

### **CASE STUDY Doe v Nestlé USA, 2005**

<https://earthrights.org/wp-content/uploads/Nestle-pltfs-opening-br.pdf>

\*\* Plaintiffs were trafficked from Mali. see U.S. Code § 1350 Alien’s Action for Tort, under which companies can be held liable

\*\*\* this case is ongoing and being heard in 2020 by the US Supreme Court

Between 1994 and 2000, Plaintiffs John Doe I, John Doe II, and John Doe III were forced to work as child slaves on cocoa plantations in the Ivory Coast.

Plaintiffs, aged 12 to 14 when first forced to work as child slaves, had to work 12 to 14 hour days with no pay. Id. They often worked with guns pointed at them, and were given only the bare minimum of food scraps. Plaintiffs were forced to stay on the farms under threat of severe beatings, which they had witnessed occur to other forced child laborers who had attempted escape. Plaintiffs were locked in small rooms at night with other child slaves so they could not escape the plantations. They were whipped and beaten by the guards and overseers when the guards felt they were not working quickly or adequately.

These brutal conditions in the Ivory Coast’s cocoa industry occurred against the backdrop of the country’s civil conflict, which left the country divided after hostilities ended in 2003. The conflict has left an “Enron-type structure” of companies that insulate their criminal activities through secret bank accounts and other layers of deception. Journalist Carol Off observed that the “dirty work” of the Ivory Coast’s cocoa industry has been dominated by Defendants in this case.

It has also been well-documented by the U.S. State Department, the International Labor Organization (“ILO”), and UNICEF that child slavery has existed on Ivory Coast cocoa plantations since the 1990s. UNICEF reported in 1997 that children were being trafficked to Ivory Coast’s cocoa farms from Burkina Faso and Mali, as Plaintiffs were, and in 2004 the U.S. State Department “estimated that 15,000 child laborers work[ed] on cocoa, coffee, and cotton farms.”

This environment enabled Defendants to extend economic dominance over the cocoa farms and provide logistical support and supplies essential to continuing the profitable system of child slavery. Plaintiffs allege that “through exclusive supplier/buyer relationships, maintained in the form of memorandums of understanding, agreements, and/or contracts, both written and oral, Defendants are able to dictate the terms by which such farms produce and supply cocoa to them, including specifically the labor conditions under which beans are produced.” Defendants thus have a distinct ability to control the labor practices on the cocoa plantations.

In addition, given Defendants’ intimate and direct involvement in their supply chains, their provision of technical assistance and training programs to farmers, and the well-documented international and U.S. reports on child labor in the cocoa farms.

Defendants had specific knowledge of the pervasive use of child labor in Ivory Coast's cocoa sector and on the farms and cooperatives they used to produce cocoa beans. Defendants have admitted that they “actively participate as the first link in an integrated supply chain,” that they “continually monitor the performance, reliability and viability of suppliers,” that they have “specific programmes directed at farmers in West Africa including field schools to help farmers with supply chain issues,” and that they have “an unprecedented degree of control over raw material supply, quality and handling.”

Defendants claim that they are “against all forms of exploitation of children,” that they “will not condone the employment or exploitation of legally underage workers or forced labor and will not knowingly use suppliers who employ such workers or labor,” and that they will “comply with the letter and spirit of all applicable . . . laws designed to accomplish equal and fair opportunities in employment.” However, Defendants’ long-term profitable participation in a system of child slavery directly contradicts their public relations strategy.

Defendants provided many forms of assistance to the farming activities of the Ivorian farmers, knew that these farms operated on child slave labor, and then kept the farms in business by buying all of their crops. Plaintiffs allege that Defendants maintained exclusive supplier/buyer relationships, and that they provided the farmers advance payments and personal spending money to maintain the farmers’ loyalty as exclusive suppliers. Defendants knew that the money they were contributing was providing the essential financial support and incentive for these farmers to employ slave labor to meet the demand of Defendants for the valuable cocoa beans. Defendants received significant benefits from the forced labor practices by purchasing cocoa beans at extremely low prices due to severely diminished labor costs. Defendants’ profits depended on their complicity in this system of child exploitation.

Plaintiffs also allege that Defendants had an “ongoing and continued presence on the cocoa farms,” that they had “first-hand knowledge of the widespread use of child labor on said farms,” and that they had influential status based on their exclusive purchasing agreements and the level of control they exercised over the farms. Plaintiffs allege specific instances of practical assistance and encouragement that had a substantial effect on the perpetration of forced labor at issue in this case.

### **Relevant Law and terms to know**

- Rome Statute of the International Criminal Court, section 25(3) (d)

<https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

- a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or (ii) Be made in the knowledge of the intention of the group to commit the crime;

- Mens Rea - the intention or knowledge of wrongdoing that constitutes part of a crime, as opposed to the action or conduct of the accused.

Aiding and Abetting – providing assistance, encouragement, or inciting someone to commit a crime.