

STAKEHOLDER ENGAGEMENT WORKSHOP ON THE LEGAL REQUIREMENTS FOR COCOA PRODUCTION AND TRADE IN GHANA

Meeting Report

Date: August 1, 2024 **Time:** 9:00 AM - 1:00 PM **Venue:** AH Hotel, Accra

1. Introduction

This report summarises the stakeholders' meeting on the legal requirements for cocoa production and trade in Ghana, held on August 1, 2024. The meeting, organised by TaylorCrabbe Initiative (TCI) and EFI, focused on updating stakeholders on the progress TCI has made in scoping the relevant legal issues that must be addressed to be compliant with the EUDR, and how to use ARS certification to show compliance with the EUDR's Due Diligence Framework. Attendees included representatives from Ghana Cocoa Board (COCOBOD), industry, civil society organisations, and cocoa farmers, who provided feedback on the findings. (A list of attendees is attached as **Appendix 1**)

2. Opening Remarks

The meeting began with Mr. Akapame from TCI giving a recap of discussions from the previous workshop on the legal requirements for Cocoa Production and Trade in Ghana. He reiterated that the EUDR's scope of legality aims to ensure compliance with existing municipal law, and not to suggest areas for law reform. As such, stakeholders are only required to comply with the existing law. He restated the methodology that TCI adopted in their study and showed how input from the previous workshop had been used to fine-tune the scope of relevant laws.

There were two presentations; one on the legality framework and how ARS certification can be used to demonstrate compliance with due diligence requirements, and another on the Due Diligence Framework itself.

3. Legality Framework

The legality framework was classified into two broad parts: non-relevant and relevant requirements. The non-relevant requirements comprise the legality considerations that participants did not consider to be a concern for the EUDR and for which justification is provided. The relevant requirements are the high-stakes legal issues and are broken down into four (4) major thematic areas:

- a. Land Use
- b. Child Labour
- c. Labour Rights (Workers' Rights)
- d. Environmental Concerns

3.1. Non-Relevant Requirements

Attendees agreed that many legal requirements concerning land ownership, human rights, labour rights, and environmental concerns were mainly irrelevant to smallholder cocoa farming in Ghana. This was primarily because cocoa farming in the region is subsistence-based rather than commercial. The legal framework mandating land title certificates, customary rights, and various labour and environmental obligations were considered inapplicable, as most smallholder cocoa farmers already have clearly defined land ownership through informal arrangements such as leases or customary tenancy. Additionally, labour regulations regarding rest periods, non-discrimination, and safety standards were deemed irrelevant due to the seasonal nature of work on cocoa farms, where workers are typically paid daily wages. Environmental laws, including those regulating fertiliser use, water resource management, and waste disposal, were also viewed as not pertinent since they do not directly impose duties on smallholder farmers. Finally, the requirement for environmental permits for larger farms was considered irrelevant as most cocoa farms do not meet the size threshold.

3.2. Relevant Requirements

a. *Land Use*

TCI's findings indicate that land use is "secure" under Ghanaian law, meaning land ownership is clearly defined and respected. Farmers' rights to land are supported by Land Title Certificates or verifiable oral grants. Although there is a legal requirement to record customary grants at the Customary Land Secretariat, a lack of written record does not invalidate land use. This raised several questions.

A government stakeholder asked how someone without written proof of land ownership could validate their claim. It was explained that such individuals can demonstrate acts of possession, trace title back to the original grantor, or use other non-documentary evidence to prove their interest in the land. The need to prove land use and compliance is only necessary to ensure that cocoa from these farms can be sold on the EU's domestic markets.

Another question was whether registration in COCOBOD's Cocoa Management System (CMS) was solid evidence of a farmer's title. The explanation pointed out that registration creates a rebuttable presumption that the farmer's title is legitimate. Once operational, the Customary Lands Secretariat should properly document customary grants. Mr. Akapame reiterated that while the EUDR requires compliance with existing legal standards, it can drive legal reforms.

A stakeholder raised a question about farms extending beyond their original borders. In answer to that, it was made clear that the Reserve Commissioner's reports prioritize the

size of admitted farms over their location. Sometimes, farm coordinates are listed in report schedules rather than the reports themselves. Since these reports are treated like High Court judgments in Ghana, there is a legal process for validating them.

b. Human Rights (Child Labour)

The EUDR considers human rights to include all treaties and conventions a country is a party to. As a dualist state, Ghana must ratify these international treaties in Parliament and incorporate them into domestic law before they can be applied. Therefore, under the EUDR, only ratified and domesticated treaties are applicable in Ghana. Besides these treaties, Ghana's human rights laws are found in the 1992 Constitution, Acts of Parliament, Regulations, and other sources of law. For example, the 1992 Constitution, the Labour Act, and the Children's Act provide a comprehensive legal framework for protecting the rights of child workers in Ghana.

A government stakeholder inquired about how to prove compliance with children's rights. Several methods were discussed such as how valid national IDs may be used to verify the age of child workers and determine permissible work. Documentation provided by COCOBOD during sales can create a rebuttable presumption that children's rights in the supply chain are protected. The Cocoa Management System (CMS) can also demonstrate compliance. Additionally, farmers can affirm to COCOBOD and buyers that children's rights are upheld. However, if farmers admit to using child labor, it is necessary to investigate and ensure no violations occur.

Although gender discrimination was noted as a concern, the main issue highlighted was ensuring equal pay for equal work for both male and female workers.

c. Labour Rights

The presentation highlighted a comprehensive labor rights framework in Ghana but noted implementation challenges on smallholder farms. For example, a stakeholder employing mainly casual labor mentioned that legal requirements for rest times and holidays are often ignored in oral contracts with casual workers. Some noted that the oral agreements include rest days and informal wage agreements, as required by law. There was a consensus that farmers as employers should not only provide rest and leave days but also make social security payments and meet other legal obligations.

A distinction was made between employment agreements and sharecropping arrangements. Sharecropping is legally recognized and treated differently from standard employment. Similarly, a farmer employing workers is considered an employer, while a farmer working on a farm is an employee.

The discussion then addressed whether companies could adjust the farm gate price of cocoa because farmers receive minimum wage. The presenter and other stakeholders clarified that the minimum wage, set by the Tripartite Committee¹, applies to all workers, while cocoa producer prices are based on production costs. Therefore, minimum wage should not affect producer prices. It was also clarified that COCOBOD, as a regulator, does not employ farmers but offers wages and pensions as incentives, not to create an employer-employee relationship.

Regarding occupational health and safety, stakeholders pointed out that many farmers lack proper Personal Protective Equipment (PPE) for handling agrochemicals. Ensuring compliance with health and safety requirements was highlighted as a key concern.

d. Environmental concerns

The use of water, disposal of waste, and the use of pesticides in farming, and soil management are well documented, with a compliance framework that does not directly involve the farmer. Regulatory bodies such as the Water Resources Commission and the Environmental Protection Agency perform most of the compliance requirements by issuing the permits that farmers use.

The main concern in this field is farming in protected areas. Farmers must ensure that their farming activities in protected areas do not affect endangered plant and wildlife species. Protected species can also not be imported or exported without the requisite authorisation.

Due Diligence Procedure

The EUDR requires sellers to provide a due diligence statement showing compliance with national law before products are placed on the market. A complaint or substantiated concern can be made where some of the seller's declarations are not accurate, and the seller will have to prove compliance. The focus of this portion of the workshop was the process for preparing due diligence statements, how substantiated claims are treated, and how cocoa traders can ensure that there is compliance at all levels in their supply chain.

The presentation then touched on how the ARS 1000 Certification could be used alongside to ensure automatic compliance with EUDR. Given that the ARS 1000 Certification has more stringent requirements than the EUDR, it is expected that getting

¹ A Committee of organised labour, employers and government that determines the National Daily Minimum Wage (NDMW) among others.










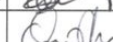
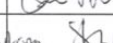

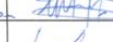
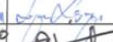

farmers to qualify for ARS 1000 Certification will make their products eligible for sale on more markets.

Conclusion

The meeting ended after extensive discussion of the issues that the various presentations raised. The members agreed to reconvene at a later date to have further discussions on due diligence and matters of environmental concern.

DATE

01.08.24

NO	NAME	ORGANISATION	REGION	ACCOMODATION	TELEPHONE NUMBER	EMAIL	SIGNATURE
1	Nicholas Jengre	Rainforest A	Accra		0265248795	njangre@ra.org	
2	Fleazer Tacke	GIZ	GAR		0243740537	fleazer.ta@ci2a.giz.de	
3.	Quaque Samuel Noble	CI2	GAR		0246890217	samuelquaque35@gmail.com	
4	Nargiza Shaidyloeva	PBN	Accra		0558323821	ns@pbn.org	
5	Akosua A. Kwagye	COCOBOD	Accra		0243072775	akosua@cocobod.gov.gh	
6	Sewa Y. Tablicca	COCOBOD	Accra		0242364845	sewatablicca@gmail.com	
7	Patrick Zure	COCOBOD	Accra		0244632340	patrick.zure@cocobod.gov.gh	
8	Samuel Adimado	LICOBOS	Accra		0596833769	adimado@licobos.com.gh	
9	Isaac Abla-Mensah		Accra		0244612852	paasega@yaho.com	
10	Osei Bolan	TCI	Accra		0267211407	osei.polye@tciltd.com	
11	Bernard Day Bwaley	TCI	Accra		0244982330	bdawaley@gmail.com	
12	Marilyn Amatey	TCI	Accra		0207949790	marilynamatey@gmail.com	
13.	Daniel Kotui Toseafa	TCI	Accra		0550901921	kotui.toseafa@gmail.com	
14	Zubog Philip Neri	EKN	Accra		0209390033	philipneri.zubog@minbuza.gov.gh	
15	Nancy Owusu Acquah	EcoGre Gh	Accra		0548737029	nancyowusuacquah@gmail.com	

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NO	NAME	ORGANISATION	REGION	ACCOMODATION	TELEPHONE NUMBER	EMAIL	SIGNATURE
1	Bruce P. Petit Asozie	CROPLIFE (Gh)	Greater Accra	N/A	0243749077	BRIGHT.ASOZIE@GMAIL.COM	
2	Abdul KATHAMAN ABUDUAI	NESTLE	-do-	-do-	0531011355	abdul.kathaman.abuduai@gh.nestle.com	
3	KWAKUWEE NUNANIA	ITC/HL	GREATER ACCRA	N/A	0549123027	nunanian@itcgh.com	
4	Michael Poku-Markoh	Touton	Accra	N/A	0506639874	M.Markoh@touton.com	
5	Jaye Tenniglo	embassy NL	Accra	NA	0501423683	ingc.kemiglo@minbuza.nl	
6	Kwadwo Mensah	Beyond Beans	Ashanti	N/A	0543975986	kwadwo.mensah@beyondbeans.org	
7	Daniel Osei Nnumah	Adikanto Commodities	Eastern	N/A	0245458677	danieloseinnumah@yahoo.com	
8	ISAAC K B Sackey	OFI	W/NORTH	N/A	0556552108	isac-sackey@ofi.com	
9	Baaba Wood	WCF	Accra	N/A	0544313477	baaba.wood@worldcocoa.org	
10	Samuel Adimado	LICORICE	Accra	N/A	0596833969	adimadoc@licorice.com	
11	Isaac Aboon-Mensah		Accra	N/A	0244612832	paaseye@yalee.com	
12	Lashua B. Sarpong	Fedco	Accra	N/A	0246151308	lashua.sarpong@fedco.com.gh	
13	Asoye Nusiulegan	Mars Niglas	Greater Accra	N/A	0243700679	asoyn@effeme.com	
14	Dennis Marthy	TCI	Greater Accra	N/A	0502084134	dennis.marthy@tci.com.gh	
15	Baffoe-Bonnie Emmanuel	ELOM	Ashanti	N/A	0540103088	baffoe-bonnie@ecomtrading.com	
16	ANN-MARIE PAVIER-BUCKLE	Tci	Greater Accra	N/A	0241979730	annmarie.pavierbuckle@taylorcrabbe.com	

Plain rice

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