climbié: Chain of neglect’ *BBC NEWS* (28 January 2003)<<http://news.bbc.co.uk/1/hi/uk/2700427.stm>> accessed 11 November 2011.

*she would work at Mrs. D.'s home until the cost of her air ticket had been reimbursed and that Mrs. D. would attend to her immigration status and find her a place at school. In reality, the applicant became an unpaid housemaid for Mr. and Mrs. D., and her passport was taken from her.*⁴⁹⁵

Traditionally, children's contribution to family farming was seen as a way to promote socialization and community spirit among children and, therefore, widely accepted.⁴⁹⁶ This view was endorsed by Zoua Bi Boti, president of Ivory Coast's national cocoa farmer's union who said that many parents view child labour as a form of initiation into the family business, but exploitation is prevalent on large, corporate-run plantations.⁴⁹⁷ The blame for abusive exploitation of children or child labour in its worst forms is thus put on corporations. Equally, the view of the president of the cocoa union who praises the traditional approach and the strong influence of corporations in the cocoa industry are challenging issue for Ivory Coast. As emphasised elsewhere, the cultural approach to child-adult relationship in most African societies is based on the win-win principle.

Levasseur writes that 'in an emerging nation, the political element of the law prevails over social traditions because the law is being placed in the service of social revolution whose aims are the essential givens of the law. Faced with the necessity of modernizing juridical institutions at a time when Africa must sacrifice some of the deeply rooted traditions in order to meet technical demands, the governing elites have, in fact, a limited choice of strategies if they also take into consideration the social realities onto which the law is being grafted.'⁴⁹⁸ As specified from the outset, the enduring child labour practice in Ivory Coast does not rest on the cultural element alone. It is a mixture of several elements pivoting around culture and economic rationales.

⁴⁹⁵ *Siliadin v France* (Application No 73316/01), judgment of 26 July 2005, (2006) 43 EHRR 16.

⁴⁹⁶ See UNICEF at <http://www.unicef.org/cotedivoire/overview.html>, accessed 11 February 2013.

⁴⁹⁷ John Heilprin, 'Child labour probed in Ivory Coast's cocoa fields' *Associated Press* (28 November 2011) http://www.boston.com/business/articles/2011/11/28/child_labour_probed_in_ivory_coasts_cocoa_fields/ accessed 25 February 2013.

⁴⁹⁸ Alain A Levasseur, 'The modernization of law in Africa with particular reference to family law in the Ivory Coast' in Philip Foster and Aristide R Zolberg (eds) *Ghana and the Ivory Coast, Perspective on Modernization* (The University of Chicago Press, Chicago 1971) 151.

4.1.2 Substantive Argument

Existing legal frameworks concerned with child labour or child rights are generally viewed as the most efficient and up to date instruments to address the relevant issues. ILO Convention No 182 among other is seen as the result of almost twenty years of the organisation's quest for the right answer to child labour around the globe. There are significant regional and sub-regional instruments regarding child rights. However, seen as a *primus inter pares* among the standing legal frameworks, the CRC is to date a significant legal achievement. It defines and qualifies children rights, with examples of how these affect children's daily lives. The CRC is by far the most widely agreed international treaty, ratified by all 192 governments in the world except for Somalia, which has no government, and the USA, which does not ratify UN treaties.⁴⁹⁹ Ratification means that government undertake to implement the CRC in law, policy and practice in its comprehensive 54 articles and to report regularly to the UN Committee on the Rights of the Child on their progress in doing so.⁵⁰⁰

The Child Rights Convention *per se* is tremendously generous in terms of what a child can enjoy as rights. It opens the door to a wide field of legal capability to every nation to promote and protect the rights of the child by enacting laws and regulations at domestic levels. For instance, Article 40 of the Convention requires governments to establish special laws and procedures regarding children accused or convicted of criminal offences. It also requires government to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.⁵⁰¹ This approach underpins the idea that the CRC is an unavoidable starting point for any discussion of the legal rights of children. Archard argues that 'this is not simply because it is the most ratified instrument of international law and thus exerts considerable and pervasive influence over how we must think practically and about the rights of children. It is also because the CRC codifies a recognizable canon of thought about the rights of children.'⁵⁰²

⁴⁹⁹ See Priscilla Alderson, 'Young Children's Rights: Exploring Beliefs, Principles and Practice' (2ndedn Jessica Kingsley Publishers, London 2008) 44.

⁵⁰⁰ Ibid.

⁵⁰¹ Article 40 CRC, See Jane Fortin, 'Children's Rights and the Developing Law' (LexisNexis UK, London 2003) 550.

⁵⁰² See David Archard, 'Children: Rights and Childhood' (2ndednRoutledge, London 2004) 58.

Publicising the CRC, Rights can only be claimed and respected when people know that they are rights holders. State parties should undertake to make the principle of the CRC 'widely known, by appropriate and active means, to adults and children. Greater awareness of the CRC will help adults and children throughout the country to work together to increase practical respect for children's rights.⁵⁰³ Jones and Walker write that:

Criticism of the CRC's lack of enforceability unless it is incorporated through national law, lack of promotion of children's participation through political rights; that definitions such as that of the best interest may be made by adults rather than involving children's own ideas and agency and that it does not pay adequate attention to the ways in which forces such as poverty and structural inequalities within society and families affect children.⁵⁰⁴

According to Temba and Waal, the adoption of the CRC should have fundamentally altered the ways in which states and the international community approach the rights and welfare of children. States' obligations to children have never before been clearly defined in international law.⁵⁰⁵ Notably, the CRC does not prohibit children from working entirely, nor does it set minimum age for work; these are covered by national laws and the ILO Convention on Minimum age (No. 138), in countries that have ratified it. It focuses on protecting children from harmful work implicitly recognizes that not all work is harmful to children.⁵⁰⁶

4.1.3 Procedural Argument

Chapter 3 showed that Ivory Coast has complied with the requirements set in regards to international legal frameworks addressing the particular issue of child labour as well as the general issue of child rights. Although the moves are appreciated, there is a sentiment that Ivory Coast has not done enough to make the elimination of child labour, as well as various violations of child rights a reality. Indeed, this is the apparent fact and poses the question of State's ratifications of international treaties. The ratification alone usually does not suffice to

⁵⁰³ Priscilla Alderson, *Young Children's Rights: Exploring Beliefs, Principles and Practice* (2ndedn Jessica Kingsley Publishers, London 2008) 44.

⁵⁰⁴ Phil Jones and Gary Walker, *Children's Rights in practice* (Sage, London 2011) 19.

⁵⁰⁵ Kombe Temba and Alex De Waal, 'Implementing the Convention on the Rights of the Child in Africa' in Alex De Waal and Nicolas Argenti (eds) *Young Africa: Realising the Rights of Children and Youth* (Africa Word Press, Inc. Trenton 2002) 207.

⁵⁰⁶ See Save the Children, *Children's Rights: Reality or Rhetoric?* (The International Save The Children Alliance, London 1999) 66.

solve the problem embodied in the treaty. An efficient implementation and enforcement are the subsequent key stages to obtaining the expected result when a legal framework is set.⁵⁰⁷ The ILO Convention No.182 came about up to date response to the plights of children engaged in the worst forms of child labour. The Ivory Coast is among the member states that made the Convention one of the most successful in terms of ratification rate. However, more than a decade after the ratification of the Convention, child labour on Ivory Coast's cocoa farms remains an enduring and dynamic phenomenon.

The standing legal frameworks at international, regional and, sub-regional levels are without doubt workable instruments that only need to be well implemented and followed up by efficient enforcement mechanisms in member states. The fact that Ivory Coast is failing to deliver in regard to its treaties obligations, could result in missing the opportunity to play its part in the process of giving effect to the spirit and the letter of the much venerated international, regional and sub-regional legal frameworks. The Ivory Coast has missed an opportunity to become a human rights protecting nation by failing to eliminate child labour on its cocoa farms. Most dramatically, Ivory Coast is missing an opportunity to prepare the future generation for the challenges pertaining to the new global context.

The Ivory Coast has failed to put in place workable mechanisms to enforce the relevant legal instruments to combat all forms of child labour and to eliminate the worst forms of child labour.⁵⁰⁸ Most significantly, the missed opportunity also lies in the fact that Ivory Coast has failed to put in place the appropriate structures and infrastructures to address child labour adequately as rights based socio-economic concept. Indeed, it is worth noting that while the legal framework appears very comprehensive, weak institutional capacity and limited funding allocated to implement and enforce meaning that they are only one-step towards promoting and protecting children's rights, including the elimination of child labour.

As a nation, present and active in the international arena, Ivory Coast is aware of the necessity to achieve the Millennium Development Goals (MDGs). Child labour being one of

⁵⁰⁷ The real challenge to the achievement of comprehensive measures set in a legal framework is the implementation and enforcement. See Anu Bradford and Omri Ben-Shahar, 'Efficient enforcement in international law' (2012) 12 *Chicago Journal of International Law* 375.

⁵⁰⁸ The Ivory Coast has no structure or enforcement authorities qualified to deal with the issue of child labour on its cocoa farms. There is still no special task force or unit of the police to track child traffickers and child labour users in the remote farms of the cocoa production zones.

the key issues in such prospect; Ivory Coast could have actively played its part in the achievement of such a noble goal in this century. Unfortunately, another excellent opportunity is missed. Achieving the MDGs requires a genuine and palpable worldwide result in all the sectors concerned.⁵⁰⁹

4.1.4 Developmental Argument

The level of industrial development of a country is crucial in the fight against child labour practices.⁵¹⁰ Child labour has existed in its brutal forms in most of the current developing nations. Owing to their level of industrial development, many underpinning factors to child labour have disappeared or at least are controlled. An overview of the state of child labour in Great Britain's history and the current state of children in a welfare society is testimonial of a paradigm shift.⁵¹¹

Indeed, children's participation to work existed in the pre-industrial Britain where they worked in family farms usually in the immediate vicinity of the family lands, children who lived on farms worked with the animals or helped their parents to plant seeds, pull weeds, and pick ripe crops.⁵¹² However, in the late 18th and early 19th centuries, Great Britain became the first country to industrialize. As Mathias observes 'a typically industrialized transformation occurred to urban brewing in London during the seventeenth century...'⁵¹³. This new context has dramatically changed the employment of children. The factories and mining industries were highly reliant on cheap labourers. When rural textile mills were built in 1769, child apprentices were employed as primary workers William Blake even called these enterprises 'dark satanic mill' because of the plight of workers in the vicinities. Thompson described the mills as 'places of sexual license, foul languages, cruelty, violent accident and alien

⁵⁰⁹ Achieving the MDGs is fulfilling all the eight goals established following the Millennium Summit of the United Nations in 2000.

⁵¹⁰ See Jeffrey G Williamson, 'Child labor and Industrial Revolution' (1991) 17 Population and Development Review 534, 536.

⁵¹¹ See, Jane Lewis '*Children, changing families and welfare states*' (Edward Elgar, Cheltenham 2008).

⁵¹² See Ann Kussmaul, '*A General View of the Rural Economy of England, 1538-1840*' (Cambridge University Press, Cambridge 1981).

⁵¹³ Peter Mathias, '*The First Industrial Nation: The economic History of Britain 1700-1914*' (Routledge, London 2001) 1.

manners’’⁵¹⁴Child labour was also practised on continental Europe. Referring to child labour in France, Hobbs writes, however, according to a detailed study by historian Colin Heywood, children played a major role only in a limited number of industries, such as textiles.’⁵¹⁵

At the dawn of its independence from French colonial rule, Ivory Coast was lagging behind Nigeria and Ghana in terms of cocoa production but by 1989, the production multiplied tenfold compared to the 1960s. As achieving this goal was a particular challenge for the authorities who rejected the idea of integration proposed by other West Africa neighbouring countries, it opted for a liberal approach to its development.⁵¹⁶ The strategy of Ivorian state concerning industry was to arrive at the completion of industrialisation from modest beginning by concerted government activity and with the help of foreign help.⁵¹⁷

Indeed, the goal of Ivory Coast authorities from the outset was to initiate and ensure a steady and rapid growth from foreign funds and put in place an industry orientated towards foreign markets. The evidence is that for years, the economic system remained oriented on the outside world. Eventually, this resulted to a perturbation that structurally jeopardised the development of the country.⁵¹⁸ The initial success in agricultural export-led growth had made Ivorian policy makers pursue overambitious and unrealistic modernization plans. The slogan to make Côte d’Ivoire the ‘’ Africa’s South Korea’’ by the turn of this century testifies to this fact. The other internal factor leading to this crisis concerns mismanagement in the economy.⁵¹⁹

⁵¹⁴ Edward P Thompson, *‘The making of the English working class’* (New York Vintage Books, New York 1996) 307.

⁵¹⁵ Sandy Hobbs, Jim Mckechnie and Michael Lavalette () *Child Labour: A world History Companion* (ABC-CLIO Ltd, Santa Barbara 1999) 94.

⁵¹⁶ Dadié Attébi, *‘Le défi Africain: L’urgence d’une alternative économique en Côte d’Ivoire’* (L’Harmattan, Paris 1995) 20, 23.

⁵¹⁷ Dereje Alemayehu, *‘The Crisis of Capitalist Development in Africa: The case of Côte d’Ivoire’* (Bremer Afrika Studien, Hamburg 1997) 126.

⁵¹⁸ Dadié Attébi, *‘Le défi Africain: L’urgence d’une alternative économique en Côte d’Ivoire’* (L’Harmattan, Paris 1995) 11.

⁵¹⁹ Dereje Alemayehu, *‘The Crisis of Capitalist Development in Africa: The case of Côte d’Ivoire’* (Bremer Afrika Studien, Hamburg 1997) 155.

In response to the state of *status quo*, Ivory Coast authorities launched ‘*le plan quinquenal de développement économique*’⁵²⁰ which was a 5-years period from 1976 to 1980 wherein the country should switch from an economy of growth to a society promoting individual and collective interests.⁵²¹ However, the new dynamic is seen appropriate for the development set by the country, the lack of management quality remained the hindering factor. For instance, public investment and other public expenditures were financed by rechanneling the funds of *la Caisse de Stabilisation et de Soutien des Prix des Productions Agricoles (CSSPPA)*.⁵²² Indeed the surplus from the agricultural sector was allocated to other sectors of the economy; thus, the CSSPPA is the principal institution not only in Ivorian export-oriented agriculture, but also in the whole economy.⁵²³

The lack of management qualities was incidental to the maintenance of some modern infrastructures realised during Houphouët-Boigny’s tenure.⁵²⁴ Indeed there was evidence of a sheer lack of organisation in the transport system and the lack adequate road network. The few that exist are old hence not practicable. The whole infrastructure established by the colonial administration and the post-independence first government needed to be upgraded. More importantly, the legal and institutional environment is not adequate for industrial development.⁵²⁵

4.1.5 Economic and Social Argument

The effect of growing poverty is worrying in Ivory Coast; poverty is visible in families, in women and children, youth, schools, housing, employment and public service. Indeed, the

⁵²⁰ The successive five years plan was a strategy to trigger industrial development.

⁵²¹ Pierre Gurtner et al., ‘De la capital au village: Les milieu du développement, une organisation agro-industrie en Côte d’Ivoire’ in Pere Jean-Paul Benoist et al. (eds) ‘*Le village piège: Urbanisation et agro-industrie sucrière en cote d’Ivoire*’ (Presse Universitaire de France, Paris 1978) 31.

⁵²² The CSSPPA was effective and successful in promoting the production of cocoa and coffee, especially when compared with similar marketing board elsewhere in Africa such as Ghana.

⁵²³ Dereje Alemayehu, ‘*The Crisis of Capitalist Development in Africa: The case of Côte d’Ivoire*’ (Bremer Afrika Studien, Hamburg 1997) 129.

⁵²⁴ Félix Houphouët Boigny, the first president of the independent Ivory Coast has initiated an ambitious development programme. This was essentially focused on the realisation of modern infrastructures during his thirty three years of tenure. However, after his death in 1993 most his infrastructural realisations were left in a derelict state.

⁵²⁵ Front Populaire Ivoirien, ‘*Gouverner autrement la Côte d’Ivoire*’ (L’Harmattan, Paris 2000) 24.

period of family solidarity based on the strong kinship has revolved. The fact is that money is the determining element in relations thus when it lacks; the family is in peril.⁵²⁶ In regard to the poverty rate in Ivory Coast, it is recorded that between 1980 and 1990, the poverty rate passed from 10 per cent to 30 per cent. From 1985, poverty passed from 15 percent of the population to 33 percent in 1998.⁵²⁷

Poverty is often seen as the primary cause of child labour.⁵²⁸ Where parents are unemployed or have low incomes, it is likely that their children will be under pressure to supplement the family income by working. Indeed where a child is faced with a choice between paid work and starvation, work is, of course, the lesser evil, but it can lead to serious abuses. Primarily school fees and in some cases the cost of school uniforms are other factors which can deter poor parents from enrolling their children in school, thus perpetuating the cycle of deprivation.⁵²⁹ However, child labour in the rural context in general and traditional settings in particular is not related to lack of employment for parents. It is understood that the general understanding of employment in most analysis is either work in factories, administration or other modern sectors. In this context, the work is in a traditional and rural agrarian environment where employment principles are inexistent.

In the particular context of child labour on Ivory Coast's cocoa farms, the practice is derived from the mixture of both poverty and traditional settings. While most children are trafficked from the north of the country and the neighbouring countries, some are used by their parents on the plantations. Parents using their children as child labourers do not usually resort to it because of poverty. Instead, they are wealthy cocoa farmers seeking to preserve their status and perpetuate their rank in the community.⁵³⁰ From that perspective, the poverty rationale cannot be seen as the prevailing factor in the contextual analysis of child labour offered in

⁵²⁶ Ibid at 162.

⁵²⁷ Loukimane Camara, 'Marché, gouvernance et pauvreté: le cas de la Côte d'Ivoire' (L'Harmattan, Paris 2013) 148, 149.

⁵²⁸ See Norbert Schady and Eric V Edmond, 'Poverty alleviation and child labor' (2012) 4 American Economic Journal 100, 124.

⁵²⁹ See Strulik Holger, 'School attendance and child labour: a model of collective behavior' (2013) 11 Journal of the European Economic Association 246, 277.

⁵³⁰ See Jean-Marc Gastellu, '*Riches Paysans de Côte d'Ivoire*' (L'Harmattan, Paris 1989).

chapter three. It is one of the elements that make the study of child labour on Ivory Coast's cocoa farms a unique topic.

Poverty rationale for child labour in Ivory Coast's enduring child labour practice encompasses a cluster of determining factors such as climatic conditions, population pressure, illiteracy, Family breakdown, unemployment and low wages, and inequality in wealth distribution. More importantly, Rwomire argues that 'poverty is intimately linked to capitalism, which emphasises profit maximisation, private property ownership and individualism. The state's structural link with the capitalist economy serves to maintain exploitative relations of production through the ideological manipulation and political domination of the working class.'⁵³¹Rwomire's viewpoint supports the argument advanced in chapter two in regard to the collusion between Ivory Coast's authorities with MNCs over the issue of child labour in the cocoa industry.

4.2 An Analysis of some Particular Issues

4.2.1 Unregulated Cocoa Farming Activities: The State of Affairs

In the quest to a definite answer to child labour, there are specific issues that need to be addressed in the context of Ivory Coast. Among other questions, farm lands registration remains crucial. The starting point to the regulation of the cocoa farming is the establishment of an accurate data in regard to the number of exploited farms in the country. The agricultural sector, although it is the main source of economic resources for Ivory Coast, is unregulated. Hence, the area remains traditional and unstructured. The prevailing state of affairs is that not only farmlands are unaccounted for, but the vast majority of farmers also are unknown to the administrative authorities. The lack of regulations in the cocoa sector is thus characterised by two crucial factors. First, farmlands are not registered and secondly, the employment rules are not applied to the sectors.

In the context of non-regulation, it is evident that any individual can engage or withdraw from the cocoa farming activity without following any administrative procedure. The State has no direct contact with the farming communities. The most crucial issue in such context is

⁵³¹ Apollo Rwomire, 'Economic Growth, Poverty and Governance: The case of Botswana' in Organisation for Social Science Research in Eastern and Southern Africa (OSSREA) ((ed) ' *Good Governance and civil society participation in Africa*' (OSSREA, Addis Ababa 2009) 80.

employment of farm workers. The farm workers are not registered with the ministry of labour or any government employment agency; therefore, their labour rights are inexistent. They depend on the sole 'human resources management' approach of their employers (farm owners) who themselves, as underscored above, are unknown to the authorities.

The particular issue of employment regulation is related to a historic event. In the colonial period, legal pluralism was accepted by the French colonial administration. In such context, customary laws of the indigenous African communities were allowed alongside the received rules. This mechanism has been the pattern of the legal environment in most western colonies in sub-Saharan Africa.⁵³² Indeed, as Berry notes, in attempting to construct stable, workable administrative systems in Africa, officials sometimes sought to preserve traditional structures of authority, sometimes to recognise or completely create them.⁵³³

Legal pluralism as the legacy of colonisation still exists in some African countries. In colonial Ivory Coast, customary contract between cocoa farmer and labourers existed. As Groff rightly notes, the customary agreement known as '*abusan*, is a type of a labour contract that came to dominate during the colonial period, the relations between farmers in the cocoa communities of the south-eastern Ivory Coast and their migrant labourers.⁵³⁴ The term *Abusan* meaning division in thirds in Asante (an ethnic group in south-western Ghana and south-eastern Ivory Coast) consist of an agreement whereby the labourer promises to take over responsibility for all or part of a farm for a set period, usually a year. During this period, the labourers perform all the tasks necessary for the maintenance of the farm and the harvesting and preparation of its product.⁵³⁵ Though the labourers remain free in this type of relations with the guarantee to keep the proceeds from the sale of one-third of the crop he harvests, they are adjuncts of the domestic group of their employers. Indeed, by providing the

⁵³² See Sam K Amoo and Sidney L Haring, 'Property rights and lands reform in Namibia' in Ben Chigara (ed) '*Southern African Development Community Land Issues: Towards a New Sustainable Land Relations Policy*' (Routledge, London 2012) 238, 239.

⁵³³ See Sara Berry, '*No condition is permanent: The social dynamics of agrarian change in Sub-Saharan Africa*' (The University of Wisconsin Press, Wisconsin 1993) 18, 27.

⁵³⁴ See David Hutson Groff, '*The development of capitalism in the Ivory Coast: The case of Assikasso, 1880-1940*' (Ph.D. thesis, Salford University 1980) 365.

⁵³⁵ *Ibid.*

workers with food, lodging, and other forms of care, the employers become their de facto paterfamilias.⁵³⁶

After independence from French colonial rules, Ivory Coast abandoned legal pluralism. Thus, customary laws could not stand in the legal system which paradoxically was the systematic transposition of the French legal system. For example, polygamous marriages, a characteristic trait of most indigenous African communities, is no more recognised in the Civil Code whereas the legal pluralistic system of the colonial era permits it. Hence, the customary labour contract remains until this day as the dominant form of labour organisation for cash crop production. It appears that the successive governments of Ivory Coast have tacitly allowed the practice instead of bringing cocoa farming activities under the labour code.

In the context of non-regulation and children engaged in the child labour practice, find themselves in the worst environment. The inexistence of records concerning farmers and their employees puts the government and NGOs in a complex situation when it comes to tackling child trafficking and child labour. As a result, the magnitude of child labourers on cocoa farms is difficult to establish and, therefore, the estimates usually provided by the government, NGOs, and the ILO could be regarded as inaccurate figures.

It is worth noting that Ivory Coast enjoyed political stability and steady economic growth thanks to policies that stimulated agricultural developments with a strong focus on cash crops namely cocoa and coffee.⁵³⁷ The farms were not large plantations, but small landholdings, many in the hands of migrant farmers coming from other parts of Ivory Coast or neighbouring countries. Although, under the laws of Ivory Coast the land belongs to the State, the government had always put in practice accepted customary laws, which held that land belonged to the lineage of the people who first settled and cultivated it. While the members of the lineage could not sell the land collectively owned by the lineage, they could grant use rights to anyone, including foreigners. The government encouraged customary

⁵³⁶ Ibid. at 367.

⁵³⁷ See Laurent Gbagbo, 'Côte d'Ivoire, économie et société à la veille de l'indépendance: 1940-1960' (Editions l'Harmattan, Paris 1979) 128.

holders to lend land to those who would make it productive, and liberal immigration policies resulted in foreigners settling in Côte d'Ivoire by the millions.⁵³⁸

In 1998, with assistance from the World Bank, Ivory Coast adopted the Rural Land Law⁵³⁹, which aims to transform customary land rights into private property rights regulated by the state. Because of an extended period of political turmoil from 1999 to 2011, and lack of resources devoted to the effort, very little has been done to make the Rural Land Law a reality for most Ivoirians.⁵⁴⁰ However, quite recently, the parliament passed a law giving landholders ten years to prove their legal claim to their properties. Those unable to do so will lose their land to the state.⁵⁴¹

The theory whereby the land belongs to who cultivates it has thus prevailed for years in the agricultural sector of Ivory Coast. While such approach was based on the idea that those who are capable of undertaking farming activities (mainly cocoa farming as this constitutes the principal sources of economy for the country) should do it without restriction, the authorities fail to regulate and modernise the sector. The rudimentary practices remained and also failed to regulate the sector in order to align it with other sectors that have their particular codes.⁵⁴² Hence, while the industrial and business sectors became the focus of attention for legislation, the agricultural sector became the most appalling sector in terms of human rights violation in general and labour rights in particular.

While the government proudly presented cocoa and coffee sectors as the foundation of the economy, it paradoxically became the terrains for all exploitations. For example, as the authorities barely know about the existence of farms across the country, the purchase of cocoa beans is left to the middle men who go around the country to buy cocoa beans on remote farms. Consequently, as an Ivorian cocoa farmer observes, 'the middlemen will buy the cocoa but will not give as good a price as they will be keeping some of the money for

⁵³⁸ See the USAID, Property rights and resource governance at [http://usaidlandtenure.net/cote -divoire](http://usaidlandtenure.net/cote-divoire), accessed 22 January 2014.

⁵³⁹ The 1998 Rural Land Law (Loi relative au domaine foncier rural, Loi n°98-750 du 23 décembre 1998 modifiée).

⁵⁴⁰ Ibid.

⁵⁴¹ *Loi n°98-750 du 23 décembre 1998 relative au domaine foncier rural.*

⁵⁴² Sectors such as mining, investment, and energy have been codified. There could have been an Agricultural code addressing every specific issue pertaining to the sector.

themselves. Our co-operative sells the cocoa directly to Nestlé, which is good for us. The middlemen have no relationship with the growers, they just come, buy the cocoa, and leave, they do not care what happens.’⁵⁴³

Again, the problem of structuration and regulation is underscored at the stage where farmers should be enjoying the fruits of their labour. The critical nature of the problem prompted several observers including the *Front Populaire Ivoirien* (FPI) proposed a new politic of agricultural development. In five major points, the then unofficial party proposed the new approach needed for farmlands. One of the primary points related to farmland registration.⁵⁴⁴ The authorities did not take into consideration the propositions made by the FPI although they were deemed adequate remedies to solve many of the problems plaguing the agricultural sector of the country.

4.2.2 The registrations of birth and death: the state of the Ivorian *Etat Civil*

Birth registration can be referred to as the process whereby a government agency officially documents a child’s birth in a civil register. The issue of birth registration in the general debate about child labour on Ivory Coast cocoa farms is of relevance in that it plays an important part in the persistence of the practice. Noteworthy, unregistered birth is a typical problem in most developing countries. Indeed, as Kenneth et al. observe, most people in Africa and Asia are born and die without leaving a trace in any legal record or official statistic. Absence of reliable data for births, deaths, and causes of death are at the root of this scandal of invisibility, which renders most of the world’s poor as unseen, uncountable, and hence uncounted.⁵⁴⁵

The concept of birth registration as fundamental human rights is enshrined in the 1998 United Nations Convention on the Rights of the Child. Article 7 provides that ‘The Child shall be registered immediately after birth and shall have the right from birth to a name, the right to

⁵⁴³ See Fairtrade foundation, ‘Got a question about Fairtrade cocoa farming? Kouame answers’ at http://www.fairtrade.org.uk/products/chocolate_products/cocoa_farming_qa_with_kouame.aspx, accessed 22 March 2014.

⁵⁴⁴ See Front Populaire Ivoirien (FPI), ‘*Propositions pour gouverner la Côte d’Ivoire*’ (Editions l’Harmattan, Paris 1987) 78, 79.

⁵⁴⁵ Kenneth Hill et al, ‘A scandal of invisibility: making everyone count by counting everyone’ (2007) 370 *The Lancet* 1726, 1735.

acquire a nationality and as far as possible, the right to know and be cared for by his parent.⁵⁴⁶ The UNICEF observes in the particular context of Ivory Coast, ‘that low-birth registration rates in Ivory Coast, where in some parts of the country more than half of all children are undocumented, is taking a toll on children's right to education. Forced out of school because of their legal status, some children are forced to work rather than continue their schooling.’⁵⁴⁷

In the early years of its independence, Ivory Coast passed laws related to the registration of births and deaths. *Loi n° 64-374 du 7 octobre 1964, relative à l'état civil, modifiée par la loi n° 83-799 du 2 août 1983*, regulates the registration procedure and the keeping of civil registry. Meanwhile, the 1964 law did make birth and death registration compulsory. Thus in 1999, ‘*loi n° 99-691 du 14 decembre 1999 portant modification de la loi n° 64-374 du 7 octobre 1964 relative a l'etat civil*’ was passed to amend the previous legislation in some of its articles. Article 41 of the legislation made the registration of births compulsory within three months from the child’s birth. The new approach was seen as an innovation concerning growing concerns about the situation of millions of children unaccounted for by the authorities.

In Ivory Coast, there are many reasons why a child cannot be registered at birth. For instance, a great number of children born in rural areas are born at home with the help of a senior woman called *metronome*. Rather than been born in a medical centre, where essential information about the birth are logged into a register in order to be transferred to the civil registrar children ae born unnoticed by the authorities. It is obvious that the registration systems do not extend to rural areas because civil registry offices are usually centralised in capital cities and other urban areas. However, parents of newborn children should find a way of reaching local authorities for the registration of their children.

The formal identification of residents in Ivory Coast, particularly people living in rural areas, is a challenge. A study conducted by Norwegian Refugee Council (NCR) found that there are several cultural and administrative obstacles in the way of modernising the civil registry in rural areas. The NCR cited Veit Vogel, the Country Director of NCR, in regard to the f birth

⁵⁴⁶ Convention on the Right of the Child, United Nations Treaty Series, vol. 1577, p.3.

⁵⁴⁷ See UNICEF: Improving birth registration practices to secure schooling in Ivory Coast, http://www.unicef.org/media/video_49966.html, accessed 22 January 2014.

registration. Veit Vogel asserts that ‘if parents do not see the interest in registering their newborn within the first three months of life when it is compulsory, this will require two additional court decisions, causing the registration to become an expensive affair bearing resemblance to an obstacle course.’⁵⁴⁸ For instance, in the neighbouring Ghana, where birth registration is also compulsory under the registration of Births and Death Act, (1965) a survey has shown that the reasons for not registering a child were the high cost of registration (31.9%), distance to registration locations (21%) and lack of awareness that children should be registered (20%). Birth registration campaign activity in Ghana has focused on such factors.⁵⁴⁹

The recent move of the authorities to make birth registration via mobile is a project intitled ‘Môh Bi Nah.’ It is an attempt to find a definite and permanent solution to the endemic issue of non-registration of child birth.⁵⁵⁰ While such moves have proven necessary in the neighbouring Liberia for the purpose of state building⁵⁵¹, in the context of Ivory Coast, it seems complex in that the authorities did not address the root causes of the persisting practice of the non-registration of child birth in rural areas. The central issues of child exploitation and child labour remain unaddressed in Ivory Coast. Both the registered children and non-registered children remain trapped in cocoa farms. In the light these facts, it must be emphasised that a child not registered at birth remains vulnerable and prone to exploitation. The children’s identity can be easily falsified for the purpose of child trafficking, child labour and other exploitative purposes.⁵⁵²

⁵⁴⁸ See Norwegian Refugee Council, ‘Number of formal birth registrations remains low’ http://www.nrc.no/?did=9129394_br, accessed 24 August 2014.

⁵⁴⁹ Sonja Fägemas and Joyce Odame, ‘Birth registration and access to health care: an assessment of Ghana’s campaign success’ (2013) 91 World Health Organization. Bulletin of the World Health Organization 459.

⁵⁵⁰ Môh Bi Nah, the hope, will help produce a better birth registry in Ivory Coast. That, in turn, might permit more efficient planning for health, education and rural development. Apropos of such optimism, ‘Môhni bah’ is an expression in central Ivory Coast’s Baoulé dialect that is used when congratulating a family on their new born baby. See <http://www.rnw.nl/africa/article/registering-births-ivory-coast-now-possible-sms>, accessed on 22 July 2014.

⁵⁵¹ See Tuulia Virhjä et al., ‘Mobile Solution for Birth Registration in Liberia: A case Study of Using ICT in Statebuilding’ (2010) 2010 Ninth International Conference on Mobile Business and 2010 Ninth Global Mobility Roundtable (ICMB-GMR) pp. 448, 452.

⁵⁵² Cristina Barrios, ‘From aid manager to diplomatic power? The EU’s role in addressing state fragility in Ivory Coast’ See document at http://www.fride.org/download/PB_102_Ivory_Coast.pdf, accessed 22 January 2014.

4.2.3 Revisiting the Issue of Enforcement

As stated hereinbefore, Ivory Coast has a satisfactory record of ratification of ILO Conventions. More significantly, the domestication process of international legal instruments referred to in Chapter 3 can be regarded as a favourable mechanism for the building of a strong legal system in Ivory Coast. Indeed the positive response of the country to ILO Standards *per se* could suffice to forecast a sound labour environment within the next two decades. However the country faces various challenges when it comes to the enforcement of the domesticated laws. It is evident that implementation alone cannot suffice in an attempt to fully apply the law. Enforcement must be effective in order to complete the whole process and this is what makes the essence of the imperative forms of the law.⁵⁵³

In the context of Ivory Coast it appears that the various issues analysed in previous sections of this chapter are the contributing factors to the predicaments of the country. Indeed, owing to the lack of training the enforcement authorities in most cases fail to carry out their duties or promulgated laws are simply not enforced. The main issues militating in favour of such state of affairs remain the hampering traditional realities, the lack of public awareness, the issues of governance characterised by extreme corruption, lack of accountability, and the persisting deficiencies in democratic control. The irony in the service of justice is often apparent at the stage of law enforcement. For instance, in the case of child labour, while several cases of prosecutions against child traffickers exist, there seem to be no prosecution against farm owners using child labourers. Yet it is understood that child traffickers and farmers using child labourers equally contribute to the enduring of child labour in Ivory Coast's cocoa industry.

Conclusion

The Ivory Coast's development strategy appears to be less dynamic in that the balance between different types of agricultural productions was not planned. Such approach has favoured the expansion and the perpetuation of child labour since farmers have to rely on a

⁵⁵³ See Herbert L A Hart, 'The Concept of Law' (2nd ed Oxford University Press, Oxford 1994).

sector that require a considerable number of labourers in order to achieve their production target. More and more peasant families were being lured out of subsistence agriculture and enticed into cash-crop production by the attractive prices they could earn selling their output to the state marketing board.⁵⁵⁴ Thus among other factors, the development strategy contributed to the increase of child labour and the perpetuation of the practice.

Despite the enriched legal environment for combatting child labour on Ivory Coast's cocoa farms the phenomenon endures. The apparent status quo leads to the understanding that legislation is not the only approach to combatting the practices. Taking into consideration the unique characteristic of the child labour practice on Ivory Coast's cocoa farms it became evident that the cultural arguments and other prevailing arguments remained unaddressed in the general debate about child labour in the cocoa industry. This chapter attempted to underscore the fundamental factors in order to appeal to the state and all other stakeholders in the cocoa industry. The approach taken in going about this chapter *per se* indicates that the phenomenon of child labour in Ivory Coast embodies both traditional and economic rationales.

There was high expectation from actions undertaken through policy reponse to child labour in Ivory Coast. However, little was achieved in terms of significant decrease in the magnitude and satisfactory contribution to the MDGs. There seems to be little attention paid to the issue of child rights in the whole debate. As stated elsewhere, while child labour endures, the fundamental rights of thousands of children are violated on a regular basis. Hence, an analysis of the impacted rights is deemed necessary in order to appeal to all the stakeholders in the Ivory Coast cocoa industry.

⁵⁵⁴ John Rapley, *Ivoirien Capitalism: African entrepreneurs in Côte d'Ivoire* (Lynne Rienner Publishers Inc., Boulder 1993) 69.

Chapter 5

Impacts of Child Labour and Child Trafficking on the Child's Human Rights: An Analysis of some Critical Ethical Issues for Ivory Coast

*‘‘Where, after all, do universal human rights begin? In small places, close to home – so close and small that they cannot be seen on any map of the world... Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere’’*⁵⁵⁵

Introduction

This chapter examines the impacts of the child labour practices on the rights of the child. It focuses on the nature of the impacts in the particular context of the child labour practice on Ivory Coast cocoa farms. The chapter shows that child trafficking is without doubt an underlying issue to the phenomenon of child labour in Ivory Coast.

In the first section, this chapter analyses the strong link between child trafficking and child labour. Child trafficking being an underlying factor to child labour in the situation of child labourers in Ivory Coast, it is necessary to understand the practice and the relevant standing legal frameworks. In the second section, this chapter examines the various rights of the child that are impacted by the fact of child labour practices. The third section analyses the responsibility of the different actors involved in the child labour practice in Ivory Coast's cocoa industry.

5.1 Corroded Rights

5.1.1 The Right to Life

The protection of the right to life is paramount in the existence of every human being. Hence, the denial or any attempt to deny such rights becomes problematic. All the core international human rights instruments as well as the regional and sub-regional instruments have placed

⁵⁵⁵Eleanor Roosevelt (1884-1962) First lady of the United States, Chair of the UN Commission on Human Rights.

emphasis upon the importance to promote and protect the rights to life. For instance, the right to life for everyone is guaranteed by Article 3 of the Universal Declaration of Human Rights (UDHR).⁵⁵⁶

It is understood that the term ‘everyone’ is univocal in this context. Indeed it does mean that without distinction whatsoever the right to life is recognised for each individual regardless of his or her race, nationality, sex or social background.⁵⁵⁷ Most significantly, Article 6(1) of the United Nations Convention on the rights of the Child (CRC) explicitly endorses that States parties recognise the right to life for every child.⁵⁵⁸ Therefore, the State party to the Convention would have agreed to be bound by the letter and the spirit of the provision regarding the recognition of such a substantive right. Article 2(1) of the European Convention on Human Rights (ECHR) also guarantees the right to life in the regional arena.⁵⁵⁹

Other human rights instruments also promote the right to life. For instance, Article 6 of the International Covenant on Civil and Political rights (ICCPR) asserts that every human being has the inherent rights to life, and that law must protect right. The right to life is inherent to every human being. It cannot be dissociated from the individual. The ICCPR emphasises the necessity to promote and safeguard the right to life in a legal framework in order to prevent anyone being deprived of it arbitrarily.⁵⁶⁰ This imperative is echoed by Article 5 of the African Charter on the Rights and Welfare of the child,⁵⁶¹ Article 4 of the African Charter on

⁵⁵⁶ Article 3: ‘Everyone has the right to life, liberty and security of person.’

⁵⁵⁷ This appeal to societies that, on the basis of custom and traditional believes, practice human sacrifices or honour killing.

⁵⁵⁸ Article 6(1): ‘States Parties recognize that every child has the inherent right to life.’

⁵⁵⁹ Article 2(1): ‘Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.’

⁵⁶⁰ Article 6 ‘Every human being has the inherent rights to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.’

⁵⁶¹ Article 5 (1) ‘Every child has an inherent right to life. This right shall be protected by law.’

Human and People's Rights,⁵⁶² As well as Article 4 of the American Convention on Human Rights.⁵⁶³

Remarkably, the International and the regional legal instruments alike are unambiguous in regards to safeguarding the right to life for every human being. Therefore, in the light of the key provisions of the legal instruments hereinbefore alluded to, children as human beings must have their right to life well promoted and protected too. It is observed that child labour and child trafficking, wherever they are practiced, often jeopardise children's right to life. The harsh working conditions and lack of adequate nutrition threaten the right to life. Thus, more than a mere impact of the life of the child involved in child labour or trapped in trafficking, the right to life is threatened.⁵⁶⁴

5.1.2 The Rights to Education

The most impacted right by child labour or child trafficking is without doubt the right to education. The right to education is sacrosanct in nature within any modern society. From a functionalist perspective, institution such as, education is, among other, part of the social system, and it acts to bring about social order.⁵⁶⁵ It, therefore, becomes a matter of serious concern when such institution is threatened by phenomena like child labour or child trafficking. The right to education for a child is promoted and protected by most human rights instruments at both international and regional levels.

The right for everyone to access education is stipulated in Article 26(1) of the Universal Declaration of Human Rights.⁵⁶⁶ From a human rights perspective, the UDHR's affirm that education shall be free and compulsory at the elementary and fundamental stages. This idea is loudly echoed by the United Nations Convention on the Rights of Child. Article 28 of CRC

⁵⁶² Article 4 provides that: 'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.'

⁵⁶³ Article 4(1) 'Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.'

⁵⁶⁴ See Douglas Hodgson, 'The child's right to life, survival and development' (1994) 2 *The International Journal of Children's Rights* 369, 394.

⁵⁶⁵ See Whitney Hope, 'Durkheim as a functionalist' (1975) 16 *The Sociology Quarterly* 361, 370.

⁵⁶⁶ Article 26(1) 'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.'

underscores the fact that States parties recognise the right of the child to education. Therefore, in order to achieve the full expression of this right, they should be aware of the principle of equal opportunity by making primary education compulsory and free for all.⁵⁶⁷ Article 2 of the first protocol of the European Convention on Human Rights⁵⁶⁸ urges all signatory parties to guarantee the right to education.

Equally, Article 13 of the International Covenant on Economic, Social and Cultural Rights, stipulates that States parties to ICESCR recognise the right to free and compulsory primary education for all.⁵⁶⁹ Most importantly, the ICESCR draws the States parties' attention to the fact that education shall be directed to the full development of the human personality and the sense of its dignity. Furthermore, education shall enable all persons to participate effectively in a free society. Indeed, as a future participant to a free society, the child can be taught social values, as well as better understanding of his human rights. In that respect, Covell et al. write that Children's rights to education is empowering because it is about the rights of children themselves in the here and now, not the right of distant others, or the rights children will acquire once they become adults.⁵⁷⁰

The African Charter on the Rights and Welfare of the Child goes further to emphasise that the education of the child shall be directed to the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential. Moreover, education shall be directed to fostering respect for human rights and fundamental

⁵⁶⁷ Article 28(1a) 'States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:(a) Make primary education compulsory and available for all.'

⁵⁶⁸The Convention from the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights (ECHR).Drafted in 1950 and entered into force on 3 September 1953, Article 2 of the first protocol provides: 'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.'

⁵⁶⁹ Article 13(1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

⁵⁷⁰ Katherine Covell et al. 'Children's human rights education as a counter social disadvantage: a case study from England' (2011) 53 Educational Research 193, 206.

freedoms.⁵⁷¹ The general trend is that the right to education is enshrined in most human rights instruments. Primary education being concerned with young children; the discourse about the negative impact of child labour on the right to education, child right is crucial. Some provisions, more than stipulating the right to education, place an emphasis on the necessity of education in society. In the light of the advantages of educating children, underlined in the provision, there is no room left for soft language on child labour.

Indeed, child labour in the global context, bars millions of children from attending primary education. The UNESCO observes that ‘education is an essential tool in preventing child labour while child labour acts as an obstacle to children attending school. Universal access to education and particularly to free and compulsory education of good quality is secured until the minimum age for entry to employment. It is a critical factor in the struggle against the economic exploitation of children.’⁵⁷²

The International Labour Organisation (ILO) also admits that child labour is a barrier to education. The ILO observes that ‘the family may depend on the contribution that a working child makes to the household’s income, and place more importance on that than on education. And when a family has to make a choice between sending either a boy or girl to school, it is often the girl who loses out.’⁵⁷³ In either case, the right of the child is severely impacted by the phenomenon. Box 1 below shows figures provided by the Global Task Force on Child Labour and global Education⁵⁷⁴ In regard to the magnitude of children left out of education

⁵⁷¹ Article 11(2b) ‘fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples’ rights and international human rights declarations and conventions.’

⁵⁷² See UNESCO, ‘Child Workers’ at <http://www.unesco.org/new/en/education/themes/strengthening-education-systems/inclusive-education/child-workers/> accessed 1 August 2013.

⁵⁷³ See ILO: *World Day Against Child Labour 2008: Education: The right response to child labour* at <http://www.ilo.org/ipec/Campaignadvocacy/wdacl/2008/lang--en/index.htm>, accessed 2 July 2013.

⁵⁷⁴ In November 2003 the first Inter- Agency Round Table on Child Labour and Education was organized during the annual meeting of the UNESCO High-Level Group on EFA in New Delhi. The Round Table issued a joint statement, the New Delhi Declaration, calling for greater co-ordination between initiatives and resources directed towards providing quality education for all children and eliminating child labour. In order to promote this enhanced co-ordination and to move the agenda forward in terms of linking work on child labour and education, a number of organizations proposed the formation of a Global Task Force on Child Labour and Education for All. The Global Task Force on Child Labour and Education for All (GTF) was subsequently endorsed and launched during the Education for All High-Level Group meeting held in Beijing in November 2005. See ILO, <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=5384>, accessed 2, July 2012.

due to child labour. The alarming impact of child labour on the children right to education led to the Global task force asserts that:

‘The right to education occupies a central place in human rights and is essential for the exercise of all other human rights and development. As an empowerment right, education is a key vehicle through which economically and socially marginalized children, youth and adults can lift themselves out of poverty and obtain the means to participate fully in their communities.’⁵⁷⁵ Indeed, education is the most adapted and reliable means for every society to get on the track of social and moral fulfilment. Education creates an environment for smooth social interactions, clear understanding of complex issues and situations.

Beegle et al. assert that ‘it is not clear whether child labour substantially displaces schooling.’⁵⁷⁶ Such an assertion is indeed an attempt to question the impact of child labour on schooling. Moreover, they argue that ‘in rural settings of developing countries, both schooling and child labour tend to be low-intensity activities in comparison with the sweatshop and full-time work that characterise child labour in the popular imagination and which have existed historically in some urban setting in North America and Europe.’⁵⁷⁷ On the issue of child labour impact on schooling, there ought not to be doubt that whatever the number of children affected, the central issue remain the deprivation of the right to education.

Indeed, child labourers have greater difficulty in going to school. Child labour is associated with higher levels of school non-entry, delayed school entry and early school leaving. Child labour is associated with lower levels of academic performance as working children tend to attend less school, and if they do attend, they may enter late and leave early. Work intensity is also likely to be negatively associated with educational outcomes. Work and education are activities competing for children’s time and the probability of attending school declines with an increase in hours spent in child labour.⁵⁷⁸

⁵⁷⁵ Ibid.

⁵⁷⁶ Kathleen Beegle et al. ‘Why Should We Care About Child Labour? The Education, Labour Market, and Health Consequences of Child Labour’. The International bureau of Economic research, working paper 10980, December 2004 available at <http://www.nber.org/papers/w10980>, accessed 4 July 2013.

⁵⁷⁷ Ibid.

⁵⁷⁸ See Alessandro Cigno and Furio C Rosati, *‘The Economics of Child Labour’* (Oxford University Press, Oxford 2005).

Involvement in hazardous economic activity appears to confer further educational disadvantage in terms of school attendance with a possible impact of child labour involvement on the ability of children to learn effectively once in the classroom. It makes sense that the exigencies of work limit the time and energy children have for their studies, in turn negatively influencing their academic performance.⁵⁷⁹

The Impact of child labour on the right of the child to education is remarkable in the particular context of Ivory Coast. This predicament has been pertinently observed by the Congressional Research Service, in a report for the US Congress. In relation to education the study found that in Ivory Coast, one-third of school-age children (6 to 17 years) living on cocoa farms have never attended school. The children working in all cocoa farming task were less likely to be enrolled in school (34 percent enrolment rate) compared to those children who did not work (64 percent enrolment rate). Indeed in West Africa, cocoa production is labour intensive thus the chance for a child to combine education and work on the cocoa farms is nil.⁵⁸⁰ Although the most recent statistics provided in 2011 show that the school enrolment for primary education has improved, significant progress is still needed (see box below) to reach percent mark.⁵⁸¹ From a logical perspective, 100 percent enrolment will imply that no child of primary school age was left out of school to be trapped in child labour.

Figure 5.1: Primary school enrolment in Ivory Coast



Source: The World Bank⁵⁸²

⁵⁷⁹ UNICEF, *The twin challenges of eliminating child labour and achieving EFA: evidence and policy options from Mali and Zambia*, Understanding Children's Work programme working paper series April 2009.

⁵⁸⁰ See CRS Report for Congress, 'Child Labour in West African Cocoa Production: Issues and U.S. Policy'(2005) available at <http://digital.library.unt.edu/ark:/67531/metacrs9107/>, accessed 4 July 2013.

⁵⁸¹ In the same year the NGO 'Save the Children' reported that there are still millions of children out of school in Ivory Coast, see <http://blogs.savethechildren.org.uk/2011/05/ivory-coast-thousands-of-children-still-out-of-school/>, accessed 8 July 2013.

⁵⁸² See <http://data.worldbank.org/country/cote-divoire>, accessed 1 August 2014.

Equally, child trafficking has a devastation impact of the full expression of the right to education in that the children displaced from their usual environment are not given the opportunity to attend school. The purpose of trafficking being exploitation, there is a strong probability that the child's right to education is denied. Children trafficked from neighbouring Mali and Burkina Faso, for the purpose of work on cocoa and coffee farms in Ivory Coast, might not attend school.⁵⁸³

5.1.3 The Right to Health

From a human rights perspective, the degradation of the child's health, as a result of child labour amounts to an infringement to his rights to health. The right to health for every human being is guaranteed by most human rights instruments. The right to health for everyone is guaranteed by Article 25(1) of the UDHR.⁵⁸⁴ The right to health is closely connected to the rights to life in that the lack of good health threatens the life itself. Therefore, any activity or any attempt toward the violation of the right to health poses a potential risk for the right to life. The right to health is also promoted by the CRC, which requires States Parties to guarantee the right of the child to the enjoyment of the highest attainable standards of health.⁵⁸⁵

The emphasis on the highest standard of health for the child evidences the poor record of child health worldwide as a result of various child abuses, including child labour, child trafficking, and other social issues. At the regional level, the African Charter on the Rights and Welfare of the Child has emphasised the necessity to guarantee the right of the child to health. Equally, the Charter urges States Parties to take the necessary measures in order to guarantee the best attainable state of physical, mental and spiritual health for the child.⁵⁸⁶

⁵⁸³ Ibid.

⁵⁸⁴ Article 25(1) 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.'

⁵⁸⁵ Article 24(1) 'States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.'

⁵⁸⁶ Article 14(1) 'Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.'

Indeed, the concept of the worst forms of child labour characterised by ILO Convention No 182 helps to focus attention on children's right to health, as well as on the work they perform. These forms of child labour are not only the most intrinsically harmful, but they are also the ones that are performed by the most vulnerable children. The boundaries of hazardous work are, therefore, not always easy to draw, especially when the harm done to children cannot be detected in the short term.

The general evidence is that, wherever the child performs it in the world, work may harm a child through the task itself; the tools used, the hours or conditions of work, or any other factor that affects his or her physical, mental, emotional, psychological, moral or spiritual development. Health and safety hazards for workers under the age of 18 are greater than those for adults. Because of their process of growth and development, children are more susceptible to occupational hazards, and exposure to dust, chemicals and other substances, as well as physical strain, and this can cause irreversible damage to their growing bodies. Chronic physical strain on growing bones and joints causes stunting spinal injury and other lifelong deformations.

Moreover, tasks that are harmless for well-built, well-fed children may harm those who are malnourished. To some extent even, light work can be dangerous for children who become exhausted at the end of a long working day. Lack of maturity and experience may lead children to take or accept risks that their older colleagues would know to avoid, and machinery and tools designed with adults in mind are unlikely to be adapted to the physical and mental capacities of younger workers. There may be other, less obvious, but nonetheless debilitating effects on children of work that, at first sight, appears innocuous, such as heatstroke incurred through long hours herding animals or exposure to agrochemicals through vegetable cultivation.⁵⁸⁷

The analysis of these general patterns of health hazards, encountered by children while undertaking diverse works, leads to the conclusion that children are an endangered social category in any place of the globe where child labour is practiced. The particular case of child labour on cocoa and coffee plantations in Ivory Coast, which is the subject of this research, does not constitute an exemption.

⁵⁸⁷ See The report of the director-general, '*A Future Without Child Labour*' Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (International Labour Office, Geneva 2002).

Boyden states that, “it certainly cannot be presumed that the effects of work on children are the same as those on adults; there being major physiological, psychological, and social differences between the two groups which significantly influence susceptibility to hazards.”⁵⁸⁸ According to Boyden, because of their immaturity and because they are in a state of growth and development, children may be seriously jeopardized by work which presents little or no risk to adults.⁵⁸⁹

It is demonstrated that children have a relatively higher level of energy expenditure than adults and energy lost through work can, therefore, jeopardise healthy growth and development. Moreover, children are not physically suited to undertaking long hours of strenuous or monotonous work. Children are more susceptible to accident and injury than adults. Carrying heavy loads or being forced to adopt unnatural positions at work can lead to deformation of the spinal column and sometimes of the pelvis.⁵⁹⁰

The realistic aspect of the debate ought to be an emphasis on the fact that children being still in the growing process have particular characteristics and needs that must be taken into consideration. Children differ biologically from adults due to the rapid growth and development of the organs and tissues and the body as whole. Children and adults also differ in terms of body composition, which in children entails a larger surface area in relation to weight. They have a higher metabolic rate and oxygen consumption and, therefore, a greater intake of air and greater energy and fluid requirements per unit of body weight.⁵⁹¹ The adverse effect of child labour on the health of the children exploited on cocoa and coffee farms in Ivory Coast raises the question of the constant violation of the child’s right to health.

5.1.4 Other Impacted Rights

The Right of the Child to Family Life

⁵⁸⁸ Jo Boyden, B Ling and W Myers, ‘*What works for working Children*’ (UNICEF, 1998) 87.

⁵⁸⁹ Ibid.

⁵⁹⁰ Ibid.

⁵⁹¹ See Mark H Pollack, Michael W Otto and J F Rosenbaum, ‘*Challenges in Clinical Practice: Pharmacologic and Psychosocial Strategies*’ (The Guilford Press, New York 1996). See also Alex F Roche, and Shumei S Sun, ‘*Human Growth Assessment: an interpretation*’ (Cambridge University Press, Cambridge 2005).

Article 16(3) of the UDHR describes the family as the natural and fundamental group unit of society. The African Charter on the Right and welfare of the Child (ACRWC) echoed this principle.⁵⁹² Article 20(1) of the CRC goes further to stipulate that: “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

Whether the child’s right to family life is protected within the family environment or by the State, Article 27 requires States Parties to promote and protect the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. Thus, article 18(1) of ACRWC provides that the family shall enjoy the protection and support of the State for its establishment and development. In the light of this approach, it is understood that the right for the child to a family life is paramount as stipulated in article 3 of UNCRC.⁵⁹³

Child trafficking is the most critical issue in the discourse about the right of the child to family life. This right is severely impacted when children are displaced from their birthplace and the cocoon of the family to destinations from which they might never return.⁵⁹⁴ Most children trafficked from Mali and Burkina Faso for child labour on Ivory Coast cocoa and coffee farms are often cut off their biological parents. A typical example of such a case is the case a boy aged 11 who has not seen his father for three years.⁵⁹⁵ The most concerning fact is that there is no guarantee that alternative arrangement will be made to alleviate the impact of the premature break off with the family environment. Consequently, not only are they deprived of the right to family life but they are also subjected to emotional and mental trauma.

⁵⁹² Article 18(1) ‘The family shall be the natural unit and basis of society. it shall enjoy the protection and support of the State for its establishment and development.’

⁵⁹³ Article 3: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’

⁵⁹⁴ Peace Tetteh, ‘Child Domestic Labour in (Accra) Ghana: A Child and Gender Rights Issue?’(2011) 19 International Journal of Children’s Right 217, 232.

⁵⁹⁵ Humphrey Hawksley, ‘Ivory Coast cocoa farms child labour: Little change’ *BBC NEWS AFRICA* (10 November 2011) <<http://www.bbc.co.uk/news/world-africa-15681986>> accessed 6 March 2014.

The right of the child to rest, leisure, play and recreation

Children engaged in child labour are often denied enough rest and opportunity to undertake any recreational activity. Such a right is guaranteed under most human rights instruments. For instance Article 12(1) of the ACRWC stipulates that: ‘States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to freely participate in cultural life and the arts.’ Equally, the right of the child to leisure is recognised under Article 31(1) of UNCRC.⁵⁹⁶ The work environments on cocoa and coffee farms have no leisure facilities for the children. They often work long hours without rest. In some circumstances, children have to walk very long distances to reach farms. This vital right in the well-being and the development of the child is denied.

The condition of child labourers on cocoa and coffee farm in regard to the deprivation of the right to leisure and rest is identical to that of Child Domestic Workers (CDWs) described in the study of Tetteh. The author writes that:

CDWs work very long hours with no time for rest. No matter the class of family in which domestics are employed, they are the first to wake up (most did at 4am) and the last to go to bed (mostly at 10pm or afterwards) when other members of the household have already retired to bed. CDWs are on call 24/7, awoken sometimes from their sleep to come and attend to needs of their employer or other members of the household. Opportunities for recreation, play and leisure are limited. Indeed some CDWs mention that an employer hates to see them idle for a moment; they are immediately given work to do. The only time of rest perhaps is when an employer is himself/ herself asleep. Should the family go out of the home for recreation, CDWs are usually taken along not as participants, but to go and work and continue in service to the employer (carrying their bags etc.).⁵⁹⁷

The various rights of the child have been unanimously recognised by almost every country of the globe yet violations of child rights occur on a frequent basis. The particular case of Ivory Coast is recurrent and dynamic due to the nature of the environment where such violations occur. Child labour on cocoa and coffee farms are indubitably detrimental to the expression of the child’s various rights. From substantive rights to other rights recognised by any human being, grave violations are commonplace. The intriguing fact is that Ivory Coast has ratified

⁵⁹⁶ Article 31(1) ‘States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

⁵⁹⁷ Peace Tetteh, ‘Child Domestic Labour in (Accra) Ghana: A Child and Gender Rights Issue?’(2011) 19 International Journal of Children’s Right 217, 232.

all the existing international and regional, legal instruments. Based on the letter and the spirit of Paragraph one of Article 2 of the Ivorian Constitution, ‘‘the Human Person is sacred.’’⁵⁹⁸ Paragraph 2 stipulates that ‘‘they enjoy inalienable rights to life.’’ Paragraph four provides that ‘‘any punishment to deprive human life is prohibited.’’ These constitutional provisions are clear evidence of the awareness to the principle of ‘‘right to life.’’

Moreover, Article 3 of the Ivorian Constitution states that ‘‘slavery; forced labour, human degradation and humiliating treatment, physical or moral torture. Physical abuse, mutilations and all forms of debasement of human beings are prohibited and punishable by law’’ yet most such practices are inflicted to children in the process of child labour.

Since the 1960s, in the early years of the country’s political independence from France, the Ivorian authorities placed education on the list of priorities and demonstrated a determination to provide 100 percent education and school attendance for children in the country. To attain this objective, about 44 percent of the national budget was allocated to education every year. This approach was reaffirmed by the Constitution of 1st August 2000 whereby free education and the obligation of the State to provide equal access to education for all children of the country was underscored.

In a context where poverty is presented by parents as the main reason for the use of their children on farms and plantations, it is the right approach to make primary education compulsory. Hence, to ensure that the situation of poor parents does not undermine the provision of a minimum level of education to their children, school textbooks were distributed to public schools. This policy, implemented since the independence of Ivory Coast, was put on hold due to the economic decline of the country in the late 1980s and through to the early 2000. Meanwhile, it was restored in the school year 2001/2002 under the government of President Laurent Gbagbo.

Unfortunately, the military and political crisis of 19 September, 2002 compelled the State to suspend the programme once again. The programme was re-introduced during the school

⁵⁹⁸ Article 2 ‘The individual is sacred. All human beings are born free and equal before the law. They enjoy inalienable rights, namely the right to life, freedom, the development of their personality and respect for their dignity. The rights of the individual are inviolable. Public authorities have an obligation to respect, protect and promote the individual. Any sanction leading to the deprivation of human life is forbidden’. See the Constitution of Ivory Coast at http://www.geneva-academy.ch/RULAC/pdf_state/Consitution.pdf, accessed 1 August 2013.

year 2011/2012, but it has yet to be effective. Indeed, the effectiveness of such initiatives by the State contributes to making significant progress in the global trend toward eliminating child labour and other child exploitation. However, it appears that Ivory Coast has declassified education and combat of child rights violations as priority.

The importance for Ivory Coast to take into account several factors in addressing the child rights issues resides not only in the lack of the authority to adopt an honest attitude but also to address the issues of the parents' illiteracy. In analysing the impact of child labour on children's development and their chance of gaining access to education, it must be noted that parents' lack of education has always been a contributing factor. The need for parents to understand the benefit of education in terms of schooling is as crucial as it is urgent to implement the "Education for all" scheme entirely. The low-education level of parents or the lack of primary education was one of the key factors facilitating the practice of child trafficking in West Africa.

The 2001 ILO report indicates that 'according to the children interviewed in Benin, 66 % of their parents did not have any education at all and according to the parents, this was 80 %. In Cameroon, 20 % of the fathers and 32 % of the mothers were illiterate, whereas 26 % of the fathers and 28 % of the mothers had only completed primary school. It should be noted, however, that 35 % of the children who provided these answers said that they did not know.'⁵⁹⁹

To address the critical issues of various child rights abuses, the National Monitoring Committee on Actions to Combat Slavery, Exploitation and Child Labour was set up by Decree N° 2011-366 of 3 November, 2011. It is a follow-up to Decree N° 2011-365 of 3 November 2011 on the establishment of an Interdepartmental Committee on Combating Slavery, Exploitation and Child Labour, tasked with assessing and following-up on Government actions in terms of fighting the phenomenon of slavery, exploitation and child labour.

⁵⁹⁹ International Programme on the Elimination of Child Labour, Combating Trafficking in children for labour exploitation in West and Central Africa, Synthesis Report, Based on studies of Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Gabon, Ghana, Mali, Nigeria and Togo, (International Labour office 2001).

From a theoretical perspective, this institutional framework is the appropriate response to the challenging issues. However, the dynamic nature of the phenomena and the existing clusters of the authorities' incapacity to adopt a proactive approach toward them have created a state of anarchy. Thus, the occurrence of child rights violation in the work environment through child labour is recurrent in Ivory Coast. The country's relation with the African commission of human right has been distorted for some time due to the lack of reporting.

There is documented evidence of Ivory Coast failing to uphold constitutional provisions, as well as International legal requirements in regard to human rights in general and child rights in particular. Indeed, in the 30th -activity report of the African Commission on Human and Peoples' Rights (African commission), Ivory Coast was listed among the 13 countries that have failed to submit periodic reports to the African Commission. The lack of periodic reports amounts to failure to comply with Article 62 of the African Charter on Human and People's Rights.⁶⁰⁰

Although Ivory Coast has revised its approach to the requirement of periodic reporting to the African Commission by providing subsequent reports,⁶⁰¹ there is a record of complex relationships with the commission. This alone is testimonial of the country's general profile in regard to human rights observance. The culture of human rights observance is not deeply rooted in the socio-politic ground. The situation of child labour in Ivory Coast's socio-economic environment remains the cause for failures to any test to claim the status of a human rights observing country. In such context it could be difficult to present the Ivory human rights abiding nation.

The significant point in regard to the issue of governance in Ivory Coast is noted in the constitution of 2000. The framers of the 2000 constitution elevated the Court, which until then was a judicial authority to the status of the Judiciary. This power, under the provisions of

⁶⁰⁰ See Report at http://www.achpr.org/files/activity-reports/30/achpr49_actrep30_2011_eng.pdf, accessed 26 July 2013. The 30th Activity report of the African Commission on Human and Peoples' Rights (African commission) The Activity Report describes the activities undertaken by the African Commission during the Inter-Session period between the 48th and the 49th Ordinary Sessions of the African Commission 2011.

⁶⁰¹ See Report at http://www.achpr.org/files/activity-reports/32-and-33/achpr5152_actrep32and33_eng.pdf, accessed 26 July 2013. Combined 32nd and 33rd activity report of the African Commission on Human and Peoples' Rights during the Twenty-Second Ordinary Session 21 – 25 January 2013.

Article 101 of the Constitution, is independent of the executive and legislative branches of government, and it is exercised by the superior courts, which are the Court of Cassation, the Council of State, the Audit Office, the Appeal Courts and the courts.⁶⁰²

In theory, this new organisation paves the way for effective judicial mechanisms in addressing the general human rights issues, the issue of corruption, as well as the issue of accountability. Nevertheless, the absence of any visible change in the socio-politic environment since the inception of the new constitution demonstrates that the lack of willingness to operate a real change that can be beneficial to the formation of an actual human rights abiding society.

5.2 Shared Responsibilities in the Violation of the Child's Human Rights

5.2.1 Corporations

The issue of social corporate responsibility in the cocoa industry has been associated with chocolate production in recent years. The scandal that has splashed the leading chocolate companies in the developed world is owed to the level of obedience to human rights values in most western democracies. Corporations usually find themselves trapped in the contradiction of rules in force and their highly protected interests. Their attempts to circumvent regulations have left them in constant justifications with unconvincing arguments in, debate about the responsibility of multinational corporations and the violation of the child's human rights through child labour.

It should be agreed upon that, failure to trade in the ambit and spirit of United Nation General Assembly Resolution 1803,⁶⁰³ contributes to embed abject poverty and deep moral crisis in most developing countries. Indeed, the core idea promoted by the resolution is that the right of the people and nations to permanent sovereignty over their natural wealth and resources

⁶⁰² Article 101 'The judicial power shall be independent of the executive power and the legislative power.'

⁶⁰³ See UN General Assembly Resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources" at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/NaturalResources.aspx>, accessed 31 July 2013.

must be exercised in the interest of their national development and of the well-being of the people of the State concerned.⁶⁰⁴

The issue of child labour has always been in the know of stakeholders operating in Ivory Coast's cocoa industry. A lawyer for International Labour Rights Fund, in a lawsuit against Nestlé, ADM and Cargill, observes that "*It is unconscionable that Nestle, ADM and Cargill have ignored repeated and well-documented warnings over the past several years that the farms they were using to grow cocoa employed child slave labourers. They could have put a stop to it years ago, but chose to look the other way. We had to go to court as a last resort.*"⁶⁰⁵

As stated hereinbefore, there is indubitably a dominant customary 'high profits factor,' deeply rooted in the trade. Hence, there is increasing tendency to dissipate all suspicions. A lawsuit filed in the US against three prominent corporations operating in Ivory Coast cocoa industry was the result of their bad labour and business practices. The recurring failure for the leading international companies to adopt a corporate attitude in Ivory Coast cocoa industry is well-documented. This state of affairs has prompted the International Labour Rights Forum (ILRF) to write to Nestlé in 2002, to inquire about the company's cocoa sourcing policies. This approach was also intended to encourage the company to increase transparency, pay a fair price to farmers and comply with international labour standards. As a result, Nestlé immediately referred to chocolate industry association initiatives and would not meet ILRF's demands. As a chocolate company that has traders and processing facilities directly in Ivory Coast, Nestlé is well positioned to institute higher standards of accountability, but has failed to do so.⁶⁰⁶

From the facts of the case,⁶⁰⁷ it is noted that, a suit filed in 2005 against Nestle, Archer Daniels Midland, and Cargill Companies on behalf of Malian former child slaves (the three

⁶⁰⁴ Ibid.

⁶⁰⁵ See <http://www.brandrepublic.com/bulletin/brandrepublicnewsbulletin/article/492454/nestle-faces-negative-publicity-child-labour-case-set-hearing/>, accessed 4 February 2013.

⁶⁰⁶ See http://www.nestlecritics.org/index.php?option=com_content&task=view&id=59&Itemid=1/ accessed 4 February 2013.

⁶⁰⁷ John Doe et al. v. Nestlé, S. A, Nestlé US.A., Nestlé Ivory Coast, Archer Daniels Midland Co., Cargill Incorporated Company, Cargill Cocoa, Cargill West Africa, S.A, and Corporate DOES 1-10. See <http://www.iradvocates.org/nestlecase.html/> accessed 4 February 2013.

plaintiffs reportedly aged 12 to 14 years old). The plaintiffs were trafficked from Mali into Ivory Coast and forced to work twelve to fourteen hours a day with no pay, little food and sleep, and frequent beatings. The suit charges that, through the action of their suppliers, the three companies were involved in child trafficking, torture, and forced child labour.⁶⁰⁸

The lawsuit against the cocoa companies has multiple merits. The prospect of bringing multinationals to justice for human rights abuses is usually inexistent. Indeed, the degree of leniency toward multinationals upon their frequent mischief is high in most developing countries. It is hardly defensible that, in a similar context, the road to justice for the children in a suit against Nestlé and others would have remained bleak. Not only the suit paves the way for future similar actions but it also appeals to developing countries in the sense that, they should often resort to legal means to uproot bad practices. The Ivorian authorities' inability to identify all the farmers involved in child labour in order to press charges hugely impedes the willingness of some multinationals to trade in a child labour free environment. In a November 2011 article, Barclay emphasising the willingness of Nestlé to eradicate child labour on cocoa farms, writes:

Beginning in January, the Fair Labour Association, Nestlé's new partner, will send a team of independent assessors to Ivory Coast to map the cocoa supply chain. The group has conducted similar investigations with companies in the textile, manufacturing and other industries in countries around the world. But Nestlé is the first-food company to open up its supply chain to FLA's scrutiny.⁶⁰⁹

Arguably, a shift in perception and the eagerness to portray an embellished image in the cocoa industry prompted Nestle to make the recent move. The consistency in the new approach of Nestlé to child labour on cocoa farms remains a challenge, given the complex threading of the supply chain in Ivory Coast.⁶¹⁰ Meanwhile, companies will always be highly

⁶⁰⁸ See <http://www.iradvocates.org/nestlecase.html>, accessed 4 February 2013. See also Jennifer Isern,, 'Bittersweet Chocolate: The Legality and Ethics of Child Labour in Cocoa Production in Côte d'Ivoire' (2006) 11 *Journal of Applied Management and Entrepreneurship* 15.

⁶⁰⁹ See Eliza Barclay, 'Nestle to Investigate Child Labour on Its Cocoa Farms' *NPR* (29 November 2011) <<http://www.npr.org/blogs/thesalt/2011/11/29/142891462/nestle-to-investigate-child-labour-on-its-cocoa-farms/>> accessed 4 February 2013.

⁶¹⁰ See Humphrey Hawksley, Nestlé 'to act over child labour in cocoa industry' *BBC* (28 November 2011) <<http://www.bbc.co.uk/news/world-africa-15917164>> accessed 6 February 2013. The report indicates that Nestlé, in its statement said the: 'cocoa supply chain is long and complex'; making it 'difficult for food companies to establish exactly where their cocoa comes from and under what conditions it was harvested.'

expected to perform efficiently in assuming their corporate social responsibilities. Similar stance has not been observed on the side of Cargill, and the other multinational corporations involved in the lawsuit referred to hereinbefore. Instead, Cargill's spokesperson in an interview emphasised that:

We require that all our direct suppliers of cocoa beans in West Africa sign a statement acknowledging that they understand that we are committed to the elimination of the worst forms of child labour in the cocoa supply chain. If suppliers are found to be employing such practices, their contracts are subject to termination.⁶¹¹

To such an important issue this is a pure bureaucratic approach. The only noticeable step taken by Cargill in term of sanctions in regard to Ivory Coast cocoa trade was noted in the electoral conflict between the incumbent president of the country and the leader of the opposition. Then, Cargill has said it is temporarily suspending its cocoa purchase with the Ivory Coast in a bid to increase financial pressure on President Laurent Gbagbo to admit defeat in November 2010 poll and cede power.⁶¹² A tougher approach to child labour, from Cargill, would have been more significant than a sanction for electoral dispute.

The Hershey Report

The Hershey report⁶¹³ was prepared by Global Exchange, Green America, International Labour Rights Fund and Oasis.⁶¹⁴ It observes that Hershey, one of the largest and oldest chocolate manufacturers in the United States prides itself on its commitment to supporting its

⁶¹¹ Chirstian Parenti, 'Chocolate's bittersweet economy: Seven years after the after the industry has agreed to abolish child labour, little progress has been made' *Fortune* (15 February 2008) <http://money.cnn.com/2008/01/24/news/international/chocolate_bittersweet.fortune/>accessed 7 February 2013.

⁶¹² See 'Ivory Coast: US backs ban, Cargill stops trade' *BBC NEWS AFRICA* (25 January 2011) <<http://www.bbc.co.uk/news/world-africa-12274696>> accessed 7 February 2013.

⁶¹³ See report Time to raise the bar: the real corporate social responsibility report for the Hershey Company, September 2010 See report at http://www.labourrights.org/sites/default/files/publications-and-resources/HersheyReport2010_0.pdf/ accessed 6 November 2012.

⁶¹⁴ Global Exchange is a membership-based international human rights organization dedicated to promoting social, economic and environmental justice around the world (Swww.GlobalExchange.org) Green America is a non-profit organization whose mission is to harness economic power—the strength of consumers, investors, businesses, and the marketplace—to create a socially just and environmentally sustainable society (www.GreenAmerica.org) The International Labour Rights Forum is an advocacy organization dedicated to achieving just and humane treatment for workers worldwide (www.LabourRights.org) Oasis USA is a non-profit organization committed to developing communities where everyone is included, making a contribution, and reaching their God-given potential (www.OasisUSA.org).

community and underserved children in the United States; yet, it lags behind its competitors when it comes to taking responsibility for the communities from which it sources cocoa. It is remarked that Hershey has no policies in place to purchase cocoa that has been produced without the use of labour exploitation, and the company has consistently refused to provide public information about its cocoa sources.⁶¹⁵

Additionally, Hershey has made no move to shift to third-party certification for the cocoa that it sources from West Africa. No information is available from Hershey about how the money it has invested in various programs in West Africa has actually impacted reductions in forced, trafficked, and child labour among the suppliers of its cocoa. The report indicates that since at least 2001, the Hershey Company has been aware of the problems that exist at the start of its supply chain, yet it continues to source from this region without ensuring that labour rights abuses do not occur in the production of the cocoa it uses.

On September 13, 2010, the Hershey Company released its first ever Corporate Social Responsibility (CSR) report, yet failed to offer any real solutions to issues of forced and child labour that persist in its supply chain. This report is an alternative CSR report for the Hershey Company. Indeed, it provides an overview of developments in corporate responsibility efforts in the cocoa industry, examines Hershey's corporate social responsibility policies and programs, and concludes that Hershey should increase transparency in its cocoa supply chain and shift to sourcing Fair Trade Certified cocoa.⁶¹⁶

The Hershey case is characteristic of the ultimate goal of most corporate companies operating in developing countries. There are often collisions between moral values and unethical business practices. Such situation is due to the inclination of MNCs towards more profits than the improvement of social conditions of the local population. In the light of Hershey's choice to carry on doing business despite being aware of the existence of child labour in the supply chain, it could be concluded that most corporations do not consistently follow measures they took for the fight against child labour. Consequently, their promises to eliminate child labour become a mere rhetoric. Therefore, they fail to recognise that child labour gravely violates various human rights of the child.

⁶¹⁵ Ibid.

⁶¹⁶ Ibid.

Multinational Corporations ought to take appropriate measures to create a better and dignifying work environment by taking into account all local factors. Hence Murray writes that: ‘in the absence of adequate state systems supporting core labour standards; firms must make an assessment of the status quo in which they are operating, and note all the risks to human dignity and decent work which are posed therein.’⁶¹⁷ Most importantly, corporations in the course of their activities in deprived areas should abide by the principles encapsulated in the term ‘corporate social responsibly.’

Sheikh and Chatterjee write that ‘the term corporate social responsibility includes corporate activities such as cash donations to charities, secondments, sponsorship, job creation programmes and the likes.’⁶¹⁸ While this definition suits best to the context of a developing country, it is evident that corporations operating in Ivory Coast cocoa industry have complete disregard to most of these core values such that no such actions indicated in the definition, take place.

5.2.2 The Parents

As seen elsewhere, an attempt to lay the responsibility of parents in the whole process of child trafficking, the analysis of certain key elements cannot be omitted. The West African contexts, with no major difference from other African contexts, remains special in that the custom of ‘cultural placement’⁶¹⁹ an old practice in West African communities prevails. Parents often agree to give away their children in fostering to relatives or acquaintances for education, training, as well as subsistence. Bass argues that the root of modern- day trafficking is the custom of child fostering.⁶²⁰

The custom of child fostering is peculiar to the West African context and such context, of course, will facilitate the luring of children (with parental consent) by Pied Piper figure- the

⁶¹⁷ Jill Murray, ‘Labour rights/corporate responsibilities: the role of ILO labour standards in Ruth Pearson, Gill Seyfang and Rhys Jenkins (eds) *Corporate responsibility and labour rights: codes of conduct in the global economy*’ (Routledge, London 2013) 40.

⁶¹⁸ Saleem Sheikh and Singh K Chatterjee, ‘Perspectives on Corporate Governance’ in S Sheikh and W Rees (eds) *Corporate Governance and Corporate Control* (Cavendish Publishing, London 1995) 36.

⁶¹⁹ ILO 2001, *Stopping Child labour*, International Labour Office, Geneva, Chanthavong Samlanchith, *Chocolate and Slavery: Child Labour in Cote d’Ivoire*, TED Case Studies Number 664 2002 available at (<http://www1.american.edu/ted/chocolate-slave.htm>) accessed 9 November 2011.

⁶²⁰ See Loretta E Bass ‘*Child Labour in Sub-Saharan Africa*’ (Lynne Rienner, 2004).

modern trafficker who may be a blood relative or family friend, as well as a seller of children. Thus, as argued by Astill, “the Pied Piper who leads the children away with their parents blessing...is commissioned to take full advantage of the extended family and the poor man’s assumption that anywhere is better than here.”⁶²¹

The west should have had a better understanding of the custom fostering pertaining to West African societies. In the landmark case of Victoria Climbié that occurred in the United Kingdom in the early 2000; ‘Victoria Climbié was born in November 1991 in the Ivory Coast, she died in February 2000 in London aged eight. To escape the poverty of Africa, her parents entrusted her to her great aunt who brought her to Europe. Victoria was tortured to death by that great-aunt, Marie Therese Kouao, and the woman's boyfriend Carl Manning.’⁶²²

The Siliadin case was another popular example of custom fostering peculiar to West African societies. From the facts of the case, ‘*The applicant was born in 1978 and lives in Paris. She arrived in France on 26 January 1994, aged 15 years and 7 months, with Mrs D., a French national of Togolese origin. She had a passport and a tourist visa. It had been agreed that she would work at Mrs D.'s home until the cost of her air ticket had been reimbursed and that Mrs D. would attend to her immigration status and find her, a place at school. In reality, the applicant became an unpaid housemaid for Mr. and Mrs D., and her passport was taken from her*’⁶²³ The victim was allegedly given to the “foster parents” with the blessing of her biological parents. It is worth noting that custom fostering has a tight link with trafficking as it remains a social and cultural element that facilitates child trafficking in the region. Although the custom of child fostering constitutes an essential part in the process of trafficking in West Africa, it cannot be assumed that customary fosterage always leads to child trafficking or exploitation of children.

On several occasions, children in custom fostering have been well looked after and well brought up by their foster families. As indicated elsewhere, trafficking exists only when there is movement and exploitation. The distinction is more apparent in the definition provided by

⁶²¹ Astill James, ‘The terrible truth about the ship of slaves’ *Guardian* (21 April 2001) <<http://www.guardian.co.uk/world/2001/apr/21/jamesastill>> accessed 07 November 2011.

⁶²² Sue Littlemore, ‘Victoria Climbié: Chain of neglect’ *BBC NEWS* (28 January 2003) <<http://news.bbc.co.uk/1/hi/uk/2700427.stm>> accessed 11 November 2011.

⁶²³ *Siliadin v France* (Application No 73316/01), judgment of 26 July 2005, (2006) 43 EHRR 16.

the UN General Assembly in 1994: ‘trafficking is the illegal and clandestine movement of persons across national and international borders... with end goal of forcing women, girls, and children into sexual or economically oppressive and exploitative situations.’⁶²⁴

Cultural placement equates to custom fostering in that both practices have the ‘ultimate aim’ of taking a child from a disadvantaged condition of life to a more promising condition. Such a dynamic is sought by any parent and it positively impacts the perception of rural communities. With the absence of sufficient opportunities for education, apprenticeship or work in the villages and the existing ignorance about the phenomenon of trafficking in children for labour exploitation, parents still believe that placement is in the interest of their child.

From the perspective of children's movement from precarious living conditions to a better place, since there is no mention of exploitation in a way or another, it is with absolute trust and good faith that parents give away their children to the ‘benefactors.’ Obviously, no parent would give his child if he was aware that the child will be subject to trafficking and may be engaged in forced labour eventually. This argument could be premised on the fact that most parents do not knowingly or voluntarily contribute to the trafficking process.

In some few cases in West Africa, parents and children themselves were well aware of the process. Therefore, the element of fraud or deception is not needed in order to designate the situation as child trafficking. The clarification is provided in sub-paragraph (c) of article 3 of the Palermo protocol as follow: ‘The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in sub-paragraph (a) of this article.’⁶²⁵

In a recent BBC programme on child labourers on Ivory Coast cocoa plantations, a young boy named Yao Kouassi asserted: ‘My father sent me here to work...I haven’t seen my family for three years.’⁶²⁶

⁶²⁴ See <http://www.africansinamericainc.org/a/p/m/undef01.html>, accessed 11 November 2011.

⁶²⁵ See United Nations General Assembly, resolution 55/25, 15 November 2000; Protocol to Prevent, Suppress and Punish Trafficking in Person Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.

⁶²⁶ See Humphrey Hawksley, ‘Ivory Coast cocoa farms child labour: Little change’ *BBC NEWS AFRICA* (10 November 2011) <http://www.bbc.co.uk/news/world-africa-15681986> accessed 6 March 2014.

5.2.3 The Employers or Users

In the context of child trafficking, the distinction between users and traffickers is crucial in order to understand the various patterns and to design effective interventions. Users or employers' responsibility in the violation of a child's human rights is as crucial a role in the child trafficking and child labour process. They are on the demand side and, in such positions; they require the greatest possible number of children to work on cocoa farms or in other areas.

Indeed, children may be networked through access to activities of an illegal nature (such as prostitution or sexual abuse of children), to reduce costs by using cheap labour (such as illegal immigrants), to have access to easily manageable workers (such as working children) or to fulfil scarce or unavailable supply (such as adoption). It is observed that the employers are often not aware of or interested in the process of trafficking or the routes and procedures used. Very often, employers or users do not perceive themselves as part of the trafficking network, although they are in fact, the engine in the exploitation machinery.⁶²⁷

Meanwhile, this does not imply that in the context of child trafficking in Ivory Coast, employers or cocoa farmers are unaware of the fact that the large majority of their employees are trafficked children from foreign countries. A report from UNICEF indicates that 'plantation owners in Ivory Coast are said to pay 50,000 FCFA (US\$70) per child (half as reimbursement of the transport costs and half for the child).⁶²⁸ This financial contribution and transaction evidence the responsibility of employers in the systematic violation of the child's human rights on Ivory Coast cocoa farms.

5.2.4 The State

The State's major shortcoming in managing the issue is its failure to compel corporate actors to observe human rights values. The rationale for the concept, especially in the context of human rights law, is that because international human rights law imposes a duty on states to

⁶²⁷ See the Joint ECOWAS.UNODCCP/CICP Regional Meeting of Experts on Trafficking in Persons. The meeting was held in Lomé (Togo) from 2 - 3 December 2002.

⁶²⁸ See UNICEF Innocenti Research Centre, *Child Trafficking in West Africa. Policy Responses*. Innocenti Insight, Florence, 2002, UNICRI, *Common Platform for Action of the Sub-Regional Consultation on the Development of Strategies to Fight Child Trafficking for Exploitative Labour Purposes in West and Central Africa*, 22-24 February. Libreville, 2000. See <http://www.unicri.it>.

protect people from violation of human rights, states have a duty to ensure that private actors do not violate human rights. Consequently, if private actors violate human rights, states will be held responsible for failing to prevent such violations within their territories. States are not directly liable for the violations by private actors but for the failure to prevent the violations.⁶²⁹ Although Ivory Coast is not directly liable for the violation of children human rights by the different multinational corporations operating in the cocoa industry, the State's failure to prevent the violations triggers its responsibility.⁶³⁰

The leniency of most developing countries towards private actors in regard to child rights violations has no ethical basis. The main rationale for their attitude is the attraction of foreign investments on their territories. Ideally, the State's tendency to attract foreign investors in a great number is *per se* the best political and economic endeavour but when this is conducted in complete disregard to human rights, the State's such action amounts to a socio-politic failure. Most importantly, this raises the debate about frequent collusions between government authorities and some private investors. Indeed, for the sake of their personal interests the former will ignore adverse effects on fundamental human rights that occur while the latter conduct their activities in the country.

The responsibility of Multinational Corporations in the practice of child labour in Ivory Coast cocoa industry is to a great extent supported by the State's inconsistency in addressing human rights issues.⁶³¹ Hence, the current status quo is not surprising as the State itself plays a significant role in the corrosion of child rights through child labour. Corporate social responsibility appears to be more conceptual than practical. The major corporations such as Nestlé and Cargill, acting in the Ivory Coast cocoa industry have demonstrated that they are fully aware of their responsibilities. Both multinational corporations have established their Code of conduct of business practice.

⁶²⁹ This idea is an interpretation of Articles 4, 5 and 8 of the International law Commission's Articles on state responsibility. See Olufemi Amao, *Corporate Social Responsibility, Human Rights and the Law: Multinational corporations in developing countries*, (Routledge, London 2011) 173. See also James Crawford, *The International Law Commission's articles on State responsibility: introduction, text and commentaries* (Cambridge University Press, Cambridge 2002).

⁶³⁰ Ibid.

⁶³¹ See Leo Gnawa, *I Beg The World To End Tyranny In Cote d' Ivoire: Uncovering The International Community's Cover-Up of Oppression In The Ivory Coast* (Create Space Independent Publishing Platform, 2014).

Cargill has more precise guiding principles in regards to competition and human rights⁶³² but like Nestlé, it is faced with the problematic child labour in its cocoa dealings with Ivory Coast. The similarity between the two corporations is that their different codes of conduct prohibit forced labour, unfair competition and, more importantly, human rights violations. Ironically, it appears that while the prohibited phenomena are in an exponential rise in Ivory Coast Cargill and Nestle are more comfortable in doing business with the country.

Section 1 of the Nestlé's corporate code states that "we respect the laws at all time."⁶³³ Such prescription implies that the company abides by every legal instrument in force as well as the rules and regulations.. The law includes international legal, regional and domestic legal instruments. In such perspective, the company recognises the necessity to comply with instruments such as the CRC, the ACRWC. Nestlé's involvement in child labour in Ivory Coast cocoa industry could be regarded as a contravention to its code of conduct. Child labour has not been eliminated in the country cocoa production, and there is no indication that Nestlé has pulled out of the cocoa dealing with the country. Therefore, the corporation has a significant ethical issue to address concerning its Code of Business Conduct.

The issue of mistrust and fair dealing which underpins the concept of free competition is also clearly indicated in Section 7 of the code.⁶³⁴ Indubitably, the child labour practice poses the problem of free competition. It could be observed that, although this is done indirectly, Nestlé is involved in unfair competition. The use of child labour on cocoa farms in Ivory Coast raises without doubt the debate on fair dealing and free competition in the following manner. Cheap labour or to some extent the free labour used in the cocoa production reduce the

⁶³² In regard to human rights, the Cargill Code of Conduct indicates that: "We respect human rights and support global efforts to protect them, working with organizations and governments to address this challenging issue that we alone cannot solve. Child labour and illegal, abusive or forced labour have no place within our operations, anywhere in the world. We follow all employment laws and regulations, including rules about the employment of minors, and support equal rights and the elimination of discrimination in employment. We pay regular and competitive wages and appropriate benefits, and we invest in resources to assist employees who want to develop to their full potential. Our employees have a right to freedom of association and collective bargaining. See Cargill Code of Conduct at <http://www.cargill.com/wcm/groups/public/@ccom/documents/document/na3064473.pdf>, accessed 31 July 2013.

⁶³³ See Nestlé Code of Business Conduct at http://www.nestle.com/assetlibrary/documents/library/documents/corporate_governance/code_of_business_conduct_en.pdf, accessed 30 July 2013.

⁶³⁴ Ibid.

overall production cost for Ivory Coast in comparison to a given cocoa producing country that employs adult workers in conformity with the labour rules and regulations in place.

Nestlé could have been exonerated of the use of child labour because it is clearly stipulated in Section 3 of the Nestlé Supplier Code that: “The use of child labour by the supplier is strictly prohibited. Child labour refers to working that is mentally, physically, socially, morally dangerous or harmful for children, or improperly interferes with their schooling needs.”⁶³⁵ Meanwhile, the recurrent failures for the company to take significant steps towards the issue are deemed tacit acceptance of the practice. Therefore, any possibility of exoneration for use of child labour in its cocoa dealings with Ivory Coast disappears.

The propensity to profit has often led multinational corporations to turn a blind eye to substantive human rights issues. The complicity of most developing countries in such adventure is usually blatant. Meanwhile, the drive for profit and wealth has often let them in complete disarray. The typical example of Nestlé wrong interpretation of the International Code of Marketing of Breast-milk Substitutes⁶³⁶ demonstrates the lack of focus and insight.

An analysis of the International Documents Centre indicates that endeavours by companies to circumvent the provisions of the International Code and to interpret the International Code narrowly are common. It is recognised that there are attempts to confine its scope to only a limited range of products and to exclude many parts of the world from its coverage. Nestlé was blamed for portraying that the International Code applies only to developing countries. No such distinction was ever made by the WHO, UNICEF or the governments which adopted the International Code. The International Document Centre admits that its analysis was deemed to unveil the many ways in which one of the biggest baby food manufacturers in the world, Nestlé, interprets the International Code, how it differs considerably from the

⁶³⁵ See Nestlé Supplier Code at <http://www.nestle.com/asset-library/documents/library/documents/suppliers/supplier-code-english.pdf>, accessed 30 July 2013.

⁶³⁶ The International Code was adopted at the World Health Assembly (WHA) in 1981 by Member States as a minimum measure to promote breastfeeding and to regulate the inappropriate marketing of breastmilk substitutes. Nestlé was involved in the consultation process of the drafting of the International Code. It approved the recommendations resulting from the 1979 preparatory meeting. See Code at http://www.who.int/nutrition/publications/code_english.pdf, accessed 31 July 2013.

International Code itself, and how the company creates opportunities for continued promotion.⁶³⁷

The issue of the child labour practice raises the question of unfair competition. The whole debate rests upon the fact that exporting child labour products to countries which prohibit child labour constitutes social dumping because child labour artificially depresses the cost of labour inputs, thereby allowing exporters to sell products at below "normal" prices.,"⁶³⁸ The perception among developed countries is that governments which refuse to establish or enforce certain core labour standards, such as prohibitions against child labour, indirectly subsidise companies that operate within the country, by enabling these companies to decrease costs by utilizing "illegal" labour. These companies thereby gain an unfair competitive advantage over manufacturers operating in countries such as the United States, which have well-established child labour laws.⁶³⁹

According to Garg, the unfair competitive advantage argument asserts that countries with low-labour standards can produce goods more cheaply, due to lower labour costs, than countries with high-labour standards. He emphasises that under this theory, the issue is not so much the comparative advantage these goods gain due to lower labour costs, but the illegitimate means through which countries obtain these lower costs. He further admits that relative to adult labourers who are engaged in the same tasks, children earn consistently lower wages and do not receive benefits, insurance, or social security. He concludes that because of these features, child labour is viewed as a violation of international labour standards and, thus, as a form of "social dumping" or an unfair "subsidy" which allows countries to operate below minimum standards.

Conclusion

The issue of child rights cannot be overlooked in the debate about child labour on Ivory Coast's cocoa farms. The general analysis in this chapter shows that almost every single right

⁶³⁷ See Nestlé and the international code: where do they differ? An analysis by the International Code Documentation Centre at <http://www.ibfan.org/art/icdcnestleinstructions.pdf>, accessed 31 July 2013.

⁶³⁸ See Anjali Garg, 'Child labour social clause: analysis and proposal for action' (1999) 31 *New York University Journal of International Law and Politics* 473.

⁶³⁹ See 'The World Trade Organisation and the social clause' (1994) 133 *International Labour Review* 407.

of the child is violated in the process of child labour practices. The impeding effects of child labour on the fulfilment of most rights enshrined in various international, regional and sub-regional, and national legal instruments have become matters of serious concern. Admassie writes that ‘child labour is considered as a violation of children’s human rights since young children are forced to undertake abusive, harmful, and exploitative work activities, which may often be beyond their physical capabilities. Child labourers are deprived of their freedom of childhood, their right to recreate and play, and their natural development.’⁶⁴⁰

Moreover, Srivastava observes that: The term “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical-mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children, and interferes with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or to require them to attempt to combine school attendance with excessively long and heavy work.⁶⁴¹ This definition embodies all the impacted area of the child's existence as a human being. The particular interest here is that these impacted areas of the child's life are recognised as specific rights in the general approach to human rights. It was, therefore, worth examining each violated rights in order to appeal to all the stakeholders in the Ivory Coast cocoa industry. The ultimate goal for such enterprise is the triggering of a paradigm shift in approach to the issue of child labour in Ivorian society. The paradigm shift could occur if the triggering factors for the way forward are explored and applied accordingly. In adopting such approach, missed opportunities must be underscored and adjustments initiated.

⁶⁴⁰ Assefa Admassie, 'Child labour and schooling in the context of a subsistence rural economy: can they be compatible?' (2003) 23 *International Journal of Educational Development* 167, 185.

⁶⁴¹ Kalpana Srivastava, 'Child labour issues and challenges' (2011) 20 *Industrial Psychiatric Journal* 1, 3.

Chapter 6

Finding the Way Forward for Ivory Coast: Missed Opportunities and New Perspectives

‘Efforts to combat child labour are failing in the face of inertia, indifference and an indefensible willingness on the part of too many governments, international agencies, and aid donors to turn a blind eye’,⁶⁴²

Introduction

This chapter examines the possible ways to find answers to the issues of the worst forms of child labour currently practiced on Ivory Coast’s cocoa farms. Chapter 3 showed that, in response to growing criticisms over the practice of child labour in its cocoa industry, Ivory Coast endeavoured to take significant steps to address the issues. Despite apparent efforts from both the international actors and Ivory Coast to abolish child labour in Ivory Coast’s cocoa industry, little seems to be achieved on the ground. Therefore, this chapter focuses on the missed opportunities by stakeholders in addressing the whole issue. It also examines the specific impediments to any possible move towards a complete elimination of child labour on Ivory Coast’s cocoa farms. The chapter offers a comprehensive approach as a way forward for Ivory Coast to manage the child labour practice.

6.1 An Analysis of Missed Opportunities

6.1.1 Missed Opportunities for Ivory Coast

The Chanel 4 broadcast that showed the gravity of child labour on Ivory Coast’s cocoa farms gave opportunities to the country to adopt a different approach to the phenomenon. Child labour is an embedded practice in the sociological environment of Ivory Coast. This fact could have been pivotal in the persistence of the practice. Meanwhile, the world has demonstrated to the country that such practice is inhumane in that not only does it degrade the personality of the child, but it also breaches his fundamental human rights.

⁶⁴² Gordon Brown: Prime Minister of the United Kingdom 2007-2010 and current Envoy on Education for the UN Secretary General.

The Ivory Coast aspiring to civilised values and modern practices in regard to human rights and the emancipation of the citizen, should have seized such golden opportunity to put an end to child labour. Hence, Ivory Coast would have shifted to the right path for its aspirations to become an entirely modern and civil society. Unfortunately, Ivory Coast has missed an opportunity to embellish its tarnished image. Chapter 3 showed that the economy of Ivory Coast has been successful between the 1960 and 1980's through cash crop products.

The period called by economists and observers '*Le miracle Ivoirien*' indeed is a period of rapid economic growth in which agricultural products generated substantial revenues for the country.⁶⁴³ Although much of the revenues were used to establish physical and educational structure for future development, the authorities did not employ strategies to modernise the agricultural sector. The Ivory Coast had to seek foreign expertise and consider transfer of technologies in the economic sector it has made its primary source of revenues. Noteworthy, cocoa farms are owned by individual farmers; the state has never owned farms, but the cocoa export was exclusively exercised by the state. In such context, the state has an interest in improving the production mechanisms employed by farmers in order to secure the annual yield necessary to sustain the economy.⁶⁴⁴

Gbetibouo and Delgado observe that the state played a vigorous role in export crop agriculture.⁶⁴⁵ Export was seen as the best economic choice for a country that has few natural resources; the setback was that food products were imported for local consumption since the agrarian politic has shift attentions to export crop agriculture.⁶⁴⁶ At independence in 1960, Ivory Coast was lagging behind Nigeria and Ghana in cocoa production but by 1989, the

⁶⁴³ See Michael A Cohen, 'Urban policy and development strategy' in William L Zartman and Christopher Delgado (eds) '*The political economy of Ivory Coast*' (Praeger Publishers, New York 1984) 62.

⁶⁴⁴ See Yapi S Affou, '*Les planteurs absentéistes de la Cote d'Ivoire*' (Orstom, Paris 1987) 46,47.

⁶⁴⁵ Mathurin Gbetibouo and Christopher L Delgado, 'Lessons and constraints of export crop-led growth: Cocoa in Ivory Coast' in William I Zartman and Christopher Delgado (eds) '*The political economy of Ivory Coast*' (Praeger Publishers, New York 1984) 129.

⁶⁴⁶ See Louis Edouard Setté, '*l'Etat et le processus de développement en Côte d'Ivoire: 1960-1980*' (INEPT, Abidjan 1997) 70.

country's production multiplied by tenfold due to the government-oriented politic towards increasing the yearly national production.⁶⁴⁷

The issue of modernisation is crucial in that the practice of child labour which was already taking ground on cocoa farms could have been halted if farmers had alternative mechanisms to achieve their production goals. In the absence of concrete measures, the child labour practice remained and is now deeply rooted in cocoa communities. Thus, Ivory Coast has missed an opportunity to utilise the historic economic growth for a paradigm shift.

6.1.2 Missed Opportunities for the Communities

Campaigns against child labour in the cocoa communities had far reaching effects in the last decade. However, the factors holding back the vast majority of rural communities in cocoa producing zones, have amongst other things been put down to customary and cultural considerations. Opting for child labour on the cocoa farm appears to be the fastest route for parents to step out extreme poverty. Traditional perceptions facilitate such choice because the parents themselves are generally uneducated and illiterate.

More significantly, the lack of legislation for free and compulsory primary education in Ivory Coast makes it easier for parents in rural communities to keep their children out of schools. The cluster of perceptions and beliefs constitute a hindrance to any prospect of new approaches to education and schooling. It is a state of lethargy that makes Ivory Coast's cocoa communities to miss the opportunity of allowing their children to step into the adult life well prepared and qualify enough for employment and better career prospects. Thus, the argument that children are better off working alongside their parents for the purpose of training them to take over the trade is irrelevant. Education and schooling cannot be opted out. Therefore, parents find themselves in breach of a fundamental right of the child by deliberately keeping him out of school.

The Ivory Coast cocoa communities are missing the opportunity of getting rid of the evil practice that has tarnish the image of the entire cocoa industry. The communities have missed an opportunity to comprehend that child labour hold no future for the child and his family.

⁶⁴⁷ See Dadié Attébi, *Le Défi Africain: L'urgence d'une alternative économique en Côte d'Ivoire* (Editions L'Harmattan, Paris 1995) 23 See also bddoulaye Sawadogo, 'L'agriculture en Cote d'Ivoire' (Presse Universitaire de France, Vendome 1977) 254.

The community is missing an opportunity to play its part in the development of the country by preventing the future citizen from accessing to the appropriate structures that will permit their accomplishment. Children are the building blocks for the establishment of strong and great nation. The communities seem to have no vision for a fair and child labour free Ivory Coast. The communities have missed the opportunity to understand that things have changed and therefore they must adopt new approaches and hold new perspectives for boys and girls in regard to primary education.

6.1.3 Missed Opportunities for the Consumers

When the western media drew the world's attention to the plight of Ivory Coast's cocoa farms child labourers, chocolate and its derivatives products consumers had a shift in approach to the whole issue. The lawsuit in the US against Nestlé, Archer Daniels Midland (ADM), Cargill and other is the typical example of the reaction in line with the new approach to chocolate consumption.⁶⁴⁸ However, if the move can be regarded as positive and groundbreaking, it could also be seen as a flash in a pan in regard to its isolated and unique episode. Chocolate consumption is not present in the diet of cocoa communities. This fact is so poignant that some farmers have never seen a bar of chocolate let alone eat a *mars* bar of drink a cup of hot chocolate.⁶⁴⁹

The rationale for this is that not only is chocolate manufactured outside Ivory Coast by foreign companies, but it is also produced for foreign markets. However, when chocolate is sold in supermarkets in Ivory Coast, it is usually not affordable for the ordinary local consumer. Thus, chocolate is regarded as a luxury good for the local consumers, cocoa farmers and the child labourers alike. Therefore, seen as the main chocolate consumers, the western consumers had the opportunity to push further their noble initiative towards boycotting child labour stained chocolate and its derivative products.⁶⁵⁰

⁶⁴⁸ See <http://www.brandrepublic.com/bulletin/brandrepublicnewsbulletin/article/492454/nestle-faces-negative-publicity-child-labour-case-set-hearing/>, accessed 4 February 2013.

⁶⁴⁹ See Richard Quest, 'Cocoa farmers get first taste of chocolate' *CNN* (28 February 2014)<http://edition.cnn.com/2014/02/27/business/freedom-cocoa-nomics-cocolate-bar/index.html> accessed 21 March 2014.

⁶⁵⁰ See for example petition by Raise the Bar Hersey! Coalition at <http://www.change.org/petitions/hershey-raise-the-bar>, accessed 21 March 2014.

The eye-opening Harkin-Engel protocol paves the way to more initiative taking opportunities for consumers in the west. Initiatives are scarce since the early 2000 to eliminate child labour in the cocoa industry. The fair-trade foundation's work is necessarily appealing to customers in that buying chocolate from fair trade certification will demonstrate consumers' choice to boycott products derived from child labour. More significantly, new paradigms in the context of international trade create opportunity for consumers to be more decisive about the issue of child labour. In that connection, Garg writes that:

With the rise of liberalized trade regimes, the world has become increasingly interdependent and borderless. In an environment in which the economic policies of one country can affect the financial markets of another, the impact of domestic *social* policies on the global community are often ignored. By lowering barriers to trade and opening national borders to foreign goods and services, the U.S. government has enabled American consumers indirectly to reinforce exploitative policies abroad. The products that line U.S. store shelves are often produced by foreign labourers, many of whom are children working under sweatshop conditions.⁶⁵¹

Remarkably, the US government has enabled consumers to have their say in the issue even abroad. However, consumers seem to be less concerned about the origin of the cocoa products. Such attitude contributes to the persistence of child labour related cocoa products in the world market. The consumers in most western countries are well educated and well informed about the approach to adopt in regards to cocoa products that are suspected to be sourced from cocoa farms that use child labour. This level of knowledge and understanding is an advantage and an opportunity to make their voices heard in the debate about child labour in the chocolate industry. However, they remain inactive while, the tragedy of millions of children unfolds in Ivory Coast's cocoa farms. Consumers should not miss the opportunities currently available to contribute to the elimination of child labour on Ivory Coast's cocoa farms. Therefore, they need to be more active in joining campaign groups for boycott initiatives in regards to cocoa related products that are not fair-trade certified.

6.1.4 Missed Opportunities for Multinational Corporations

The Hersey report and the lawsuit against Nestlé and Cargill are significant steps in highlighting the dealings of multinational corporations in most environments of investment.

⁶⁵¹ See Anjali Garg, 'A child labour social clause: analysis and proposal for action' (1999) 31 New York University Journal of International Law and Politics 473.

This case reports appeals to the sense of corporate social responsibility for multinationals corporations. It appears that they have missed to grasp the core of the idea. Child labour and other human rights abuses have always degraded the image of some prominent multinational corporations. The recent reports and court cases should offer the opportunity to MNCs to improve their image by creating conditions of work environments free of child labour. Their corporate social responsibility should be strongly founded on the respect of human rights values in line with the principle of decent works as perceived by the ILO. The recent comment of the Committee of the rights of the child stresses the fact that businesses including MNCs continuously fail to address the issue of child right in their business dealings.⁶⁵² The committee notes that:

The Committee on the Rights of the Child recognizes that the business sector's impact on children's rights has grown in past decades because of factors such as the globalized nature of economies, business operations, on-going trends of decentralization, outsourcing and privatization of State functions that affect the enjoyment of human rights. Business can be an essential driver for societies and economies to advance in ways that strengthen the realization of children's rights through, for example, technological advances, investment and the generation of decent work. However, the realization of children's rights is not an automatic consequence of economic growth and business enterprises can also negatively impact children's rights.⁶⁵³

In the light of the Committee's General comment No. 16, it should be understood that MNCs are reminded of the opportunity offered to them to improve child rights. This address implies that they have failed despite all the relevant legal instruments and guidelines available to them to adopt a paradigm shift in approach to the global issues of child labour and child exploitation.

6.1.5 Missed opportunities for the ILO

In terms of standards setting, the ILO has remarkably contributed to finding the ways to address child labour efficiently. Attempts to give an answer to child labour across the globe

⁶⁵² The UN Committee on the rights of the child emphasises that For the purposes its general comment, the business sector is defined as including all business enterprises, both national and transnational, regardless of size, sector, location, ownership and structure. The general comment also addresses obligations regarding not-for-profit organizations that play a role in the provision of services that are critical to the enjoyment of children's rights. See UN Committee on the rights of the Child (CRC) General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, 17 April 2013, CRC/GC/16, available at <http://www.refworld.org/docid/51efcd24.html>, accessed 22 January 2014.

⁶⁵³ Ibid.

were made on several occasions. The introduction of ILO Convention No 139 setting minimum age for engaging in employment and work for children it has proven ineffective in regard to the aim. Indeed, child labour has not been eliminated. Instead, children continue to work irrelevant of their age category. The complexity of the issue remains a challenge for the ILO. Hence, almost two decades after Convention No 138, the sentiment of failure prompted the ILO to devise a new Convention that will constitute the best legal instrument addressing the particular issue of worst forms of child labour. ILO Convention No 182, as indicated in previous chapters, is one of the Conventions that recorded a considerable number of ratification in its first year of existence.⁶⁵⁴

While the ILO's efficiency in standards setting cannot be denied, there are still questions regarding the far reaching capability and effects of those standards. It is understood that the ILO has no enforcing power. However, the level of acceptance and the credential of the ILO among member states remains an opportunity to go beyond its traditional role. Going beyond its traditional role does not imply its capacity to enforce its standards. Because such an attempt not only will threaten national sovereignty but it will also raise the issue of intervention as provided by Article 2 paragraph 7 of the Charter of the United Nations and Matters of Domestic Jurisdiction.⁶⁵⁵ Instead, this new approach could be delivered by helping the most disadvantaged member states to tackle the issue of child labour.⁶⁵⁶ The ILO's approach to combating child labour should not be limited to standards setting only. Even though it lacks enforcement powers, the ILO could do better by creating the conditions for effective implementation and enforcement within member states. The consequence of the

⁶⁵⁴ Worst Forms of Child Labour Convention, 1999 (No. 182).

⁶⁵⁵ Article 2 Paragraph 7 provides that : 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII'.

⁶⁵⁶ In the particular context of an enduring child labour on Ivory Coast's cocoa farms, the ILO could send a team of experts alongside the country's labour inspectors to scour the cocoa production zones. This additional approach could be an opportunity to identify the zones practicing child labour, but it will also be an opportunity for cocoa communities to get the appropriate education about the phenomenon and its dangers in a nation building process.

ILO's current approach can be gauged by the foreseeable failure to meet the Millennium Development Goals.⁶⁵⁷

The issues of national sovereignty, brandished by member states in their dealings with international organisations, could be an impediment for the ILO. Indeed, an attempt to command state members regarding effective enforcement of laws deriving from its standards will surely meet stiff resistance. Meanwhile, the ILO's involvement in actions that will facilitate the implementation and the enforcement of its standards should be thoroughly considered. A more practical approach to the achievement of the spirit and the letter of the ILO standards will thwart the pessimistic observers' attempt to portray the organisation as a toothless tiger.⁶⁵⁸

The inability of Ivory Coast to manage the issue of child labour has led to finding a way forward for the country in a 'diagnosis approach' to pinpoint the real issue needing special attention in the fight against the enduring child labour practice on its cocoa and coffee farms. It is evident that the whole bunch of missed opportunities is still taking its toll on children in cocoa communities. The challenging issue in this regard is the apparent indifference of the leading actors in the fight against child labour. While various opportunities have been offered, they are yet to be seized by all stakeholders in order to eliminate child labour. Most of the actions undertaken by Ivory Coast were analysed in chapter three. However, the general perception is that the country itself is not doing enough to eliminate the child labour practice.

The sheer lack of determination from Ivory Coast's authorities in fighting the child labour practice heralds more failures in the global trend towards the total elimination of the phenomenon. As noted hereinbefore, the enactment of various laws alone cannot solve the problem. In observing Ivory Coast context, it appears that decision makers have not realised the evil nature of child labour. Probably, they understand the gravity of the problem but they turn a blind eye to it or they just don't measure the extent of the danger child labour constitutes in the process of nation-building. Giving less priority to education, failing to

⁶⁵⁷ Goal two of the MDGs which is concerned with the achievement of universal primary education is seriously challenged by the permanent use of millions of children in child labour across the globe.

⁶⁵⁸ See Laurence R Helfer, 'Monitoring Compliance with Unratified Treaties: the ILO Experience' (2008) 71 *The Law and Politics of International Delegation* 193,217.

implement birth registration laws effectively, failing to regulate the cocoa farming are situations that indubitably thwart the development agenda of the country.

After a thorough analysis of the question, Garg notes that developing countries often respond to criticisms of child labour by arguing that, because of their relative lack of technology, their only competitive advantage lies in low-cost labour. They assert that the enforcement of international labour standards would hinder economic development in their countries because they would have to forego cheap labour. Companies employing child labour similarly argue that they can cut costs by hiring children instead of adults because they are a cheap and abundant source of labour. However, this argument fails to recognise that the loss of education due to child labour hampers a country's ability to achieve sustained economic development.

As noted in previous chapters, the economic rationale of child labour in Ivory Coast has a destructive effect not only on the future of the child, but also leaves the nation with a bleak future in terms of citizen emancipation and the country's development. Garg rightly notes that evidence indicates that child labour is not critical or even necessary, to achieve sustainable economic growth and competitiveness. If child labour laws were firmly enforced in developing countries, if information regarding the dangers of child labour were disseminated to their citizens increasing their social awareness, if greater resources were allocated to improving educational access in these countries, significant progress could be made in eliminating this problem.⁶⁵⁹ In addition to this cluster of issues showing the nature of the problem, some key arguments underpin the idea that Ivory Coast is unlikely to manage the issue of child labour in the near future.

6.2 An Analysis of some Constitutive Elements of a New Paradigm

6.2.1 Revisiting the Social Clause

In an article related to the World Trade Organisation and the Social Clause, the author asked the question as to whether the growing liberalisation of trade, capital flows and choice of industrial location can proceed without a set of rules, especially social rules, applying on the same world scale. In his attempt to provide a clear answer to the question that *per se* justifies

⁶⁵⁹ See Anjali Garg, 'A child labour social clause: analysis and proposal for action' (1999) 31 New York University Journal of International Law and Politics 473.

the insertion of a social clause in trade agreements, he observes that 'the version of a social clause which focuses on wages and social protection has miscarried and a different perspective prevailed.' More significantly, he notes that the focus has now shifted to worker's basic rights such as freedom of association, collective bargaining, prohibition of forced labour and child labour, and non-discrimination. He goes further to note that this view was summed up by Mr Brett the workers' Vice-Chairman of the Governing body of the ILO as follow:

It might be helpful if I begin by saying what a social clause, in the eyes of the workers, is not about. It is not about the protection of trade, but the protection of people. It is not about establishing minimum wages across the world. It is not about transferring first –world wage levels in terms of conditions to developing countries. It is simply about ensuring that the basic human rights are respected in all countries that trade.⁶⁶⁰

Indeed, in the context of international trade, the term 'social clause' essentially refers to a legal provision in a trade agreement aimed at removing the most extreme forms of labour exploitation in exporting countries by allowing importing countries to take trade measures against exporting countries which fail to observe a set of internationally agreed minimum labour standards.⁶⁶¹ In that connection, Lee admits that 'many nations are advocating the inclusion of "social clause" in trade agreements in an effort to establish and enforce international labour standards. A social clause essentially entails pairing international labour standards with trade liberalization, such that trade sanctions can be invoked if these labour standards are violated.'⁶⁶²

In the WTO context,⁶⁶³ the social clause would require members to accept certain core labour standards, including prevention of child labour, or face trade sanctions. Fair and competitive mechanisms will lead to the creation of enough adequately paid jobs for adult workers, so

⁶⁶⁰ See 'The World Trade Organisation and the social clause' (1994) 113 *International Labour Review* 407.

⁶⁶¹ See Lim Hoe The social clause: issues and challenges at <http://actrav.ilo.org/actrav-english/telearn/global/ilo/guide/hoelim.htm#3.1>, accessed 11 December 2013.

⁶⁶² See Eddy Lee, 'Globalization and Labour Standards: A Review of Issues' (1997) 136 *International Labour Review* 173, 176.

⁶⁶³ the WTO's founding and guiding principles remain the pursuit of open borders, the guarantee of most-favoured-nation principle and non-discriminatory treatment by and among members and a commitment to transparency in the conduct of its activities.'

they are able to feed their children and send them to school rather than to work.⁶⁶⁴ The call to impose sanctions through the inclusion of “social clause” was made at the Uruguay Round of trade negotiations in Marrakesh in 1994.

6.2.2 The Pedagogy Perspectives

As defined by the Oxford Advanced Learner’s Dictionary, Education is “a process of teaching, training and learning, especially in schools or colleges to improve knowledge and develop skills.”⁶⁶⁵ Dewey notes that education is the means through which the aims and habits of a group of people lives on from one generation to the next.⁶⁶⁶ Education, therefore, occurs through any experience that has a formative effect on the way one thinks, feels or acts. In that sense, it is a formal process by which society guarantees the transmission of its accumulated knowledge, skills, customs and values from one generation to another. According to Rousseau, we were born weak, we need strength; we were born deprived of everything, we need assistance, we were born stupid, we need judgement. Anything we lack at birth which is needed when we grow up is given to us through education.⁶⁶⁷ Education is an important pillar to human society. In the same vein, Wilson notes that the concept of education, is seen to be inevitable for human beings, and carries certain values with it. That is most obvious in its connection with learning. He goes further to write that:

Education in contemporary English meant something like ‘a serious and sustained programme of learning, for the benefit of people qua people rather than only qua role-fillers or functionaries, above the level of what people might pick up for themselves in their daily lives.’ I quote this example of a definition only to show that it is intended (whether successfully or not) to cater for actual usage.⁶⁶⁸

Education indeed is out of the range of any controversy in that it emancipates and empowers citizens in carrying out their duties in society. Boas referring to Plato’s quotes on education writes that even though a man is born with favourable nature if his education is bad, he will

⁶⁶⁴ Kishor Sharma, ‘Labour standards and WTO Rules: Survey of the Issues with Reference to Child labour in South Asia’ (2009) 43 Journal of Economic Issues 29.

⁶⁶⁵ Oxford Advanced Learner’s Dictionary, (sixth edition, 2000).

⁶⁶⁶ John Dewey, ‘*Democracy and Education*’ (The Free Press, 2007) 9, 14.

⁶⁶⁷ Jean-Jacques Rousseau, ‘*Emile ou de l’éducation*’ (Editions Gallimard, Paris 1969) 83.

⁶⁶⁸ John Wilson, ‘The concept of education revisited’ (2003) 37 Journal of Philosophy of Education 101, 108.

turn into the wildest creature on earth.⁶⁶⁹ In terms of education for all and the attainment of very high rate of literacy, the situation of most developing countries is a matter of urgency.

The lack of education among the majority of the population is regarded as the source of major social and economic disruptions. For instance, phenomena such as child labour and adverse practices that hamper a sustainable development remain deeply rooted in most communities with no prospect of being eliminated because the people concerned do not understand the gravity of the problem.

The lack of education has been in some contexts the fact of the colonial settlement. For example, Grier writes that, 'the struggle over the construction of African childhood in Southern Rhodesia was not limited to the homestead, the white farmer, the mining centre, and the town. It extended into the sphere of education as well. Most settlers and officials and many missionaries favoured the kind and level of education that would enable African children to rise no higher than servants. This would help ensure that Africans would not one day deprive white employer of cheap labour, compete with whites labour for skilled jobs, or challenge white domination in the political and social arena. Whereas white children, regardless of class, were to be educated to take up reign of economic, social, and political power in southern Rhodesia, African children were to be educated for an adulthood of subservience.'⁶⁷⁰ Whether the lack of education or *second-class education* is the fact of colonisation or the unwillingness of some communities to embark of education, illiteracy is to be combated in all its forms.

Primary and secondary education has been found to enhance the productivity of human capital and contribute to the economic development process. The ILO also has found that a strong commitment to education was critical in explaining the rapid economic growth in East and South-East Asia. The World Bank has stated that the biggest single factor in achieving a high-growth rate of certain Asian countries is primary education.⁶⁷¹

⁶⁶⁹ See Georges Boas, '*The Cult of Childhood*' (The Warburg Institute, London 1966) 12.

⁶⁷⁰ See Beverly C Grier, '*Invisible Hands: Child labour and the state of colonial Zimbabwe*' (Social History of Africa, Portsmouth 2006) 161, 162.

⁶⁷¹ Anjali Garg, 'A child labour social clause: analysis and proposal for action' (1999) 31 New York University Journal of International Law and Politics 473.

Myint observes that 'in recent years; economists working on the problems of development of the underdeveloped countries have turned their attention towards education for a number of reasons. The experience of the advanced countries has suggested that the rate of economic growth they have enjoyed cannot be satisfactorily explained purely in terms of quantitatively measurable increases in material capital and the size of the working population. This has led to the hypothesis that a substantial "residue" of economic growth must be accounted for in terms of a rise in the productivity of the resources due to technical innovations and other qualitative improvements in the methods of production and organisation. These "residual" factors of economic growth are thought to be related directly or indirectly to better education.'⁶⁷²

From Myint's observations, the quest for better education requires an economic approach that can trigger the expected changes. Hence, Ivory Coast needs to be aware of what it lacks, its weakness, where improvements are needed and what the real priorities for sustainable development are. Africa has faced and continues to face several phenomena and challenging issues, such as apartheid, war, bad governance, and human rights violation including the worst forms of child labour. In the particular case of apartheid, Chigara observes that the pedagogy of the oppressed is a potential instrument for ending agents' semi-authentic existence.⁶⁷³ He goes further to conclude that:

Therefore, with the appropriate pedagogic interventions in the democratic dispensation, most people would turn away from apartheid-rule's deceitful distortions about the significance of human worth along racial line and embrace the path of equity and social justice because of its overall promise of authentic human existence that offers the possibility of self-actualization.⁶⁷⁴

Likewise, the starting point for Ivory Coast from any attempt to manage the challenging issue of child labour and other relating issues is the pedagogic approach. Access to good quality,

⁶⁷² Hla Myint, 'Education and Economic Development' (1965) 14 *Social and Economic Studies* 8, 20.

⁶⁷³ Ben Chigara, 'Deconstructing Southern African Development Community land relations challenges: Towards a new, sustainable land relations policy?' in Ben Chigara(ed) '*Re-conceiving Property Rights in the New Millennium: Towards a New Sustainable Land Relations Policy*' (Routledge, Oxon 2012) 223.

⁶⁷⁴ Ibid.

appropriate education and training is a significant element in contributing to breaking the vicious cycle and creating a positive one that lifts these children out of poverty.⁶⁷⁵

The most significant input of education in the socio-economic environment for a comprehensive attitude toward issues such as child labour, child trafficking and various child abuses is the raising of public awareness to the highest level. Education undoubtedly lays the foundation to various aptitudes. Hence government officials, non-governmental entities and the general public having been empowered with basic abilities should be able to receive the adequate information and reflect on them. In regard to enforcement agencies, public awareness can be raised through regular training, conferences, seminars and inter-states cooperation about specific challenging issues. More importantly, their work could be facilitated by the high level of public awareness among the general public. Achieving this level of public awareness among the population should be a high priority in the government's strategies to eradicate adverse practices to the socioeconomic development of Ivory Coast.

6.2.3 Embracing modern views and good governance for sustainable development

'The Ivory Coast was influenced by an approach based on the French colonial model, which was characterised by the systematic introduction of French patterns to be adapted by local elites to African social, cultural, political and economic systems. France tried to change African institutions slowly, but the gulf between French and African structures meant a rapid confrontation of two very different systems. From the 1950s, Ivory Coast was exposed to an important change in its social, political and economic systems. Slowly, the country was introduced into world history. The elites accepted transformations linked to French interests.'⁶⁷⁶

Although colonial interventions came from outside the different countries, changes of the autochthonous societies had to be adapted to this model originating from another social system which had had an increasing influence since the beginning of the 20th century. Today,

⁶⁷⁵ Kishor Sharma, 'Labour standards and WTO Rules: Survey of the Issues With Reference to Child Labour in South Asia' (2009) 43 *Journal of Economic Issues* 29.

⁶⁷⁶ Ulrike Schuerkens, 'Structural Change in Western Africa as a legacy of European COLONIALISM: The Labour System in Ghana and the Ivory Coast' (2003) 51 *Current Sociology* 287, 304.

no groups remain which are not influenced by structures of western models. However, 'the transformation of a social system never concerns all elements at the same time: several elements change in the initial phase, and force other elements to change until the emergence of another structural model can be observed.'⁶⁷⁷

Since Ivory Coast embraced the so-called modern views imposed by France, the country is faced with the practical aspects of the new mode of living. Change induced by various colonial politics consisted of introducing a formal educational system, paid labour and a bureaucratic system. Despite great differences between autochthonous groups, there are some elites who support a rather identical development in their own respective countries. The shift to modern views and social change against Ivory Coast's traditional settings has never been easy as most of them vigorously resisted change. In that respect, Rapley writes that:

Rather than adapting to the changes in the society, economy, and culture, however the chiefs did what traditional ruling classes frequently do when threatened by change: they tied themselves even more firmly to the tradition. This tradition, however, was rapidly collapsing, and along with it went power.⁶⁷⁸

The Ivory Coast is part of the modern trend thus; it should properly embrace and implement the necessary values pertaining to that trend. It must be admitted that in most African societies, resistance to change is often underpinned by cultural considerations. Culture indeed is what determines a society. However, all hampering aspects of culture in the modernisation process must be relinquished. In pursuance of that aim, various traditional societies must be aware of how positive modernisation could be for their environment.

The shift in approach should be based on objectivity and transparency in the management of public affairs. It is worth noting that richer countries provide institutional, social regulation, through formal mechanisms whose operation is not dependent upon interpersonal relations but instead relies on abstract, general and rational bureaucratic categories. Unlike developed countries, the poorest countries are characterised by the prevalence of traditional mechanisms of solidarity and regulation, which can either take precedence over State or result from State failures in terms of spatial or social extension. The relationship between formal rules and

⁶⁷⁷ Ibid.

⁶⁷⁸ John Rapley, *Ivoirien Capitalism: African entrepreneurs in Côte d'Ivoire* (Lynne Rienner Publishers Inc., Boulder 1993) 27.

depersonalisation is not unambiguous: in some cases, the introduction of formally rationalised rules is seemingly content. In this case, the State is notional since the formal rules are not widely implemented in the social regulation, which remains based on traditional relations, such as ethnic solidarity, tribal, or regionally implemented in a political-economic client list pattern.⁶⁷⁹

The purpose of embracing modern views and relinquishing hampering traditional practices as well as bad governance is the attainment of a level of development that will improve the social conditions of the population. The suggestion that a new approach must be taken is pertinent in that the issue of child labour in Ivory Coast is underpinned not only by cultural considerations, but to a great extent, is also fuelled by poverty. Hence, the Ivorian society in all its composition should adopt the paradigm shift to sustainable development. As noted hereinbefore, good governance and at all levels of government intervention is a necessity in the developmental argument.

Since the late 1980s, the concept of good governance has become widespread in donor discourse, as well as the discourse of development and public policy studies. It first appeared in the World Bank report in 1989.⁶⁸⁰ As it was elaborated in the discourse of international financial institutions (IFIs), it refers to a formal set of codes, institutions and doctrines that countries have to abide by, with concern to the management of affairs of states. This alludes to political practices.⁶⁸¹ According to the United Nations Development Program (UNDP), governance is “the exercise of economic, political and administrative authority to manage the country’s affairs at all levels. It comprises of mechanisms, processes, and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.”⁶⁸²

⁶⁷⁹Thierry Kirat, ‘Legal tradition and quality of institutions: Is colonization BY French countries distinctive?’ (2013) 11 *Criterion Libre* 26.

⁶⁸⁰ World Bank, *Sub-Saharan Africa: from Crisis to sustainable Growth*. Washington, DC: World Bank 1989.

⁶⁸¹ See Rawia Tawfic, ‘Reviewing Good Governance: Towards a Methodology of the African Peer Review Mechanism’ (SAII Report No.41, The South African Institute of International Affairs, 2004) 11.

⁶⁸² Apollo Rwomire, ‘Economic Growth, Poverty and Governance: The case of Botswana’ in Organisation for Social Science Research in Eastern and Southern Africa (OSSREA) ((ed) ‘*Good Governance and civil society participation in Africa*’ (OSSREA, Addis Ababa 2009) 71.

The New Partnership for Africa's Development (NEPAD)⁶⁸³ adopted the principle of good governance as one of its main pillars. It considers the principle to be a major condition for African development, with an African Peer Review Mechanism (APRM) to review good political, as well as economic and corporate governance.⁶⁸⁴ Good governance is at the centre of any development, and this must appeal to Ivory Coast as a developing country that accepted changes hence aspires to a continuous economic growth and sustainable development. In that respect, Dogoré argues that 'the State of Ivory Coast must play its role as a market regulator, have strong capacity for administrative control, and regulate the public sector and the private sector. It should also strengthen the legal and regulatory framework conducive to the development of the private sector and invest in local structures in order to create new jobs thus creating an environment conducive for economic growth. It is certain that growth internally will attract other investments both from the internal and external actors.'⁶⁸⁵

The Ivory Coast has an imperative responsibility to adopt in its national development plans, economic diversification which is crucial for employment creation, poverty alleviation, and income inequality reduction. Such a route was followed by Botswana in its NDP 8.⁶⁸⁶ There is also a requirement to empower the population easily to embrace the changes underpinning the development of the country. More importantly, Ivory Coast must invest in education of children everywhere in order to achieve the goal of primary education for all children in the country.⁶⁸⁷ The empowerment of citizens to participate to the development of the country is the primary obligation of a state.

Participation is seen as a means to the greater effectiveness of development projects, the mobilisation of resources, and the empowerment of people hitherto excluded or marginalised

⁶⁸³ See the Nepad Framework Document, Abuja, October 2001 available at www.nepad.org/en.html.

⁶⁸⁴ See Rawia Tawfic, 'Reviewing Good Governance: Towards a Methodology of the African Peer Review Mechanism' (SAII Report No.41, The South African Institute of International Affairs, 2004) 4.

⁶⁸⁵ Raymond Guisso Dogoré, '*La Côte d'Ivoire: Construire le développement durable*' (L'Harmattan, Paris 2007) 48.

⁶⁸⁶ Apollo Rwomire, 'Economic Growth, Poverty and Governance: The case of Botswana' in Organisation for Social Science Research in Eastern and Southern Africa (OSSREA) ((ed) '*Good Governance and civil society participation in Africa*' (OSSREA, Addis Ababa 2009) 70.

⁶⁸⁷ Raymond Guisso Dogoré, '*La Côte d'Ivoire: Construire le développement durable*' (L'Harmattan, Paris 2007) 57.

by the prevailing power structure within society.⁶⁸⁸ The World Bank assumes that participation improves the effectiveness of development projects and programmes. The objective of participation is stronger state capacity.⁶⁸⁹ More importantly both UNDP and DFID regard participation a human right. UNDP includes participation along with equality and representation as principles underpinning its work, while DFID endorses the rights of all citizens' to participate in, and gain access to information relating to the decision-making process that affects their lives.'⁶⁹⁰ Indeed, participation is necessary to ensure the long-term sustainability of projects and programmes. As Smith writes:

Participation improves state capacity by endowing it with credibility when citizen can express opinion and demands, by reducing information problems, and by plugging gaps in state provision. Therefore, the state must bring 'popular voice' into policy making by opening up ways for groups in civil society to 'have their say' and encourage wider participation in the design and delivery of goods and services.⁶⁹¹

More importantly, the concept of public management as an essential element of good governance is necessary for the achievement of the country's various development programmes. Hence, an efficient public management is vital in the process of development. It is imperative for Ivory Coast to embrace good governance and apply efficient public management. As indicated in chapter four, the lack of development constitutes among other factors, a critical issue for Ivory Coast's management of child labour in general. Smith rightly observes that:

If public Management is defective, the consequence can be severe, especially for development objectives sought by the international development community. Poorly functioning bureaucracies impede efforts to promote economic growth and reduce poverty. When the influence of public servants on policy- making lacks technical expertise it will eventually work its way through the economy, constraining the accumulation of human and physical capital.⁶⁹²

⁶⁸⁸ Robert Chambers, 'Paradigm shifts and the practice of participatory research' in N Nelson and S Wright (eds) *Power and participatory Development: Theory and practice* (International Technology Publication, London 1995) 30.

⁶⁸⁹ World Bank, 'world development report 1997. The state in a changing world' (Oxford University Press) 110.

⁶⁹⁰ See Department for International Development, 'Poverty: Bridging the gap' (DFID, London 2001) 86.

⁶⁹¹ Brian C Smith, '*Good governance and development*' (Palgrave Macmillan, Houndmills 2007) 149,150.

⁶⁹² *Ibid* at 226.

The Ivory Coast also has an imperative to comply with international rules in the context of globalisation where modern nations cannot develop in isolation. Of course, this requires a high degree of good governance and good cooperation with other nations. As Meadowcroft et al. indicate, ‘studies in international regimes have demonstrated that effectiveness of a regime increases with the degree to which it makes the behaviour of states transparent.’⁶⁹³ However, regime theory assumes that states are more willing to comply with international rules if they can be sure that other states do the same and that free riding is discouraged.⁶⁹⁴

More importantly, Ivory Coast assuming public management has the imperative ensure that domestic laws and regulations are strictly implemented and enforced in order to achieve the different socio-economic goals. This approach implies the strict regulation of both the public and private sectors. For example, all procurement entities, as well as bidders and service providers, must observe the highest standards of ethics during the procurement and execution of contracts financed under government projects.⁶⁹⁵

The 1987 Report of the World Commission on Environment and Development (WCED) propelled the idea of sustainable development onto the international stage. In a famous passage, it characterised sustainable development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’⁶⁹⁶ The Ivory Coast has an imperative to adopt a strategy that creates the full conditions of sustainable development.

There are companies for which sustainable development is part of their very essence, their *raison d’être*, their corporate mission.⁶⁹⁷ This goes along with sustainable business practices, mainly by the assumption of corporate social responsibility and corporate governance. ‘Much of the early activity in relation to Corporate Social Responsibility (CSR) centred on the adoption of company codes of conduct that established broad principles and guidelines

⁶⁹³ James Meadowcroft, Oluf Langhelle and Audun Ruud, *Governance, Democracy and sustainable development: Moving beyond the impasse* (Edward Elgar Publishing Limited, Cheltenham 2012) 240.

⁶⁹⁴ Ronald B Mitchell, ‘Source of transparency: Information Systems in International Regimes’ (1998) 42 *International Studies Quarterly* 109, 130.

⁶⁹⁵ *Ibid.*

⁶⁹⁶ World Commission on Environment and Development, *Our common future* (Oxford University Press, Oxford 1997).

⁶⁹⁷ Niko Roorda et al., *Fundamentals of sustainable development* (Routledge, London 2012) 309.

governing the behaviour of firms in relation to a combination of corporate governance and economic, social, labour, environmental, and human rights aspects.’⁶⁹⁸

The Ivory Coast’s new approach to dealing with private companies must be based on their ability to pursue and to uphold corporate values resulting in sustainable development. It is admitted that CSR on its own does not guarantee ‘accountability’ to citizens or communities and does not address issues of economics of scale, nor issues of social equity and distribution. Thus, governments should work with corporations in transparency and require them to establish stronger mechanisms of accountability, rather than just responsibility, to ensure that corporate activity is indeed sustainable.’⁶⁹⁹

6.3 Adoption of some Necessary Approaches

6.3.1 Serving the Best Interest of the Child

The principle of the best interests of the child has been the subject of extensive consideration in academic, operational and other circles. Legal documents relating to the protection of children, including those adopted by UNHCR’s Executive Committee on children of concern to the Office, systematically refer to it.⁷⁰⁰ More significantly, Article 3(1) of the Convention on the Rights of the Child that encapsulates the concept provides that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.⁷⁰¹

Some scholars argue that the concept of ‘best interest’ is a rather nebulous and ill-defined standard that opens a plethora of considerations. However, the term refers to ‘the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve

⁶⁹⁸ Jennifer Clapp and Peter Utting, ‘Corporate Responsibility, Accountability, and Law: An introduction’ in Peter Utting and Jennifer Clapp (eds) *‘Corporate accountability and sustainable development’* (Oxford University Press, Oxford 2008) 5.

⁶⁹⁹ Ibid at 16.

⁷⁰⁰ See UNHCR guidelines on determining the best interests of the child at http://www.essex.ac.uk/armedcon/story_id/000821.pdf, accessed 16 December 2013.

⁷⁰¹ UNTC, Vol. 1577, p.3.

a child as well as who is best suited to take care of a child. "Best interests" determinations are made by considering a number of factors related to the child's circumstances and the parent or caregiver's circumstances and capacity to parent, with the child's ultimate safety and well-being the paramount concern.⁷⁰²

The general argument was that, in the light of the provision of article 3, there is no concrete or definitive standard to which a judge can look when the court must consider the best interests of the child. However, the elements of evidence vary from case to case, and ultimately, the one concrete element that does exist is that which serves the interests of the child best.⁷⁰³ From that perspective, it must be noted that doctrinal controversy should not be prevailing in the child protection debate. Indeed, courts make a variety of decisions that affect children, including placement and custody determinations, safety and permanency planning, and proceedings for termination of parental rights.⁷⁰⁴

The core idea is that whenever a court makes such a determination, it must weigh whether its decision will be in the "best interests" of the child. Such argument should also prevail in any debate concerned with children's interests in society. It is equally significant in court cases related to the practice of child labour on Ivory Coast's cocoa farms in that, an element of cultural consideration; chiefly customary child fostering is present. Law regulating child fostering in Ivory Coast is inexistent. Hence, children are entrusted to relatives or family acquaintances for a better living condition. Unfortunately, the majority of these children end up as child labourers on cocoa farms or in other trades.⁷⁰⁵ In its General comments No. 14 the UN committee on the rights of the child's laid out specific guidelines that should better instruct decision makers in adopting the right approach.

The concordant view is that the general comment seeks to ensure the application and respect for the best interests of the child by the states parties to the Convention. It defines the requirements for due consideration, especially in judicial and administrative decisions as well

⁷⁰² See 'Family law- child custody-best interest of the child factors' (1991) 86 North Dakota Law Review 463.

⁷⁰³ Van Deusen and Christian Reichel, 'The Best Interest Of the Child And The Law' (1991) 18 Pepperdine Law Review 417.

⁷⁰⁴ See ZH (Tanzania) [2011] UKSC4.

⁷⁰⁵ See Serra Renata, 'Child fostering in Africa: when labour and schooling motives may coexist' (2009) 88 Journal of Development Economics 157, 170.

as in other actions concerning the child as an individual, and at all stages of the adoption of laws, policies, strategies, programmes, plans, budgets, legislative and budgetary initiatives and guidelines – that is, all implementation measures – concerning children in general or as a specific group. The Committee expects that this general comment will guide decisions by all those concerned with children, including parents and caregivers. The main objective of this general comment is to strengthen the understanding and application of the right of children to have their best interests assessed and taken as a primary consideration or, in some cases, the paramount consideration.⁷⁰⁶

Its overall objective is to promote real change in attitudes leading to the full respect of children as rights holders. More significantly, this has implications for:

- (a) The elaboration of all implementation measures taken by governments;
- (b) Individual decisions made by judicial or administrative authorities or public entities through their agents that concern one or more identified children;
- (c) Decisions made by civil society entities and the private sector, including profit and non-profit organizations, which provide services concerning or impacting on children;
- (d) Guidelines for actions undertaken by persons working with and for children, including parents and caregivers.⁷⁰⁷

The committee believes that the best interest of the child is about assessing and determining what is the best interest of the child when any decision is taken that affects the child. This is not just a decision about a specific child, it a decision that affect the child in general. According to the committee, because there are many decisions that affect the children, and they have impacts on their lives although they are not about them, those decisions about the

⁷⁰⁶ See UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, available at: <http://www.refworld.org/docid/51a84b5e4.html> [accessed 20 January 2014]. See also SAVE the children at <http://resourcecentre.savethechildren.se/library/general-comment-no-14-2013-right-child-have-his-or-her-best-interests-taken-primary>, accessed 20 January 2014.

⁷⁰⁷ Ibid.

best interest of the child must be taken into account. It is worthwhile to note that the committee evaluates the best interests of the child by putting specific criteria in place.

More importantly, decisions taken in the best interest of the child have to be based on objective criteria. For example, a child cannot be adopted by a family simply because the decision is made that that family will be better than their birth family. There is a question of the comprehensive respect of the child's rights as a whole and thus, in the committee's understanding, it is more a question of procedure to determine the best interest of the child than a personal consideration.⁷⁰⁸

6.3.2 The Need to Protect the Child

Protecting a child is an inherent mandate to be assumed by every society. Lawrence writes that 'in Western society; it is recognised that the family has the prime responsibility for the welfare of the child although, additionally, the state is also seen to have a collective responsibility in this area. Indeed, the state is responsible for initiating welfare policy and legislation with a duty to provide finance and support for the implementation of welfare programmes.⁷⁰⁹ Although this statement has its own merit, it should be emphasised that the need to protect the child is a critical issue in every human society.⁷¹⁰

The contemporary discourse of child protection relates to the fact that, some societies give less priority to the question. Thus, Beckett observes that children, and especially small children, rely on an adult who cares for them to meet both their physical needs and their needs for security, safety, and a sense of belonging. But children are often harmed by those whom they rely upon for protection. Occasionally, they are killed. More often, they are injured, or used for sexual gratification, or treated in a way that may not do any obvious physical harm, but which have long-term emotional and psychological consequences.⁷¹¹ This

⁷⁰⁸ Ibid.

⁷⁰⁹ Anne Lawrence, *Principles of child protection: Management and practice* (Open University Press, 2004) 52.

⁷¹⁰ See Peter Lachman et al. 'Challenges facing child protection' (2002) 26Child Abuse and Neglect 587, 617.

⁷¹¹ Chris Beckett, *Child protection: An Introduction* (2nd edn Sage Publications, London 2007) 5.

situation leads to an analysis of the concept of childhood in society.⁷¹² It also raises the question of the child as a vulnerable person in society.⁷¹³

Is childhood a status inherent to the person designated as ‘child’ or a concept constructed by society? In the on-going debate about the issue, some scholars have adopted the Universalist approach whereas others believe that the Relativist approach should prevail, depending on the cultural context.⁷¹⁴ However, understanding the two different approaches is vital in effectively addressing the phenomenon of child labour and other child abuses in society.

Conclusion

Human beings have in common certain universal features that are typical of the entire species of *homo sapiens*.⁷¹⁵ Whether the child is in Vavoua in Ivory Coast or Chester in the United Kingdom, he is a rights holder. Children are to be valued in every society. The Bible places emphasis on that fact in the book of Mark when he says, ‘suffer the little children to come unto me, and forbid them not: for such is the kingdom of heaven.’⁷¹⁶ When people were bringing little children to Jesus to have him touch them, but the disciples rebuked them.⁷¹⁷ In reaction to their act and the value of children, Jesus made his disciple and other people understand how valued children should be.

Whether it is from a religious viewpoint or social perspectives, the rights of the child must be promoted and protected. Whenever the rights are threatened or violated through any action, the law must intervene in its fullest terms. The protection of the child is the responsibility of all adults in society. Whether child labour occurs in Vavoua or Chester, society as a whole should stand up to block the way to the phenomenon. In that respect, the general perception that the problem of child labour is a problem for governments to solve is distorted. Such

⁷¹² See, Martin Woodhead and Heather Montgomery, ‘*Understanding Childhood: An Interdisciplinary Approach*’ (John Wiley and Son Ltd in association with The Open University, Milton Keynes 2003).

⁷¹³ See Jane V Appleton, ‘The concept of vulnerability in relation to child protection: health visitors’ perceptions’ (1994) 20 *Journal of advanced nursing* 1132, 1140.

⁷¹⁴ Sonia Harris-Short, ‘International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child’ (2003) 25 *Human Rights Quarterly* 130, 181.

⁷¹⁵ See Michael Freeman and Philip E Veerman, ‘*The ideologies of children’s rights*’ (Martinus Nijhoff, Boston 2012) 47.

⁷¹⁶ See The Bible, Mark 10: 14 (New International Version).

⁷¹⁷ See The Bible, Mark 10: 13 (New International Version).

perception is wrong and counterproductive. The truth is that child labour has so many facets, and the reasons for its existence are so complex that governments alone cannot be expected to resolve the problem. The solution will only come about from the efforts of a large number of partners, including trade unions. Moreover, the political will to increase public awareness must exist. Because the higher public awareness goes the lower child labour practice will descend. Hence one should not give up hope that child labour could end in the history of mankind.

There is no valid justification to child labour in modern societies. Senator Harkin declares that, ‘Gone is the argument that abusive and exploitative child labour is an acceptable practice because of the country's economic circumstances. Gone is the argument that abusive and exploitative child labour is acceptable because of cultural tradition. And gone is the argument that abusive child labour is a necessary evil on the road to economic development.’⁷¹⁸

This fact leaves no justification for child labour in Ivory Coast's cocoa farms or any other country. The real debate in countries so much attached to child labour is to be shifted on education. Weber writes that it is hard to imagine how citizens could participate in or contribute to a knowledge economy without not only basic reading and writing skills, but also some measure of computer literacy, including the use of the internet.⁷¹⁹ It is understood that modern societies have distinct patterns that need to be followed in order to be in phase with the globalisation trend.⁷²⁰

The ILO observes that ‘although the fight against child labour will not be won through legislation, it certainly cannot be won without it. Child labour laws can play a catalytic and supportive role in efforts to establish a more humane order and allowing society to give the child the best it has to offer.’⁷²¹ The effects of child trafficking and child labour are more devastating than a double-edged sword. The Ivory Coast seems to provide a conducive socio-economic environment that nurses and nurtures this phenomenon beyond the control of

⁷¹⁸Tom Harkin United States Senator.

⁷¹⁹ Alan S Weber, ‘The role of knowledge education in economies in developing countries’ (2011) 15 *Procedia - Social and Behavioral Sciences* 2589, 2594.

⁷²⁰ See Simon Sweeney, ‘Europe, the state, and globalisation (Pearson Longman, Harlow 2005).

⁷²¹ See ILO, Child labour: Law and practice, in *Condition of work Digest*, Vol.1 (ILO, Geneva 1991).

stakeholders involved in remedying the problem. Additionally, there are no customary rules compelling state to use ILO standards. The sole element to rely on is the political will of each nation. As long as the political will is absent there will be no considerable progress in the fights against child labour and other labour relations issues.

As it appears universally, child labour not only is a complex socioeconomic issue but it is also evil. It seems that all the actors involved in the fight against child labour in Ivory Coast's cocoa farms have failed to take the right direction. This state of affairs indicates that the nature of the problem has not been grasped. In the light of the nature of the problem therefore, it is unlikely that Ivory Coast could manage the issue of child labour in the foreseeable future.

Submission

Challenges

The dynamic nature of child labour appears to be the critical undermining factor to the total elimination. The ILO's significant efforts alongside member states seem to yield little result in the areas most concerned with the child labour practice. As per goal two of the United Nations Millennium development Goals (MDGS) universal primary education must be attained by 2015.⁷²² However, the prospect of completing a full course of primary schooling by children across the world by 2015 is seriously challenged by the current scale of child labour in Ivory Coast and other regions of the globe.

Chapter 1 examined the ILO's role in addressing international labour issues. It showed that the ILO's contribution to the fight against child labour is substantial and remarkable across the globe. It showed that the ILO's works have a great impact on worldwide public opinion. More significantly the ILO plays a tremendous role in the general interest in the issue of child labour through its legal campaigns across the globe. The Chapter also examined the current legal frameworks concerned with child rights at different levels of decision-making. This approach has permitted to understand the standing international, regional and sub-regional legal frameworks applying to child labour in the Ivory Coast context.

Chapter 2 demonstrated that child labour practice is has existed since pre-colonial era of the Ivory Coast. It showed that the practice was upheld during the principal historical periods of Ivory Coast. The chapter examined the different forms of child labour as per definitions provided by the ILO. In the light of the magnitude of the problem and its nature, the chapter showed that child labour currently practiced on Ivory Coast's coca farms despicable and fall short of moral values.

The chapter sought an answer to the enduring practice through utilitarianism and functionalism in order to comprehend whether child labour can be justified in society. The chapter analysed the socio-economic environment of child labour in Ivory Coast. The chapter underscores the fact that there is an economic rationale for the child labour practice on Ivory Coast's cocoa farms, and this remains one of the considerable challenges to a possible

⁷²² See http://www.masterpeace.org/blogs/post/education_should_be_made_paramount, accessed 19 August 2014.

eradication of the phenomenon. More importantly, the chapter examined the issue of child trafficking as an underlying problem to child labour in Ivory Coast. It showed that children trafficked from the neighbouring country such as Mali and Burkina Faso are mainly sent to work on cocoa and coffee farms. Child trafficking being a phenomenon intrinsically linked to child labour in Ivory Coast, the authorities should address both issues concomitantly.

Chapter 3 underscored the current position of Ivory Coast in the international labour environment. It showed that the government of the United States played an important role in the transformation of Ivory Coast's legal framework for child labour. The chapter showed that Ivory Coast has a satisfactory record of ratification of the ILO Conventions. However, it often encounters difficulties in providing regular reports on the implementation of the Conventions. The chapter examined the legal input of Ivory Coast in the fight against child labour and child trafficking within its borders.

Chapter 4 examined the underpinning factors to the perpetuation of the child labour practice on Ivory Coast's cocoa farms. The chapter showed that cultural perceptions of the cocoa farming communities in rural zones is a key challenging factor to a possible elimination of child labour. The chapter showed that although efforts are made to adopt a universal approach to child labour and child rights, cultural perceptions in different areas of the globe remain serious challenges. Hence, the chapter examined the impediment of culture and custom to the combat against child labour in Ivory Coast. The chapter placed great emphasis on the substantive, procedural, developmental, and economic and social arguments. Indeed each discussion is crucial in Ivory Coast's cocoa related child labour debate.

Firstly, the substantive and procedural arguments are made to show that Ivory Coast made significant efforts in domesticating the relevant international legal instruments. Secondly, the developmental and socio-economic arguments are made to demonstrate the political and structural weakness of the country to manage the issue of child labour in the foreseeable future. In the same vein, the chapter examined some specific issues nursed by the socio-political orientation of Ivory Coast at the dawn of its independence from French colonial rule. The specific issues examined in this appear to be overlooked by Ivory Coast authorities. Indeed they seem to dissociate these issues from the enduring child labour in the country.

Chapter 5 examined every single right impacted by child labour or child trafficking. It showed that there has been a shift in approach to children's rights. This rests upon the idea that in previous centuries, rights for children were nonexistent because such rights were simply

denied to them. However, from the systematic denial of rights to the recognition of rights, an importance process has taken place. During that process, the work of activists in advocating fully recognised human rights for children was determinant.

The chapter showed that various actors contribute to the erosion of child rights in the process of using child labourers in Ivory Coast's cocoa industry. The chapter demonstrated that the stakeholders, including the state, contribute to the perpetuation of the child labour practice that continues to negatively impact record number of child rights. Thus, it concluded that if the violation of those rights occurs, all the stakeholders should be accountable for such outcry.

Chapter 6 examined the missed opportunities by the stakeholder in Ivory Coast's cocoa industry. While several opportunities were given to each actor to play a tremendous role in combatting child labour in Ivory Coast's cocoa communities there seems to be little efforts to bring about the expected change. The chapter showed that child labour remains a serious problem for the development of Ivory Coast. The chapter observed that Ivory Coast is unable to manage the issue of child labour in the foreseeable future. The chapter proposed that Ivory Coast adopts a shift in approach to managing the whole issue. Hence, the chapter analysed the constitutive elements of a new paradigm in pursuance of a better management of the problem and eventually a complete elimination of the phenomenon. More importantly emphasis is placed on the need for that Ivory Coast to urgently adopt the pedagogic method as a new approach in order to go about critical issues undermining its economic development, as well as its relations with the external world.

The debate about child labour apprehended in a broader spectrum opposed two main current of thoughts. The ILO and all human rights agencies in the globe are in the forefront of the advocacy for the eradication of child labour. Their line of reasoning is linear and consistent. They scarcely pay attention to the cultural relativist approach to the issue.⁷²³ Indeed, their approach raises the question of a common language on child labour in terms of providing a standard definition. The concept of child labour is equally problematic to apply to the many activities undertaken by children across the globe.⁷²⁴ Some writers and cultural relativists

⁷²³ See Ben White, *Defining the Intolerable: Child work, Global Standards and Cultural Relativism*' (1999) 6 *Childhood* 133, 134.

⁷²⁴ See Michael Bourdillon, Deborah Levison, William Meyers and Ben White, *'Rights and Wrongs of Children's Work'* (Rutgers University Press, New Jersey 2010).

argue that child labour is a broad concept that needs more specification in order to avoid an abusive generalisation of children's participation of children to work as child labour.

The debate about child labour, whether it is centred on the abolition or on preventing children from engaging in certain types of work, should make the welfare of the child paramount. This is because the child is an important element of society. Hence, where the child's development, his fundamental rights and welfare are not put in jeopardy, the child should be allowed to acquire the necessary aptitude to play an efficient role in society when he reaches adulthood. Amidst the current controversy about the child labour practice, the plight of record number of children on Ivory Coast's cocoa farms persists. Child labour remains a challenging issue. Its complex nature appears to be to thwart the authorities' efforts to overcome it. It appears that legislation alone cannot overcome the phenomenon. More significantly, perceptions and attitudes appear to counter any dynamic for a total abolition. The current *status quo* reinforces the postulate that Ivory Coast is unable to manage the child labour practice in the near future.

Recommendations

1. The Ivory Coast Law has made child labour illegal. The Ivory Coast should, therefore, establish a police unit to enforce child labour legislation nationwide.
2. The Ivory Coast should entrust the child labour committee with an independent group of experts to avert any political interference. Hence, the current tenure of the position of chair of the committee by the first lady of the country will appear inadequate.
3. The Ivory Coast should initiate a national consultation for the codification of farming activities. This undertaking should be aimed at putting the farming activity under the umbrella of the Ministry of labour in order to give a status of legal employee to every worker employed on Ivory Coast's farms and also to issue every cocoa and coffee farmer with a farming permit. The new approach will allow cocoa or coffee farmers to exploit farms legally and employ workers in accordance to Ivory Coast's labour and employment regulations.
4. The Ivory Coast should establish a labour inspection unit to inspect on a regular basis cocoa and coffee farming communities and monitor the implementation of labour regulations.
5. The Ivory Coast should establish a special unit that will liaise with every rural settlement (village) and the registrar's office in order to report every single birth on its territory.
6. The Ivory Coast should make it compulsory to declare births and deaths on its territory.
7. Ivory Coast law should make primary education compulsory for every child residing on the territory.
8. The Ivory Coast should strictly implement and enforce human rights instrument in general and in particular child rights instrument.

9. Ivory Coast law should provide prosecution with severe jail term for any cocoa or coffee farmer in breach of the child labour legislation. In addition, the culprit should have his farming permit withdrawn for a determined period.
10. Ivory Coast law should establish a regular reporting system for individual entering the country from other ECOWAS States with minors. This approach is to ensure that the child is not involved in the child labour practice during the holiday. If a child were to reside on the territory for a longer period, there should be a guarantee that he or she is enrolled and attends a local school and strictly forbidden to engage in any employment.
11. Among all NGOs operating in Ivory Coast, there is none for child labour. The Ivory Coast should encourage the creation of local NGOs advocating the total elimination of child labour in the country, especially the eradication of the worst forms of child labour as practiced currently on coffee and cocoa farms.
12. Multinational Corporations operating in Ivory Coast cocoa industry should never buy a non-Fair-trade certified cocoa or coffee from Ivory Coast. They should have their agents sent on cocoa and coffee farms for regular supervision to ensure that the crops are child labour free.
13. The Ivory Coast should make the abolition of child labour a constitutional principle. Hence, making the practice a direct offence according to the constitution.

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