SUSTAINABILITY LAWS AND MULTISTAKEHOLDER INITIATIVES

THE INFLUENCE OF CORPORATE SUSTAINABILITY LAWS ON MULTI-STAKEHOLDER INITIATIVES TO ELIMINATE FORCED AND CHILD LABOUR IN SUPPLY CHAINS

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TITLE: The Influence of Corporate Sustainability Laws on Multi-Stakeholder Initiatives to Eliminate Forced and Child Labour in Supply Chains

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LAY ABSTRACT: An array of governance initiatives has emerged to address forced labour and labour exploitation in global value chains (GVCs). This thesis examines the interaction between two of these initiatives: stakeholder initiatives and corporate sustainability laws. Through a case study of the cocoa sector, and specifically of the multinational company, Nestlé, I find that the layering of corporate sustainability laws, and particularly the French Duty of Vigilance Law, on top of CSR and MSIs in the cocoa sector, does not appear to address the governance gap that permits corporations to evade accountability for human rights abuses in their supply chain. This raises implications for the continuous efforts in various jurisdictions to introduce these laws as a solution to the shortcomings of private, voluntary rule-making systems.

ABSTRACT: An array of governance initiatives has emerged to address forced labour and labour exploitation in global value chains (GVCs). Drawing on the transnational business governance interactions theoretical framework, as well as Timothy Bartley's place-conscious transnational governance model, this thesis examines the interaction between two of these hybrid forms of governance: multi-stakeholder initiatives and corporate sustainability laws. I conduct a case study of the cocoa sector, and specifically of the multinational company, Nestlé, using multiple qualitative research methods including legal analysis, key informant interviews, and documentary analysis. My research suggests that the layering of corporate sustainability laws, and particularly the French Duty of Vigilance Law, on top of CSR and MSIs in the cocoa sector, is not addressing the governance gap that permits corporations to evade accountability for human rights abuses in their supply chain. I find that the introduction of corporate sustainability laws may have contributed to a decrease in Nestlé's efforts to address labor violations in certain areas, while in others, it appears to have supported the continuation of existing practices. This raises implications for the continuous efforts in various jurisdictions to introduce these laws as a solution to the shortcomings of private, voluntary rule-making systems. Further research is required to explore how these governance mechanisms are interacting in other sectors, in companies of different sizes, and within various types of MSIs. This will help identify the factors that influence interactions and shed further light on the path forward for policymakers.

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List of Abbreviations

ATS	Alien Tort Statute
CIP	Cocoa Industry Protocol
CLMRS	Child Labour Monitoring and Remediation System
CMS	Cocoa Management System
CSDDD	Corporate Sustainability Due Diligence Directive
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
CTSCA	California Transparency and Supply Chain Act
DISCO	Dutch Initiative on Sustainable Cocoa
FLA	Fair Labour Association
GISCO)	German Initiative on Sustainable Cocoa
GVC	Global Value Chain
ICI	International Cocoa Initiative
IFC	International Finance Corporation
ILO	International Labour Organization
MNC	Multinational Corporation
MSI	Multi-Stakeholder Initiative
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
SAI	Social Accountability International
SDG	Sustainable Development Goal
TNC	Transnational Corporation
UNGC	United Nations Global Compact

Introduction

Over the past 30 years, multinational corporations (MNCs) have faced mounting pressure to improve labour standards in their supply chains and their corporate social responsibility (CSR) regimes have failed to meaningfully address the problem (Kuruvilla, 2021). The adoption of Target 8.7 of the 2030 Sustainable Development Goals (SDGs) by UN member states in September 2015 – which calls for immediate and effective measures to eradicate forced labour, end modern slavery, end human trafficking, and eliminate child labour – brought renewed global attention to the problem of labour exploitation, and to the role of supply chains as a vector of forced labour and modern slavery. There is now widespread acknowledgment that eliminating forced labour and child labour from global value chains (GVCs), which make up approximately 70% of global trade, is critical to achieving SDG Target 8.7 (OECD, 2021).

In response to these developments, an array of governance initiatives has emerged to address forced labour and labour exploitation in GVCs. Three dimensions of governance have been identified as playing roles in global value chains: private governance relies on lead firms and other private sector bodies to set and apply labour standards throughout their supply chain; social governance draws on the ability of CSOs, including NGOs, trade unions, charities, and community groups to influence norms, policies and institutions; and public governance involves the use of laws, policies, and agreements within and between nation states to regulate the operation of GVCs (Barrientos, 2019). The interaction between these dimensions of governance can "involve complementarity where one fills a gap in another, substitution where one replaces another, or enforcement where one strengthens implementation of the other" (Barrientos, 2019). Further, the interlayering of these different governance dimensions has produced new, hybrid and multiscalar forms of governance that are interlinked at the global, national, and local levels.

Drawing on the transnational business governance interactions theoretical framework, as well as Timothy Bartley's place-conscious transnational governance model (Bartley, 2018), this research study examines the interaction between two of these hybrid forms of governance: multi-stakeholder initiatives and corporate sustainability laws. Multi-

stakeholder initiatives (MSIs) bring together companies, NGOs, and trade unions to address social and environmental issues, reflecting the interlay of private and social governance (Barrientos, 2019). Corporate sustainability laws are a form of "new" governance, responsive regulation, or reflexive law that impose minimum obligations on all MNCs to adopt CSR measures**.** Many countries in the Global North, where most MNCs are incorporated, have enacted such legislation, which is designed to increase the accountability of MNCs for labour violations occurring in their transnational supply chains. The study sought to explore the following research questions: Do these laws complement, substitute, or strengthen the role of MSIs (or stakeholders' perception of their role) in addressing forced and child labour in global supply chains? To what extent are they helping to alleviate some of the shortcomings of MSIs?

My analysis is conducted through a case study of the cocoa sector, where there are several MSIs involved in corporate social sustainability initiatives, and specifically of the multinational company, Nestlé, which is a major player in the industry, is a member of several cocoa MSIs, and is subject to corporate sustainability laws in at least six jurisdictions. Given the extensive use and disappointing results of MSIs in the cocoa sector and the sector's appetite for regulation, the conditions are ripe for corporate sustainability laws to influence these initiatives. The study data was gathered using multiple qualitative research methods and triangulated to examine how corporate sustainability laws interact with multi-stakeholder initiatives to address forced labour and child labour in the cocoa supply chain. These methods included legal analysis of the French Duty of Vigilance Law and judicial decisions relating to labour violations in the cocoa supply chain of Nestlé and other cocoa-chocolate companies; semi-structured key informant interviews with representatives of MSIs in the cocoa sector that count Nestlé as a member; and analysis of documents from Nestlé and its MSIs relating to corporate social responsibility initiatives in the cocoa sector and corporate sustainability laws.

My analysis suggests that the introduction of corporate sustainability laws may have contributed to a decrease in Nestlé's efforts to address labor violations in certain areas, while in others, it appears to have supported the continuation of existing practices. Since

these laws set the bar lower than what Nestlé was doing previously, they potentially give the company legal cover to limit its activities only to what is necessary, to choose to address the problem in the ways that suit it, and to avoid addressing the root causes that are within its control, such as by changing its purchasing practices. These laws may also affect interactions in cocoa-producing states, as governments are incentivized financially by their counterparts in the global north and assisted by MSIs to adopt an approach that seems focused on facilitating MNC compliance and reporting under the laws. In this this way, corporate sustainability laws do not appear to be preventing the re-centring of the state but may be steering it in a way that suits the needs of businesses.

I conclude that the layering of corporate sustainability laws, and particularly the French Duty of Vigilance Law, on top of CSR and MSIs in the cocoa sector, does not appear to have addressed the governance gap that permits corporations to evade accountability for human rights abuses in their supply chain. The case of Nestlé does not provide any indication that the French law is leading to more meaningful action by the company to address labour violations. This raises implications for the continuous efforts in various jurisdictions to introduce these laws as a solution to the shortcomings of private, voluntary rule-making systems. My analysis suggests potential directions for future research, including further studies that explore how these interactions are occurring in other sectors, in companies of different sizes, and within various types of MSIs. This will help identify the factors that influence interactions and shed further light on the steps policymakers should consider in this area.

The manuscript proceeds with a brief review of the literature on transnational business governance interactions and the theoretical models that can provide a useful framework for the study. This is followed by an analysis of the key scholarly debates concerning MSIs and corporate sustainability laws, with particular focus on the French Duty of Vigilance Law. Drawing on secondary sources and legal cases, I then sketch a portrait of the cocoa sector in Ghana and Cote d'Ivoire, including the role played by MSIs and Nestlé, in order to demonstrate the research context and the rationale for my case choice. In the final sections of the paper, I explain in detail my interview and document

collection and analysis methods, present the findings of my analysis, discuss their implications, and offer directions for further research.

Theoretical Framework

The theoretical foundation for this research is situated in the literature on the interaction of different methods of governing transnational business (transnational business governance interactions). A significant trend in global governance over the past three decades has been the recession by states from their role as primary rule makers, and a rise in non-state actors creating and managing rules and institutions to address complex global environmental, social, and economic challenges (Eberlein, 2019; Cashore et al., 2021). There is a considerable body of research that examines these private forms of regulation and the 'interactions' among them (Esbenshade, 2012; Hsueh, 2019), defined by Eberlein et al. (2014) as "the myriad ways in which governance actors and institutions engage with and react to one another" (p. 2). Scholars also increasingly recognize that these private actors "do not operate in a public policy vacuum" and that their impact is shaped by their interactions with traditional state-led governance and public policy-making processes (Bartley, 2011; Mayer & Phillips, 2017; Cashore et al., 2021). The ways that regulatory forms "co-evolve, hybridize, compete and reshape organizational behaviour" can have important implications for the performance and effectiveness of governance approaches and interventions (Eberlein et al., 2014; Lambin & Thorlakson, 2018).

Accordingly, various concepts have been developed to describe and analyze the diversity of governance interactions (Hardy & Ariyawansa, 2019). The analytical framework proposed by Eberlein et al., (2014) defines the "character" of private-private and private-public interactions as falling into four categories: coordination, cooptation, competition, and chaos. With this as a starting point, Lambin and Thorlakson (2018) synthesize three types of interactions between governance systems identified in the literature "variously labelled as (a) complementarity, collaboration, coordination, synergism, or symbiosis; (b) substitution, superseding, or cooptation; and (c) competition, antagonism, or chaos" (p. 372). They note that interactions are dynamic and can evolve

through different stages of regulatory governance over time and place (Lambin & Thorlakson, 2018). Cashore et al. (2021) further explore how different factors can create particular interactions within a governance sphere or change the nature of interactions over time; for example, the way private governance interventions navigate the tension between their stated purpose of functional problem solving and the need to build legitimacy through democracy, participation, and inclusionary norms, impacts how they interact with other private governance systems as well as with public policies.

Similarly, in her analysis of regulatory experiments to reduce informality and improve labour standards in Bulgaria, Australia, Cambodia, and India, Marshall (2019) identifies examples of successful co-regulation through governance mechanisms that widen the scope of regulation to cover a broader group of workers (expansion); add new regulatory instruments, agents, and levers to complement and bolster the existing rules (complementary layering); draw on the power of non-state actors as allies to boost compliance (networked regulation); compete with existing institutions (rivalry); and replace existing rules with new ones (displacement). Her examples show that these strategies can co-exist and that the same form of co-regulation can change over time to reflect different strategies.

Some scholars have focused their analysis on the specific nature of public-private interactions (Locke et al., 2013; O'Rourke, 2006; Karassin & Perez, 2018; Cashore et al., 2021; Brandi, 2020; Renckens, 2020). Labour standards and working conditions have long been regulated through both public and private measures and this interaction is "crucial" to the origins, nature, and effectiveness of such regulations (Fransen & Burgoon 2017). Initially, the universe of interactions was assumed to be simple and narrow: private governance could play a *complementary* role by filling gaps in policy and substituting for missing or inadequate regulation, or it could play a *competitive* role by constraining or undermining public policy (Cashore et al., 2021). Similarly, public law could either restrict or enhance the authority of private rulemaking (Karassin & Perez, 2018). Fransen and Burgoon (2017) provide a succinct summary of the academic debates on the public-private interrelationship, noting that some empirical studies have found complementarity to be the

dominant pattern emerging from such interactions, while others have identified more competitive effects. Relatedly, LeBaron and Rühmkorf (2019) compare the 'complementary' vein of scholarship, including what some scholars have termed the 'California effect' whereby public regulation raises private standards while the latter compensates for state capacity gaps. They contrast it with the opposing 'competitive' vein which emphasizes the role of industry actors in thwarting effective state-based regulations. Researchers note that it is also important to consider the contingencies which may condition the level of complementarity or competition between public and private protections, such as the specific country, sector, or kind of regulatory measure (Fransen & Burgoon, 2017). For example, an analysis of the ILO/IFC Better Work programme across eight countries found that, while the programme's transnational/private initiatives complement its domestic/public ones, the outcomes of this complementarity were contingent on the institutional characteristics and political dynamics of the local contexts (Bair, 2016). Likewise, in his analysis of the timber legality regime, Tim Bartley (2014) observes that while "the architectural designs of public and private initiatives can provide hints about their interactive outcomes, (…) much depends on how design principles are mobilized or resisted by actors with different degrees of power, rooted in different socio-political circumstances" (p. 106).

Efforts to move beyond the binary interpretation (complementarity or competition) have resulted in more detailed typologies to map the "fuller suite of mechanisms through which public and private governance interact" (Cashore et al., 2021, p. 1167). Karassin and Perez (2018) identify five different types of interactions between public and private environmental governance regimes: public law can actively support the use of private standards *(incorporation)*; create conditions that enable the adoption of private regulation *(facilitation)*; be silent about issues covered by private regulation *(abstention)*, take over the regulation of issues previously regulated privately *(substitution)*, or directly bar certain forms of private regulation *(suppression).* Fransen and Burgoon (2017) identify five key dimensions of variation in the interaction between public and private protections of labour and social standards that impact research on the evolution, character, and outcomes of these

interactions: the stages of the policy process; the countries or regions; the specific labour issue(s) and regulatory policy instrument(s); the directions of causality of the interactions (public to private and private to public); and the choice of study methods. Evidently, despite the growing body of empirical evidence in this area, there remains much uncertainty about the mechanisms at work and it remains difficult to parse 'what affects what' and what direction the influence travels (Fransen & Burgoon, 2017).

The 'interactions' model has been used to explore how private voluntary sustainability standards interact with the UN Sustainable Development Goals (Schliefer et al., 2022), how private climate change litigation against corporations interacts with environmental due diligence legislation (Rajavuori et al., 2023), and the interaction between public and private regulatory reforms instituted in post-Rana Plaza Bangladesh (Bair et al., 2020). Most pertinent to the present research topic is LeBaron and Rühmkorf's (2017) comparative analysis of the impact of the UK Bribery Act and Modern Slavery Act on global supply chain governance. They observe that public regulation is not a coherent monolith but consists of various models of legislation with significant differences in quality, which has consequences for its effectiveness (LeBaron & Rühmkorf, 2017). Their research indicates that stringent legislation can strengthen private governance, by for example driving lead firms to implement stronger due diligence procedures, but less stringent legislation is unlikely to provoke change in company practices or to produce strengthened public standards or compliance measures (LeBaron & Rühmkorf, 2017). The UK Modern Slavery Act is an example of the latter, as it "merely codifies and legitimates existing private governance mechanisms" and does not establish new standards or impose any sanctions for non-compliance (LeBaron & Rühmkorf, 2017, p. 26). The timber legality regime provides another useful example of the power of public regulation to re-orient the demands of firms around weaker standards of legality, in place of higher private standards of sustainability (Bartley, 2014).

One major critique of the 'interactions' model as a framework for theorizing transnational labour regulation and governance is that it is distant from points of implementation and fails to account for the regulatory intersections between transnational

structures and domestic governance (Hardy & Ariyawansa, 2019; Bartley, 2018). This is the position taken by Bartley, who emphasizes that transnational private regulation does not occur in "empty spaces" or "regulatory voids" where it can "navigate around" weak national legal regimes, but rather is channelled, frustrated, amplified, and reconfigured by domestic governance in producer countries in distinctive ways (Bartley, 2018, p. 5; Bartley, 2014, p. 95). He argues that the interactions model is driven by "the hope of transcendence", which assumes that "pushing standards through supply chains can transform markets by, in effect, pulling factories, forests, and farms out of their local contexts and up to global best practices" (Bartley, 2018, p. 261). His alternative model of "place-conscious transnational governance" calls for transnational labour standards initiatives that "recentre the state" through enforcement of domestic law and penalties for lead firms for violations in their supply chains (Bartley, 2018, p. 274). This understanding of private-public interactions as embedded in national political arenas and tied to domestic distributional struggles is starting to take root in the literature (Marques & Eberlein, 2020).

Drawing on both the 'interactions' and 'place-conscious transnational governance' models, this research will add to the scholarship on transnational business governance interactions by analyzing how multi-stakeholder initiatives (MSIs) that seek to address child labour and forced labour interact with corporate sustainability laws that require firms to report on and/or take action to eliminate labour exploitation in their supply chains. The 'interactions' model, developed by Eberlien et al. (2014) breaks down regulatory governance into six core components and sets out six dimensions for analyzing the interactions that occur in each component (see Table 1). While there is scope for research on corporate sustainability laws and MSIs in relation to all six governance components, this research focusses on the *implementation* component and seeks to assess the *character* and *effects* of these interactions: do corporate sustainability laws complement, compete, or co-exist with MSIs? Do they incorporate, facilitate, or substitute for existing CSR mechanisms? This research study concentrates on the implementation component because it can be analyzed using publicly available sources and could provide insights that are

important to stakeholders (such as governments considering enacting similar laws in their jurisdictions).

Table 1: Analytical framework for transnational business governance – reproduced from Eberlein et al. (2014)

Dimension of interaction	*Components of regulatory governance*					
	Goal/agenda setting	Rule formation	Implementation	Monitoring, information gathering	Compliance, promotion, enforcement	Evaluation, review
Who or what interacts						
Drivers and shapers						
Mechanisms and pathways						
Character of interaction			*Area of research focus*			
Effects of interaction						
Change over time						

Although this research question is focused on the public to private direction, the study nevertheless considers how the influence may in fact flow in the other direction. Further, since these interactions will be examined through a case study of a specific commodity – cocoa – which is sourced primarily from two West African countries, Bartley's (2018) place-conscious transnational governance model will provide an additional and useful frame for the research. It will look at the ways that the interaction between private and public (consumer-state) regulation is shaped by domestic (producer-state) governance mechanisms in Ghana and Cote d'Ivoire, and to what extent corporate sustainability laws are promoting or preventing the 're-centering' of the state. Examining these emerging interactions through a regulatory and governance lens will draw out some of the concrete effects and implications of these laws for working conditions and for workers.

Multistakeholder initiatives and corporate sustainability laws: key themes and debates

As a starting point to exploring the interactions between MSIs and corporate sustainability laws, it is critical to review the key debates in the literature concerning the development of MSIs as private governance initiatives, and their role in addressing human and labour rights violations in supply chains, as well as the emerging literature on corporate sustainability legislation as new public governance mechanisms with similar objectives. This literature review identifies the key themes that have dominated scholarly critiques of MSIs, such as varying typologies, organizational challenges, and issues of effectiveness and legitimacy. It provides helpful context for the research study by mapping out the governance gaps and fault lines that could be remedied, or worsened, as MSIs in the cocoa sector interact with corporate sustainability legislation, and lays the foundation for further exploration of these themes through the Nestlé case study.

Multi-stakeholder initiatives: the 'gold standard' of private governance

There is a rich literature that discusses the varied alliances between corporations, civil society actors, and governments that are commonly grouped under the umbrella term of 'multi-stakeholder initiative' (MSI). Most of this literature is in the field of business ethics but it is also covered by scholars of numerous disciplines, such as political economy, development studies, and law. These initiatives are described using various terminologies, such as multi-stakeholder meta-organizations (Berkowitz et al., 2017, p. 757); multistakeholderism, multistakeholder governance (Boersma, 2018, p. 613); global public policy networks, global action networks, non-state market-driven governance systems, international accountability standards (Rasche, 2012, p. 682); transnational private regulation and public private partnerships (Mena & Palazzo, 2012, p. 533).

There is no single accepted definition of an MSI. Baumann-Pauly et al. (2016) suggest that MSIs must be voluntary and involve two or more stakeholders cooperating to address issues of sustainability, corporate social responsibility (CSR), the environment and/or human rights. Potential stakeholders include companies, industry associations, non-

governmental organizations (NGOs), trade unions, government agencies, investors, academics, and international organizations (Baumann-Pauly et al., 2016, p. 108). Rasche (2012) adds that the array of stakeholders involved in any single MSI must "cross the state/non-state and profit/non-profit boundaries" and MSIs must set rules that are intended to apply to more than one firm (p. 683). For some scholars, MSIs involve not simply cooperation but collaborative agreement on private transnational 'rules' to govern corporate conduct (LeBaron & Lister, 2022, p. 676), including defining, implementing, and enforcing these rules (Rasche, 2012).

Researchers generally agree that the rationale and impetus for the proliferation and increased influence of MSIs is the need to address the "governance gaps" (Baumann-Pauly et al., 2016, p.108; Boersma, 2018, p.613), "governance voids" (Rasche, 2012, p. 679) or "global regulatory gaps" (Mena & Palazzo, 2012, p. 528) created by the increasingly borderless operations of transnational corporations, and the absence of enforceable regulations that can extend across borders (Rasche, 2012). In this respect, the MSI model is widely perceived as the 'gold standard' of transnational private governance, with the greatest potential for legitimate private rule-making (Schleifer, 2019). The popularity of MSIs is reflective of a shift from 'compliance' to 'cooperation' in corporate social responsibility (CSR), following criticism of lead firms for governing sustainability at a distance and imposing on suppliers the cost of compliance with a myriad of codes, benchmarks, and audits (Riisgaard et al., 2020).

MSIs are often born out of industry-wide crises, at times when corporations are under pressure and facing human rights allegations that no single actor can effectively address (Baumann-Pauly et al., 2016, p. 108). Some of the most prolific MSIs were launched at the request or initiative of national governments. The U.S government served as a catalyst for the creation of the Fair Labor Association (FLA) in response to concerns about sweatshop practices in apparel supply chains (the origins of the FLA were in the Apparel Industry Partnership convened by the Clinton White House in 1996), and the Kimberly Process, a voluntary regulatory body for the diamond industry, was created at the request of the UN Security Council (Baumann-Pauly et al., 2016, p. 112). The Ethical Trade

Initiative in the UK and the National Pact to Eradicate Slave Labour in Brazil are other similar examples. This reflects the tendency of states to look for ways to outsource their governance responsibilities in this area (Mayer & Phillips, 2017). In the absence of other viable regulatory options, MSIs have become the "default response" to business and human rights challenges and an "emerging institutional infrastructure for addressing social and environmental problems" (Rasche, 2012, p. 680).

There is no consistent typology of MSIs, and researchers have grouped them in different ways. Baumann-Pauly et al. (2016) distinguish between three categories of MSIs: 'best-practice sharing MSIs' which convene stakeholders to promote sustainability principles, share best practices, and self-report on their activities (such as the United Nations Global Compact (UNGC)); 'certification MSIs' which seek to regulate conduct by setting standards and monitoring implementation of these standards by suppliers within an MNC's supply chain (such as Social Accountability International (SAI)); and 'human rights governance MSIs' which seek to govern MNC conduct by creating binding and enforceable rules for groups of competitor companies in the same industry (such as the Fair Labor Association) (p. 108). LeBaron and Lister (2022) identify three similar but not fully overlapping MSI types: instructional MSIs that provide procedural guidance on management practice (e.g., UNGC), enforcement MSIs that prescribe and audit transnational rules (e.g., Rainforest Alliance), and partnership MSIs between corporations and NGOs designed to fix certain problems (p. 676). Rasche (2012) identifies four complementary types of MSIs: MSIs that are platforms for exchanging best practices; MSIs offering reporting frameworks; MSIs outlining criteria for certification; and MSIs standardizing management processes related to CSR. Alternatively, in lieu of a typology, Mena and Palazzo (2012) differentiate between MSIs based on levels of increasing engagement, ranging from learning platform MSIs, to MSIs that develop behavioural standards such as codes of conduct and guidelines, followed by MSIs that develop mechanisms of auditing and compliance of the rules, and at the highest level MSIs that issue labels and certifications to those which comply with their standards (p. 536).

One subset of the literature examines the organizational challenges faced by MSIs. These include building trust among competitor companies and stakeholders; there needs to be a "healthy degree of tension" among stakeholders which allows them to cooperate while preserving their core interests, and it this may require time-consuming and difficult negotiations may be required to build this tension (Baumann-Pauly et al., 2016, p. 114). MSIs have been characterized as "networks of networks" as they are global networks in which a variety of local networks (country networks, local coalitions, national chapters etc.) are embedded; for example, the UNGC consists of 95 numerous local networks which provide platforms for multi-stakeholder dialogue to facilitate mutual understanding among participants and coordinate joint efforts (Rasche, 2012, p. 685). Rasche (2012) argues that global networks lean toward looser couplings while local networks tend to establish tighter couplings, and this mix of couplings influences the stability, flexibility, and legitimacy of MSIs.

The effectiveness of MSIs is also a frequent topic explored by researchers. According to many some scholars, "the effectiveness of MSIs on improving labour standards is constrained by power asymmetries between stakeholders and workers", and MSIs tend to crowd out unions, fail to identify process rights violations, and prioritize the need to create business value over more radical social goals (LeBaron et al., 2022, p. 105; Riisgaard et al., 2020). A report by MSI Integrity based on a comprehensive review of MSI performance over the past decade concluded that, while MSIs can be important and necessary venues for learning, dialogue, and trust-building between corporations and other stakeholders, they are not effective tools for holding corporations accountable for abuses, protecting rights holders against human rights violations, or providing survivors and victims with access to remedy (MSI Integrity, 2020). Moreover, given the limited budgets of many MSIs, best-practice sharing and shared learning activities that are popular with companies are often conducted at the expense of other activities that would better fulfill regulatory functions (Baumann-Pauly et al., 2016).

The legitimacy of MSIs is fiercely debated in the literature. The three most common critiques raised are the voluntary nature of participation and compliance, the lack of

representation from affected communities (including the lack of union involvement in some labor-rights focused MSIs), and the outsized role played by corporations, often described as 'the fox guarding the henhouse' (Baumann-Pauly et al., 2016; Boersma 2018). With respect to the first critique, Baumann-Pauly et al. (2016) argue that some MSIs have developed quasi-binding arrangements which are different from purely voluntary CSR commitments and challenge the dichotomy of voluntary versus mandatory standards as overly simplistic. Participation in MSIs is voluntary but participants are expected to comply with underlying rules once they have joined an initiative and non-compliance leads to non-legal sanctions, such as refusal of certification (Rasche, 2012). The second criticism is longstanding and includes the failure of MSIs to include NGOs from the communities in Africa, Asia, and Latin-America most affected by MNCs in their governance structures (Baumann-Pauly et al., 2016). The third critique is based on the fact that MSIs set and enforce their own standards, and as corporations are often the biggest funders of MSIs, they may have a greater say than other stakeholders in how the standards and its monitoring mechanisms are designed (Baumann-Pauley, 2016). While many MSIs align their standards with recognized international standards such as International Labour Organization (ILO) fundamental conventions, Baumann-Pauly et al. (2016) acknowledge that the weak monitoring mechanisms of most MSIs may be the result of corporate lobbying inside MSIs. The independence of NGOs is also subject to question; for example, "the NGO pillar of the Voluntary Principles [on Security and Human Rights] largely consists of NGOs that are funded by the same governments and/or companies that are members of the organization" (Baumann-Pauly et al., 2016, p. 119). Mena and Palazzo (2012) note that these last two issues (lack of inclusiveness and independent monitoring mechanisms) detract from the democratic legitimacy of MSIs, on which their success depends.

Baumann-Pauly et al. (2016) argue that most of the arguments of MSI critics do not apply to industry-specific MSIs. They suggest that industry-specific, standards-based MSIs (that collaboratively design standards and monitoring and enforcement mechanisms) can be a half-way solution between mandatory legislative approaches (i.e., corporate sustainability laws) and wholly voluntary CSR approaches (such as the UNGC) to

effectively regulate corporate conduct (Baumann-Pauly et al., 2016). However, they note that few MSIs meet all these criteria (setting and enforce standards, sanctioning non-compliance, and providing access to remedies), the most notable being the FLA (Baumann-Pauly et al., 2016). In summary, these debates surrounding the organizational structure, effectiveness, and legitimacy of MSIs point to key challenges in the *implementation* of this form of transnational business governance, which may have significance for the *character* and *effect* of its interactions with corporate sustainability laws.

Corporate sustainability laws and the changing landscape of multistakeholder governance

MSIs are a hybrid, multi-scalar form of governance, blending the private, social, and public dimensions of governance (Barrientos, 2019). They are also a type of soft law, based on voluntary participation of actors and driven by social expectations (Rasche, 2012). Corporate sustainability laws can be succinctly described as their hard law counterpart. This term is used here to describe home state legislation that regulates the conduct of transnational companies in their operations in host states. They are a form of "new" governance, responsive regulation, or reflexive law designed to increase the accountability of MNCs for labour violations occurring in their transnational supply chains.

Corporate sustainability laws can be categorized into two main legislative models. The disclosure or transparency model seeks to increase the obligations of MNCs in relation to supply chain governance through the mechanism of disclosure (Phillips, LeBaron & Wallin, 2018). Companies are required to report on activities, if any, they have undertaken to detect, eradicate, mitigate, and compensate for any forced labour, modern slavery, child labour, and human trafficking in their supply chains. This was the preferred model adopted by the mainly Anglo-American jurisdictions that were the first to enact corporate sustainability laws, including California's Transparency in Supply Chains Act (2010), the United Kingdom's Modern Slavery Act (2015), and Australia's Modern Slavery Act (2018). By contrast, the human rights due diligence model imposes obligations on companies in respect of a much broader range of harms, including international human and

labour rights and international environmental standards. It draws on the UN Guiding Principles on Business and Human Rights (UNGPs) which introduced the first global standard for "due diligence" and provided a non-binding framework for companies to put their responsibility to respect human rights into practice. The UNGPs provide a four-step framework for conducting due diligence: "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed" (Sarfaty & Deberdt, 2023).

Human rights due diligence laws vary in the stringency of their requirements and the variety of their components. They impose due diligence obligations that range, at the lightest, from making due diligence processes and reporting obligatory, to requiring companies to remediate harms they have caused. Some laws require companies to consult with stakeholders in developing a due diligence plan and provide company-level grievance mechanisms. They also differ in the type and extent of public supervision and enforcement (Millar et al., 2022). This is the dominant model in Europe, with notable examples including Germany's Law on Supply Chain Due Diligence (2021), Norway's Transparency Act (2021), and Switzerland's Criminal Code reforms and Ordinance on Due Diligence and Transparency Duties (2022). France's Corporate Duty of Vigilance Law (2017) takes this model a step further by imposing civil liability for negligence where companies are found to contribute to human rights violations in their business activities. This approach was also adopted in the European Commission's proposed Corporate Sustainability Due Diligence Directive (CSDDD), which was approved by the European Council in March 2024 (Ernst & Young LLP, 2024).

As most corporate sustainability laws were enacted within the last decade, researchers are only beginning to explore these laws and to hypothesize about their role in relation to MSIs. For some scholars, since corporate sustainability laws and MSIs share the same objective of addressing the governance gap that has been created by transnational business operations, they are complementary approaches that should operate side-by-side. For example, MSIs can serve as an important stop-gap measure to have in place while legislation is being enacted, and it is assumed that MSIs will resonate more with companies

than legislation and thus will continue to be used even after the legislation is developed (Baumann-Pauly et al., 2016). Further still, MSIs are viewed as more capable of effectively reflecting the rapidly changing business realities of companies within a specific industry than legislation (Baumann-Pauly et al., 2016).

This complementary approach is supported by the acknowledgment in many international frameworks that MSIs can assist companies in meeting their due diligence obligations. For instance, the Organisation for Economic Co-operation and Development's (OECD) Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector "advises that businesses should engage with other companies in the sector, relevant multi-stakeholder institutions and directly with workers and their chosen representatives such as trade unions" (Nolan, 2018, p. 75). The European Commission's CSDDD proposal was criticized by one commentator for not "explicitly recogniz(ing) the importance of learning, information sharing and collective action through multi-stakeholder initiatives at the sector level" (The provisional political agreement on the Directive reached by the European Council and Parliament in December 2023 also does not mention multi-stakeholder initiatives) (LaFarre, 2022; LaFarre & Rombouts, 2022, p. 576). Researchers who share this view argue that corporate sustainability laws will be most effective if they are designed as "part of a smart mix of mandatory and voluntary (such as participation in multi-stakeholder initiatives) measures (..) and make use of existing market and reputational drivers" (McCorquodale & Scheltema, 2020, p. 1).

Australia's Industrial Relations (Ethical Clothing Trades) Act) 2001, which protects the rights of home-based workers in the clothing industry, is often cited as an example of the way MSIs and legislative approaches can work hand-in-hand (although this law only covers workers in Australia and has no transnational effect). Nolan and Bott (2018) explain that "[t]he legislation is supplemented by a voluntary mechanism administered by a multi-stakeholder initiative – Ethical Clothing Australia – that accredits businesses operating in this specific sector and assists companies with the process of mapping their supply chains and verifying that all workers within it are receiving their legal entitlements" (p. 59). They argue that this is a way to leverage the relative power of different stakeholders along the

supply chain and to use public and private mechanisms to protect the rights of the workers, and advocate for this model to be applied transnationally and across different sectors.

The synchronicity between MSIs and corporate sustainability laws is also reflected in the importance companies accord to MSI participation as essential to discharging their obligations under the existing laws. A study of thirty-six UK companies in the textiles and fashion industry found that the majority publicized their involvement in multi-stakeholder initiatives in their modern slavery statements (Benstead et al., 2018). Similarly, Flynn and Walker (2021) found that 35% of FTSE 100 firms and 6.5% of FTSE 250 firms "highlight in their [modern slavery] statements how participation in [MSIs] helps guide their approach to modern slavery" (p. 300). The authors also found that participating in an MSI was associated with establishing modern slavery working/steering groups and specifying KPIs on modern slavery, and concluded that MSIs are a source of institutional, mimetic pressure on firms to address modern slavery (Flynn & Walker, 2021).

The study by Benstead et al. (2018) also demonstrates that corporate sustainability legislation can provoke horizontal collaboration between business actors. It looked at how twenty-two UK-based brands came together "to discuss a shared response" to the UK Modern Slavery Act with the assistance of an NGO and a trade body, and effectively created an MSI through which they collaborated in several ways, including modern slavery training for employees, a targeted modern slavery audit at a high-risk factory, and a collective review of purchasing practices and development of shared guidelines of responsible purchasing (p. 2291). Taken together, this evidence suggests that the enactment of corporate sustainability laws is likely to increase business participation in MSIs. However, this may be specific to the UK Modern Slavery Act and similar disclosure or transparency laws, and human rights due diligence legislation may not have the same effect on MSI activity. The French Duty of Vigilance Law reportedly "over-shadowed" MSI operations and, while there was no noted decline in business participation in MSIs, the introduction of the law led several French civil society organizations (CSOs) to end their participation in MSIs based on their desire to focus on regulation rather than self-regulation (Huyse & Verbrugge, 2018, p. 30).

The literature also demonstrates that MSIs have been used to prevent or "deflect" corporate sustainability laws. The best example is the International Cocoa Initiative, which was proposed by cocoa companies in order to stop the passage of an amendment to the 2002 Agricultural Appropriations Bill for the development of 'slave free' labelling requirements on cocoa products (Baumann-Pauly et al., 2016, p. 113). Similarly, in the UK, a coalition of industry associations who were opposed to the inclusion of supply chain transparency requirements in the then Modern Slavery Bill, launched a "business-driven multi-stakeholder programme" called the Stronger Together Initiative (LeBaron & Ruhmkorf, 2019, p. 733). The initiative was "at worst, (…) a clear attempt to deflect more stringent regulation by initiating a CSR programme" and was mentioned numerous times in parliamentary hearings to support arguments that the legislation would be redundant (LeBaron & Ruhmkorf, 2019, p. 733). Finally, there is some concern that commitment to an MSI standard may be used by companies as a "safe harbour" (Smit & Bright, 2020, p. 1) or a "rebuttable presumption" (European Parliament, 2020, p.11) that they have undertaken reasonable and appropriate human rights due diligence. Some NGOs have argued that a "rebuttable presumption of compliance with due diligence obligations – and therefore of freedom from liability" could be appropriate if "the company in question is active in a private multistakeholder initiative recognized by the state as promoting the implementation of jointly defined sustainability industry-wide standards" (Initiative Lieferkettengesetz 2021). However, it is doubtful that most MSI standards could effectively substitute for the individual and continuous human rights due diligence activities required of companies under the UNGPs (Smit & Bright, 2020).

Thus, the nascent literature seems to indicate that interactions between MSIs and corporate sustainability laws are characterized primarily by relationships of complementarity and co-existence, with both playing important roles in strengthening corporate accountability for human rights abuses in their supply chains. However, most of the analysis in this area concerns laws that fall under the transparency or disclosure model, particularly the UK Modern Slavery Act. While this model was previously the most prevalent form of corporate sustainability law, in recent years it has been overtaken by the

wave of human rights due diligence laws introduced across Europe. This demonstrates the need for further research on the interactions between MSIs and due diligence laws. This study aims to make a contribution in this area by providing an analysis of these interactions with a focus on France's Duty of Vigilance Law. The French law is the oldest due diligence law and was the inspiration for many of the other European laws as well as the CSDDD, and thus the findings from this research may reflect future trends in those jurisdictions.

The Duty of Vigilance Law: key elements and emerging challenges

Enacted in March 2017, France's "Duty of Vigilance of Parent and Instructing Companies" (Law No. 2017-399) ("Duty of Vigilance Law") establishes a duty of care for companies; "a legal obligation to adhere to a standard of reasonable care, while performing any acts that could foreseeably harm human rights or the environment" (Schilling-Vacaflor, 2021, p. 115). Corporations covered by the law are required to develop, publish, and implement a vigilance plan that sets out measures to identify risks and prevent serious harms linked to the company, its controlled subsidiaries, and suppliers with which it has an established commercial relationship. Although its applicability is limited to large corporations (with at least 5,000 employees in France or 10,000 worldwide), it is notable for its wide ambit ("human rights and fundamental liberties, health and security of people, … [and] the environment"); its extension to risks created by activities of sub-contractors or suppliers; and its civil liability regime, whereby tort actions may be brought on behalf of victims and damages sought for the harm caused by the company's failure to comply with its vigilance obligation (Schilling-Vacaflor, 2021; Deva, 2023). Further, it requires companies to consult with stakeholders, including MSIs where appropriate, and to set up grievance mechanisms that can be used to alert the company to risks and abuses. For these reasons, it has been described as "a legislative breakthrough in the business and human rights galaxy" (Savourey & Brabant, 2021, p. 152).

Nonetheless, the implementation and enforcement of the law has raised several challenges and questions. The first vigilance plans in 2019 were analyzed by a group of NGOs and described as "broadly insufficient" (Lancri, 2021, p. 457). Plans discussed risks

"in a very general manner without mentioning specific subsidiaries, controlled companies, or places of production" (Schilling-Vacaflor, 2021, p. 117). Commentators have also noted the difficulty faced by litigants in proving that a company has breached its obligations outlined in the law, and to show a causal link between the company's breach and the damage suffered (Deva, 2023; Schilling-Vacaflor, 2021). For example, drawing on the case brought against French multinational Total for its subsidiary's natural gas operations in Bolivia, Schilling-Vacaflor (2021) showed the challenges faced by indigenous communities to prove the harmful actions of the subsidiary and to demonstrate the causality between these actions and the lack of duty of care by the parent company. The burden of proof remains on the claimant, and this is a serious obstacle for affected individuals to access remedies.

As a result, "ensuring compliance with the vigilance obligation or holding corporations accountable for breach of this obligation may still be a challenge" (Deva, 2023, p. 407). Several legal proceedings have been commenced under the law, with at least 15 lawsuits are currently underway (Duty of Vigilance Radar, 2023). Savourey and Brabant (2021) note that this is a positive signal that the mechanism is operational and being used by parties; however, there have been no significant judicial decisions and some of the earliest cases were dismissed by the courts on procedural grounds, with the judges signalling a "reluctance to interfere with companies' decision-making processes" (Levine et al., 2023, p. 5). Despite these hurdles, the Duty of Vigilance Law remains one of the strongest corporate sustainability laws and provides a good yardstick with which to assess how this new form of regulation is influencing the activities of MSIs and their member companies.

Research context and case study

The cocoa sector presents a particularly compelling context to study the interactions between MSIs and corporate sustainability laws, due to the longstanding and well-documented pattern of labour exploitation on cocoa farms; the extensive engagement of consumer-facing chocolate brands in MSIs with only paltry achievements; and the sector's

overt embrace of corporate sustainability laws. As detailed below, this combination of factors provides fertile soil for rich interactions between corporate sustainability laws and MSIs. This case study will focus on one of the most prominent companies in the sector, Nestlé, and examine how the introduction and implementation of corporate sustainability laws, and particularly the French Duty of Vigilance Law, has impacted the company's activities and approaches, as well as those of the MSIs to which it belongs.

Working conditions in the cocoa sector

Cocoa is a quintessential transnational commodity, originating first in Latin America, and then transported, beginning in the 1600s, to the Caribbean, Southeast Asia, and West Africa, where it was initially grown on colonial plantations to meet the growing demand in Europe for chocolate (Shultz, 2006; Ross, 2014). Today, cocoa bean production is centred in the coastal belt of West Africa, particularly Côte d'Ivoire and Ghana, which account for more than 60% of the global cocoa harvest (Cocoa Barometer, 2020). Cocoa plays a significant role in both countries' economies, with each having an estimated 25-30% of their population dependent on the cocoa industry for their livelihood (LeBaron, 2018; World Bank, 2019). They are involved in different stages of the supply chain, as the cocoa is weeded, pruned, fertilized, harvested, collected, transported, fermented, and dried before continuing up the chain, sold first to individual traders or cooperatives, then to major traders and exporters, and onwards to confectionary and production companies, located primarily in Europe and North America, for processing into chocolate and other food and cosmetics products, and finally to retailers and consumers in those jurisdictions (Hütz-Adams et al., 2016; Ingram et al., 2016).

Cocoa production is labour-intensive and largely dominated by smallholder farmers working on family farms (Barrientos, 2019). While the majority own their own farms, a sizeable proportion are tenants under varying customary lease systems, who are required give up part of their yield to the landowners and cannot be sure that they will benefit from their investment in the land (Hütz-Adams et al., 2016; Cocoa Barometer, 2020). Temporary and seasonal hired workers are also present in the sector, working primarily on larger

plantations and often without employment contracts (Cocoa Barometer, 2020; Smith, 2017). A significant proportion of hired workers are internal and external migrants, which reflects historical patterns of migration for cocoa work dating back to the colonial era (Robson, 2010; Kissi & Herzig, 2023). Women also play an important and often overlooked role in the cocoa sector; they participate in almost all steps of cocoa production and it is estimated that about half of the labour required to produce cocoa in West Africa is performed by women, despite only a quarter of cocoa farms in Cote d'Ivoire and Ghana being women-run (Barrientos, 2019; Cocoa Barometer, 2020; Brudney et al., 2023). In addition, children are visibly involved in cocoa production as part of their contribution to the family and in line with sociocultural traditions for skill acquisition, although the line between 'acceptable' and 'unacceptable' work for children is subject to continued debate (Berlan, 2013, p. 1090).

Poor working conditions are a prevalent feature of the cocoa sector. In her study of cocoa workers in Ghana, LeBaron found that "all of the workers interviewed and surveyed … had experienced some form of labour exploitation" (LeBaron, 2018, p. 29). She identified three specific patterns of labour exploitation that are widespread in the sector. Firstly, workers are routinely not paid for all work performed or subject to other forms of underpayment, such as mandatory deductions, fines, and recruitment fees. In some cases, workers are not paid at all (LeBaron, 2018). Exploitation also takes the form of requiring workers to perform additional labour without renumeration for set periods, which can be as long as three months, or to take on additional tasks that were not agreed. Worker resistance can result in termination, withholding outstanding payments, or deductions from these payments (LeBaron, 2018). Finally, cocoa workers are exploited through debt bondage resulting from high-interest loans from farm owners and recruiters, which are used to pay for food, medical bills, transportation, and recruitment fees. Interest rates are frequently as high as 100% of the amount loaned. Some workers report that they are left with little or nothing at the end of the season, as all of their earnings are used to repay debts, fines, and deductions (LeBaron, 2018). In addition to these forms of exploitation, many workers are

also subject to physical and sexual violence, verbal abuse, threats, and coercion (LeBaron, 2018).

Moreover, it is well documented that migrants, and women, among other groups working in the cocoa sector, face exacerbated vulnerabilities to labour exploitation, including the worst forms of child labour, human trafficking, and forced labour (Barrientos, 2019; Kissi & Herzig, 2023; LeBaron & Gore, 2020; Schrage & Ewing, 2005). While this can be partly attributed to traditional norms and discriminatory practices that are a factor of life in cocoa-producing regions, research by LeBaron and Gore (2019) on the unequal gender-power relations in the cocoa sector has demonstrated how business models in global cocoa supply chains are configured to leverage women's unequal position within the industry and society more broadly, as well as other intersections such as migration status, for increased profits. This inequality in bargaining power and the advantages that it confers to big businesses can also be seen at the larger scale of the cocoa-chocolate value chain, where there is a sharp contrast between the fragmented nature of the largely unorganized smallholder farmers at the bottom of the chain, and the high market concentration found among the traders/buyers, grinders/processors, and manufacturers (of chocolate confectionary, and other food and cosmetics) further up the chain (Ingram et al., 2016; Barrientos, 2019; Cocoa Barometer, 2020). Over the last decade, many cocoa and chocolate companies have merged with or acquired competitors both vertically and horizontally across the supply chain (Ingram et al., 2016). For example, most of the cocoa on the world market is traded and processed by a group of six companies[1], and two companies within this group – Barry Callebaut and Cargill – account for 70% to 80% of cocoa processing worldwide (Cocoa Barometer, 2020; Ingram et al., 2016).

At the root of this power asymmetry is the abysmally low and extremely volatile price of cocoa. In the 1980s, state-run marketing boards in West Africa, which had exclusive control over the price, purchasing, and export of cocoa, were dismantled or weakened under structural adjustment programs. Consequently, the price that farmers receive for their cocoa is now largely set on international markets, fluctuating based on

[1] The six companies are Barry Callebaut, Olam, Cargill, Ecom, Sucden, and Touton.

global trends and market conditions, and has fallen significantly over the long term (Barrientos, 2019). The average world market prices for cocoa were 13% lower in 2005-2006 than in 1993-1994 (Barrientos, 2019). This has resulted in a shift in value distribution across the cocoa-chocolate value chain, with processors and manufacturers capturing increasingly higher shares of the gains. In January 2024, the price of cocoa was at a 46-year high, having risen by 82% in the previous 12 months, but this has not led to higher incomes for farmers (The Economist, 2024). For every ton of cocoa sold, farmers receive the lowest share of the value, approximately 6.6% (compared to 16% in 1980), while the largest shares are captured by chocolate manufacturers (35.2%) and retailers (44.2%) (Barrientos, 2019, 109; Cocoa Barometer, 2015). Farmers earn very low incomes even by local standards; one study in Cote d'Ivoire found that levels of poverty among cocoa farmers were higher than in the general population of the country (Hütz-Adams et al., 2016; Katayama et al., 2017; Cocoa Barometer, 2020). Temporary, seasonal, and female farmers of cocoa are among the lowest paid, even when compared to their counterparts in other agricultural sectors (Smith, 2017; LeBaron & Gore, 2020; Barrientos, 2019; Cocoa Barometer, 2020). This highly uneven distribution of market power and profits along the cocoa supply chain, which precludes farmers from making a living income, fuels the continued demand for forced labour and exploitation in the cocoa industry, particularly at the base of the chain (LeBaron, 2018).

Multi-stakeholder initiatives in the cocoa sector

The oppressive labour regimes associated with cocoa production have led to calls for corporations in the sector to be held accountable, and to take action to prevent labour exploitation in their supply chains. This dates back as far as 1905, when the British chocolate firm Cadbury Brothers Limited commissioned an investigation into cocoa plantations in Portugal's West African colonies, and subsequently sought to boycott exporters using enslaved Africans in cocoa harvesting and to reform its purchasing practices (Higgs, 2012). More recently, in the late 1990s and early 2000s, as the price of cocoa was in steep decline, media reports surfaced of child labour on cocoa farms in Cote

d'Ivoire, including the sale and trafficking of children from other countries in West Africa who were forced to work under abusive conditions. In response to the scrutiny, the Ivorian government blamed the international cocoa industry for setting prices too low, and major brands faced mounting pressure to take responsibility for human rights conditions in the cocoa supply chain (Schrage & Ewing, 2005).

From the outset, multistakeholder initiatives (MSIs) were presented as an important part of the solution. In response to the media revelations, the British Foreign Office "created a task force of governments, industry, and NGOs to address forced labour in the cocoa industry" (Schrage & Ewing, 2005, p. 100). The U.S. Congress introduced the Harkin-Engel Protocol and announced plans to create a 'no child slave labour' labelling requirement for all cocoa products. On the eve of this proposed legislation, the cocoa industry adopted the Cocoa Industry Protocol (CIP) and, in collaboration with labour unions and NGOs, established the International Cocoa Initiative (ICI) in 2002 to implement the CIP.

ICI was the first of many MSIs created over the past two decades to address labour rights issues in the cocoa sector. Over this period, cocoa and chocolate companies have invested an estimated $215 million in programs to fight child labour through MSIs and other initiatives (Cocoa Barometer, 2020). These sustainability initiatives can be categorized in two main types, according to Ingram et al. (2016): Platforms, Networks and Associations and Voluntary Sustainability Standards. In Table 2 (below), this typology is used to classify the major MSIs that seek to address labour rights in the cocoa sector.

Table 2: Mapping of MSIs addressing labour rights in the cocoa sector

Name of Initiative	**Year established**
Platforms, Networks and Associations	
Fair Labor Association	1996
United Nations Global Compact	2000
International Cocoa Initiative	2002
IDH Sustainable Trade Initiative	2008
German Initiative on Sustainable Cocoa (GISCO)	2012

Name of Initiative	Year established
Swiss Kakao Platform (Swissco)	2018
Beyond Chocolate (Belgium)	2018
Dutch Initiative on Sustainable Cocoa (DISCO)	2020
Initiative Française pour un Cacao Durable	2020
Voluntary Sustainability Standards	
Rainforest Alliance/UTZ	1987
Fair Trade	1988

Despite these sector-wide efforts and financial commitments, "the challenges remain as large as they have ever been" (Cocoa Barometer, 2020, p. 11). CIP signatories have continued to set and miss non-binding targets, including most recently the target set in the 2010 Declaration of Joint Action to Support Implementation of the Harkin-Engel Protocol, to reduce the worst forms of child labour in cocoa by 70% in Ghana and Cote d'Ivoire by 2020 (Griek et al., 2010). A widely reported study conducted by the National Opinion Research Center (NORC) at the University of Chicago found that 45% of children living in cocoa- growing areas in Cote d'Ivoire and Ghana during the 2018-2019 season were engaged in (mostly hazardous) child labour, and that the prevalence of child labour in cocoa production had increased by 14 percentage points since 2010 (NORC, 2020). Likewise, in her study of cocoa sector workers in Ghana in the 2017-2018 season, LeBaron (2018) found that they were "experiencing severe labour exploitation, including forced labour" (p. 36). Overall, the evidence seems to indicate that while industry initiatives can have a positive impact in the specific communities where they are implemented, this impact is temporary and does not spread to other communities or meaningfully reduce the prevalence of child labour and forced labour (NORC, 2020; Engelbertink & Kolk, 2021).

The disappointment wrought by MSIs is particularly clear in the case of certification schemes, a subset of voluntary sustainability standards which are the most popular form of MSI in the cocoa sector (Lalwani et al., 2018). The idea behind these schemes is simple: farmers implement sustainable cocoa production practices that are intended to benefit their communities and the environment (including responsible labour practices), and in return

receive a premium price for this cocoa which is sold at a higher price to consumers under a certified label. Given the nature of chocolate as a consumer-facing, luxury good, cocoa companies are motivated to be perceived as socially conscious by consumers who see these certification labels (Hinch, 2018). Promoting sustainable practices is also important to companies as a way to combat rising cocoa shortages due to environmental and socioeconomic factors (Krauss & Barrientos, 2021).

Rainforest Alliance/UTZ and Fairtrade International are the main certification schemes adopted by cocoa traders, chocolate manufacturing and retail companies since 1987 (Ingram et al., 2018; Bermudez et al., 2022). These schemes began as movements to create "alternative markets" linking small commodity producers with conscious consumers, thus bypassing large commercial intermediaries, and have faced criticism for straying from their roots and being coopted by these very intermediaries (Jaffee & Howard, 2010, p. 391; Krauss & Barrientos, 2021, p. 188; Raynolds, 2017). For example, Jaffee and Howard (2010) argue that increased corporate agrifood participation in Fairtrade has resulted in lowered entry requirements (notably, in the case of Starbucks, which benefited from a reduction from 5% to 1% in the percentage of company purchases that must meet Fairtrade standards), falling real value of fair trade minimum prices, and increased certification of plantation agriculture.

More critically, there is a large body of evidence that calls into question the effectiveness of certification schemes in improving working and living conditions for farmers in the cocoa sector. Ingram et al. (2018) describe the impact of UTZ certification on farmers in Ghana and Cote d'Ivoire as "mixed and modest" and point to "a gap between what certification alone has been expected to be deliver and what actually has been delivered" (p. 15). Their study found no difference in the use of child labour between UTZ-certified and uncertified farmers in Ghana (Ingram et al., 2018) . Similarly, in Cote d'Ivoire, hazardous child labour has been documented on Fair Trade International and Rainforest Alliance/UTZ certified cocoa farms (Corporate Accountability Lab & Mouvement Ivoirien des Droits Humains, 2021). Another large study found "extensive confusion among [cocoa] producers [in Ghana] about how certification operates and whether or not they were

certified"; 95% of cocoa workers surveyed did not know if the farm they were working on was certified or not (LeBaron, 2018, p. 3). Moreover, certification standards are often imposed on farmers and workers without their input (CAL, 2023a). Of concern as well is the recent trend among cocoa companies to develop and promote in-house sustainability programmes in lieu of third-party certification schemes such as Fair Trade and Rainforest Alliance/UTZ (Thorlakson, 2018; Krauss & Barrientos, 2021; Bermudez et al., 2022). This shift away from traditional independent certification further lowers standards and does not address the ineffectiveness and other deficiencies of certification (CAL, 2023a).

These concerns and the overall lack of progress in reducing child labour and forced labour has not dampened the cocoa industry's attachment to MSIs, but has led to a growing belief in the need to shift its focus from random audits and zero-tolerance policies for child labour to addressing root causes, such as "farmer poverty, absence of or access to good schools, inadequate local infrastructure, inadequate labour services in cocoa growing communities, and lack of awareness" (Cocoa Barometer, 2020, p. 57). At the same time, the sector has publicly embraced regulation. In 2019 and 2020, cocoa companies published statements "challenging governments to regulate them" and expressed support for the proposed European Union CSDDD, citing a desire for clarity, a levelling of the playing field, and higher impact (Cocoa Barometer, 2020, p. 11). This further increases the suitability of the cocoa sector for this case study: in addition to having a clear and widely acknowledged problem of labour exploitation, and decades of unsuccessful CSR and MSI actions to address it, there is also visible interest and acceptance of this new form of regulation from the corporate participants in this sector.

The case of Nestlé: an industry leader and prominent target of litigation in the cocoa sector

Given the extensive use and disappointing results of MSIs in the cocoa sector and its appetite for regulation, the conditions are ripe for corporate sustainability laws to influence these initiatives. To what extent is this occurring? This research study attempts

to begin to answer this question through a case study analysis of one major cocoa company – Nestlé – and the MSIs with which it works.

Headquartered in Vevey, Switzerland, Nestlé is the world's largest and most diversified food and beverages company, with 270,000 employees worldwide and 93 billion CHF in sales in 2023 (Nestlé, 2023a). Although the company manufactures numerous food and beverage products, chocolate is one of the oldest and well-known parts of its business. In 2021, its confectionary sales (of which chocolate constituted 75%) totalled CHF 7.5 billion, making it the sixth-largest chocolate company in the world (Lalwani et al., 2018; International Cocoa Organization, 2020; Nestlé, 2021c). Most critically for this research, Nestlé is subject to corporate sustainability laws in at least six jurisdictions – California, United Kingdom, Australia, France, Canada, Switzerland, and the European Union - more than any other major chocolate brand.

The company is vocal about its efforts to eliminate child labour and forced labour from its cocoa supply chain; it was one of the original signatories of the Harkin-Engel Protocol and is a member of several MSIs in the cocoa sector including ICI, FLA, and IDH Sustainable Trade Initiative. In 2009, Nestlé spent $110 million to establish the Nestlé Cocoa Plan, a project to improve the well-being of cocoa farmers in West Africa and decrease the use of child labour, and which has become the umbrella program for the company's CSR activities in the cocoa sector (Sidani, 2018).

The benchmarking organization KnowTheChain ranked Nestlé 8th out of 60 companies in the food and beverage sector, noting that the company "discloses more information on its forced labor policies and practices than its peers across all themes" (KnowTheChain, 2023). Similarly, a study of the sustainability initiatives of several large chocolate manufacturers – Ferrero, Mars, Mondelez, and Nestlé – found that the latter "stood out" due to the availability and quality of its CSR communication (Lalwani et al., 2018, p. 3999). On the other hand, Perkiss et al. (2021) have argued that Nestlé undertakes strategies to downplay issues in its supply chain through impression management in its publicly available disclosures. Their content analysis of Nestlé's CSR and sustainability reporting between 2001 and 2015 found a progressive decrease in the use of the word

‘‘forced” over the years in conjunction with ‘‘child labour”, although there is no evidence of a reduction in forced child labour in its supply chain (Perkiss, 2021).

In addition to the above, Nestlé was selected for this case study because it has been a lightning rod for criticism in the cocoa sector and is often the subject of investigations that expose labour exploitation in the sector. Its decision to join the FLA in 2012 came in response to allegations by the BBC of child labour in its cocoa supply chain in Cote d’Ivoire, including on farms that were part of the Cocoa Plan (Candy Industry, 2011; Lalwani et al., 2018). In 2015, further evidence of child labour among Nestlé’s suppliers was uncovered by the Guardian (Sidani, 2018). The company has also faced numerous class action lawsuits brought by or on behalf of former victims of child labour and forced labour on the farms of its cocoa suppliers (Coppa, 2021).

Most recently, in *Nestlé v. Doe (“Doe”)*, six Malian nationals who were forced as children to harvest cocoa in Cote d’Ivoire argued that Nestlé and Cargill aided and abetted their treatment by providing their enslavers with financial support, supplies, and training, even though they knew or should have known that these farms were exploiting children (*Nestlé USA, Inc. v. Doe et al.*, 2021; LeClercq, 2021). Like many other suits before it, this claim was filed under the Alien Tort Statute (ATS), which grants U.S. courts extraterritorial jurisdiction for violations of customary international law, and is seen as an important tool to hold corporations liable for child labour and forced labour abroad (Feasley, 2016). In 2021, the U.S. Supreme Court dismissed the plaintiffs’ claim in *Doe* on the basis that they had not shown that any harmful conduct had occurred in the U.S.; the fact that the major operational decisions of the defendant companies were made in or approved in the U.S. was not sufficient to warrant conferring domestic jurisdiction in this case (LeClercq, 2021). Although this decision limited the scope of the ATS, a majority of the court rejected the argument that domestic corporations could not be sued under the ATS, a point that was previously contested, and thus broadened ATS liability (LeClercq, 2021). This is in line with recent rulings from the top courts in Canada (*Nevsun Resources Ltd. v. Araya*, 2020) and the U.K. (*Vedanta Resources PLC and another v. Lungowe and others*, 2019) which have found that parent companies can be held liable for the human rights violations of their

foreign subsidiaries (LeClercq, 2021). Thus, there is a growing judicial "momentum towards recognizing the link between parent companies and rights violations along supply chains" (LeClercq, 2021, p. 3).

A similar trend may be emerging in consumer protection litigation, where Nestlé is also a frequent target for suits relating to false advertising, misrepresentation, and unfair competition (Chambers, 2023; Winton, 2022; Coppa, 2021). The overarching argument in this line of cases is that cocoa corporations harm consumers when they do not adequately disclose the existence of child or forced labour in their supply chains on product labels. Many of these claims have been unsuccessful but the tide may be turning. In 2021, a U.S. district court rejected an application by Starbucks to dismiss a class action lawsuit concerning labelling that indicated its hot chocolate was "made with ethically sourced cocoa" (Chambers, 2023, p. 140). The company subsequently settled the claim out of court (Steinberg, 2022). Similarly, in July 2023, a district judge denied Nestlé's application to dismiss a lawsuit alleging that labels on its chocolate products falsely lead consumers to believe they are produced in accordance with environmental and socially responsible standards (Chambers, 2023).

These trends are important because they shed some light on why transparency and due diligence legislation may be appealing to Nestlé and its peers; these laws can provide a 'safe harbour' that shields companies from litigation. There is already some evidence that this safe harbour argument can be deployed successfully. In *Barber v Nestlé USA* (2015), the plaintiffs argued that Nestlé had failed to meet its duty under the California Transparency and Supply Chain Act (CTSCA) to disclose information about forced labour in its seafood supply chain. The court dismissed the claim partly on the basis that the CTSCA had created a "safe harbour from liability by defining what a company is required to disclose regarding the use of forced labour in its supply chain" (Chambers, 2023, p. 115). The court found that the company was only required to meet its reporting requirements under the CTSCA (which solely mandates disclosure on the company website) and "could not be required to disclose information about the specific risks of forced labour at the point of sale or on product packaging" (Chambers, 2023, p. 138). More recently, in *Tomasella v.*

Nestlé USA, Inc. (2020), the court found that the fact that Nestlé (and its fellow defendants Hershey and Mars) had publicly acknowledged on their websites that child labour existed in their supply chains shielded them from liability because the information was technically available to consumers, and thus the lack of disclosure at the point of sale was not unethical (Winton, 2022).

In this context, supporting transparency and due diligence legislation can be an effective way for corporations to "sideline" the civil liability regime and avoid the high financial and reputational costs posed by litigation (Feasley, 2016, p. 28). Conversely, some commentators have suggested that the increase in public reporting under this new legislation may increase companies' vulnerability to claims of misrepresentation if they "oversell their efforts" to address human rights abuses in their supply chains (Chambers, 2023, p. 146), However, for corporate giants like Nestlé that are already frequent targets of litigation, this may still be a positive development as it widens the net and puts smaller players under the spotlight.

Data collection and methodology

The data for the study were collected over a period of eight months, between February and September 2023, from three main sources. First, I sought to interview representatives from six MSIs focused on child labour and forced labour in the cocoa sector, and which counted Nestlé as a member. Only two of these MSIs responded and consented to the interview. The interview participants held the positions of Executive Director and Senior Programs Manager, and were based in Switzerland and Ghana respectively. These were semi-structured interviews, and my interview protocol addressed the ways in which they work with their member companies and the effect of corporate sustainability laws on this work. The interviews strengthened the analysis by providing detailed accounts of the ways that MSIs work with companies in the cocoa sector, and how they perceive the role and impact of corporate sustainability laws on this work. I did not ask about their engagement with Nestlé specifically, as I anticipated that this would raise confidentiality concerns.

I had hoped to interview a larger number of MSIs but was not successful in recruiting additional study participants, despite extending my study timeline and recruitment scope. This may indicate that many MSIs do not feel that these laws are changing the way the work and thus do not have much to say on this topic. Alternatively, some MSIs may be reluctant to openly discuss their interactions with private sector members and may consider the topic too sensitive to warrant participation in a research study. I was also unsuccessful in obtaining an interview with any representatives from Nestlé.

Secondly, I triangulated my interview findings with other sources of data by analyzing publicly available documents published by Nestlé and its three main MSIs in the cocoa sector: International Cocoa Initiative, IDH Sustainable Trade Initiative, and the Fair Labor Association. To identify these documents, I conducted Google searches using combinations of search terms and reviewed Nestlé's country-specific websites relating to the jurisdictions covered by my research. The latter led me to Nestlé's online repository of documents and reports, which I filtered for documents related to "sustainable sourcing" and/or "human rights" (Nestlé, 2023b). The resulting data trove comprised 42 documents, including modern slavery statements and vigilance plans published from 2016-2022 relating to the UK, Australia, French, and California laws; corporate policies and action plans relating to child labour and/or forced labour; supplier codes (current and past) and a cocoa supplier list; annual sustainability reports; cocoa-specific reports; and press releases, white papers, and conference presentations. I also reviewed 15 additional publications and reports found on the websites of the three MSIs, related to their operations in cocoa, with Nestlé, and related to corporate sustainability legislation. These additional sources allowed me to gain a deeper understanding of temporal changes, perceptions of corporate sustainability laws, and other important themes. Thirdly, I also conducted legal analysis of the French Duty of Vigilance Law and reviewed judicial decisions relating to labour violations in the cocoa supply chain of Nestlé and other cocoa-chocolate companies lawsuits filed against Nestle and other chocolate companies. Table 13 summarizes the searches conducted and the data collected for this study.

Table 3: Summary of data collection process

		Documents reviewed			
Search terms used: "Nestlé (country name)" "supplier code" "plan de vigilance (year)" "modern slavery and human trafficking report (year)" "modern slavery statement" **Websites reviewed:** Nestlé.fr *(France)* Nestlé-cwa.com *(Central and West Africa)* Nestlé.com *(Switzerland and global)* Nestléusa.com *(USA)* fairlabor.org cocoainitiative.org idhsustainabletrade.com		***Source***	***Type of document***	***Number***	***Timeframe***
		Nestlé	Modern slavery statements and vigilance reports	9	2016-2022
			Corporate policies and action plans	11	2010-2023
			Supplier codes and lists	4	2008-2020
			Sustainability reports (including Cocoa Plan reports)	15	2012-2022
			Press releases, white papers, and conference presentations	3	2013-2019
		International Cocoa Initiative, IDH Sustainable Trade Initiative, Fair Labor Association	Annual reports	6	2012-2022
			Other reports	7	2012-2021
			Press releases	2	2012
		Case law reporters	Judicial decisions	5	2015-2021

All interview notes and documents collected were imported into the qualitative data analysis software MAXQDA, which helped me to develop, organize, and refine my codes. I coded the documents using descriptive as well as in vivo codes, in order to track the repetition of words and phrases and identify recurring concepts, such as references to the United Nations Guiding Principles and to certification schemes. I also used structural coding when reviewing codes of conduct and similar policies which tend to follow a similar format and are divided into sections. I combined both deductive and inductive coding approaches, as I refined my original list of codes and introduced new codes during the document review process. This was helpful to see how different policies addressed issues such as grievance mechanisms, remediation procedures, and stakeholder consultations. While developing the codes, I was alert to what Nestlé and the MSIs chose to share and what was not disclosed; the stated assumptions behind past and planned actions to address child labour and forced labour; how corporate sustainability laws were mentioned or used in Nestlé and MSI documents; and how the documents portrayed the relationship between Nestlé and different MSIs. Subsequently, I looked for links between

the initial codes to identify patterns and group them into themes. Although the broad themes identified could potentially have been explored without coding, the coding process helped to provide structure to the data, to ensure that it was examined in a systematic way, and to capture the various patterns and forms of interaction that could be gleaned from the data.

Findings

1. MSI membership is used as a proxy for stakeholder consultations

Article 1 of the Duty of Vigilance Law encourages (but does not require) companies to develop their vigilance plans in conjunction with stakeholders and, where appropriate, as part of sectoral or regional multi-stakeholder initiatives *(initiatives pluripartites).* This is one of the features which "sets the law apart" from other corporate sustainability laws currently in force (Ibanez et al., 2020, p. 23). In its first vigilance plan, in addition to affirming that it regularly consults with stakeholders, Nestlé noted that it develops partnerships and collaborates with many organizations including the Fair Labor Association (FLA) (Nestlé, 2020). Its subsequent vigilance plan notes that it has identified stakeholders in order to surround itself with the best partners in its prevention and protection actions, and refers the reader to a page within its Human Rights Framework and Roadmap which provides a simple list of its industry associations and multi-stakeholder platforms (Nestlé, 2022; Nestlé, 2021a).

In this way, the mere fact of MSI membership is deemed to imply that the company is adequately consulting with stakeholders. However, the interview data indicates that ways that MSIs' contributions to stakeholder consultations vary considerably. One MSI participant reported that they advise on consultations but believe it is important for companies to take the lead in conducting them (while noting that the current level of consultation is quite shallow – for example, children are rarely consulted despite being key stakeholders in interventions to eliminate child labour from supply chains). By contrast, another MSI said that it conducts stakeholder consultations for groups of companies sourcing in the same area and considers this to be an important part of their role as it

encourages companies to take a landscape approach and work together in one area pre-competitively.

Nestlé's annual sustainability report in 2012 contains details of specific stakeholder forums and events held by the company, the types of stakeholders which attended, and a summary of the recommendations made by those stakeholders (Nestlé, 2012). Thus, the standard set in the Duty of Vigilance Law seems to elevate the significance of MSI membership for stakeholder consultations while allowing the company to be less transparent about stakeholder engagement than it was prior to the introduction of the law. As noted by one interview participant, there is increased interest from companies in conducting stakeholder consultations since the introduction of corporate sustainability laws but "many different meanings put to it" (MSI 2).

2. Limited accessibility and transparency of grievance and remediation mechanisms

Companies subject to the Duty of Vigilance Law are required to take appropriate action to mitigate risks and prevent serious violations, and to set up an alert mechanism for reporting of existing or actual risks, in consultation with trade union representatives (under Article 1 of the Law). In its vigilance plans, Nestlé claims to fulfill this requirement through its global reporting system, *Speak Up*, which is managed by a third party and is intended for use by both Nestlé employees and external stakeholders (Nestlé, 2020; Nestlé, 2022). The system is available 24/7 and stakeholders can report risks–- including serious violations of human rights relating to the company, its subcontractors, and suppliers–- on the *Speak Up* website or by calling a hotline number.

However, a review of the Speak Up website reveals significant weaknesses. It indicates that the hotline has no operator; rather it takes the caller to a voicemail system which will record the message and send a transcript to Nestlé's Alert Committee. Moreover, there is no phone line available for Cote d'Ivoire, where Nestlé sources the majority of its cocoa, and thus reporting from that country is only possible using the web form (SpeakUp, n.d.). This seems inadequate, particularly given that, according to Nestlé's own reporting,

59% of adults in Cote d'Ivoire are illiterate (Nestlé, 2017). In addition, the entire Speak Up platform appears to only be available in English, which will be inaccessible for most Ivorians who are French-speaking. Many of these concerns were raised in monitoring reports published by the Fair Labor Association (FLA) in 2016 and 2018, with the latter noting that "Nestlé's toll-free number is complex for use and not practical for farmers and workers who would like to report noncompliances *[sic]* directly to Nestlé" (Fair Labor Association, 2016a ; Fair Labor Association, 2018, p. 5).

The vigilance plan provides details of complaints made through *Speak Up,* including the number and types of concerns raised and the number that were "substantiated". In 2021, Nestlé received 49 *Speak Up* messages related to child labour, forced labour, or modern slavery concerns, but only 1 of these messages was "substantiated". No specific information is provided regarding how cases are substantiated and how each substantiated case is resolved.[2] Further, while the vigilance plan notes that the *Speak Up* platform is referenced in the Responsible Sourcing Standard (Nestlé's Supplier Code), no information is provided on how this grievance mechanism is brought to the attention of Tier 2 level and other upstream suppliers who are not parties to the Code. An assessment of a tier-2 supplier in Nestlé's standard cocoa supply chain[3] in Cote d'Ivoire conducted by the FLA in 2016 found "little awareness of [the Supplier Code] and its provisions among farmers and farm workers" (Fair Labour Association, 2016b, p. 3).

With respect to child labour specifically, Nestlé operates a Child Labour Monitoring and Remediation System (CLMRS) in the cocoa sector in Cote d'Ivoire and Ghana. The CLMRS was introduced in 2012 based on a recommendation from the FLA which was commissioned to look into the issue in 2011(Nestlé, 2017). It is implemented in conjunction with the International Cocoa Initiative (ICI); the company notes that "ICI's expertise has been so fundamental in the design and implementation of the CLMRS that its execution should be viewed as a joint effort between our two organisations" (Nestlé, 2017, p. 7).

[2] According to the report, over 500 cases in total were substantiated in 2021. 133 employees left the company and 6 service provider contracts were terminated as a result of these substantiated cases.
[3] The "standard supply chain" refers to any cocoa sourced outside of the Nestlé Cocoa Plan (NCP), meaning that Nestlé has no direct contact with the cocoa growers and procurement is managed by the sub-suppliers (tier-2 suppliers, also known as traders and "traitants").

Through the system, reports of child labour can be filed with Community Liaison Persons (CLPs), who also conduct visits to households and farms. Following "validation" of these reports at the cooperative level, ICI "analyzes the data … identifies trends and suggests a palette of remediation activities that will be implemented by ICI" (Nestlé, 2017, p. 23). Remediation actions take various forms include building or refurbishing schools, procuring birth certificates (which are needed for entry to secondary education), and providing bridging classes for school drop-outs.

Nestlé's CLMRS pre-dates the introduction of corporate sustainability laws and there is no indication that these laws have had any impact on its implementation, including its engagement with ICI or other MSIs. Moreover, the CLMRS is only briefly mentioned in the vigilance plan and is not mentioned in the section of the plan relating to the grievance mechanism requirement.[4] The plan notes that Nestlé works with business partners, NGOs, and local authorities to improve access to remedies in its upstream supply chain, including the development of non-judicial third-party mechanisms such as worker helplines, but no specific detail is provided. Further, in both the *Speak Up* and the CLMRS, there is no transparency on specific grievances, and how they were investigated, substantiated, and addressed.

3. Increased focus on direct suppliers

The Duty of Vigilance Law requires companies to include in their vigilance plans, procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company maintains an "established commercial relationship". This term is not defined in the law and Nestlé appears to have interpreted it to mean direct suppliers only. The company's Responsible Sourcing Standard, which was adopted in 2018,[5] stipulates that, while the Standard applies to "Tier 1 suppliers, upstream intermediaries and origin [service providers] supplying these volumes or

[4] Interestingly, it is mentioned in more detail in Nestle's UK and Australia Modern Slavery Reports.
[5] Please note that in January 2024 (after data collection for this study had concluded but prior to publication of this thesis), Nestle released a new version of their Supplier Code, titled the Nestlé Responsible Sourcing Core Requirements.

services", Section 2 of the standard which covers labour and universal human rights, including responsible recruitment and minimum age for employment, applies "in particular" to Tier 1 suppliers, "defined as having a *direct* commercial relationship with Nestlé" (Nestlé, 2018, p. 6). Section 3 applies to Upstream Intermediaries –"defined as any entities involved in the making of, sourcing or producing services or materials contracted by Nestlé with its tier 1 commercially binding suppliers" – and does not include similar provisions (Nestlé, 2018, p. 13). Accordingly, Nestlé's vigilance plan notes that its Tier 1 suppliers – with which it has a "direct commercial relationship" – are regularly audited to verify compliance with its Responsible Sourcing Standard. These direct suppliers are expected to ensure the integrity and compliance of upstream intermediaries (Nestlé, 2022, p. 12). This added pressure on suppliers to enforce compliance was also reflected in the interview data, with one MSI representative noting that chocolate brands are transferring the pressure imposed by corporate sustainability laws to the next level of the value chain, and that it continues to be passed down until it reaches the level of cocoa cooperatives and farms. This is also evident from the growing interest from local organizations such as cooperative federations in Cote d'Ivoire and licensed buying companies (LBCs) in Ghana in joining MSISs in the cocoa sector seeking support and guidance for compliance, according to one MSI interviewed for this study.

Nestlé's 'salient issue action plans' on child labour and forced labour are also focused on direct suppliers, and sometimes even more specifically "prioritized direct suppliers" (Nestlé, 2023c, p. 2). In these plans, Nestlé commits to "engage and support *prioritized direct suppliers* to assess risks and impacts *on their own suppliers* and farming communities" and "through our *direct suppliers*, engage and support [priority] *indirect/upstream suppliers* to help address child labor risks at production level" (Nestlé, 2023d, pp. 9-10). By contrast, in an earlier version of Nestlé's Supplier Code, adopted in 2008, provisions relating to child labour and forced labour applied to "suppliers, their employees, agents, and subcontractors" (Nestlé, 2008, p.1). In this way, the introduction of corporate sustainability laws has coincided with a narrowing, and not widening, of the scope of Nestlé's obligations. Thus, these laws do not appear to be preventing or restricting

Nestlé from limiting its responsibility for labour violations at the lowest tiers of its supply chain, despite continued evidence of labour rights issues in these tiers – including child labour, a lack of effective grievance procedures, and forced labor risks (Fair Labor Association, 2016).

It is important to note that in July 2020, Nestlé disclosed it supplier lists for 15 priority commodities, including cocoa. The cocoa supplier list represented a snapshot as of December 2019 and included the names of the companies' direct suppliers and Tier 2 suppliers in Cote d'Ivoire and Ghana.[6] However, this disclosure only covered cocoa purchased through the Nestlé Cocoa Plan, which in 2019 represented just 44% of total Nestlé cocoa (Nestlé, 2021b).[7] Moreover, this disclosure was not required under any of the corporate sustainability laws currently in force.

4. Direct support for human rights due diligence legislation

Nestlé considers its advocacy for human rights due diligence legislation to be part of its contribution to reducing child labour and forced labour in supply chains. One of the stated aims of the company's Human Rights Framework, unveiled in 2021, is "to support enabling environments for the respect and promotion of human rights" (Nestlé, 2021a, p. 28). The company notes that it will achieve this aim by, among other measures, "supporting legislation that encourages companies to assess, address and report on their potential human rights impacts" (Nestlé, 2021a, p. 28). In this vein, the company has signed multiple joint statements calling for mandatory human rights and environmental due diligence legislation in the EU, including as part of the Cocoa Coalition, an informal group of companies, certification organisations, NGOs, and MSIs aiming to support the development of relevant EU policy measures" (Adidas et al., 2020; ICI, 2021a). Similarly, in its 2022 Vigilance Plan, the company reports that a dialogue was launched at the Nestlé Group level which resulted in the company signing a communique calling for EU-wide due diligence legislation applicable to all sectors (Nestlé, 2022).

[6] There are 7 direct suppliers in Cote d'Ivoire (Barry Callebaut, Blommer/Olam, Cargill, Cocoanect, Ecom, Sucden, Touton) and 2 direct suppliers in Ghana (Ecom and Cocoanect).
[7] In 2022, 68% of Nestle's cocoa was sourced through the Nestle Cocoa Plan.

This level of corporate support for enhanced regulation is commendable and Nestlé does not appear to have tried to water down the legislation; in fact, it has endorsed calls to strengthen the EU CSDDD by, for example, including provisions for civil liability (ICI, 2021b). This may indicate the company's belief that it can easily meet the standard set by human rights due diligence laws. It also stands in contrast to Nestlé's argument, in its defense to a lawsuit alleging its complicity in child slavery on cocoa farms, that the suit should not be filed against it but against the traffickers and farmers *within its supply chain* who were involved (Whoriskey, 2020). This demonstrates the limits of the company's commitment to accountability for labour rights violations at the lower tiers of its supply chain.

MSIs also play a key role in this advocacy for due diligence laws. ICI leads the Cocoa Coalition, and in its latest annual report the initiative contends that through this role it is contributing to "foster(ing) a supportive environment that promotes responsible business conduct" (ICI, 2021c, p. 29). Similarly, in its annual report, IDH notes the importance of the upcoming EU CSDDD for businesses and signals that it will support stakeholders to comply with these requirements (IDH, 2023). It celebrates the legislation for creating a level playing field for sustainable business practices but also cautions that it may lead companies to disengage from high-risk regions and suppliers (IDH, 2023).

MSIs report that they are teaching their corporate members about the laws and "help[ing] them [to] realize [that] they need to put their act together" (MSI 2), noting that companies are scaling up their interventions and systems massively, particularly in response to human rights due diligence laws. Now that sustainability is a legal requirement and no longer just a nice-to-have, companies also have higher expectations of their MSIs in terms of providing relevant approaches, manuals, and toolkits, and advising them on developments and what is expected of them – they "want value for money" (MSI 2). Some companies also expect MSIs to conduct advocacy to influence the development of new laws.

One MSI reported that it is assessing how to "fuse" the new legislation into its work (MSI 1). This can include supporting companies in meeting their reporting obligations

under corporate sustainability laws. In cases where MSIs are directly implementing and supporting systems for member companies, they "can also assist with the reporting" and "in a way in those cases that's part of the deal" (MSI 2). Where there is no direct operational cooperation, they offer to look at, and advise on reporting as part of their membership services, as they see this as a way to promote good practices. This applies not just to reports but also codes of conducts, policies, data collection tools etc. The MSI representative noted that in any case many companies work with human rights consultancies that support them in producing their reports.

5. Continued reliance on certification schemes

Although certification programs and schemes are not mentioned in the Duty of Vigilance Law (or in other human rights due diligence laws that apply to Nestlé), there appears to be a continued reliance on certification as a major vehicle to address child labour and forced labour in supply chains.

Cocoa sourced through the Nestlé Cocoa Plan is certified by the Rainforest Alliance and farmers with certified cocoa receive additional cash payments as a premium (Nestlé, 2021b). In its salient issue action plans on child labour and forced labour, Nestlé commits to reviewing the effectiveness of different certification and verification schemes in addressing child labour and forced labor risks and to "contribute to improving" the schemes that it is already using to sustainably source raw materials, including cocoa (Nestlé, 2023c, p. 10). The plans also state that certified volumes could be increased if certification is determined to have a positive impact on tackling these risks (Nestlé, 2023d). It is worth noting as well that Rainforest Alliance and Fairtrade International, the leading global cocoa certification schemes, are members of ICI. On the other hand, IDH has been more critical of certification schemes and has called for the need to "go beyond certification" through for example, Verified Sourcing Areas (VSAs) (IDH, 2015; IDH, 2018).

Table 4: Corporate sustainability programs and certification schemes

Company	Corporate sustainability program	Associated certification schemes
Nestlé	The Nestlé Cocoa Plan	Rainforest Alliance
Mars	Cocoa for Generations	Fairtrade
Mondelez	Cocoa Life	FLOCERT

Barry Callebaut	Forever Chocolate	Rainforest Alliance Fairtrade Cocoa Horizons
Cargill	Cocoa Promise	Rainforest Alliance
Ferrero	Farming Values Cocoa Programme	Rainforest Alliance Fairtrade Cocoa Horizons

Thus, despite the lack of evidence of the effectiveness of certification to improve working conditions or income (CAL, 2023b), companies may seek to use the momentum provided by the introduction of corporate sustainability legislation to continue their pre-existing work on certification. This is unsurprising since most of the major cocoa-chocolate companies have in-house corporate sustainability programs that are associated with specific certification schemes (see Table 4 above). For example, as noted above, the Rainforest Alliance certifies cocoa for Nestle as well as for Barry Callebaut, Cargill, and Ferrero. This continued reliance on certification suggests that the introduction of corporate sustainability laws has not meaningfully changed the approach of cocoa corporate giants such as Nestlé but allows for the continuation of the same CSR initiatives that have not led to significant reductions in labour rights violations.

6. Impact on activities in producer-states

The interview data also revealed interesting trends relating to how corporate sustainability laws are changing dynamics and the role of MSIs within cocoa-producing countries (producer-states), specifically Ghana and Cote d'Ivoire. One of the concerns noted by MSI representatives is that the laws do not take into consideration the development challenges that are root causes of child labour and forced labour, and create the expectation that companies' supply chains can be "clean" without addressing these challenges (MSI 2). For example, the lack of basic infrastructure such as good roads and schools in many cocoa communities make it necessary for farmers to take their children to work with them, and there is a cultural/sociological context in which older children are expected to learn their parents' trade. These laws are implemented in a vacuum that is independent of this context,

and result in increased pressure on small producers to stop using children on farms without changing these realities or providing alternatives.

These laws target companies and do not refer to the producer-state government or its role, unlike the UNGPs which identify the responsibilities of both governments and the private sector. That said, there is dialogue between states in the development of the laws. For example, the EU CSDDD proposal was preceded by a series of multi-stakeholder roundtables known as the 'Cocoa Talks', and according to one MSI representative, the EU asked the government of Ghana to integrate child labour monitoring and deforestation monitoring components into its Cocoa Management System (CMS) and provided funding for this integration, thus creating the necessary infrastructure for companies to track compliance with the proposed CSDDD. This shows how corporate sustainability legislation may be leading to changes in producer-state governance mechanisms.

As a result, MSI are playing an increased role in facilitating this link between the actions of companies and governments, promoting collaboration, and preventing duplication, such as private sector systems running parallel to the public system. For example, one MSI helped to ensure alignment between the Ghanian government's Cocoa Management System, and the systems being used by the private sector so that all of the data feeds into a central database. It is also supporting companies to align their grievance mechanisms with the government's framework.

Discussion

While the goal of corporate sustainability laws is to bridge the governance gap and compensate for the inadequacies of private, voluntary CSR activities, the evidence suggests that their practical application to-date may not consistently achieve these outcomes. The case of Nestlé does not provide any indication that these laws are leading to more meaningful action by companies to address labour violations.

At first glance, the dominant *character* of the interaction between corporate sustainability laws and MSIs is <u>incorporation</u>. Whether explicitly or implicitly, these laws appear to be encouraging companies to participate in MSIs as an important way of

addressing labour exploitation in their supply chains. The laws have been a good recruiting tool for MSIs and have led to increased membership from companies around the world that export products to the jurisdictions where they have been enacted. Companies are aware that membership in MSIs provides an easy signpost to both consumers and legislators that they are making efforts to clean up their supply chains. At the same time, MSIs are responding to the demand from companies and looking for ways to incorporate these laws into their activities, including taking on a lobbying role to advocate for the type of laws that are desired by their membership and supporting members in meeting their reporting obligations.

For companies like Nestlé that are consumer-facing and subject to frequent scrutiny, the *effect* of this interaction is reduced efforts and maintenance of existing approaches. Since these laws set the bar lower than what Nestlé was doing previously, they may give the company legal cover to limit its activities only to what is necessary. The company is now less transparent about its stakeholder consultation process and limits its supply chain monitoring to direct suppliers. Likewise, it can ignore the severe weaknesses of its grievance and remediation procedure - which were identified for it by one of its own MSIs – because the Duty of Vigilance law only requires that it has a system and does not mandate or enforce the effectiveness of this system. The laws also allow the company to maintain existing approaches to CSR, such as the reliance on certification schemes, despite decades of evidence that these have not led to meaningful improvements in working conditions. Further still, the laws may legitimize these approaches as they are now part of the company's mandatory obligations as opposed to lesser, voluntary activities. Companies can choose to address the problem in the ways that suit them and avoid addressing the root causes that are within their control, such as by changing their purchasing practices. In fact, the laws are leading companies to put more pressure on suppliers which can incentivize them to cover up problems in order to retain their multinational clients.

In this way, the introduction of corporate sustainability laws may have allowed Nestlé to reduce its efforts to address child labour and forced labour in its supply chains. MSIs in the cocoa sector are cognizant that these laws are weak and are trying to push their

members to take steps that go beyond compliance. As noted by one of the interview participants, as the issue has moved from the responsibility of the sustainability department to that of the legal department, companies have become overly focused on simply avoiding liability and ticking the right boxes. From this perspective, the interaction between MSIs and corporate sustainability laws is competitive, as the laws could potentially restrict the ability of MSIs to push for meaningful action.

Drawing on Bartley's 'place-conscious transnational governance' model, these interactions are also shaped by domestic (producer-state) governance mechanisms in Ghana and Cote d'Ivoire. These governments are changing their systems in a way that aligns with the requirements of these laws and the MSIs are facilitating this process and promoting links between the government and the private sector. The intention is to promote collaboration but there is a risk that since the funding is coming from consumer-state governments and corporations, that it leads to a system that is designed to promote and facilitate corporate compliance with home-state laws, rather than one that is intended to address the major development challenges that are root causes of the problem. In this way, corporate sustainability laws are not preventing the re-centring of the state but may be steering it in a way that suits the needs of businesses.

The layering of these laws on top of the MSI governance mechanism has increased the size and diversity of MSI membership and contributed to a levelling of the playing field, as smaller companies are required to raise their standards. However, this layering may also be lowering the standards of Nestlé and similar companies, who can now use their mere compliance with these laws as a safe harbour to ward off scrutiny as well as legal action. .

Conclusion and Directions for Further Research

This study examined how the emergence of corporate sustainability laws has influenced the activities of the corporations that are subject to them, and the multi-stakeholder initiatives through which this work was done prior to these laws. My research focused on the French Duty of Vigilance Law, which falls under the human rights due diligence model and is considered one of the strongest corporate sustainability laws. I chose

to look at this issue within the cocoa sector, where labour rights violations are well-documented and MSI engagement is high, and to specifically examine Nestlé, one of the biggest players in the sector and which has been subject to heavy media scrutiny and litigation. My findings demonstrate that, as these laws have been introduced, Nestlé appears to have maintained or lowered the status quo with respect to taking responsibility for preventing and remediating labour violations in its cocoa supply chain.

Given the varied and multi-faceted interactions that were revealed through this narrow and limited case study, there is a clear need for further research to better understand the different links and influences between these public and private mechanisms and their implications for public policy. Researchers could explore whether the trends observed in Nestlé's activities are unfolding among smaller and less consumer-facing companies, which are a key target of the laws in terms of 'levelling the playing field'. Even among large companies, it will be important to study interactions in different sectors and supply chains, and this may shed further light on the role of place-conscious transnational governance. The cocoa-sector is highly place-specific, with two major producing countries that share similarities in terms of democratic political regimes, land rights systems, and the role of cooperatives, to take a few examples. The transnational business governance interactions that occur may be different in autocratic regimes or in sectors that are more mobile such as garment.

In addition, collecting data from a larger number of MSIs would help to verify the accuracy of these research findings. As the number of jurisdictions enacting these laws is growing considerably, there may be more interest from MSIs in participating in this research. It could also be informative to engage with different types of MSIs such as certification MSIs, country-specific MSIs (such as the national initiatives on sustainable cocoa), as well as MSIs based in the global South, and explore how these factors impact the character and effect of their interactions with corporate sustainability laws.

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