

**Testimony before the U.S. House of Representatives, Committee on Ways and Means  
Subcommittee on Trade**

**Hearing Concerning “The Global Challenge of Forced Labor in Supply Chains:  
Strengthening Enforcement and Protecting Workers”**

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Chairman Blumenauer, Ranking Member Buchanan, and members of the Sub-Committee, thank you for the opportunity to present testimony today on behalf of my organization, Corporate Accountability Lab, a Chicago-based nonprofit. My organization’s mission is to generate new strategies to address unsustainable supply chain practices and human rights abuses, to diversify the legal tools available to partner organizations and attorneys, and to push the legal system to better protect workers, communities and the environment.

Forced labor is not limited to a few countries or regions. We have welcomed the recent activity around forced labor in China, particularly in the Xinjiang region, but highlight that China is just one of many countries in the world where forced labor exists. My testimony today will focus on trafficked child labor in the cocoa industry in Cote d’Ivoire, and forced labor on sugar plantations in the Dominican Republic.

**I. Child Trafficking in the Cocoa Sector of Cote d’Ivoire**

In February of 2020, my organization submitted a petition to U.S. Customs and Border Protection (CBP) on the incidence of trafficked child labor in the Ivorian cocoa sector,<sup>1</sup> followed by a supplemental petition with new evidence submitted last month.<sup>2</sup> These petitions documented, through photos, videos, audio transcripts and affidavits from investigators, numerous cases in which children were working on farms, carrying heavy loads or using dangerous instruments, and where one or more ILO indicators of forced labor were present. They also documented trafficking routes, based on interviews with border agents and bus companies, and the prevalence of corruption by local police who accept bribes from traffickers to allow

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<sup>1</sup> Corporate Accountability Lab (CAL) & IRAdvocates, *Petition to 26 U.S. Custom & Border Protection to exclude cocoa produced in Cote D’Ivoire manufactured with forced or trafficked child labor under 19 C.F.R. § 12.42* (Feb. 12, 2020), available at <https://corpaccountabilitylab.org/calblog/2020/2/14/cal-and-iradvocates-challenge-importation-of-cocoa-produced-with-forced-child-labor?rq=CBP>

<sup>2</sup> CAL & IRAdvocates, *CAL and IRAdvocates Provide New Evidence of Forced Child Labor in Major Chocolate Producers’ Supply Chain* (Jun. 25, 2021), available at <https://corpaccountabilitylab.org/calblog/2021/6/24/cal-and-iradvocates-provide-new-evidence-of-forced-child-labor-in-the-cocoa-sector-in-wake-of-supreme-court-decision-in-nestle-v-doe>

children from Mali and Burkina Faso to be transported into the country to work on cocoa farms. Our investigators found that the ILO indicators of abuse of vulnerability, abusive working and living conditions, and isolation were applicable in a number of cases.<sup>3</sup>

### A. Forced and Hazardous Child Labor

According to the most recent Department of Labor report, released in October 2020, there are 1.56 million children engaged in child labor in the West African cocoa sector, including 790,000 in Côte d'Ivoire.<sup>4</sup> 770,000 of these children are engaged hazardous child labor.<sup>5</sup> This same report found that the prevalence of child labor in agricultural households in the Ivorian cocoa sectors actually rose by 14 percent over ten years (from 31 percent in 2008/09 to 45 percent in 2018/19).<sup>6</sup>

However, forced labor is excluded from the Department of Labor study methodology. There are sources that document the existence of forced labor in general terms or anecdotally,<sup>7</sup> but there have been no comprehensive studies on the extent of forced labor across the sector in recent years. One reason for this is that forced child labor is notoriously difficult to document in this sector, as in many others. In our experience, both children and adults routinely deny that forced and child labor exist, and claim that children working on a farm are all family members. Children are often scared to speak to people they do not know and in some cases are prohibited by adults from doing so.<sup>8</sup>

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<sup>3</sup> CAL & IRAdvocates, *supra* note 2 at 3.

<sup>4</sup> See generally Santadarshan Sadhu, *NORC Final Report: Assessing Progress in Reducing Child Labor in Cocoa Production in Cocoa Growing Areas of Côte d'Ivoire and Ghana 8-9* (NORC at the University of Chicago Oct. 2020), available at

[https://www.norc.org/PDFs/Cocoa%20Report/NORC%202020%20Cocoa%20Report\\_English.pdf](https://www.norc.org/PDFs/Cocoa%20Report/NORC%202020%20Cocoa%20Report_English.pdf)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 12.

<sup>7</sup> The Department of Labor's 2020 List of Goods Produced by Child Labor or Forced Labor includes cocoa from Côte d'Ivoire, listing it as produced with both child labor and forced labor. Dep't of Labor, *2020 List of Goods Produced by Child Labor or Forced Labor* 21 (Sep. 2020), available at [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2019/2020\\_TVPRAListOnlineFinal.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRAListOnlineFinal.pdf). The U.S. Department of Labor and U.S. State Department have both reported on the trafficking of children and forced child labor in the Ivorian cocoa sector. See, e.g., U.S. Dep't of Labor, Bureau of Int'l Labor Affairs, *2018 Findings on the Worst Forms of Child Labor: Côte d'Ivoire* (2018), available at [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2018/Cote%20d%27Ivoire.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2018/Cote%20d%27Ivoire.pdf); U.S. Dep't of State, Bureau of Democracy, Human Rights, & Labor, *Cote d'Ivoire 2018 Human Rights Report* (2018), available at <https://www.state.gov/wp-content/uploads/2019/03/Cote-Divoire-2018.pdf>. The Child Labor Cocoa Coordinating Group Annual Report provides clear evidence of forced child labor in the cocoa industry. *2018 CLCCG Annual Report*, CLCCG, <https://cocoainitiative.org/wp-content/uploads/2019/10/CLCCG2018AnnualReport.pdf>.

<sup>8</sup> See, e.g., Aarti Kapoor, *Children at the Heart: Assessment of Child Labour and Child Slavery in Cote d'Ivoire's Cocoa Sector and Recommendations to Mondelez International* 10 (Embody 2016), available at [https://www.cocoalife.org/~/\\_media/CocoaLife/Files/pdf/Library/FULL\\_REPORT\\_Cote\\_Ivoire\\_Mondelez\\_Embody\\_ChildrenattheHeart.pdf](https://www.cocoalife.org/~/_media/CocoaLife/Files/pdf/Library/FULL_REPORT_Cote_Ivoire_Mondelez_Embody_ChildrenattheHeart.pdf).

To begin to fill this gap, we have conducted forced labor investigations in the cocoa growing regions of Cote d'Ivoire on a regular basis since 2019. We have found that the trafficking of children into Cote d'Ivoire's cocoa growing regions from neighboring countries continues, and in significant numbers. Children between the ages of 10 and 18 are often offered money or tangible goods to take the bus to work on cocoa farms in Cote d'Ivoire.<sup>9</sup> They are promised education or are misled about the conditions of work at their destination.<sup>10</sup> Children are also internally trafficked within Cote d'Ivoire, including from the north of the country to the south.<sup>11</sup>

The real driver of illegal forms of labor in the cocoa sector is the unacceptably low price of cocoa.<sup>12</sup> These low prices leave the majority of cocoa farmers in extreme poverty, often earning under the World Bank's poverty line of \$1.90 per day.<sup>13</sup> As a result, farmers often rely on their families, including their own underage children and children trafficked from neighboring Mali and Burkina Faso, to produce cocoa. Forced labor will persist in the sector until farmers earn a living income. The Ivorian government sets the price of cocoa each season, and while chocolate multinationals often treat that price as a cap, it is a floor.

The COVID-19 pandemic exacerbated pre-existing farmer poverty, but does not appear to have significantly impacted trafficking patterns. Prior to the pandemic, many farmers lived in precarious financial conditions, often going into debt to buy inputs. With reduced income during the mid-season harvest, farmers were forced into more debt. While the Living Income Differential (LID), a \$400 per tonne increase the Ghanaian and Ivorian governments implemented for the 2020-21 growing season, may have allowed farmers to pay off that debt, this spring the price of cocoa again decreased, making it likely that farmers will once again go into debt to buy inputs in the upcoming season. This decrease in farmer income also negatively impacts sharecroppers, renters, and hired labor.

While Cote d'Ivoire's borders were closed to control the spread of COVID-19, children continued to be trafficked into Côte d'Ivoire through unofficial channels. An Ivorian soldier

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<sup>9</sup> Peter Whoriskey and Rachel Siegel, *Cocoa's child laborers*, WASH. POST, June 5, 2019, <https://www.washingtonpost.com/graphics/2019/business/hershey-nestle-mars-chocolate-child-labor-west-africa/>.

<sup>10</sup> Abou Traoré, *Travail des enfants dans les plantations de cacao: Le trafic a la peau dure*, CENOZO (Jan. 8, 2019), available at <https://cenozo.org/travail-des-enfants-dans-les-plantations-de-cacao-le-traffic-a-la-peau-dure/>.

<sup>11</sup> CAL & IRAdvocates, *supra* note 1 at 5.

<sup>12</sup> See Whoriskey & Siegel, *supra* note 9; Antonie C. Fountain & Friedel Huetz-Adams, *Cocoa Barometer 2020 12* (2020), available at <https://www.voicenetwork.eu/wp-content/uploads/2020/12/2020-Cocoa-Barometer.pdf>; True Price & IDH, *The True Price of Cocoa From Ivory Coast 16* (2016) available at <https://trueprice.org/wp-content/uploads/2016/03/TP-Cocoa.pdf>.

<sup>13</sup> See, e.g., Fountain & Huetz-Adams, *supra* note 18 at 40 (showing a graph for farmer income in Ghana); Francisco Ferreira et al., *The international poverty line has just been raised to \$1.90 a day, but global poverty is basically unchanged. How is that even possible?*, World Bank Blogs (Oct. 4, 2015), available at <https://blogs.worldbank.org/developmenttalk/international-poverty-line-has-just-been-raised-190-day-global-poverty-basically-unchanged-how-even> (explaining why the World Bank increased the poverty rate to \$1.90 per day).

stationed at the northern border with Mali reported to our investigators in January 2021 that child trafficking had continued by motorcycle at night when bus travel was prohibited.

Once across the border, children are transported to the cocoa-growing regions as they were in pre-COVID times--on regular bus routes.<sup>14</sup> We interviewed bus company staff, who reported that certain known traffickers had recently purchased tickets for children to send them in groups to cities across the cocoa belt, and from there that they would travel to smaller towns in the region. When they reach their destinations, children work long hours and engage in hazardous work,<sup>15</sup> including carrying heavy loads, applying pesticides and using machetes.

The extremely poor labor rights environment in Cote d'Ivoire is a major factor in allowing child trafficking to continue. In the cocoa sector, it is common to see small children engaged in hazardous labor, not attending school, and working long hours. It can be difficult for investigators, auditors, certifiers and government agents to distinguish the abusive living and working conditions that are standard practice in the industry from those that meet the legal standard for forced labor. Where children will consistently deny being trafficked while still on the farm, for obvious security reasons, strict legal standards of what rises to the level of forced labor can draw arbitrary lines that leave harmed children unprotected.

## **B. The Role of the Ivorian Government**

We welcome the increase in enforcement activities by the Ivorian police, but corruption, inconsistency, and performative enforcement remain significant challenges.

High-profile raids have increased significantly over the past 18 months. In January 2020, *Bloomberg* reported that a raid in Côte d'Ivoire had rescued 137 children from Ghana, Nigeria,

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<sup>14</sup> In January 2019, the Ivorian journalist Abou Traoré (AT) reported that there is a trafficking network that uses the Sikasso-San Pedro road. The road runs through some of the main cocoa-growing regions, with the most frequented route from Sikasso (Mali) to Soubré or to San-Pedro in Côte d'Ivoire. AT reported that migrants often travel to Yamoussoukro and from there depart for their final destinations in the forest, such as Soubré, San Pedro, the forests of Duekoué, Guiglo, Bolequin, etc. AT also reported that since the campaign against child labor began, children have been required to show their birth certificates while traveling to prove that they are accompanied by their parents. AT was told that traffickers sometimes bribe police officers who are suspicious. At the same time, a policeman he spoke with at the border of Laleraba (Côte d'Ivoire-Burkina Faso), explained that every time they asked the children about their travels, they said they were going to a relative's house. Abou Traoré, *supra* note 10; Abou Traoré, *Travail des enfants dans les plantations de cacao: Le Trafic a la peau dure*, CENOZO (Feb. 4, 2019), available at

[https://www.facebook.com/cenzo/videos/308465473203064/?q=abou%20traore%20cenoza&epa=SEARCH\\_BOX](https://www.facebook.com/cenzo/videos/308465473203064/?q=abou%20traore%20cenoza&epa=SEARCH_BOX).

<sup>15</sup> The ILO defines hazardous work as work that a child does such as conducting land clearing; carrying heavy loads; using agrochemicals; using sharp tools; engaging in long working hours; or engaging in night work. Sadhu, *supra* note 4 at 8 (stating the ILO definition).

and Benin from human traffickers.<sup>16</sup> In a separate raid in October 2020, police arrested three farmers “on suspicion of people trafficking”<sup>17</sup> and rescued eleven children and two teenagers from cocoa farms in the southwestern part of Côte d’Ivoire.<sup>18</sup> In February of this year, the Ivorian government arrested “four suspected traffickers and rescued 19 children in the southeastern town of Aboisso.” A few days later, the Ivorian police arrested three Burkinabe nationals suspected of trafficking, who were detained while traveling on a bus with three children from Burkina Faso.<sup>19</sup> In May 2021, the Ivorian government rescued 68 children from forced labor conditions on cocoa farms and arrested 25 suspected traffickers.<sup>20</sup> *Reuters* reported that most of these children had been trafficked into Cote d’Ivoire from Burkina Faso.<sup>21</sup>

Despite these enforcement actions, the role of the government overall appears to vary greatly between regions and to be undermined by ongoing corruption. Our sources report that these enforcement actions have pushed trafficking further underground, resulting in a change in form but not a change in prevalence. The government has put travel restrictions and identification requirements in place to restrict the movement of all foreign nationals, including trafficked children, but such restrictions are ripe for abuse. Ivorian police are inconsistent in their enforcement, and our investigators even witnessed police facilitating and profiting from trafficking through accepting bribes to allow foreign children who lacked proper documents to travel unimpeded.

### **C. The Role of Importers, Multinational Brands, and Certification**

Another, related, concern, is the way social auditors and certifications have become complicit with industry in obfuscating the existence of forced labor in supply chains. Major companies use social audits to prove a supply chain is not tainted with illegal labor, while these audits often miss serious violations. This is a particular problem in the case of forced labor, where workers are unlikely to speak candidly to auditors.<sup>22</sup>

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<sup>16</sup> Leanne de Bassompierre, *Ivory Coast Rescues 137 Children in Raid on Traffickers*, BLOOMBERG (Jan. 13, 2020), available at <https://www.bloomberg.com/news/articles/2020-01-13/top-cocoa-grower-rescues-137-children-in-raid-on-traffickers>.

<sup>17</sup> *Ivory Coast police rescue 11 children working on cocoa farms*, CNN (Oct. 8, 2020), available at <https://www.cnn.com/2020/10/08/africa/ivory-coast-police-rescue-children-cocoa-farm-intl/index.html>.

<sup>18</sup> *Id.*

<sup>19</sup> Ange Aboa, *Ivory Coast arrests three suspected child traffickers in cocoa belt*, REUTERS (Feb. 12, 2021), available at <https://www.reuters.com/article/cocoa-childlabour-ivorycoast/ivory-coast-arrests-three-suspected-child-traffickers-in-cocoa-belt-idUSL8N2KI3GR>.

<sup>20</sup> *Ivory Coast police rescue 68 children working on cocoa farms*, REUTERS (May 10, 2021), available at <https://www.reuters.com/world/africa/ivory-coast-police-rescue-68-children-working-cocoa-farms-2021-05-10/>.

<sup>21</sup> *Id.*

<sup>22</sup> See, e.g., Eva Xiao, *Auditors to Stop Inspecting Factories in China’s Xinjiang Despite Forced-Labor Concerns*, Wall Street Journal (Sept. 21, 2020), available at <https://www.wsj.com/articles/auditors-say-they-no-longer-will-inspect-labor-conditions-at-xinjiang-factories-11600697706>.

The cocoa industry offers a striking example. For over twenty years, the world’s largest cocoa and chocolate companies have made and broken promises to clean up their supply chains and eradicate forced and child labor. In 2001, the eight largest companies in the industry signed the Harkin-Engel Protocol, a voluntary protocol in which companies promised to eradicate child labor by 2005. In 2005, cocoa industry leaders admitted the goals would not be “fully met” by the 2005 deadline, but stated that they were “committed to achieving a certification system...within three years.”<sup>23</sup> Then in 2008, cocoa industry leaders again extended their self-imposed deadline by two years.<sup>24</sup> In 2010, the industry delayed the implementation date by a full decade to 2020, and this time the goal was changed to merely reducing by 70% the use of child labor in the cocoa industry. At the 8th Annual World Cocoa Foundation (WCF) Meeting in July 2018, the industry admitted it could not make its 2020, or even the newer 2025, goal of eradicating child labor in the cocoa supply chain.<sup>25</sup>

Twenty years after signing the Protocol, and despite years of promises, child labor in the West African cocoa industry remains prevalent and has even increased.<sup>26</sup> Voluntary corporate social responsibility initiatives, including certification schemes, have been touted for years to buffer the industry from critique for benefitting from trafficking and failing to meet their goals under the Protocol, but these initiatives have failed to make a discernible impact.

In 2018 and 2019, we traveled to the cocoa-growing regions of Cote d’Ivoire to examine this issue. Our findings are documented in *Empty Promises: The Failure of Voluntary Corporate Social Responsibility Initiatives to Improve Farmer Incomes in the Ivorian Cocoa Sector*.<sup>27</sup> We conducted consultations in five cocoa-growing villages, including with tribal chiefs<sup>28</sup> and elders

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<sup>23</sup> Joint Statement from U.S. Senator Tom Harkin, Representative Eliot Engel and the Chocolate/Cocoa Industry on Efforts to Address the Worst Forms of Child Labor in Cocoa Growing 1 (Jul. 2, 2005), available at <http://www.cacao.gouv.ci/commun/documents/jointstatementSenateurTomHarkin.pdf>.

<sup>24</sup> The International Cocoa Initiative, *Joint Statement from U.S. Senator Tom Harkin, Representative Eliot Engel and the Chocolate and Cocoa Industry on the Implementation of the Harkin-Engel Protocol*, CSRwire (Jun. 16, 2008), available at [http://www.csrwire.com/press\\_releases/14132-Joint-Statement-from-U-S-Senator-Tom-Harkin-Representative-Eliot-Engel-and-the-Chocolate-and-Cocoa-Industry-on-the-Implementation-of-the-Harkin-Engel-Protocol-#](http://www.csrwire.com/press_releases/14132-Joint-Statement-from-U-S-Senator-Tom-Harkin-Representative-Eliot-Engel-and-the-Chocolate-and-Cocoa-Industry-on-the-Implementation-of-the-Harkin-Engel-Protocol-#).

<sup>25</sup> Tim McCoy, *Remarks: Child Labor Cocoa Coordinating Group (CLCCG) Annual meeting Opening Ceremonies Sofitel Abidjan Hotel Ivoire*, World Cocoa Foundation (Jul. 17, 2018), available at <https://www.worldcocoafoundation.org/blog/2018-child-labor-cocoa-coordinating-group-8th-annual-meeting-remarks/>.

<sup>26</sup> For a more detailed discussion of the Harkin-Engel Protocol, see CAL & IRAdvocates, *supra* note 1. See also Santadarshan Sadhu at 16, *supra* note 4.

<sup>27</sup> *Empty Promises: The Failure of Voluntary Corporate Social Responsibility Initiatives to Improve Farmer Incomes in the Ivorian Cocoa Sector*, Corporate Accountability Lab (Jul. 2019), available at <https://corpaccountabilitylab.org/empty-promises>.

<sup>28</sup> The tribal leaders represented a population of approximately 18,300 residents, including children and adults, the vast majority of whom were involved in cocoa production as their primary source of income.

from several ethnic groups<sup>29</sup>, and held focus groups with women farmers. We met with farmers who were Fairtrade and Rainforest Alliance certified, farmers who are part of cocoa cooperatives, and farmers who produce “untraced cocoa,” a category that constitutes approximately 80% of cocoa production in Côte d’Ivoire.<sup>30</sup>

Our interviews revealed that certification in the cocoa sector had no perceptible impact on farmer incomes, access to healthcare or education, or forced or child labor. Farmers reported that there was almost no auditing conducted to obtain or retain certification, that premiums were sometimes promised but rarely paid, and when they were paid, that they were too small to make any appreciable difference in farmers’ lives. Regardless of region, ethnic group, or cooperative affiliation, farmers reported that certification was largely meaningless.

One of the most striking and consistent features of these interviews was the outrage from farmers when we explained that US consumers believed that certified products were produced with higher social and environmental standards than uncertified products, and that these consumers paid a significant premium to purchase these products. For the farmers, certification was not related to standards or auditing, which in most cases had never occurred, but to the promise of access to a broader market--a promise that also often failed to materialize.

In addition to hiding behind ineffective certifications, industry has further hidden its role by refusing to make supply chain data public. Forced labor occurs primarily in supply chains that are not transparent. Supply chain transparency alone does not eradicate forced labor, but is a threshold issue. Industry’s failure to reach the goal of eradicating child labor is understandable to an extent, but the continued intentional obfuscation of the cocoa supply chain is not.<sup>31</sup> Effectively addressing forced labor requires coordination between government, civil society and industry, but where industry is the only actor with access to key supply chain data, that coordination is impossible. This data is within the control of the multinational chocolate brands, as well as the major exporters from West Africa. Any company that claims to oppose forced and child labor should provide farm-level supply chain transparency to the public.

## II. Forced Labor in the Dominican Sugar Industry

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<sup>29</sup> The villages included farmers from the Agni, Baoule, Malinke, Burkinabe and Bete ethnic groups, and were located on the East and West ends of the cocoa-growing region.

<sup>30</sup> Aarti Kapoor, *supra* note 8 at 11.

<sup>31</sup> None of the major agribusiness companies (Barry Callabaut, Cargill, Olam, and Ecom), and none of the multinational chocolate brands, provide farm-level data. In 2020, Nestle reported that only 46% of its cocoa was traceable to specific farms. *Cocoa*, Nestlé, available at <https://www.nestle.com/csv/raw-materials/nestle-cocoa-plan>. Similarly, Mars reports that only 24% of its cocoa is traceable to the farm level. *Cocoa for Generations & Sustainable in a Generation Plan*, Mars Cocoa Supply Chain Disclosure 1 (Mar. 21, 2019), available at <https://gateway.mars.com/m/462faad227ee3889/original/POLICY-Cocoa-Disclosure-All-Tier-1-updated.pdf>. See also Mighty Earth, U.S. Cocoa Imports: Secretive mega-traders get the lion’s share 6, available at [https://www.mightyearth.org/wp-content/uploads/US\\_Cocoa\\_Supply\\_Chain\\_Research.pdf](https://www.mightyearth.org/wp-content/uploads/US_Cocoa_Supply_Chain_Research.pdf).

Many of these same dynamics are on display in the Dominican sugar sector, where a primarily Haitian workforce cuts sugar cane for export, largely to the United States. In its 2020 Report of Goods Produced by Child Labor or Forced Labor, the U.S. Department of Labor reported that sugarcane in the Dominican Republic is produced using both forced and child labor.<sup>32</sup> These workers are often undocumented<sup>33</sup>, and live in remote housing called *bateyes*.<sup>34</sup> The term *bateye* refers to a cluster of isolated, dilapidated, company-owned worker homes on dirt paths, surrounded by endless acres of sugar cane fields, far from regular Dominican life. Armed guards reportedly monitor the enclosed *bateyes* and limit visitors.<sup>35</sup> There are hundreds of *bateyes* in the Dominican Republic, owned both by the State Sugar Council (Consejo Estatal de Azúcar), and three main private companies: Central Romana, CAEI and CAC.<sup>36</sup>

These *bateyes* often lack adequate housing, medical care, and other basic accommodations and services.<sup>37</sup> The Inter-American Commission on Human Reports (IACHR) reported on the degrading living conditions in the *bateyes* based on site visits,<sup>38</sup> finding subpar hygiene conditions inconsistent with minimum decent standards of living, lack of potable water, lack of latrines, lack of electricity, and overcrowding.<sup>39</sup>

Sugarcane cutters earn very low wages, and in some cases, are paid in vouchers that could only be used in company stores.<sup>40</sup> There are reports of wages so low that workers and their families can barely subsist.<sup>41</sup> Because the *bateyes* are so remote, and major highways can be difficult to access during the rainy season, workers and their families often struggle to access medical care.<sup>42</sup> Some children work with their parents harvesting sugarcane, collecting the cut cane, clearing the land, or planting sugarcane.<sup>43</sup>

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<sup>32</sup> Dep't of Labor, *supra* note 7 at 21.

<sup>33</sup> United States Department of Labor's Bureau of International Labor Affairs (ILAB), *2013 Findings on the Worst Forms of Child Labor: Dominican Republic 237*, available at [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2013/dominicanrepublic.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2013/dominicanrepublic.pdf). The abuse of undocumented workers, including using threats of deportation, is common in the sector.

<sup>34</sup> *Id.*

<sup>35</sup> Inter-American Commission of Human Rights (IACHR), *Situation of Human Rights in the Dominican Republic* 127, ¶ 308 (Dec. 31, 2015), available at <http://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf>.

<sup>36</sup> See *Dominican Sugar Industry*, available at <http://www.dominicansugar.org/about-the-industry> (citing the Dominican Sugar Institute); Verité, *Research on Indicators of Forced Labor in the Supply Chain of Sugar in the Dominican Republic* 16, available at [https://www.verite.org/wp-content/uploads/2016/11/Research-on-Indicators-of-Forced-Labor-in-the-Dominican-Republic-Sugar-Sector\\_9.18.pdf](https://www.verite.org/wp-content/uploads/2016/11/Research-on-Indicators-of-Forced-Labor-in-the-Dominican-Republic-Sugar-Sector_9.18.pdf).

<sup>37</sup> ILAB, *supra* note 33.

<sup>38</sup> IACHR, *supra* note 35 ¶ 307.

<sup>39</sup> *Id.* ¶ 310-311.

<sup>40</sup> *Id.* ¶ 309.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* ¶ 312.

<sup>43</sup> ILAB, *supra* note 33.



Our colleagues in the Dominican Republic report that these conditions have remained largely unchanged for decades. Several ILO indicators can be seen easily from these facts: abuse of vulnerability, isolation, restriction of movement, intimidation and threats, withholding of wages, and abusive working and living conditions. While in many cases these conditions do meet the legal standard for forced labor, it is the ubiquitous violation of labor rights that allows such blatant forced labor to persist. This is exactly why forced labor cannot be viewed in a bubble, divorced from the broader labor rights environment. Where conditions are this poor, and workers have no voice in their workplace, slavery can hide in plain sight.

#### **IV. Recommendations**

CBP has an important role to play in combating forced labor in global supply chains, but Withhold Release Orders (WROs) should be only one of many tools leveraged to address this thorny problem. We need CBP to use its powers flexibly, as well as strategies that are less reliant on CBP enforcement activities.

##### **A. Flexible Enforcement of CBP’s Mandate: a comparison between Xinjiang products and Ivorian Cocoa**

A narrow reading of the statute suggests that CBP’s powers under Section 307 of the Tariff Act are limited to issuing WROs, findings, and civil penalties against importers of products made using forced labor.<sup>44</sup> This is technically correct, but as has been demonstrated in several cases, there are a number of other ways CBP can and does engage with supply chain actors to improve labor rights, both prior to and following the issuance of WROs. In many cases, these other activities will be more useful for stopping the practice of forced labor.

The WRO is a blunt tool. Unlike most petitions under Section 307, our cocoa petitions do not ask for an immediate WRO, despite the fact that a significant amount of cocoa produced by trafficked children is entering the U.S. market. The risk of unintended consequences in any sector characterized by dispersed, smallholder production is great, and must be handled with care to protect the most vulnerable actors in the supply chain.

A comparison between possible CBP interventions in the case of prison labor in Xinjiang China, on one hand, and child trafficking in West African cocoa, on the other, illustrates how different facts may counsel different responses. In the Xinjiang case, the Chinese government and private companies have profited enormously off of the labor of the Uyghur Muslim minority, a group that has been subjected to genocide according to the present and prior administrations. The ability to derive profit from persecution and imprisonment of religious minorities creates a perverse incentive to violate human rights. In this context, shutting down the global trade of

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<sup>44</sup> See 19 C.F.R. § 12.42 (2017).

goods coming out of those camps, through WROs and other trade restrictions, is an effective deterrent to incarceration that is likely to have a positive impact on the workers.

In contrast, a broad WRO against all cocoa or chocolate products entering the United States that contain forced labor-produced Ivorian cocoa would probably harm the most vulnerable supply chain workers. Cocoa is vital to Cote d'Ivoire's economy and accounts for roughly half of its exports.<sup>45</sup> Impoverished cocoa farmers, including the majority who do not use trafficked child labor, would lose access to an important market and lose what little income they had. Given the level of commingling that occurs at each level of the supply chain, it would be impossible to distinguish between cocoa beans produced with forced labor and those which were not.

Viewing CBP's power narrowly, one could argue that CBP can and must block all Ivorian cocoa and products made with Ivorian cocoa, regardless of the exporter, importer or brand because its mandate is to exclude goods produced "in whole or in part" with forced labor. But unlike in the Xinjiang case, the unintended consequences of such an action would be morally unjustifiable.

But this does not justify inaction, nor does it indicate that a WRO would be inappropriate in all cases. Multinational chocolate companies have played a major role in structuring the cocoa supply chain, and they bear significant responsibility for creating and perpetuating the conditions that lead to forced labor. These companies do not pay a price sufficient to cover the costs of production and a living wage for cocoa farmers, yet many of these companies are making billions in annual profits.<sup>46</sup> These companies must change the way they do business, and CBP has a role in making that happen.

First, CBP can use its investigatory powers, leveraging the threat of a WRO, to both obtain important data and communicate expectations to the industry. For example, CBP could improve transparency and supply chain due diligence by requesting farm- and factory-level transparency, social auditing reports and internal investigations, and testimony from employers, farmers, workers, cooperatives and governments. CBP could even induce companies to take remedial actions by requesting documentation showing that ILO indicators have been addressed, such as that migrant workers' passports have been returned, that companies comply with wage and hour

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<sup>45</sup> CAL & IRAdvocates, *supra* note 1 at 1.

<sup>46</sup> See, e.g., Mars, Forbes (Nov. 23, 2020), available at <https://www.forbes.com/companies/mars/?sh=2cb6b1393bb7> (Mars, Inc. had a revenue of \$37 billion for 2019); *Key Figure*, Ferrero, available at <https://www.ferrero.com/the-ferrero-group/business/key-figures> (Ferrero Group had a revenue of €12.3 billion for 2020); *Mondelēz International Reports Q4 and FY 2020 Results*, Mondelēz International (Jan. 28, 2021), available at <https://ir.mondelezinternational.com/news-releases/news-release-details/mondelez-international-reports-q4-and-fy-2020-results> (Mondelēz International had a gross profit of \$10.45 billion for 2020); Hershey, Notice of 2021 Annual Meeting and Proxy Statement: 2020 Annual Report to Stockholders (May 17, 2021), available at <https://www.thehersheycompany.com/content/dam/corporate-us/documents/annual-reports/2021-proxy-statement-2020%20annual-report.pdf> (Hershey Company had a revenue of \$8.1 billion for 2020).

regulations, abusive living or working conditions have been addressed, or that recruitment fees have been reimbursed. Where companies make claims about corporate social responsibility programs, CBP could request specific information on the impacts of these programs, including the percentage of supply chain workers covered by such programs, their duration, and the level of involvement of workers, farmers or other affected communities in decision-making and implementation.

While CBP is currently unable to provide this information to civil society and worker representatives, the very fact that CBP has sought it has resulted in improved transparency. Several major companies began to provide cooperative-level data on their websites last year, after CBP sought this data in a questionnaire shortly after the February 2020 cocoa petition was filed.

Second, CBP could issue narrow WROs, targeting only those actors that do not comply with CBP requests for information and documentation. Companies that fail to provide data, or whose data provided shows the continuation of practices that lead to forced labor, should face WROs and civil penalties. This process, allowing companies to participate in good faith and punishing those who do not, reduces unintended consequences, protects vulnerable workers and precarious economies, and results in more strategic interventions in supply chains than might be expected under a strict read of the statute.

Many of the examples provided in this section are not hypothetical: we have seen CBP engaging strategically, both to give companies some form of due process, but also to stop the global trade of goods produced with forced labor through decisive action. I don't suggest that CBP be lenient with companies that violate the law--to the contrary, I would like to see more enforcement and larger penalties. But I do suggest that CBP should be given the political support to engage its mandate flexibly to respond with nuance to the complex, ever-changing economic realities that result in forced labor.

## **B. Increased Use of Civil Penalties Against Importers**

Under the Tariff Act, CBP can also issue civil penalties “against importers for entering, introducing, or attempting to enter or introduce any merchandise into the commerce of the United States contrary to law.”<sup>47</sup> Importers are often on notice that forced labor exists in their supply chains, yet they continue to import these goods -- both before and after CBP issues

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<sup>47</sup> *CBP Collects \$575,000 from Pure Circle U.S.A. for Stevia Imports Made with Forced Labor*, U.S. Customs and Border Protection (Aug. 13, 2020), available at <https://www.cbp.gov/newsroom/national-media-release/cbp-collects-575000-pure-circle-usa-stevia-imports-made-forced-labor>.

WROs. There has only been one civil penalty, issued in August 2020 against Pure Circle for importing stevia products from China.<sup>48</sup>

By the language of statute, even if it has not been done in practice, CBP could issue civil penalties against an importer without issuing a WRO. This would be another way CBP could use its powers to change corporate behavior, while protecting workers and vulnerable industries that would not be benefitted by a broad import ban.

CBP's power to issue civil penalties, whether in relation to or separate from WROs, is underutilized, and has real potential as a deterrent to importing forced labor-produced goods.

### **C. Increased Enforcement of the Criminal Provisions of the TVPRA**

Even viewing its mandate flexibly, CBP has neither the capacity nor the tools to address all situations of forced labor globally. Other agencies have an important role to play. One area where more activity would be welcomed is use of the criminal provisions of the Trafficking Victims Protection Reauthorization Act, which provides that a party that “knowingly benefits, financially or by receiving anything of value from participation in a venture” may be criminally liable.<sup>49</sup>

Based on the Human Trafficking Legal Center's federal criminal case database, the US government has yet to invoke the extraterritorial provision of the TVPRA (18 USC 1596) in a forced labor prosecution--let alone against a corporate defendant. Criminal prosecutions of extraterritorial conduct have focused exclusively on sex trafficking by individual defendants.<sup>50</sup>

This is a missed opportunity. Where multinational brands knowingly benefit from forced labor in global supply chains, they are in violation of this statute. In nearly every case where CBP issues a WRO, there is a corporation that has knowingly benefitted from trafficking. We would encourage coordination between CBP and the Department of Justice to build cases against companies who knowingly benefit from extraterritorial forced labor, and would hope to see a DoJ investigation sparked as a result of nearly every WRO issued.

### **D. Amend the Alien Tort Statute to Allow Extraterritorial Application**

Civil liability is also an essential deterrent to forced labor, and provides the possibility of remedy to the millions of victims of forced labor and trafficking around the world. The recent Supreme Court decision in *Nestle v. Doe* (2021) dismissed the claims of children who were trafficked to

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<sup>48</sup> *Id.*

<sup>49</sup> 18 U.S.C. § 1595, amended by TVPRA § 221.

<sup>50</sup> Data on file with the Human Trafficking Legal Center.

work in the Ivorian cocoa sector, on the grounds that the Alien Tort Statute can no longer be applied extraterritorially and the allegations in that case did not meet the standard set in *Kiobel v. Royal Dutch Petroleum* (2013). While the civil provisions of the TVPRA do provide access to remedy for victims of forced labor, the Alien Tort Statute holds the promise of providing remedy to those harmed in other ways, including those who were tortured, subjected to crimes against humanity and war crimes with corporate complicity. Victims of US companies should be able to bring their claims in US courts, even where they were harmed off of US soil. In response to the *Nestle* decision, Congress should amend the Alien Tort Statute to make extraterritorial application explicit.

### **E. Mandatory Human Rights Due Diligence Legislation**

Forced labor is a symptom of a broader labor rights environment that undercuts workers, including through violations of wage and hour, health and safety, freedom of association, anti-discrimination or other local and international laws and regulations. That broader environment must be addressed if we have any hope of ending forced labor long term. To achieve this, the United States should follow its European allies in developing Mandatory Human Rights Due Diligence (mHRDD) legislation that puts responsibility on Global North buyers for the abuses that take place across supply chains, regardless of whether the buyer knew of or intended for the violation to occur. This type of legislation, if carefully drafted, can place the incentives appropriately across the supply chain, forcing those actors who are best situated to remedy or prevent the harm to absorb the costs of prevention and remediation.

### **V. Conclusion**

I appreciate the opportunity to present this testimony, and this Committee's continued leadership in combating the global scourge of forced labor.