

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

### **Meeting Report**

**Date:** July 3, 2024 **Time:** 9:00 AM - 1:00 PM **Venue:** AH Hotel, Accra

### **1. Introduction**

This report summarizes the stakeholders' meeting on the legal requirements for cocoa production and trade in Ghana, held on July 3, 2024. The meeting, organized by TaylorCrabbe Initiative (TCI), focused on presenting initial findings on the EU Deforestation Regulation (EUDR) legal requirements and due diligence challenges. Attendees included representatives from Ghana Cocoa Board (COCOBOD), industry, civil society organizations, 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 opening remarks by Mr. Michael Amoah, COCOBOD's Deputy Director of Research & Development. He summarized the steps COCOBOD and the Forestry Commission have taken to ensure cocoa cultivation complies with the EUDR and emphasized the importance of the gathering in discussing the alignment of Ghana's legal framework with the EUDR requirements and supporting stakeholders in meeting these obligations.

Fabienne Yver, Technical Advisor on Sustainable Cocoa at the European Forest Institute (EFI), provided an overview of the EUDR and detailed EFI's role in supporting Ghanaian stakeholders in complying with the regulation. (A copy of the presentation is attached as **Appendix 2.**)

### **3. Presentation Of Findings**

Clement Kojo Akapame and Albert Agyepong from TCI presented their initial findings, outlining the assignment's objectives and deliverables. They clarified that the EUDR's scope of legality aims to ensure compliance with existing local laws, not drive legal reform. Therefore, stakeholders are only expected to comply with requirements already enshrined in law. They demonstrated the methodology they adopted in their study, highlighting how the work started from the broader cocoa legal framework before narrowing it into the relevant applicable laws. They invited the stakeholders to provide feedback and comments on the findings. The feedback is categorized as follows:

### ***1. Clarification on the Scope of EUDR***

A question was raised regarding whether COCOBOD's jurisdiction extends to cocoa derivatives as outlined in Annex I of the EUDR. A government stakeholder clarified that the EUDR considers the origin of production for both cocoa and its derivatives. For compliance with traceability standards, sellers must provide the geolocation of the original plant for each product. Consequently, COCOBOD is indirectly responsible for cocoa derivatives, as it may need to supply geolocations and other relevant details of cocoa trees and pods produced in Ghana.

Another question concerned the scope of fertilizers and agrochemicals and whether they fall within the EUDR's purview. According to a government stakeholder, fertilizers and agrochemicals are regulated by Ghana's legal system rather than the EUDR. Currently, the EUDR does not monitor these inputs, though this may change following future reviews.

[Editorial Note: For clarification, fertilisers and pesticides, contrary to the statement made, fall within the environmental protection requirement under the EUDR.]

### ***2. Scope of legality***

In response to the presentation, several stakeholders expressed a desire to include additional aspirational areas of concern, such as Free, Prior and Informed Consent (FPIC), mining and international human rights. The presenters clarified that the EUDR references relevant applicable laws, which pertain specifically to cocoa farming, production, and sale. The explained that FPIC is currently not applicable in this context, as Ghana has no laws

requiring FPIC for cocoa production. Similarly, mining falls outside the EUDR's scope. Regarding international human rights laws, the presenters noted that these are only applicable if they have been incorporated into domestic law, given Ghana's status as a dualist state.

The presenters recommended that the issues not currently deemed relevant to cocoa production represent an opportunity to advocate for legislative and policy reform nationally and, secondly, for their inclusion in the EUDR during its next review.

### ***3. Land Use***

The stakeholders agreed that there was minimal concern regarding cocoa farms outside forest reserves, as most of these farms are situated on legally acquired land and are considered low-risk areas. The presenters reiterated that the absence of documentary evidence of customary land rights related to these farms was not an indication of illegality and non-compliance with the EUDR.

The stakeholders acknowledged that cocoa from admitted farms posed a high risk, given the potential for boundary encroachment. This uncertainty about whether the cocoa originated from a permitted area or an encroached area heightened the risk.

TCl presented findings from a preliminary interview with the Forest Commission, revealing that the Reserve Commissioner's report included the names and sizes of admitted farms but omitted their specific locations. However, the stakeholders indicated they had encountered schedules within the Reserve Commissioner's report that provided the exact coordinates of admitted farms. TCl requested copies of these reports to address better concerns related to land use.

### ***4. Environmental Issues***

Several stakeholders suggested that environmental concerns should be included as a key area of focus. They proposed incorporating issues such as biodiversity conservation, pesticide use, and wildlife management into the due diligence system.

### ***5. Child labour***

The presenters inquired about how farmers address issues of child labour and verify the ages of their workers. Some farmers present at the meeting stated that they ensure workers are of legal working age by inspecting national identification cards, such as Voter's Identification and Ghana Cards, with the presumption that the information on these documents is accurate. They are aware of the regulations regarding permissible work for children.

The presenters noted that child labour is an area of concern because it has always been an issue in agricultural supply chains. Specific to cocoa, the problem is not with farmers directly engaging children; the issue is with farm hands (who are of age) engaged by the farmers bringing their children to work on the farms. COCOBOD has a national monitoring system to monitor the use of children by employees. This makes child labour a due diligence concern as farmers will struggle to demonstrate compliance.

### ***6. Workers' rights***

The presenters explained that workers' rights encompass all aspects, from recruitment to contract termination. Most cocoa farmers in Ghana are subsistence farmers and do not operate on large scales. As such, the labour requirements are not strictly complied with. Stakeholders expressed concerns about the ability of smallholder farmers to prove compliance, as many may not maintain proper employment records because most workers on cocoa farms are hired through oral contracts, with no written evidence of the terms and conditions of service. The absence of compliance records does not automatically indicate illegality. There is no law mandating farmers to maintain a database of employees, so the lack of such records does not conclusively prove the presence of forced labour. Farmers are responsible for ensuring that the rights of their contracted workers are respected. This makes workers' rights an area of concern for due diligence.

### ***7. Taxes, Trade, Customs and Anti-Corruption***

There was a discussion on taxes, trade, customs and anti-corruption. The presenters noted that there are no tax concerns for cocoa production because it under Ghanaian law the production of cocoa was tax-free. As regards trade, the law was clear that only a licenced

buying company could trade in cocoa. This requirement is complied with and documented and is not a legality concern for.

#### 4. Findings and Recommendations

During the discussions, stakeholders made several key observations. Firstly, there was confusion between the legality and deforestation requirements of the EUDR, highlighting the need for further training and capacity building to clarify these distinctions. Secondly, there was a misconception that the EUDR's legality requirement aims to address legal gaps and drive legislative reform, influencing some stakeholders' perceptions and expectations.

Stakeholders also agreed that the Ghanaian legal framework includes detailed requirements in most of the areas of law listed in the EUDR, some of these requirements are not applicable to small-scale cocoa farming. The relevant Ghanaian legal requirements to determine the legality of cocoa are thus concerned with four key issues: land use, child labour, environmental concerns, and workers' rights. Therefore, they concluded that the focus of the due diligence system should be directed towards these specific issues rather than the broader legal framework.

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DATE 03-07-2024

NO	NAME	ORGANISATION	REGION	ACCOMODATION	TELEPHONE NUMBER	EMAIL	SIGNATURE
1	Nana Kwasi B. Bekah	SEAGI Ghana	GAR		0247852948	nana.kwasi@seaglobal.org	
2	Nunana Kwakutsey	ITOCHU Corp.	GAR		054-012-3027	nunana@itochu-africa.com	
3	Alcorus A. Kwagyan	CO COBOD	GAR		0243012775	alcorus@cocobod.com	
4	Anass Mohammad Esg	FED CO	GAR		0244051132	anass-mohammed@fedco.com.gh	
5	VICTOR DZAH	LICORAH	GAR		0222431218	dzahvictor@gmail.com	
6	Pious Vincent Abekah	Nyarko's Color	AR		0244282605	pious-abekah@nyarkos.com	
7	PATRICK Adjewoodah	Fairtrade Africa	GAR		0244477441	p.adjewoodah@fairtradeafrica.net	
8	Tejnor Francis	FRANCIS URBAN	ER		0244277508	tejnortf@gmail.com	
9	Adamu Billey	Beyond Beans Foundation	GAR		0547885115	adamu.billey@beyondbeans.org	
10	Simeon COURANT	Toulon F.P.R.	GAR		058741487	s.courant@toulon.com	
11	Sena Yawa Tabbica Esg	CO COBOD	GAR		0553826175 0242364545	senatabbica@cocobod.com	
12	Martha P.O. Mensah	CO CODEVI	ACCRA		0242338732	m.vanier@codevi.org	
13	Michael Ekow Amoah	CO COBOD	ACCRA		0244619102	amoah2002@cocobod.com	
14	NARGIZA SHAHIDYLDAROVA	Preferred by Koforidua	ACCRA		0558323821	ns@pbu.org	
15	Mery Omsu Ansah	Tropenbos Ghana	Ashanti	✓	0207878603	meryomsu@tropenbos.org	
16	Charity Sackitey	Banyo Call Centre	Ashanti		0243300710	charity.sackitey@banyo-callcentre.com	

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CSD

CIS-Kesi

DATE 03-07-2024

NO	NAME	ORGANISATION	REGION	ACCOMODATION	TELEPHONE NUMBER	EMAIL	SIGNATURE
✓ 17	Moses Djan Asiedu	GCCP	Ashanti		0244745920	m.djanasiedu@gmail.com	
✓ 18	Issifu Issaka	GCCP	Western North		0536899090	issifuissaka@gmail.com	
19	Harrison D. Asiedu	ECOMGH	Ashanti		0246207682	harrison.asiedu@ecomgh.com	
20	Obed Owusu-Akpan	Ecocore Ghana	Accra		0240355324	obed@ecocoreghana.org	
21	Nicholas Jengre	Rainforest Alliance	Accra		0265348195	njengre@ra.com	
22	Mawuli Coffie	WCF	Accra		0263206645		
23	Larry Attipoe	IT =	Accra		0505367704	lattipoe@intratenu.org	
✓ 24	Leticia A. Tankey	GCCP	Western South		0240760899	leticia.tankey2016@yahoo.com	
✓ 25	Samuel Nanku	Ecocore Gh.	Accra		0247932312	snanku@gmail.com	
26	Hans Gyimah Gyampfi	COCOBOD	Accra		0247102133	hansgyimahgyampfi@gnk.com	
27	Fabienne Yver	EFI	Accra		0594889825	fabienne.yver@epd.int	
28	Zuobog Philip Neri	EKN	Accra		0501423689	philipneri.zuobog@minbuza.gov.gh	
✓ 29	Nasir Yaw Randa	GCCP	Eastern		024076338	nasiryaw@gmail.com	

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