The Enduring Child Labour Practice in Ivory Coast: Grasping the Underlying Factors

Alexis FOUA
The Enduring Child Labour Practice in Ivory Coast: Grasping the Underlying Factors

Alexis Foua*

“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”.

ABSTRACT

This article examines the underlying factors behind the enduring practice of child labour on Ivory Coast’s cocoa farms. More than a decade after the plight of thousands of children on those plantations was revealed to the world community, concerns remain about the nature of the problem and the ineffective responses of various legal instruments to the phenomenon. The current approach to combatting the crisis is only making that state of affairs worse. Neither the International Labour Organization (ILO) Convention on the Worst Forms of Child Labour, 1999 (No. 182) nor laws enacted after the domestic adoption of most United Nations’ human rights instruments have made the impact that might have been hoped. The study's approach is a textual analysis of the key legal instruments relevant to this issue, which has been so challenging for Ivory Coast authorities and the ILO alike. The article emphasises this aspect in both its substantive and procedural arguments.

Keywords: Worst forms of child labour, enduring child labour practice, Cocoa plantations, underpinning factors, ILO Conventions, Child’s rights, Ivory Coast.

---

* PhD Candidate in International Economic and Labour Law (Brunel University), London) LLM in International Comparative and Business Law (London Metropolitan University), BA (Pierre Mendes France Grenoble) BA (Abidjan Cocody). The author accepts full responsibility for any errors or omissions in this paper and welcomes correspondence to alexisff@yahoo.co.uk or Kema.Foua-Bi@brunel.ac.uk.

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

The child labour debate in Ivory Coast is essentially centred on eliminating the problem through legislative action. While such an approach per se is understandable on its face, it scarcely addresses the causes that perpetuate the problem. The unique nature of child labour practice on Ivory Coast’s cocoa farms requires a different approach to achieve its elimination.

Child labour is endemic across the world. Although the practice has been known in innumerable societies for centuries, its fundamentally despicable nature has made it intolerable in contemporary societies. Despite universal efforts through the 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 manifested in legislative activities of the leading international organisations to eradicate all forms of child labour, have had little demonstrable impact on the current state of affairs in regard to child labour practices. Various challenges are blocking the way to a complete abolition reignite the debate about whether legislating should be the only approach to the issue of child labour.

Ivory Coast is the world’s largest cocoa producer, with an average production of 1,300,000 tons of beans per year. Cocoa accounts for one-quarter of its exports and public revenues. Approximately 700,000 smallholder families (or six million people) depend on the sector for their main 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 by agencies in the sector have limited cocoa’s contribution to rural growth and poverty reduction. An estimated 60 percent of cocoa farmers live below the poverty line, and they account for some 28 percent of all the poor in Ivory Coast.

The Ivory Coast like any modern country has subscribed to the notion of respecting human rights and other values pertaining to contemporary societies. The Ivory Coast is signatory to most United Nations legal instruments and the major ILO Conventions. This article emphasises the unique characteristics of child labour in Ivory Coast. It analyses the different arguments that underlie the perpetuation of child labour practices on Ivory Coast’s cocoa farms. It shows that although the cultural argument remains the most significant in the current debate, other challenging issues need to be effectively addressed by the state and by all stakeholders in the cocoa industry.

THE UNIQUE CHARACTERISTICS OF CHILD LABOUR IN IVORY COAST

Ideally, the nature of the problem determines the right approach to adopt in addressing the entire issue. By applying the right remedy, the problem is likely to be overcome. 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.” Numerous studies have revealed that child labour has many facets, and a combination of factors

---

makes child labour in Ivory Coast unique. As a consequence, child labour in this context should be regarded as a problem with many questions to solve – the uniqueness of the problem requires a similarly nuanced approach in order to be eradicated.

The major challenge remains the simple scale of the problems relating to child labour practices. For instance, the Ivorian authorities show no appreciation of the number of unregistered births in the country; there are no estimates available of children born in rural areas who were not registered on the civil registry. The birth registration process has two steps: the record of the birth by a midwife or a health centre and then the registration of the birth in the civil registry. Obviously, if the first step does not occur, the authorities cannot determine the exact number of children born in rural areas. Additionally, 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 accepted values and legal principles become a common element in their dealings.6

Cultural argument

The cultural rationale for children’s involvement in work and exploitation varies from one society to another. Work by children is a worldwide issue in that the phenomenon exists in almost every country across the globe. It is hard, though, to accept the claim of some countries that they have eradicated it, which reinforces the need for global vigilance about the issue. It also reveals the issue as a pattern inherent to every human society. If some societies have resorted to children’s work as a means of sustaining economic growth and compensating for a lack of adults in the labour market, some consider it an appropriate preparation for adult life, 7 even when the children are as young as five years.8 This latter view is common in segments of many African societies and is often defended by recourse to the cultural relativism argument. The term ‘culture’ is broad and vague: the concept of culture can refer to many things, ranging from cultural products like art and literature to the cultural process or culture as a way of life.9

Anthropologists commonly use the term ‘culture’ to refer to a society or group in which all or many people live and think in similar ways.10 Culture includes “inherited ideas, beliefs, values and knowledge which constitute the shared bases of social action”.11 During the general discussion on the rights to take part in cultural life, held by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) at its seventh session in 1992, it was stated that culture meant “way of life”.12 Moreover, Feinberg and Ottenheimer’s account of Schneider’s position about culture notes that Schneider’s position fundamentally characterizes culture as a system of symbols. Since the connection between a symbol and its referent is by definition arbitrary, the variety among cultural categories and systems is restricted only by the limits of human imagination.13

---

In agrarian societies and thus most African rural communities, schooling is not regarded as something that guarantees better jobs for children. Therefore, parents often find it pointless to send their offspring to school. Rather, it is preferable to teach children a trade in order to allow them to “fend for themselves” in the future. It is dubious to claim that these societies have an awareness of the concept of childhood, both in its relation to work and to the developmental aspects of children. In these societies, it might not be clear how to define a child, whereas in the west, it is customary and even automatic to do so by chronological age. The definition’s 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 key 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 that gradually introduces children into work activities and teaches them survival skills. Considering the challenges and contextual realities, the sooner children engage in the development of the community, the better. For instance, in the Kwara Fulani community in Nigeria where the source of subsistence is cattle, male children and adolescents are herdsmen. When they are young, young boys’ work is helping both parents with miscellaneous tasks around the home, but from about the age of seven, sons help in the herding of cattle until they are themselves married. This example indicates how early children can be introduced to such important social responsibilities 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 agrarian societies. For instance, while for the Wataita tribe of Kenya all children are “God’s gift”, male children are more prized. The underlying assumption that the accumulation of male children could be achieved through polygamy remains well established in those communities. Women in the polygamous households not only contribute immensely to the land cultivation process but most importantly, the husband’s land serve as a kind of insurance against the failure of crops that the women grow. Although some scholars argue that polygamy is implicitly considered favourable to birth spacing and leads to longer sexual abstinence, the irrefutable underlying social and cultural arguments remain in favour of family enlargement and land control, which stabilise wealth in the family. This view is widely shared among most rural communities in developing countries in general and particularly in Ivorian rural communities where cocoa and coffee farming requires a significant population of labourers. It is understood there that the relationship between fertility, household size, and child labour also depends on the amount of land holdings.

In the light of cultural conceptions, it is undeniable that each society tends to regard its own way of rearing children as not only the adequate and but also fully justified and indeed the best option. As a result, they

---

not perceive the involvement of children in a wide range of social and economic activities as anything morally objectionable or even dubious, given that such involvement strikes them as immensely beneficial to children’s development within their own context. Mbidi argues that another significance of rites is to introduce the candidates to adult life. 

Comparing this outlook with the child labour approach exhibited by UNICEF and the ILO, the wide gap in perceptions of child work seems fated to have caused a serious misunderstanding at the international level. Cultural elements and the conservatism of traditional societies are not merely hindering factors to an easy agreement but even to finding a common language for the discussion. In the same vein, Humbert notes that “the concept of child labour is equally problematic to apply to the many activities undertaken by children across the globe”. This simple fact remains the main challenge 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 working to be the proper and natural occupation for the children of either the poor or of ethnic minorities. They have no interest in or commitment to ending child labour and indeed want to continue exploiting these children for the cheap labour they provide. In other cases, when parents have little money to spend on education, they choose to educate the male child, so girls rarely receive any schooling. Neube 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”.

Bart Rwenzaura cautions 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 road to global improvement of the status of children. The reason for his restraint is that social, economic, and cultural diversity means that the world community cannot all understand the Convention in the same way. For example, while all may agree that all children should be protected against all forms of exploitation prejudicial to their welfare, sexual exploitation and sexual abuse, arbitrary interference with their privacy, and that all actions by appropriate authorities concerning children shall always give regard to their best interests, there will always be nuanced differences among the understandings of what kind of work is hazardous to children and which conduct, customs, and practices are contrary to a child’s best interest.

Himonga writes that the “respect” that can translate itself into a culture of silence on the part of children underpins the cultural distance between adults and children. 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 do 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 entirely separate from their

---

24 Article 36 CRC.
25 Article 32 CRC.
26 Article 16 CRC.
27 Article 3 CRC.
own. The result might be that any decisions concerning children arising from the adult world will be treated by children as being entirely out of their competence to question.\textsuperscript{29}

Participation in decision-making is limited to consultation, rather than to the decision being made. The Convention requires permitting children to express their views freely, \textsuperscript{30} going so far as to require that children’s views be given due weight in accordance with their age and maturity (Article 12).\textsuperscript{31} The right of children to information is encapsulated in Article 17 of CRC. According to Harrison the stipulation implies that “all children have a right to accurate and beneficial information. This includes learning to understand the hidden messages in certain sources of information.”\textsuperscript{32}

Due to the scarcity of resources, poor parents make decisions concerning their children’s education and care in which the latter have no chance to express an opinion. These involve fostering arrangements for children made between the parents who are unable to support their children, and their relatives who help with care.\textsuperscript{33} Peasants themselves often stress the economic utility of their children in activities around the home or family farm. They also speak of the economic difficulties they would encounter with fewer offspring.\textsuperscript{34}

One of the most important ways in which participation and empowerment might be facilitated is through access to accurate, timely, and appropriate information that enhances decision-making and promotes personal, social, and cognitive skills. Jones and Walker argue that children and young people have the right to correct information that allows decision-making to take place.\textsuperscript{35} They are to the view that both mental and sexual health issues can be difficult for young people to seek information about due to embarrassment. Therefore, the right to information should calls for innovative ways of accessing health information anonymously such as using the internet and telephone advice and help lines, which can overcome barriers to information and facilitate seeking answers.\textsuperscript{36}

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 result. After all, the African Child Charter in its preamble reaffirms adherence to the principles of the rights and welfare of the child laid out in the Convention. However, behind this apparent harmony lie ideological and conceptual differences between the two documents, which at the very least suggest that, there remain unanswered questions about the conceptual understandings of the essence of both the theory and substance of the rights of the child.\textsuperscript{37}

Most modern international human rights laws on children are based on the assumption that there are certain basic universal values and norms on children’s rights held by the international community as a whole, around which the normative consensus reflected in these international instruments has been constructed. In

---

\textsuperscript{29}Ibid. at 115.
\textsuperscript{30} Article 12 CRC.
\textsuperscript{32} D Harrison, Regardless of Frontiers: Children’s Rights and Global Learning (Trentham Books, Stoke on Trent 2008) 15.
\textsuperscript{35} P Jones and G Walker, Children’s Rights in Practice (2011, Sage) at 151.
\textsuperscript{36} Ibid.
reality, though, behind the normative consensus lie conceptual and substantive claims of cultural and contextual diversity.38

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 a 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, child-centred philosophy. Within individual countries, and in cultures and communities that make up those countries, research reveals different issues that are foregrounded in children’s lives and the ways in which ideas of child rights have developed their own localised meaning and drivers for change.39

The birth of the CRC was celebrated and even hailed to be the perfect international legal instrument that crowned the efforts of several campaigners and human rights lawyers. However, more than two decades after the adoption of the Convention, serious obstacles block the path of the “divine child”, with culture being the leading challenge. The question is whether the culture should always take precedence over the Convention. Dyregrov et al write 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.”40

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 this thesis. In African societies, the primary interest in the child is as a source of wealth. The core of the child labour debate rests in this definition and the philosophy that results from it. 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 they acquire new members in each generation, and the defence of their collective resources (usually land and cattle) requires able-bodied men”.41

Le Vine et al. go further in writing 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”.

The diversity of culture and the difficulty of reconciling tightly-anchored perceptions can only fuel the debate on cultural relativism. There are universal patterns for human rights, but when these western-influenced ‘universal’ patterns are not present, the debate often becomes overheated. Different approaches to social-structural and cultural values are in conflict. For instance, pluralists believe that there are many reasonable conceptions of a good life and many reasonable values upon which the realisation of good lives depend. As to the specific characteristics 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.”

This reasoning is pertinent in that it underpins the core issue of value systems. A value system is a set of consistent ethical values accepted by a group, community, or society. A society that has adopted a set of values will regard them as a standard to guide their behaviour preferences in all situations. The significance of such an approach is underscored by Rwezaura:

“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”.

These are genuine facts, of course, and not at all ignored in the debate, but there is 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 recognized as such. This is pertinent in that a cultural practice abhorred by all human communities and, therefore universally proscribed, cannot be defended at all. However, it cannot strongly and successfully be argued that others cultures must be rejected merely because they appear strange to other societies or the world community as a whole.

---

42 Ibid.
43 The tendency to present western culture as the model and the standard does not facilitate the solving of the problem.
45 Ibid at 22.
47 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
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, that would entail an often-radical reworking of opinions about children’s social status in most indigenous communities. From that perspective, the rights of the child would be seen as an exact science that needs to be studied and made clear in its specifics. Indeed, Bachelard writes that “science is totally opposed to opinion, not just in principle but equally in its need to come to full fruition”.48

The world’s communities are deeply interconnected in this 21st century. In such a global context, there are opportunities for nations to appreciate best practices and imitate counterparts that may be models for success in other places. Some societies deny children the opportunity to benefit from existing patterns or available models or to understand or uncover the gravity of the activities in their own countries. It is difficult to argue that in a democracy adults can safely assume their personal freedoms and human rights, but children cannot. Children are often expected to show unconditional obedience and loyalty and physical and mental subordination to parents and teachers.49

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 this cultural trap, the adults are faced with an epistemological obstacle. There is a growing agreement that children must have their rights recognized and protected everywhere in the world, and there are international legal frameworks to guide states in making domestic laws in that respect. Still, there remain some countries permit outrageous practices that systematically violate children’s substantive rights.

The assumption that cultural belief or opinion is an epistemological obstacle50 rests upon the theory that cultural practices universally seen as unacceptable should be reformed or eliminated in order to establish best practices that truly value child rights. Any such reform could thence be credited to the 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.51

The practice of child fostering per se is a cultural value that is widely accepted in many countries. It is a practice that, in Freeman’s terms, all reasonable people would find acceptable. In the UK for instance, there are regulations relevant to the placement of children in foster care.52 In the West African context, there is the practice of kinship fostering, in which children are sent to live with their relatives, often at a great distance and for a long period. In many places, children are only sent when they are over five years of age, but among the Mende of Sierra Leone, fosterage of children under two is quite common.53
Particularly in West Africa, childless women are entitled to request children from their kin, and they have a socially-accepted role as foster parents. The specific elements of the custom of child fostering that are peculiar to the West African setting have often led to serious child rights violations and all manner of abuses. The fostering relatives can systematically exploit and abuse the weaknesses of the practice. This will, of course, facilitate the luring of children (with parental consent) by a sort of Pied Piper figure – the modern trafficker who may be a blood relative or family friend and a seller of children. 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”.

The west should have had a better understanding of the fostering customs pertaining to West African societies through the landmark case of Victoria Climbie in the United Kingdom in early 2000. Victoria Climbie was born in November 1991 in Ivory Coast. She died in February 2000 in London at the age of 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.

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 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”.

Traditionally, children’s contributions to family farming were seen as a way to promote socialization and community spirit among children and thus enjoyed widespread acceptance. 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. The blame for abusive exploitation of children or child labour in its worst forms is thus put on corporations. The views of the cocoa union president who praises the traditional approach, and the strong influence of corporations in the cocoa industry are equally challenging issues for Ivory Coast. As emphasized elsewhere, the cultural approach to the child-adult relationship in most African societies is based on a win-win principle where the child learns roles and skills vital for later life and the family as a whole benefits from the child’s economic contributions. Levasseur notes 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

54 Ibid at 32.
Available at: <http://www.guardian.co.uk/world/2001/apr/21/jamesastill> (last accessed 12 August 2014).
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”.61

Substantive argument

Existing legal frameworks concerned with child labour or child rights are viewed as the most efficient and up-to-date instruments for addressing the relevant issues. ILO Convention No 182 is the result of almost twenty years of organizational searching for the right answer to child labour around the globe. There are significant regional and sub-regional instruments regarding child rights. However, as a primus inter pares among the existing legal frameworks, the CRC the most significant legal achievement to date. It defines and qualifies children rights, with examples of how they affect children’s daily lives. The CRC is by far the most widely-accepted international treaty, ratified by all 192 governments in the world except for Somalia, which has no government, and the USA, which is often reluctant to ratify UN treaties.62 Ratification means that the government undertakes to implement the CRC and its comprehensive 54 articles in law, policy, and practice and to report regularly to the UN Committee on the Rights of the Child on their progress in doing so.63

The Child Rights Convention per se is tremendously generous in terms of what any child enjoys as rights. It opens the door to a wide array of legal options for 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 governments to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.64 The CRC is thus an unavoidable starting point for any discussion of the legal rights of children. This is the case not simply because it is the most widely ratified instrument of international law and thus exerts considerable influence on how to think practically about the rights of children, but also because the CRC “codifies a recognizable canon of thought about the rights of children”.65

Rights can only be claimed and respected when people know that they are rights holders. States 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”.66 Criticism of the CRC includes its lack of enforceability unless incorporated into national law, its lack of promotion of children’s participation through political rights, that its definitions such as best interest may be made solely by adults rather than including 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.67

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

---

63Ibid.
66 P Alderson, Young Children’s Rights: Exploring Beliefs, Principles and Practice (2nd ed, 2008, Jessica Kingsley Publishers) at 44.
children had never before been clearly defined in international law.\textsuperscript{68} Notably, the CRC does not prohibit children from working entirely, nor does it set a minimum age for work; these are covered by national laws and the ILO Convention on Minimum Age (No. 138), at least in countries that have ratified it. It focuses on protecting children from harmful work and implicitly recognizes that not all work is harmful to children.\textsuperscript{69}

**Procedural argument**

The Ivory Coast has complied with the requirements set out in regards to international legal frameworks addressing the specific issue of child labour as well as the general issue of child rights. Although these moves evince some progress, it appears that Ivory Coast has not done enough to make the elimination of child labour and various other violations of child rights a reality. This concern raises the question of the state’s ratifications of international treaties. The ratification alone typically does not suffice to solve the problems addressed in the treaty. Efficient implementation and enforcement mechanisms are the key subsequent stages to obtaining the expected result when a legal framework is set.\textsuperscript{70} ILO Convention No. 182 came about as a modern to the plight of children engaged in the worst forms of child labour. Ivory Coast is among the member states that made the Convention one of the most successful in terms of its 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 pervasive phenomenon.

The standing legal frameworks at the 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. That Ivory Coast is failing to deliver in regard to its treaties obligations could result in its missing the opportunity to play its part in the process of giving effect to the spirit and the letter of the international, regional and sub-regional legal frameworks. By failing to eliminate child labour on its cocoa farms, Ivory Coast has so far missed an opportunity to become a human rights protecting nation. Most dramatically, Ivory Coast is missing an opportunity to prepare the future generation for the challenges pertaining to a new global context.

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.\textsuperscript{71} More specifically, the missed opportunity also lies in the fact that Ivory Coast has failed to put in place the appropriate structures and infrastructures to effectively address child labour 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 for implementation and enforcement means that Ivory Coast has only taken one step on the road to 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). As child labour is one of the key issues in the MDG initiative, Ivory Coast could have actively played its part in the achievement of such a noble goal.


\textsuperscript{69} Save the Children, Children’s Rights: Reality or Rhetoric? (1999, The International Save The Children Alliance) at 66.

\textsuperscript{70} The real challenge to the achievement of comprehensive measures set in a legal framework is implementation and enforcement. See A Bradford and O Ben-Shahar, “Efficient enforcement in international law” (2012) 12 Chicago Journal of International Law at 375.

\textsuperscript{71} 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 exploiters in the remote farms of the cocoa production zones.
Unfortunately, another excellent opportunity was missed. Achieving the MDGs requires an effective and demonstrable result in all the sectors concerned.72

Development argument

The level of industrial development in a country is crucial in the fight against child labour practices.73 Child labour has existed in brutal forms in most currently developing nations. Owing to advancing levels of industrial development, many factors that underpin child labour have either disappeared or at least been controlled. An overview of the history of child labour in Great Britain and the current state of children in a welfare state is testimony to a paradigm shift.74 Children’s participation in work existed in pre-industrial Britain, where they worked on family farming initiatives; children who lived on farms worked with the animals or helped their parents to plant seeds, pull weeds, and reap the ripe crops.75 However, in the late 18th and early 19th centuries, Great Britain became the first country to industrialize. Mathias observes that “a typically industrialized transformation occurred to urban brewing in London during the seventeenth century...”76 This new context dramatically changed the employment of children. The factories and mining industries were highly dependent on cheap labour. When rural textile mills were built from 1769 on, child apprentices were employed as primary workers. William Blake even called these enterprises “dark satanic mills” 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 manners”.77 Child labour was also practised in continental Europe. Referring to child labour in France, Hobbs writes that “according to a detailed study by historian Colin Heywood, children played a major role only in a limited number of industries, such as textiles”.78

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, production had multiplied tenfold compared to the 1960s. The cocoa situation was a special challenge for the authorities, who rejected the idea of integration proposed by other West African countries and opted for a liberal approach to its development.79 The strategy of the Ivorian state concerning industry was to arrive at the full industrialisation from modest beginnings by concerted government effort and reliance on substantial foreign help.80 The goal of Ivory Coast authorities from the outset was to initiate and ensure strong and rapid growth using foreign funds and putting in place an industry orientated towards foreign markets and global trade. Eventually, this commitment led to difficulties that structurally jeopardised the country’s development.81 The initial success in agricultural export-led growth had made Ivorian policymakers pursue overambitious and unrealistic modernization plans. The slogan to make Ivory Coast “Africa’s South Korea” by the turn of this century is but one example of this ambition. The other significant internal factor is leading to a crisis concerned mismanagement in the economy.82

72 Achieving the MDGs means fulfilling all eight goals established following the Millennium Summit of the United Nations in 2000.
In response to the challenges it was facing, Ivory Coast authorities launched *le plan quinquenal de développement économique*83 ("five-year economic development plan") for the 1976-1980 period, during which the country was to switch from an economy based on constant growth to a society promoting individual and collective interests.84 However, whatever the merits of the new economic emphasis determined by the country, the lack of quality management remained the hindering factor. For instance, *La Caisse de Stabilisation et de Soutien de Prix des Produits Agricoles en Côte d’Ivoire* (CSSPPA), the cocoa board financed public investment and other public expenditures by rechanneling the surplus from the agricultural sector into other sectors of the economy.85 Thus, the CSSPPA was the key institution not only in Ivorian export-oriented agriculture, but also in the whole economy.86

The lack of management qualities was incidental to the maintenance of some modern infrastructures realised during Houphouet-Boigny’s tenure.87 There was ample evidence of a total lack of organisation in the transport system and the absence of an adequate road network. The few roads that exist are old and hence not practical. The entire infrastructure established by the colonial administration and the initial post-independence government needed to be upgraded. More importantly, the legal and institutional environment was not adequate for industrial development.88

**Economic and social arguments**

The effect of growing poverty is a serious concern in Ivory Coast: poverty is visible in families, in women and children, youth, schools, housing, employment, and the public service. The period of family solidarity based on strong kinship has disappeared, and money is the determining element in all relations, so that a family that lacks money is in peril.89 Between 1980 and 1990, Ivory Coast’s poverty rate rose from 10 per cent to 30 per cent, and by 1998, had risen to 33 per cent.90 Poverty is often seen as the primary cause of, or at least a powerful justification for, child labour.91 Where parents are unemployed or have low incomes, their children will be under intense pressure to supplement the family income by working. In cases where a child is faced with choosing 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 that can deter poor parents from enrolling their children in school, thus perpetuating the cycle of deprivation.92 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 child labour is occurring in a traditional and rural agrarian environment where employment principles are non-existent.

---

83 The successive five-year plan was a strategy to trigger industrial development.
85 The CSSPPA was effective and successful in promoting the production of cocoa and coffee, especially when compared with similar marketing boards elsewhere in Africa, such as Ghana.
87 Houphouet Boigny, the first president of the independent Ivory Coast initiated an ambitious development programme. This was essentially focused on the realisation of modern infrastructures during his thirty-three years in office. However, after his death in 1993, most of his infrastructure was derelict.
89 Ibid at 162.
In the specific context of child labour on Ivory Coast’s cocoa farms, the practice is derived from a mixture of both poverty and traditional settings. While most children are trafficked from the Ivorian north and neighbouring countries, some are used by their own 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 consolidate their ranks in the community. From that perspective, the poverty rationale cannot be seen as the prevailing factor in the perpetuation of child labour. It is one of the elements that make the study of child labour on Ivory Coast’s cocoa farms a unique topic.

The 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”. Rwomire’s viewpoint supports the argument advanced in Chapter Two in regard to the collusion between Ivory Coast authorities with Multinational Corporations (MNCs) over the issue of child labour in the cocoa industry.

ANALYSIS OF SOME SPECIFIC ISSUES

Unregulated cocoa farming activities: The current state of affairs

In addition to the underpinning factors examined hereinbefore, there are specific issues that need to be address in the quest to supply a definite answer to the child labour on Ivory Coast’s cocoa farms. Among other questions, farmland registration remains crucial. The starting point to the regulation of the cocoa farming is the establishment of an accurate database on the number of farms in the country. The agricultural sector, although it is the foundation of the Ivorian economy, is unregulated; the sector remains traditional and unstructured. Not only are farmlands unaccounted for, but also the vast majority of farmers are unknown to the administrative authorities. The lack of regulations in the cocoa sector is thus characterised by two crucial factors. First, farmland is not registered and secondly, the employment rules are not applied to the sector, because there is no solid information on who works in it.

In the context of non-regulation, it is evident that any individual can enter into or withdraw from cocoa farming without following any administrative procedures. The state has no direct contact with farming communities. The most crucial issue in such a vacuum is the employment of farm workers, who are not registered with the Ministry of Labour or any other government agency; their labour ‘rights’ are thus non-existent. They depend entirely on the ‘human resources management’ approach of the farm owners who employ who them and who themselves, as underscored above, are unknown to the authorities.

This gap in employment regulation is related to a historic event. In the colonial period, legal pluralism was accepted by the French colonial administration. The customary laws of the indigenous African communities were retained alongside the laws imposed by Paris. This pattern in the legal environment is seen in most former

---

western colonies in sub-Saharan Africa. As Berry notes, in attempting to construct stable, workable administrative systems in Africa, officials sometimes sought to preserve traditional structures of authority, and sometimes created entirely new structures.

Legal pluralism as the legacy of colonisation still exists in some African countries. In colonial Ivory Coast, customary contract between cocoa farmers and labourers existed. As Groff rightly notes, the customary agreement known as *abusan* is a type of a labour contract that came to dominate relations between farmers in the cocoa communities of south-eastern Ivory Coast and their migrant labourers during the colonial period. The term *abusan* means ‘division into thirds’ in Asante (an ethnic group in south-western Ghana and south-eastern Ivory Coast) and consists 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 produce. Though the labourers remain free in this type of arrangement, with the guarantee of keeping the proceeds from the sale of one-third of the crop, they are adjuncts of the domestic employees of the landowners. By providing the workers with food, lodging, and other forms of care, the employers become their de facto paterfamilias.

After independence from French colonial rule, Ivory Coast abandoned legal pluralism. Thus, customary laws could no longer stand in a legal system that ironically was systematically adopted from the French legal system. For example, polygamous marriages, a characteristic trait of most indigenous African communities, are no longer recognised in the Civil Code though the pluralistic legal system of the colonial era permitted it. However, the customary labour contract remains to this day the dominant form of labour organisation for cash crop production. Successive Ivory Coast governments have tacitly allowed the practice rather than bringing cocoa farming activities under the labour code. To correlate this issue with child labour on cocoa farms, it should be noted that in such a state of non-regulation, children find themselves in the worst environment imaginable. The lack of records concerning farmers and their employees puts the government and NGOs in a complex situation when it comes to tackling child labour and child trafficking. 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 in the 1970s and 1980s, Ivory Coast enjoyed political stability and strong economic growth thanks to policies that stimulated agricultural developments with a strong focus on cash crops, namely cocoa and coffee. 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 Ivory Coast laws stipulate that the land belongs to the state, the government had always in practice accepted customary laws, which held that land belonged to the descendants of the people who first settled and cultivated it. While the members of the family could not sell the land collectively owned by the lineage, they could grant use rights to anyone, including foreigners. The government encouraged customary holders to rent land to those who would

---

96 S Berry, No Condition is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa (1993, The University of Wisconsin Press) at 18, 27.
98 Ibid.
99 Ibid. at 367.
make it productive and liberal immigration policies resulted in foreigners settling in Côte d’Ivoire by the millions.\textsuperscript{101}

In 1998, with assistance from the World Bank, Ivory Coast adopted the Rural Land Law, \textsuperscript{102} 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 a lack of resources devoted to the effort, very little has been done to make the Rural Land Law a reality for most Ivoirians.\textsuperscript{103} However, quite recently, the legislature passed a law giving landholders ten years to prove their legal claims to their properties. Those unable to do so will lose their land to the state.\textsuperscript{104}

The theory whereby the land belongs to who cultivates it has prevailed for years in the agricultural sector of Ivory Coast. While such an approach was based on the idea that those who are capable of undertaking farming activities should do so without restriction, the authorities failed to regulate and modernise the sector. Rudimentary practices remained and failed to regulate the sector in order to align it with other sectors that have their own specific codes.\textsuperscript{105} As a result, while the industrial and commercial sectors became the focus of attention for legislation, the agricultural sector became the most appalling sector in terms of human rights violations in general and labour rights in particular.

While the government proudly presented the cocoa and coffee sectors as the foundation of the economy, they, in fact, became locations for all sorts of exploitation. For example, as the authorities barely know about the existence of farms across the country, the purchase of cocoa beans is left to middlemen who travel the country to buy cocoa beans on remote farms. Consequently, as one farmer observes, the middlemen will buy the cocoa but will not give as good a price as they might in order to keep some of the money for 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 don’t care what happens”.\textsuperscript{106}

Again, the problem of restructuring 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), the then-unofficial opposition party, to propose a new policy on agricultural development. In five major points, the FPI proposed a new approach needed for farmlands. One of the major thrusts related to farmland registration.\textsuperscript{107} The authorities did not take into consideration the propositions made by the FPI, although they were deemed by the opposition, adequate remedies to solve many of the problems plaguing the agricultural sectors of the country.

The registration of births and deaths: The state of the Ivorian Etat Civil

Birth registration is 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. Unregistered births are a common

\textsuperscript{101} USAID, Property rights and resource governance at <http://usaidlandtenure.net/cote-divoire> (last accessed 12 August 2014).

\textsuperscript{102} The 1998 Rural Land Law (Loi relative au domaine foncier rural, Loi n°98-750 du 23 décembre 1998 modifiée).

\textsuperscript{103} Ibid.

\textsuperscript{104} Ibid.

\textsuperscript{105} Ibid.


\textsuperscript{107} Front Populaire Ivoirien (FPI), Propositions pour Gouverner la Côte d’Ivoire (1987, l’Harmattan) at 78, 79.
problem in many developing countries. As Kenneth et al. observe that 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.\textsuperscript{108} The concept of birth registration as a basic human right 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 acquire a nationality and as far as possible, the right to know and be cared for by his parent”.\textsuperscript{109} In the specific context of Ivory Coast, UNICEF notes 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. As they have no documentable legal status, some children are forced to work rather than continue their schooling.\textsuperscript{110}

In the early years of its independence, Ivory Coast passed laws related to the registration of births and deaths. \textit{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 the civil register. However, the 1964 law did make birth and death registration compulsory. Thus in 1999, \textit{Loi n° 99-691 du 14 décembre 1999 portant modification de la loi n° 64-374 du 7 octobre 1964 relative à l’état 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 of the child’s birth. This was a response to 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, children born in rural areas are frequently born at home with the help of a senior woman called a \textit{matronne} rather than in a medical centre, where essential information about the birth is logged into a register in order to be transferred to the civil register. The registration systems do not extend to rural areas because civil registry offices are usually centralised in the capital city and other urban areas. Formal identification of residents of all ages, particularly people living in rural areas, remains a challenge in Ivory Coast. A study conducted by the Norwegian Refugee Council (NRC) found that in rural areas there are several cultural and administrative obstacles in the way of modernizing the civil registry. Veit Vogel, the Country Director of NCR, notes that “if parents do not see the interest in registering their new-born 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”.\textsuperscript{111} For instance, in 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 reducing such factors.\textsuperscript{112}

The recent move of the authorities to make birth registration possible via mobile phone is a project called \textit{Môh Bi Nah}. It is an attempt to find a practical and permanent solution to the endemic issue of non-
registration of births. While such moves have proven necessary in neighbouring Liberia for the purpose of state-building, in Ivory Coast, it is surprising that the authorities did not address the root causes of the persistent practice of the non-registration of child birth in rural areas. The main issues of child exploitation and child labour remain unaddressed in Ivory Coast. Both registered and non-registered children remain trapped in cocoa farms. This said, it must be emphasised that a child not registered at birth remains vulnerable and prone to exploitation. Children’s identity can be easily falsified for the purpose of child trafficking, child labour, and other exploitative purposes.

CONCLUSION

The Ivory Coast’s development strategy appears to lack the triggering element for a dynamic economy in that the balance between different types of agricultural production was not planned. Such strategy, or lack thereof, has favoured the expansion and the perpetuation of child labour since farmers have to rely on techniques that require a considerable number of labourers in order to achieve their production targets. In the light of the government’s development strategy Rapley notes that “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”. Among many other factors, then, the development strategy contributed to the perpetuation and even growth of the practice of child labour.

Despite the improved legal environment for combatting child labour on Ivory Coast’s cocoa farms, the practice endures and even thrives. This result leads to the conclusion that legislation is hardly 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 becomes evident that cultural and other prevailing arguments remained unaddressed in the general debate about child labour in the cocoa industry. This article attempted to underscore the key factors that are behind it in the hope that the state and NGOs might have some new tools with which to combat child exploitation.

113 Môh Bi Nah, meaning “the hope”, should 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 a newborn baby. See <http://www.rnw.nl/africa/article/registering-births-ivory-coast-now-possible-sms> (last accessed on 12 August 2014).

