

# Transparency & Accountability

A Consultation Paper for the Cocoa Barometer. **October 2017**

Many efforts have been made to map parts of the challenges surrounding sustainability<sup>i</sup> in the cocoa sector. Nonetheless, there is very little clarity in the cocoa sector about the scope of the challenges we face, the size of current efforts being undertaken, or about the effectiveness – and impact – of these efforts. To put it bluntly: we don't really know who is doing what, we don't really know whether what is being done is actually working, and, therefore, we cannot know how close we are to achieving sustainability. For this, **transparency** and **accountability (T&A)** are essential.

## Better understanding

T&A will lead to a better understanding of the size of the problems still facing the sector, and to an approach where the size of the solutions is equal to the size of the challenges, both in terms of investments needed to roll out improvements at community level, as well as in the additional impacts needed to achieve living income, foster reforestation, and other pressing challenges. This in turn should make it possible to identify what shared responsibility really should look like for all the actors in the sector, and will bring to light available synergies and opportunities among different stakeholders

## A Necessary Step

Transparency is never an end-goal, but a necessary step towards accountability. It is a prerequisite for implementing sustainability, as well as a necessary building block for delivering on human rights requirements set in national and international laws and conventions. Without transparency, human rights violations cannot be prevented, mitigated, remediated or reported on.

## UNGPs demand Transparency

The UN Guiding Principles on Business and Human Rights (UNGPs) demand from States and companies that they prevent, address, and remedy human rights abuses committed in business operations. The UNGPs emphasise the need for companies to understand and disclose risks in a timely and regular manner. As such, transparency and accountability are crucial preconditions for and integrally part of the UNGPs.

## Advantages

Transparency and accountability together allow for better managing and accelerating progress, identifying gaps in current approaches, preventing transgressions

from taking place, and facilitating mitigation of effects of transgressions for farmers and cocoa growing communities. They also provide several important advantages to all actors in the cocoa supply chain.

- For the **private sector**, T&A creates a level playing field and knowledge about their supply chain (e.g. where their products come from, and under which conditions they were cultivated and/or produced). T&A allows for companies to analyse, prevent, mitigate, remediate and report on risks in their supply chain. T&A helps clarify risks and responsibilities along the supply chain, not only for themselves but also for other actors involved. Moreover, T&A builds trust towards investors and their customers, increases compliance, shows company confidence in their own human rights due diligence mechanisms, etc.

- For **producing** as well as **consuming countries**, T&A allows for the implementation of measures to regulate private actors, protect their industries and communities, and to establish grievance and remedy mechanisms.

- For **producing countries**, T&A will help create enabling environments for cocoa growing communities. Key elements of this include: strengthening governance capacity; improving the coordination of ministries and departments to ensure effective implementation and enforcement; and improving data quality and availability so ministries and other stakeholders can make informed decisions.

- For **civil society organizations**, T&A provides information needed to facilitate advocacy on human rights and environmental sustainability in the supply chain.

- For **consumers**, T&A allows for information to know under which conditions the goods they consume are produced and to hold actors to account.

- For **farmers**, T&A can lead to increased information, organization and thus increased bargaining power on the side of the farmers, the opportunity to influence local and national policies, and thus increased government investments in local communities.

## Access to Grievance Mechanisms

Transparency can also help victims of human rights violations in a supply chain to find access to grievance mechanisms for the remedy of these violations, ranging from forced labour to paying below the minimum wage. This 'access to remedy' is the third pillar of the UNGPs,

besides the government's duty to protect, and the company's responsibility to respect. Grievance mechanisms can be in the form of judicial, administrative, legislative or other appropriate means. Individuals, trade unions and NGOs should be able to file complaints in case of company or government noncompliance.

### **Governments and Companies**

Both governments and companies play a critical role in establishing transparency & accountability. If they work together, the sector will be in a much better position to address challenges in cocoa more effectively.

### **Governments**

At a governmental level, transparency and accountability should be directed at helping address what the Open Government Partnership (OGP) calls "the five grand challenges" - improving public services, increasing public integrity, effectively managing public resources, creating safer communities and increasing corporate accountability.<sup>ii</sup>

### **Public Services**

The provision of social, educational and health services - as well as the development of local communities - is mainly the responsibility of national governments and local authorities. Cocoa growing communities suffer from a lack of schools and teaching material, have insufficient access to health care and clean drinking water, bad roads, no electricity, and other insufficient public infrastructure. T&A should lead to an increased understanding of the size of this infrastructural gap.

In countries such as in Ghana and Côte d'Ivoire, transparency about the financing of Cocoa Stabilisation Funds, as well as the bufferstocks currently being set up, is essential to ensure public trust. The current unrest around Ghana's Stabilisation Fund and the medium term effects it will have on prices for farmers is a prime example.

For national and local governments to improve these public services, extensive financial investments are required. While recognising that governments have sovereignty on expenditure choices of tax revenues, there is a real need for financial transparency and the ensuing accountability of the delivery of these public services. T&A on the level of revenues from various forms of cocoa taxes and export tariffs is an essential ingredient. This includes both the cocoa bean trade as well as the growing national processing industries, including the level of taxes multinationals pay in country for their processing activities.

### **Public Integrity**

Recently, a statement was issued by Ghana's COCOBOD on their 'cocoa roads' project; many contracts had been awarded by public servants at costs higher than the organisation could afford, and at least 30 of the 230 awarded projects cannot be traced to any town or community.<sup>iii</sup> Though this particular case is being redressed, it is symptomatic for a broader problem, where public funds seem to be misused. Whilst the previous example comes from Ghana, Transparency International ranks the other major cocoa producing nations all even lower on their annual Corruption Perceptions Index<sup>iv</sup>. For the West African cocoa producing nations, the percentage of public service users that paid a bribe in the past year varies between a third (Côte d'Ivoire at 34% and Ghana at 36%) and almost half (Nigeria at 43% and Cameroon at 48%). This is far above the regional average of 22%.<sup>v</sup>

The poor are affected the hardest by bribery. They are twice as likely to have paid a bribe, and are much less likely to report corruption out of fear of the consequences.<sup>vi</sup> At the same time, anti-corruption measures are only implemented piecemeal, usually after a change of power due to elections, such as the Ghanaian example above. Whistle-blower protection is largely absent, and in Nigeria changes in anti-corruption legislation are making it easier for top officials to 'continue with corrupt practices'.<sup>vii</sup> Additionally, there is very little transparency or accountability on how contracts are awarded to manufacturers and processors, as well as whether local traders are paying the farm gate price.

While cocoa specific data is scarce, experts estimate that for African nations in general, the sum total of illicit financial flows - whether in bribes at local level, misappropriation of funds designated for public services or through other illicit financial streams - is estimated to be far larger than the official development assistance that these nations receive.

### **Public Resources and Local Communities**

T&A are also necessary prerequisites to a decent management of public resources, such as protected areas, schools, hospitals, and to address a selection of threats, including a decline of biodiversity, a threat to the sector by gold mining, and climate change affecting the land still suitable for growing cocoa.

The current double catastrophe of deforestation and the pricing crisis is an important case in point. The past years have seen a vast increase of cocoa production, especially in Côte d'Ivoire. Reports are starting to

indicate that this is due to a staggering amount of deforestation in regions that are classified as protected forests. With no supply chain traceability, for years, companies have been willingly (and often knowingly) purchasing vast amounts of cocoa from areas that should have been protected natural parks. Governments have not been enforcing the protection of classified areas. T&A in sourcing, as well as effectiveness of enforcement efforts, form the foundation of any functional protection of public resources.

Additionally, local civil society, farmers and farmer-based organisations, as well as individual citizens, are able to play a more involved role when governments and companies operate in a transparent and accountable manner. They are empowered to demand improvements in local infrastructure and provisions, have stronger bargaining positions towards large commercial entities, and are more informed to make decisions on collective steps forward.

### Corporate Accountability

Governments have obligations in regards to corporate accountability, at a global and/or collective level, such as the UNGPs, or legal obligations under for example national anti-bribery laws. Additionally, there is an increasing body of legislation in consuming nations on supply chain integrity and Human Rights Due Diligence. T&A within these frameworks of national or regional legislation and the UNGPs cover a wide range of issues, including transparency of efforts, of payments to governments and to cooperatives, of due diligence risk analyses of supply chains, etc.

### Legislative Requirements

In addition, there are various developments at national level of consuming nations, increasingly requiring due diligence in supply chains, including the French Duty of Vigilance Law, the Dutch Child Labour Due Diligence Law, or at least reporting requirements as under the California Supply Chain Transparency Act, the United Kingdom's Modern Slavery Bill, or the EU Non-Financial Reporting Directive. Pressure is also mounting to develop EU-wide legislation on mandatory due diligence.<sup>viii</sup> Legislation should also be put in place to start tackling tax evasion, an issue with major multinationals, primarily at consuming country level where multinationals' tax avoidance reduces national tax revenues.

### Necessary Areas for T&A for Governments

Governments should increase T&A in at least;

- **Taxes received** and **taxes reinvested** in local communities, the **impacts** of these (re)investments

(including a specification of size of direct investments to support farmers);

- Size and viability of **price stabilisation funds**;
- **Public procurement**, including open bidding & open budgeting processes;
- **Decision making processes** on cocoa policies, i.e. who is involved, how can farmers and civil society be consulted;
- Development, implementation, and regular and open communication of **anti-corruption** policies;
- Strengthening and enforcement of **transparency** and **due diligence laws** and enforcement of legislation;
- **Public procurement provisions**, including mandatory due diligence obligations for relevant public bodies; inclusion of modern slavery provisions in social clauses of public procurement; and inclusion of mandatory exclusion provisions for certain suppliers.

## Companies

By now, every chocolate and cocoa company worth their salt has at least one cocoa sustainability programme, most have several, whether in collaboration with others or on their own. But are companies doing what they should be doing? This question can only be answered when efforts and impacts are communicated transparently and openly.

There is no way of holding companies to account to their own commitments if they are not transparent about their achievements. The risk of human rights violations in the cocoa supply chain, in combination with a highly concentrated market, means that even more than in most other sectors, transparency and accountability are essential - and largely missing - ingredients.

Increased T&A would also allow other actors with shared interests (such as development actors) to support companies' efforts, making them more effective.

### Shared Data and Lessons Learned

Currently, corporate reporting on cocoa sustainability and human rights is often based on a principle of only communicating successes. Lessons learned are seldom made public, resulting in many companies trying the same unsuccessful approaches. Additionally, most communication is based solely on outcomes and numbers in absolute terms, and not on the impact that these expenditures might have on achieving impact, nor on how they relate to the size of the challenge.

Collaborative efforts such as Cocoa Action are struggling to find reliable data, and when they do, report on a highly aggregated level. Data from projects

is kept proprietary, even when they are (co)-funded with publicly financed development support from consuming governments, such as through financial support from the IDH Sustainable Trade Initiative or other similar initiatives.

Indicators need to be measurable, and results need to be publicly available for measuring progress. Care should be taken to ensure data is comparable, e.g. through collaborating on indicators and coordination of reporting periods. For all shared data projects, baselines studies should be carried out, and living income benchmarks should be an integral part of the design. Lastly, data should be based on impact, not effort; for example, it is not the building of a school that is the relevant data, but whether school attendance rates went up and illiteracy went down.

### Standards

For standards such as UTZ, Rainforest and Fairtrade, T&A should also include reporting on impact on livelihoods and labour conditions, not just on efforts of remediation. Additionally, standards must be more transparent on payments of premiums and farm gate price, both to cooperatives as to farmers. When specific partnerships are made, such as the Cadbury/Mondelēz and Fairtrade partnership, financial and impact transparency is essential.

### Human Rights Due Diligence (HRDD)

Under the UNGPs, corporations are required to undertake human rights due diligence. A key ingredient of such HRDD is a significant level of transparency in order to account for the companies' impacts, both within country, as well as abroad, and with sub-contractors and supplier. Multinationals should be required to report annually on the implementation of their due diligence plan, including identified risks and effectiveness of measures taken. Companies reporting on HRDD should refer to HRDD standards set forth in ILO Protocols, the UNGPs and OECD Guidelines.

### Necessary Areas for T&A for Corporations

Companies should increase T&A in at least;

- **Investments in sustainability projects and rural communities;**
- **Scope** of projects, including number of farmers/communities targeted, overlap with other projects;
- **Impact** of projects (what was effectively achieved with these activities, e.g. how was farmer net income increased, including disclosure on instances and remediation of child labour and trafficking);

- **Payments to governments**, as part of anti-corruption measures, including taxes paid and declared profits, disaggregated per nation;
- **Payments to farmers** and cooperatives, including premiums and farm gate prices paid, living income calculations;
- **Supply chain traceability** including sourcing locations.

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### About this paper

This consultation paper is a first attempt to find new vocabulary, spark a debate, and effect necessary change on a sensitive topic.

### Feedback

We call on stakeholders to provide their perspectives to this paper, which will be used for the upcoming Cocoa Barometer, to be released early 2018. The deadline for submitting feedback is November 30<sup>th</sup>, 2017, to [antonie@voicenetwork.eu](mailto:antonie@voicenetwork.eu).

**Citation:** Fountain, A.C. (2017); Transparency and Accountability in the Cocoa Sector. Cocoa Barometer Consultation Paper.

### Cocoa Barometer Consortium

- VOICE Network;
  - ABVV-FGTB Horval (Belgium)
  - FNV (Netherlands)
  - Inkota Netzwerk (Germany)
  - Green America (USA)
  - Oxfam (Netherlands, Belgium)
  - Public Eye (Switzerland)
  - Stop The Traffik (Netherlands, Australia)
  - Südwind Institut (Germany)
- Hivos (Netherlands)
- International Labor Rights Forum (USA)
- Mondiaal FNV (Netherlands)
- Oxfam America (USA)
- Solidaridad (Netherlands)
- UNICEF (Netherlands)

*This paper was co-funded by the Hamburger Stiftung für Wirtschaftsethik*

<sup>i</sup> A sustainable cocoa sector is one in which all stakeholders are able to earn a living income under decent working conditions, where child rights are respected, within a thriving and healthy environment.

<sup>ii</sup> Open Government Partnership: <http://bit.ly/2bgpKIM>

<sup>iii</sup> Ghana Web <http://bit.ly/2gluds9>

<sup>iv</sup> Out of 176 countries, Ghana ranks 70<sup>th</sup>, Brazil 79, Indonesia 90, Peru 101, Côte d'Ivoire 108, Ecuador 120, Nigeria 136, and Cameroon 145.

<sup>v</sup> People & Corruption Survey 2015, Transparency International, p. 16

<sup>vi</sup> Corruption Perceptions Index, Transparency International, 2016, p. 18, p. 25

<sup>vii</sup> Transparency International <http://bit.ly/2gunjinU>

<sup>viii</sup> Business and Human Rights Research Centre p. 4