

A BITTER HARVEST: CHILD LABOUR IN SUGARCANE AGRICULTURE AND THE ROLE OF CERTIFICATION SYSTEMS

Natasha Schwarzbach

*Ben Richardson**

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I. INTRODUCTION

The headline statistics show the continued prevalence of child labour in agriculture.¹ According to the International Labour Organisation (ILO) the

* Natasha Schwarzbach is Head of Engagement for Bonsucro, London, U.K. Ben Richardson is Associate Professor in International Political Economy in the Department of Politics and International Studies, University of Warwick, U.K. He works with Bonsucro via one of their member NGOs, Ethical Sugar, and has previously sat on Bonsucro's Standard Revision Committee. Both positions were unpaid.

¹ This paper follows the International Labour Organisation in defining a child as a person between the ages of five and seventeen years old.

agricultural sector employs an estimated 98 million children, or 59% of the total number of child labourers worldwide.² Along with cocoa, coffee, cotton, tea and tobacco, sugarcane is one of those cash crops that feature consistently in policy initiatives, academic studies and media reports on the abuse of working children. As our title suggests, this sweet crop still entails a bitter harvest.

The number of children working in sugarcane agriculture specifically is unknown, since data provided by the ILO and other research institutions is not disaggregated by crop.³ However, drawing on the available literature, we would suggest that this is best measured in the tens of thousands, if not hundreds of thousands.⁴ Certainly the U.S. Department of Labor (DOL) lists a large number of countries in which it believes sugarcane is produced using child labour. In 2013, this list included Belize, Bolivia, Burma, Colombia, the Dominican Republic, El Salvador, Guatemala, Kenya, Mexico, Panama, Paraguay, the Philippines, Thailand, and Uganda.⁵ Based on publicly available studies commissioned by the Coca-Cola Company, as well a cursory search of reports by non-governmental organisations (NGOs) and newspapers, Cambodia,⁶ Costa Rica,⁷ Honduras,⁸ Fiji,⁹ India,¹⁰ Nicaragua,¹¹

² INT'L LABOUR OFFICE, GLOBAL ESTIMATES AND TRENDS 2000-2012: MARKING PROGRESS AGAINST CHILD LABOUR 23 (Sept. 27, 2013), available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_221513.pdf.

³ This is to leave aside the methodological issues of identifying child labour and producing accurate statistics on its incidence in the first place. These difficulties are discussed elsewhere in the paper.

⁴ For example, the estimated number of children working in sugarcane agriculture just in the Philippines in the early 2000s ranged from 60,000 to 200,000. See JENNIFER DE BOER, TERRE DES HOMMES NETHERLANDS, SWEET HAZARDS: CHILD LABOR ON SUGARCANE PLANTATIONS IN THE PHILIPPINES 10 (2005).

⁵ Note that child labour abuse is also reported in sugar beet production in Turkey. *List of Goods Produced by Child Labor or Forced Labor*, U.S. DEP'T OF LABOR, <http://www.dol.gov/ilab/reports/child-labor/list-of-goods/> (last visited Sept. 16, 2014).

⁶ Kate Hodal, *Tate & Lyle Supplier Accused Over Child Labour*, THE GUARDIAN (Jul. 9, 2013), <http://www.theguardian.com/business/2013/jul/09/tate-lyle-sugar-child-labour-accusation>.

⁷ SPECIALIZED TECH. RES., INC., COSTA RICA SUGAR: A MACRO VIEW OF TODAY'S INDUSTRY 9, http://assets.coca-colacompany.com/28/c1/cb4ced444ed4b6316e01a4334cba/Costa_Rica_Sugar_Industry_Macro_Report.pdf (last visited Oct. 1, 2014).

⁸ Specialized Tech. Res., Inc., *Honduran Sugar: A Macro View of Today's Industry* 7-8, http://assets.coca-colacompany.com/de/c3/657978d9459c99dbaf53f02cbd32/Honduras_Sugar_Industry_Macro_Level_Report.pdf (last visited Oct. 1, 2014).

⁹ Maciu Malo, *Plans to End Child Labour in the Sugar Industry*, THE FIJI TIMES (May 11, 2013), <http://www.fijitimes.com/story.aspx?id=233551>.

¹⁰ Priyanka Dubey, *Where Do the Missing Children of Delhi Go?*, TEHELKA MAGAZINE (Aug. 25, 2012), <http://www.tehelka.com/where-do-the-missing-children-of-delhi-go/>.

Nepal,¹² and Pakistan¹³ can also be added to that list. Notably, no less than thirteen of these countries are given privileged access to the U.S. sugar market under its tariff-rate quota scheme,¹⁴ and in fiscal year 2013 they collectively exported 329,187 tonnes of raw sugar to the U.S.¹⁵ In addition, Mexico has completely free access under the terms of the North American Free Trade Agreement and that same year exported 2,124,000 tonnes of sugar to the U.S.¹⁶ Given the size of these export flows, it is almost inconceivable that sugar tainted with child labour is not being consumed in the U.S. today.

In this paper we are primarily concerned with how certification and its associated practices of standard-setting and auditing might be used to help eradicate child labour in sugarcane agriculture. To do this, the paper proceeds in the following fashion. We begin by categorising three kinds of abuse that children suffer in sugarcane agriculture. We also examine the challenges that have confronted recent efforts to eradicate the use of child labour and the reasons why it remains such a stubborn aspect of the sugarcane sector. Then we contrast different certification systems for sugarcane to show the subtly different forms this governance mechanism can take. The paper concludes by suggesting strategies that might better integrate certification systems with broader actions to tackle child labour. Aimed primarily at influential supply-chain actors, these strategies are modest but practical: agree on common and comprehensive standards; engage in credible and inclusive monitoring; and undertake open and honest assessments of one's endeavours.

¹¹ Specialized Tech. Res., Inc., *Nicaraguan Sugar: A Macro View of Today's Industry* 16, <http://assets.coca-colacompany.com/10/58/7b94d83d4c25a4a3bb5eb919649e/NicaraguaSugarIndustry-AMacroLevelReport012309.pdf> (last visited Oct. 1, 2014).

¹² *Concept Note*, GLOBAL MARCH, <http://www.globalmarch.org/SARCCLA2010/conceptnote> (last visited Sept. 13, 2014).

¹³ *Anti-Slavery International*, PRODUCTS OF SLAVERY, <http://www.productsofslavery.org> (last visited Oct. 1, 2014).

¹⁴ For a list of countries that are offered TRQ access, see *U.S. Trade Representative Froman Announces FY 2014 WTO Tariff-Rate Quota Allocations for Raw Cane Sugar, Refined and Specialty Sugar and Sugar-Containing Products*, U.S. TRADE REPRESENTATIVE (Sept. 2013), <http://www.ustr.gov/about-us/press-office/press-releases/2013/september/WTO-trq-for-sugar>.

¹⁵ The five biggest sugar exporters among those countries cited for child labour were the Dominican Republic, the Philippines, Guatemala, Panama and El Salvador. See *Sugar & Sweeteners: Yearbook Tables*, U.S. DEP'T OF AGRIC., <http://www.ers.usda.gov/data-products/sugar-and-sweeteners-yearbook-tables.aspx> (last visited Oct. 14, 2014) for data on exports to the U.S.

¹⁶ *Sugar & Sweeteners: Trade*, U.S. DEP'T OF AGRIC., <http://www.ers.usda.gov/topics/crops/sugar-sweeteners/trade.aspx#.VD0gRvldUWI> (last visited Oct. 14 2014).

II. CATEGORISING THE ABUSE: HAZARDOUS WORK, HARMFUL ADULT WORK, AND EXPLOITATIVE WORK

Child labour in itself is neither a uniform category nor an unequivocal “bad thing.” Many forms of labour exist, from assisting parents to holding part-time jobs, which can be safely performed by children and can contribute to their cognitive and social development. As Ben White argues, it is the *abuse* of children in work, rather than the mere fact of their involvement in work, by which the child labour problem should be understood.¹⁷ ILO Convention (“Convention”) No. 182 acknowledges this distinction and calls for national governments to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.”¹⁸ Article 3 of Convention No. 182 defines “the worst forms of child labour” as the following:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.¹⁹

The Convention thus implies that it is both helpful and possible to differentiate between work that is “intolerable” or “extreme” for children and work which is not. It also abandons the traditional distinction between paid and unpaid work; keeping a child at home and out of school for full-time domestic work is no less a “worst form of child labour” than full-time paid employment in factories, plantations or sweatshops.²⁰

¹⁷ Ben White, *Defining the Intolerable: Child Work, Global Standards and Cultural Relativism*, 6 CHILDHOOD 133, 133 (1999).

¹⁸ Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour art. 1, June 17, 1999, 2133 U.N.T.S. 161 [hereinafter Convention No. 182].

¹⁹ *Id.* at art. 3.

²⁰ White, *supra* note 17, at 139.

A. Hazardous Work

Most tasks undertaken in sugarcane agriculture are usually considered to fall within the bracket of “hazardous work” because it is likely to harm the health, safety or morals of children. During the annual Bonsucro conference in 2013, Rachel Phillips Rigby of the DOL, Office of Child Labor, Forced Labor and Human Trafficking, outlined some of the most common examples of hazardous work in sugarcane agriculture. These included the use of dangerous tools like machetes and knives, exposure to agro-chemicals, exposure to harsh sunlight and high temperatures, crouching for hours at a time, the transportation of heavy loads, long hours that interfere with schooling and the practice of very young children accompanying parents to work in the fields.²¹

Undoubtedly, the most hazardous tasks of sugarcane agriculture are harvesting and spraying. Manual harvesting involves chopping thick stalks of cane with a blade, often for more than eight hours per day throughout the harvest season.²² Injuries such as cut fingers or legs caused by the use of machetes and sickles are common, as is muscular-skeletal damage resulting from the hours of repetitious striking and bending over.²³ Spraying pesticides and herbicides exposes children to dangerous chemicals, which if improperly used can result in respiratory illness and eye and skin irritation, as well as long-term impacts such as increased risk of cancer and neurological damage.²⁴ Tools and equipment built to adult specifications present additional risks to younger workers. Machetes may be unwieldy and difficult to use safely, while personal protective equipment like gloves and hats may not fit properly and so are not used.²⁵ Both of these tasks typically involve long periods of times spent in hot, sunny conditions, where dehydration and skin damage are likely, and where insect or snake bites and skin cuts from the sugarcane are also common.²⁶

²¹ Rachel Phillips Rigby, Int’l Relations Officer, U.S. Dep’t of Labor, Speech at the Bonsucro Annual Conference 2013: Labor Issues Present in the Sugarcane Supply Chain (Nov. 7, 2013).

²² Fernanda Ludmilla Rossi Rocha et al., *Work and Health Conditions of Sugar Cane Workers in Brazil*, 44 REVISTA DA ESCOLA DE ENFERMAGEM DA USP 974, 976 (2010).

²³ Jennie Gamlin & Therese Hesketh, *Child Work in Agriculture: Acute and Chronic Health Hazards*, 17 CHILD., YOUTH & ENV’TS. 1, 9-11 (2007).

²⁴ MARKKU LEHTONEN, ETHICAL SUGAR, STATUS REPORT ON SUGAR CANE AGROCHEMICALS MANAGEMENT 12 (Dec. 19, 2009), http://ethicalsugar.files.wordpress.com/2014/02/agrochemicals_1_-2.pdf.

²⁵ Anne Trebilcock, *Introduction to Sugar Cane and Child Labour: Reality and Perspectives*, ETHICAL SUGAR 5, 6 (2011), http://www.sucro-ethique.org/IMG/pdf/child_labour_07-2011_2_.pdf.

²⁶ Orlando Delgado Cortez, *Heat Stress Assessment among Workers in a Nicaraguan Sugarcane Farm*, 2 GLOBAL HEALTH ACTION 1, 2 (2009); Gamlin & Hesketh, *supra* note 23,

These tasks tend to be done by adolescent children, with younger children given less physically demanding and/or less dangerous jobs within the division of labour. These jobs are likely to include planting, weeding and stacking the sugarcane for loading.²⁷ Not all work is done on the farm. Girls, in particular, may be involved in domestic labour such as washing clothes, fetching water and wood and cooking in the sugarcane worker's camps.²⁸ This mirrors much of the work done by children on family farms, which may not be directly related to sugarcane production but is nonetheless invaluable to the farm's economic viability.²⁹ In her study of sugarcane farming in Fiji, Sue Carswell found that while children did contribute to the cultivation of sugarcane (though not its harvesting) they also tended vegetable gardens and subsistence plots among other jobs.³⁰

There are three things about this labour regime that create difficulties for assessments of whether or not child labour is taking place. First, the division of labour is not rigid, meaning that children can move in and out of the "worst forms" of labour. A child's engagement in light work at one moment in time does not mean that they will not be expected to undertake more demanding and directly hazardous work at a later date. Second, the very definition of hazardous work by the ILO includes work that "interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work."³¹ In this sense, even light work can be extremely harmful when it unduly interferes with a child's basic education, which again can be difficult to monitor without cross-referencing school attendance data. Third, there is the question of whether abusive work undertaken outside the production process but intimately linked to it should be classified as part of the sugarcane supply-chain. The more restrictive the scope — excluding work in migrant camps and subsistence plots attached to cane farms for example — the less likely child labour will be found.

at 9.

²⁷ MAUREEN E. JAFFE ET AL., U.S. DEP'T OF LABOR, BY THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN U.S. AGRICULTURAL IMPORTS AND FORCED AND BONDED CHILD LABOR 43 (Vol. 2, 1997).

²⁸ In Bolivia, the girls that perform such domestic labour at the camps are known as *pensionistas*. See LAURA BAAS, CHILD LABOUR ON SUGAR CANE PLANTATIONS IN BOLIVIA: A WORST FORM OF CHILD LABOUR 15 (Sonja Zweegers ed., 2009), available at http://www.crin.org/docs/Rural%20CL_Bolivia%20Zafra_Laura_final.pdf.

²⁹ Sue Carswell, *A Family Business: Women, Children and Smallholder Sugar Cane Farming in Fiji*, 44 ASIA PAC. VIEWPOINT 131, 140 (2003).

³⁰ *Id.* at 143.

³¹ *What is child labour*, INT'L LABOUR ORG., <http://www.ilo.org/ipecc/facts/lang-en/index.htm> (last visited Oct. 1, 2014).

B. Harmful Adult Work

The second category of abuse is the harm caused to children as a direct result of the labour regime for adult work. The linkages between the exploitation of adults and suffering of children have long been noted. Of particular relevance is the inability of adults working in sugarcane agriculture to adequately feed their dependents: not for nothing is sugar known as “the hunger crop.”³² For example, one study in the Philippines found that a family working in sugarcane earned an average of 3,290 pesos per month, while the poverty threshold in that particular region was 10,800 pesos per month.³³ When one is so far below the breadline, it is inevitably hard to stave off hunger.

Most of the studies we focused on singled out wage labour — specifically seasonal harvest labour undertaken by migrants — as especially injurious to children.³⁴ For instance, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) has connected both child labour and child harm in Kenya to the outsourcing of harvesting, which leads to less oversight of the workforce and greater ability to underpay them.³⁵ Because families migrate with the work, it is very difficult for children to attend school regularly, even if they are not employed in the field or camp.³⁶ In the case of the sugarcane sector in Maharashtra in India, Save the Children collected data on over 700 working children.³⁷ They found that more than half did not go to school in their home villages and virtually none attended school while they were away during the six-month harvest season.³⁸ This, they concluded, amounted to a “denial of the right to education” leading to their call for the government to establish residential schools in areas where migrant children come from

³² BELINDA COOTE, *THE HUNGER CROP: POVERTY AND THE SUGAR INDUSTRY* 36 (1987).

³³ DE BOER, *supra* note 4, at 10.

³⁴ See Jason Hickel, *Sweatshop Sugar: Labour Exploitation in South Africa’s Cane Fields*, *THE AFR. REP.* (Sept. 29, 2011), <http://www.theafricareport.com/Columns/sweatshop-sugar-labour-exploitation-in-south-africas-cane-fields.html>, for an example that family farm labour remains more problematic in southern Africa.

³⁵ Jorge Chullén, *Kenya: Children Cutting Cane; Cane Cutters Living in Miserable Conditions*, IUF SUGAR WORKERS NETWORK (Sept. 26, 2007), <http://www.iuf.org/sugarworkers/kenya-children-cutting-cane-cane-cutters-living-in-miserable-conditions/>.

³⁶ See BAAS, *supra* note 28, at 22–25.

³⁷ Debasish Nandy, Save The Children, *Child Rights Situation Analysis: Children of Families Engaged in Sugarcane Farming in Maharashtra* 10 (2012), <http://resourcecentre.savethechildren.se/sites/default/files/documents/childrights.pdf>.

³⁸ *Id.* at 41.

and/or basic educational infrastructure in the areas they move to.³⁹ Nor is it just the care of school-age children that must be considered. Another study on Maharashtra found that 85% of children aged 0-5 years were taken by their parents to the migrant camps, typically located hundreds of miles away from their home, whilst pregnancy and child birth at work sites were not uncommon either.⁴⁰

The camps themselves are also cause for concern. The Save the Children report called the conditions of the camps “inhuman,” referring to the cramped huts made of bamboo and that lacked access to water, sanitation or electrical facilities.⁴¹ Furthermore, migrant workers are often trapped by debt, contracted by intermediaries who have loaned them money on the condition that they repay the loan by working in the sugarcane fields that season.⁴² This forced migration can cause psychological harm to children either way: either they are separated from their parent(s) and denied a family life, or they accompany them to places where they may not know the language or culture and where the family as a whole is at the mercy of contractors.⁴³

C. Exploitative Work

The final category of abuse is controversial since it can be seen as condoning child labour. This is the abuse that comes from exploitation, i.e., explicitly under-paying children for the work they undertake. A study carried out in Guatemala detailed reports of children receiving just 24.50 quetzals per day for cutting cane. Under the law, they should have been paid the minimum wage, which at that point was 54.72 quetzals, but because they could not harvest as much cane as adult workers, they were prevented from earning this minimum. Wage differentials also extended to seed sowing which in this case were explicitly discriminatory, i.e. payment was based entirely on *who* was doing the work rather than how much work they did. The same report detailed that children were paid only 0.25 quetzals per

³⁹ *Id.* at 43, 83.

⁴⁰ Smita, Consortium for Research on Educational Access (CREATE), Transitions and Equity, *Distress Seasonal Migration and its Impact on Children's Education*, Research Monograph No. 28, 22 (May 2008), <http://sro.sussex.ac.uk/1869/1/PTA28.pdf>.

⁴¹ *Id.* at 15.

⁴² Isabelle Guérin, *Bonded Labour, Agrarian Changes and Capitalism: Emerging Patterns in South India*, 13 J. AGRARIAN CHANGE 405, 413-14 (2013).

⁴³ Jayshree V. Kharche, *Child Labour and Rights Issues among Katkari Brick-Kiln Labourers and Bhil Sugar-Cane Cutters: A Sociological Study* 228, (Dec. 2011) (unpublished Ph.D. thesis, Tilak Maharashtra Vidyapeeth) (on file with author), available at http://shodhganga.inflibnet.ac.in/handle/10603/5900?mode=full&submit_simple>Show+full+item+record.

packet of cane sowed while adults were paid 0.40 quetzals.⁴⁴

Likewise in Bolivia, a study conducted on behalf of the foundation International Research on Working Children found that children undertaking light work as “helpers” for their relatives tended to earn between 300 and 800 bolivianos per month but many did not know how much they would eventually be paid for their labour.⁴⁵ In this instance, children were denied the status of “workers” even though they were clearly engaged in the production process. As the report’s author Laura Baas noted: “Helping out family members is perceived as family work for which minors don’t need to be rewarded individually.”⁴⁶

The invisible, or in some cases, simply illegal status of child labourers also means that they are less likely to receive their legal entitlements, such as minimum wage, overtime, food basket, health care.⁴⁷ This is also influenced by their weaker position vis-à-vis employers and overseers, which also opens the door to physical and verbal abuse in the workplace. In the Philippines, it has been claimed that the *hacenderos* hire children because they do not join unions, do not ask for additional benefits, and do not stand up for their rights as readily as adults do.⁴⁸ If child labour is illegal, this is of course even more difficult to do.

III. ERADICATING ABUSIVE CHILD LABOUR IN SUGARCANE AGRICULTURE: ONGOING CHALLENGES

Since this paper largely relies on desk research, we avoid drawing firm conclusions about the extent to which particular interventions to eradicate child labour have been successful or not. To do so would require in-country fieldwork and careful efforts to avoid the reporting biases that are often contained in self-approving statements by corporations/governments on the one hand, and in sensationalising reports of NGOs/newspapers on the other. Instead, we detail some of the challenges that have confronted attempts to eradicate abusive child labour in sugarcane agriculture in order to get a better sense of where certification systems might fit into the picture. These challenges are: recognising child labour as a problem; assigning responsibility for its eradication; inadequate monitoring of the continued (ab)use of children; and properly identifying children and their best interests.

⁴⁴ COVERCO & Int’l Labor Rights Fund, *Labor Conditions in the Guatemalan Sugar Industry* 35 (May 2005), http://www.laborrights.org/sites/default/files/publications-and-resources/guatemala_sugar.pdf.

⁴⁵ BAAS, *supra* note 28, at 15.

⁴⁶ *Id.*

⁴⁷ Carolyn Tuttle, *History Repeats Itself: Child Labor in Latin America*, 18 EMP. RESP. & RTS. J. 143, 148, 148 n.9 (2006).

⁴⁸ DE BOER, *supra* note 4, at 11.

A. *Recognising Child Labour as a Problem*

Of the major sugar producing countries, only Cuba and India have not ratified Convention No. 182 on child labour.⁴⁹ This is an important high-level political commitment to recognising child labour *as a problem* rather than a natural economic practice and can serve as a starting point for writing adequate legal protections into the national statute book. But of course, even among countries that have ratified and put into force this convention, abusive child labour may still persist. As a result, alternative processes have been adopted to problematize child labour in sugarcane agriculture, namely sectoral programmes co-ordinated by international agencies and *ad hoc* media campaigns targeted at transnational corporations involved in the supply-chain.

A case in point here is in El Salvador, in which these two processes dovetailed. El Salvador ratified Convention No. 182 in 2000 and with support from the DOL and the ILO's International Programme on the Elimination of Child Labour (IPEC) launched a Time Bound Programme in 2002 to eliminate the worst forms of child labour.⁵⁰ As part of its efforts in the sugarcane sector specifically, IPEC engaged the Salvadoran Sugar Association as one of its main implementing partners, which issued a ban on child labour in the mills and supplier plantations.⁵¹ This coincided with the widely-cited 2004 Human Rights Watch report *Turning a Blind Eye: Hazardous Child Labor in El Salvador's Sugarcane Cultivation*,⁵² which linked child labour in the country to the domestic production and sale of Coca-Cola and resulted in new initiatives launched to support the transition of child labourers into school. By the end of the decade, Human Rights Watch acknowledged that the numbers of children working in sugarcane agriculture had fallen considerably, although they remained concerned about

⁴⁹ Convention 182, *Countries that have not ratified this Convention*, INT'L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312327:NO (last visited Nov. 24, 2014). India does have some national legislation around child labour abuse, including laws to protect children from sexual offenses, to protect children and adults from trafficking and forced labour, and to ban all labour for children under the age of fourteen. However, according to the DOL, proposals to proscribe hazardous work for children under eighteen remain on the shelf, and agricultural activities remain excluded from what little legal protection that does exist. See U.S. DEP'T OF LABOR, FINDINGS OF THE WORST FORMS OF CHILD: INDIA (2012), <http://www.dol.gov/ilab/reports/child-labor/findings/2012TDA/India.pdf>.

⁵⁰ IPEC, *Private Sector Contributions to Combating Child Labour in Sugarcane in El Salvador – CSR case study*, INT'L LABOUR ORG. 1–2 (Oct. 2010), <http://www.ilo.org/ipeinfo/product/download.do?type=document&id=14355>.

⁵¹ *Id.*

⁵² Michael Bochenek, *Turning a Blind Eye: Hazardous Child Labor in El Salvador's Sugarcane Cultivation*, 16 HUM. RTS. WATCH 1, 4 (2004).

the reintegration of the majority into mainstream education.⁵³

An obvious issue with this approach, however, is that not every country is subject to such international support and/or scrutiny. This may be especially likely in cases where child labour cannot be connected to a brand-name corporation sensitive to reputational damage or extreme human rights violations able to mobilise public opinion. In addition, as the frontier of sugarcane production expands, new sites of child labour may open up beyond the scope of existing eradication programmes.

The case of Cambodia is apposite here. As greenfield investments have been made in the country's sugarcane industry in the last five years, reports of child labour on the new plantations have also surfaced.⁵⁴ In response to domestic and international pressure, the sugar investor and Cambodian Senator Ly Yong Phat announced that his company had amended its hiring policy to forbid contractors from employing children, but for many campaigners who opposed the very granting of land concessions for sugar plantations, this change was too little, too late.⁵⁵

B. Assigning Responsibility

Recognising child labour as a problem is one thing, eradicating it quite another. In her research on the Philippines, Jennifer de Boer highlights the seeming paradox that exists where child labour carries on despite a consensus that it should be ended:

With the exception of one or two interviewees who were of the opinion that children do not work in agriculture apart from helping their own parents, all involved — children, parents, government representatives, NGOs, the interviewed plantation manager — would rather not see children work. The question is why child labor still persists if all these players in the field want it to end?⁵⁶

A generous answer to Boer's question is that there is a collective action failure on the part of those actors who genuinely want child labour to be eradicated. This might be inferred from the plethora of programmes that have been launched in the Filipino sugarcane sector. In the last three years

⁵³ *Child Labor in Sugarcane Plantations in El Salvador Drops by 70%*, HUM. RTS. WATCH (Sept. 16, 2009), <http://www.hrw.org/news/2009/09/16/child-labor-sugarcane-plantations-el-salvador-drops-70>.

⁵⁴ Hodal, *supra* note 6.

⁵⁵ Stuart White & May Titthara, *Sugar Company Axes Child Labour*, THE PHNOM PENH POST (Jan. 15, 2013), <http://www.phnompenhpost.com/national/sugar-company-axes-child-labour>.

⁵⁶ DE BOER, *supra* note 4, at 21.

alone these include a fifteen million dollar project granted by the DOL to the NGO World Vision to pull children out of sugarcane work and into educational programmes;⁵⁷ an agreement between the ILO's IPEC and a wide-ranging number of government and industry organisations to monitor child labour on the farms and establish a referral service;⁵⁸ and a government-led initiative that produced a voluntary code of conduct that prohibits children under the age of fourteen from working in the field and limits those aged 14-18 to non-hazardous weekend work.⁵⁹

This is not to say that a wide-range of actors should not be involved in such initiatives or that co-ordination cannot emerge out of their disparate efforts. But clearly a number of issues are raised, among them duplication (does there need to be another public commitment to eradicate child labour?), contradiction (should emphasis be put on prevention or remediation?) and displaced accountability (who is responsible if children continued to be abused through labour?). For instance, a review by IPEC into the long-term effectiveness of interventions in the Philippines found that as anti-child labour programmes expired, many of the beneficiaries drifted from education back into hazardous work.⁶⁰ They also noted that policies around child rights and child protection had to be addressed too, the challenge being to “strengthen coherence between [a] programmatic approach and policy approach.”⁶¹

Returning to Boer's question of why child labour persists, another possible answer is that it suits many employers to continue to use unpaid and under-paid child labour. The claims made by companies and contractors to recognise child labour as a problem and support its eradication might thus be disingenuous. This much is suggested by the DOL's Office of Trade and Labor Affairs (OTLA) in its report on the Dominican Republic:

Employers asserted in meetings with the OTLA that they prohibit child labor and that child labor does not exist on their plantations. Many interviewed workers corroborated that this is

⁵⁷ Technical Cooperation Project Summary: Project to Combat Exploitative Child Labor in Sugarcane Growing Areas of the Philippines, U.S. DEP'T OF LABOR (2011), http://www.dol.gov/ilab/projects/summaries/Philippines_ABK_PhaseIII.pdf.

⁵⁸ *Child Labour Monitoring System in Bukidnon*, INT'L LABOUR ORG., http://www.ilo.org/manila/whatwedo/eventsandmeetings/WCMS_153092/lang--en/index.htm (last visited Oct. 18, 2014).

⁵⁹ *Philippines: Agreement Signed to Reduce Child Labour in Sugar*, SUGAR ONLINE.COM (Nov. 12, 2013), http://www.sugaronline.com/home/website_contents/view/1224703.

⁶⁰ INT'L PROGRAMME ON THE ELIMINATION OF CHILD LABOR, INT'L LABOUR ORG., PHILIPPINES TRACER STUDY: MEASURING LONGER TERM IMPACT ON CHILDREN AND FAMILIES OF INTERVENTIONS AGAINST CHILD LABOUR 33-36 (2012), <http://www.ilo.org/ipcecinfo/product/download.do?type=document&id=24415>.

⁶¹ *Id.* at 56-57.

the official policy at the major sugar companies. However, many workers who spoke with the OTLA also reported that they observed children performing tasks in sugarcane that are prohibited by Labor Resolution 52/2004 for children under 18, such as cutting or collecting cane, planting seeds, or clearing fields.⁶²

Likewise, in Guatemala the International Labor Rights Fund reported on the way in which child labour is actively hidden through payment practices which only recognise adult labourers:

While the major refineries publicize their policy of not employing women or children in the harvest of cane, women and children do work in the Guatemalan sugar cane harvest. . . . [T]he practice, particularly in fields not directly owned by the refineries, is to employ and pay only the male head of the family, but to allow the entire family to assist in the cutting and collection of sugar cane.⁶³

Finally, in India, when children working in the cane-belt fall ill or get injured, they are more likely to receive treatment from private medical facilities or rural pharmaceutical shops than in government hospitals or clinics.⁶⁴ While the sugar mill may provide some healthcare services and the labour contractor some credit services in this regard, neither provides it as a right.⁶⁵ The point here is that they acknowledge no formal responsibility for children harmed in the process of growing sugarcane, only discretionary assistance.⁶⁶

To tackle seemingly entrenched business practices, the buyers of products derived from sugarcane are increasingly taking — or are being asked to take — greater responsibility for child labour. Following advocacy work by the Brazilian Abrinq Foundation,⁶⁷ in 1999 the state-owned oil company Petrobrás and Royal Dutch Shell introduced clauses into their contracts with sugarcane ethanol suppliers prohibiting the use of child labour, although to our knowledge, no direct monitoring procedures were established.⁶⁸

⁶² OFFICE OF TRADE AND LABOR AFFAIRS, U.S. DEP'T OF LABOR, PUBLIC REPORT OF REVIEW OF U.S. SUBMISSION 2011-03 (DOMINICAN REPUBLIC) 14–15 (Sept. 27, 2013), <http://www.dol.gov/ilab/reports/pdf/20130926DR.pdf>.

⁶³ COVERCO & Int'l Labor Rights Fund, *supra* note 44, at 19–20. *See, e.g.*, discussion *supra* Part II.C.

⁶⁴ Nandy, *supra* note 37, at 52–57.

⁶⁵ *Id.*

⁶⁶ *Id.* at 57.

⁶⁷ *See* discussion *infra* Part IV.C.

⁶⁸ *Good Practice Note: Addressing Child Labor in the Workplace and Supply Chain*,

In respect to sugar, in 2002 the Coca-Cola Company introduced a set of Supplier Guiding Principles for its direct suppliers, which included a prohibition on child labour as defined by national law.⁶⁹ These principles would be checked by a third-party auditor appointed by the Coca-Cola Company, although suppliers could use audits undertaken for other reasons to demonstrate their compliance.⁷⁰ If a supplier failed to uphold any aspect of these principles, the supplier was then expected to implement corrective actions or face contract termination.⁷¹ A similar policy has since been adopted by PepsiCo in its Supplier Code of Conduct.⁷² For its part, Mars's Supplier Code of Conduct is monitored via a combination of risk assessment, self-assessment and third-party auditors.⁷³ Notably, while Mars uses this system to monitor sugar and other ingredients in its supply-chains, for palm oil and cocoa it has committed to *only* use supplies certified by *independent* certification systems including the Roundtable on Sustainable Palm Oil and UTZ, the Rainforest Alliance and Fairtrade International.⁷⁴ Finally, the members of AIM-PROGRESS — a forum of consumer goods manufacturers that promotes responsible sourcing practices and includes the Coca-Cola Company, PepsiCo and Mars — are working toward mutual recognition of one another's auditing systems, with child labour specified as a key area that must be covered in supplier audits.⁷⁵

While buyers' efforts to share responsibility may help build pressure and provide additional resources to the eradication of child labour, they also

INT'L FIN. CORP. 11 (June 2002), <http://www.ifc.org/wps/wcm/connect/0c566200488555cbb834fa6a6515bb18/ChildLabor.pdf?MOD=AJPERES&CACHEID=0c566200488555cbb834fa6a6515bb18>. See also Rosa Maria Fischer & Andres P. Falconer, Universidade de São Paulo, *Social Labelling against Child Labour: Brazilian Experiences* 64-65 (ILO/IPEC Working Paper, 2000), available at <http://www.ilo.org/public/english/standards/ipecc/publ/policy/papers/brasil/report.pdf>.

⁶⁹ See *Workplace Rights Implementation Guide: Supplier Guiding Principles*, COCA-COLA CO. 5 (Feb. 1, 2012), <http://assets.coca-colacompany.com/55/b5/5dcc88f044faa9e56bf0d0f72a17/SupplierSGPImplementationGuideENGLISH.pdf>.

⁷⁰ *Id.* at 9.

⁷¹ *Transparency in Supply Chains: Addressing Forced Labor and Human Trafficking*, COCA-COLA CO., <http://www.coca-colacompany.com/our-company/transparency-in-supply-chains-addressing-forced-labor-human-trafficking> (last visited Sept. 13, 2014).

⁷² PEPSICO, GRI REPORT 70-71 (2013), http://www.pepsico.com/Assets/Download/PepsiCo_2013_GRI.pdf.

⁷³ *Supplier Relationships*, MARS, <http://www.mars.com/global/about-mars/mars-pia/our-supply-chain/supplier-relationships.aspx> (last visited Sept. 13, 2014).

⁷⁴ See *Palm Oil*, MARS, <http://www.mars.com/global/about-mars/mars-pia/our-supply-chain/palm-oil.aspx> (last visited Oct. 18, 2014), for more information about Mars' use of palm oil. See *Cocoa*, MARS, <http://www.mars.com/global/about-mars/mars-pia/our-supply-chain/cocoa.aspx> (last visited Oct. 18, 2014), for more information about Mars' use of cocoa.

⁷⁵ *AIM-PROGRESS Mutual Recognition*, AIM-PROGRESS, <http://www.aim-progress.com/files/22/aim-progress-mutual-recognition-framework-sept-2014.pdf> (last visited Oct. 1, 2014).

add another layer of complexity to the issues raised above regarding duplication, contradiction and accountability — a point we return to later in the paper.⁷⁶ Moreover, since their supplier principles and codes of conduct apply to only first-tier suppliers (e.g. sugar mills), and the number of audits and compliance levels are confidential, there is good reason to question the extent to which demands made by buyers way down the supply-chain are adhered to on the farms from which they ultimately source their sugarcane.

C. Inadequate Monitoring

A constant refrain in reports on child labour is that governments cannot adequately enforce legislation because of inadequate monitoring capacity. For instance, a study in Bolivia found that in both Santa Cruz and Bermejo districts there was only one person working for the governmental Commission for Progressive Eradication of Child Labour programme, each expected to attend over one thousand migrant camps and without a vehicle of their own.⁷⁷ Conversely, in countries where some of the greatest gains in child labour reduction have been made, investment in monitoring has been vital. In Brazil, the Labour Ministry's Mobile Inspection Units, which included child labour within its remit, were funded to provide annual reports that served as important resources in subsequent child labour and education policy-making.⁷⁸

Yet it is not always the government that undertakes monitoring functions. In El Salvador, UL, a multinational company involved in health and safety management, has been contracted to train the national Sugar Association in monitoring child labour as well as conduct its own site visits and provide data for use in the Sugar Association's stakeholder- and board-level meetings.⁷⁹ Meanwhile, in the case of the Philippines's monitoring programme mentioned previously in Part III.B, it is the industry stakeholders that are taking the lead given the lack of resources within the Department of Labor and Employment.⁸⁰ An important issue to bear in mind, of course, is the independence of labour inspectors, especially, but not exclusively, where their wages are in some way linked to the children's employers.

⁷⁶ See discussion *infra* Part IV.

⁷⁷ BAAS, *supra* note 28, at 40.

⁷⁸ INT'L LABOUR OFFICE., GLOBAL REPORT UNDER THE FOLLOW-UP TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK: ACCELERATING ACTION AGAINST CHILD LABOUR 22 (2010), available at http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_126752.pdf.

⁷⁹ *The Sugar Association of El Salvador Case Study*, UL, http://site.ul.com/global/documents/verificationservices/businesssegments/RS/MC202_AAES_CaseStudy_F_Web.pdf (last visited Oct. 18, 2013).

⁸⁰ *Child Labour Monitoring System in Bukidnon*, *supra* note 58.

Aside from the issues of capacity and independence, there is also the question of what should be monitored. As we noted earlier, adult work can often be harmful for children,⁸¹ and in this respect some have pointed to the need for monitoring the conditions pertaining to non-child workers as well. In a study on El Salvador, IPEC itself has argued that “[t]he prohibition of child labour is inseparable from other core labour rights that are not fully realized.”⁸² It goes on to note that:

Respecting adult workers’ rights to decent working conditions and pay will allow them to better provide for their families, reducing the pressure on the children to work. The rights to freedom of association and collective bargaining are also crucial to eliminating child labour. Through achieving better working conditions and pay for workers, unions decrease the need for working families to also employ their children and increase their ability to cover schooling costs. They can also play a direct role in the elimination of child labour, particularly by monitoring work places for child labour and other core labour rights violations, including the child labour issue in collective bargaining agreements, and increasing awareness.⁸³

D. Properly Identifying Children and their Best Interests

The final issue we raise relates to the proper identification of children in the workforce, and, much more subjectively, the best interests of that child. For various reasons, children may not give their correct age when asked. To verify age, child labour inspectors thus draw on supporting evidence: typically a combination of documentary evidence — such as birth certificates, religious or other local records, and passports or state identification cards — and interviews with trusted informants. This is made difficult in situations where employers do not require such documents and where they may not even exist in the first place. Such is the case in the Dominican Republic where many young people working in sugarcane lack citizenship, most likely because they are the children of illegal immigrants from Haiti (who themselves might have been contracted by intermediaries for work in the sugarcane fields).⁸⁴

⁸¹ See discussion *supra* Part II.B.

⁸² IPEC, *supra* note 50, at 3.

⁸³ *Id.*

⁸⁴ See U.S. DEP’T OF LABOR, *supra* note 62, at 16–17. The OTLA reports that in 2011 the “Dominican Supreme Court upheld [a decision], which instructs Civil Registry officials to deny Dominican birth certificates to children of parents who lack resident status, including those who are ‘in transit.’” *Id.* at 16. As a result, those born on Dominican soil to parents without resident status are not entitled to Dominican birth certificates. Furthermore, many such

A more philosophical challenge is ascertaining what is in the child's best interests. Some academics have argued that the idea that children's development is harmed by work is confounded by children's own testaments of their experience. For example, Martin Woodhead avers that:

For children, work is an activity into which they have been initiated by parents, employers or peers, and over which they have varying levels of control. Some have been coerced, but the majority have not — not at least any more than children throughout the world who are required to comply with adult expectations over many areas of their lives, notably schooling. For the most part, they see their work as an inevitable and necessary part of growing up, as a contribution to their family and their future prospects. Work is situated within the context of cultural norms and expectations in which children's contribution is valued by their parents even though it may be low status within the wider society. . . . Few of these children would see exclusion from the workforce as a solution to their problems.⁸⁵

Evidence of this can be found in Bolivia. Here, where latest figures report that an estimated 746,000 child workers out of a population of nearly 11 million were engaged in child labour, children have resisted reforms to raise the age at which they could be legally employed to fourteen.⁸⁶ According to *Al Jazeera*, some children were even beaten by police when they marched on the government palace in the capital, La Paz, to demonstrate in front of the government.⁸⁷ In 2014, the Bolivian government effectively legalised child labour by specifying that the minimum age of employment would be ten years old for self-employed work and twelve years old for contract work, albeit on the condition of parental consent and compulsory school attendance.⁸⁸

Out of this perspective, then, comes the question of what should happen to children labouring in sugarcane agriculture? A note of caution comes

children also cannot obtain birth certificates from their parents' countries of origin or will face virtually insurmountable obstacles to doing so, particularly if their parents are no longer citizens of other countries or have lost ties with their countries of origin as a result of their long-established presence in the Dominican Republic.

⁸⁵ Martin Woodhead, *Combatting Child Labour: Listen to What the Children Say*, 6 CHILDHOOD 27, 46 (1999).

⁸⁶ *ILO's Concerns Regarding New Law in Bolivia Dealing with Child Labour*, INT'L LABOUR ORG. (Jul. 28, 2014), http://www.ilo.org/ipec/news/WCMS_250366/lang-en/index.htm [hereinafter *ILO's Concerns*].

⁸⁷ Daniel Schweimler, *Bolivia Child Workers Reject Labour Proposal*, AL JAZEERA (Jan. 28, 2014, 6:32 PM), <http://blogs.aljazeera.com/blog/americas/bolivia-child-workers-reject-labour-proposal>.

⁸⁸ *ILO's Concerns*, *supra* note 86.

from research in the Philippines. Some children working in sugarcane agriculture used their earnings to save for educational expenses — sometimes their own, but more often those of their sibling's.⁸⁹ Eradicating all forms of child labour might have some immediate adverse consequences for children's educational attainment and life chances, which need to be treated with sensitivity.

In Brazil, the *Programa de Erradicao do Trabalho Infantil* (PETI) attempted to get children into mainstream education and did so through two public policy interventions. The first created the *Jornada Ampliada*, an after-school programme to complement regular school hours.⁹⁰ The second provided a subsidy called a *bolsa* to poor households whose children attended the after-school programme at least 80% of the time.⁹¹ The authors of a World Bank study into this twin-track approach concluded that to accelerate the reduction of child labour, such income transfers were necessary to ensure that children would not face barriers to enter school once they were excluded from the workforce.⁹²

Alternatively, in the absence of government welfare assistance, efforts can be made to provide children who are above the minimum working age with safe, alternative sources of income in combination with schooling. In El Salvador, one small project required former child sugarcane workers to attend school and, as part of their curriculum, an agricultural technician taught the children how to plant vegetables and manage a project-funded greenhouse and orchard.⁹³

Finally, where government schools are absent, substitutes may be provided. Again in El Salvador, the ILO reported that “non-formal education centres” were set up to provide complementary educational and recreational activities for children who were withdrawn from work.⁹⁴ They also served as part of the monitoring network aimed at preventing the future recruitment of children into the fields.⁹⁵ These centres were supported in part by donations from the charitable arm of the national Sugar Association, and have since been formalised by the Ministry of Education and incorporated into the National Education Programme.⁹⁶ Similarly, in the Philippines and as part of

⁸⁹ DE BOER, *supra* note 4, at 10.

⁹⁰ YOON-TIEN YAP ET AL., WORLD BANK, LIMITING CHILD LABOR THROUGH BEHAVIOUR-BASED INCOME TRANSFERS: AN EXPERIMENTAL EVALUATION OF THE PETI PROGRAM IN RURAL BRAZIL 18 (June 18, 2002), available at <http://www.iadb.org/res/publications/pubfiles/pubs-223.pdf>.

⁹¹ *Id.*

⁹² *Id.* at 19.

⁹³ IPEC, *supra* note 50, at 2.

⁹⁴ *Id.* at 1.

⁹⁵ *Id.*

⁹⁶ *Id.*

a multi-agency project also involving IPEC, the Coca-Cola Foundation contributed toward the construction of schools in areas where the incidence of child labour was high.⁹⁷

Regardless of which options are chosen — whether they are focused on the prevention of child labour or on the provision of some developmental alternative — recalling Martin Woodhead’s insight the most important thing to ensure is that the interventions are tailored to the needs of the children and that both the children and their parents feel motivated to pursue them. As Laura Baas noted after her fieldwork in Bolivia, those projects that informed families of their rights and the laws prohibiting child labour, but which treated the parents and children as passive recipients, were ultimately ineffective.⁹⁸ As Baas put it, they involved “people just sitting there and listening [and they] tend to soon forget what these workshops were about.”⁹⁹

IV. CERTIFICATION AND CHILD LABOUR: COMPARING EXISTING SYSTEMS IN THE SUGARCANE INDUSTRY

This section highlights the different ways that certification systems within the sugarcane industry can operate in respect to child labour. It is not an exhaustive list. For the sake of space we have excluded, among others, the new sugar standard offered by the major coffee-certifier Rainforest Alliance/Sustainable Agriculture Network (SAN),¹⁰⁰ and the public-private *Triple Sello* standard developed for the Santa Cruz province of Bolivia.¹⁰¹ For the three systems we do consider, we give attention both to the standard against which farms are certified (i.e. the set of regulatory indicators and criteria which define permissible practice) and the way this standard is upheld (i.e. the auditing practices and certification protocols that provide

⁹⁷ *Our Company: Addressing Global Issues*, COCA-COLA CO., <http://www.coca-colacompany.com/our-company/addressing-global-issues> (last visited Sept. 13, 2014).

⁹⁸ BAAS, *supra* note 28, at 35.

⁹⁹ *Id.*

¹⁰⁰ Rainforest Alliance/SAN certified its first sugarcane producers in 2011. In regards to child labour it makes some interesting demands when compared to other standards. These include the guarantees of educational access for children that live on the farm and the reduction of work by minors in agricultural activity. How this applies to migrant labour is unclear, however. See generally Sustainable Agriculture Network, *Sustainable Agriculture Standard* (July 2010), http://www.san.ag/biblioteca/docs/SAN-S-1-1.2_Sustainable_Agriculture_Standard.pdf.

¹⁰¹ The Triple Sello standard requires no child labour, no discrimination, and no bonded labour. It was developed by the Instituto Boliviano de Comercio Exterior in combination with private sector and labour and civil society organizations in Bolivia. It has since been supported by Solidaridad, a member of Bonsucro. See *Towards a More Sustainable Sugar Cane Production in Bolivia*, SOLIDARIDAD (Mar. 21, 2012), <http://www.solidaridadnetwork.org/news/towards-a-more-sustainable-sugar-cane-production-in-bolivia>.

credibility). This latter aspect is what differentiates certification systems from corporate codes of conduct¹⁰² and social responsibility statements,¹⁰³ both of which lack external validation and so are often cast by critics as no more than rhetoric.¹⁰⁴

A. Bonsucro (formerly Better Sugarcane Initiative)

An important claim made for social audits conducted by independent certification systems is that this independence allows for higher standards, more rigorous audits and greater credibility in the public sphere. In Bonsucro's case, this claim rests on its multi-stakeholder membership and its use of third-party auditors.¹⁰⁵ The membership is comprised of sugarcane growers, millers, traders, brand-name manufacturers and NGOs.¹⁰⁶ Having organisations representing different interest groups means that the standard against which producers are certified is attuned to a broader set of demands than if it were approved by just one group alone. Likewise, the use of third-party auditors rather than first-party auditors (where an organisation audits itself) or second-party auditors (where an association of those organisations does the auditing) means that there is a greater degree of autonomy during inspection. Moreover, unlike some third-party audit regimes where the results are kept opaque, in Bonsucro's case there is clear guidance as to what a producer has to do to be certified, and, if this is obtained, the decision is made public.

The relevant requirements in the Bonsucro standard are that all relevant national laws must be followed and all workers based on the premises of the sugar mill and sugarcane supply-base, including those employed by

¹⁰² See *Code of Conduct and Business Ethics*, ILOVO SUGAR LTD. 3-4 <http://www.illovosugar.co.za/UserContent/Documents/Code-of-Conduct-Bus-Ethics-Feb-2014.pdf> (last visited Oct. 22, 2014) (discussing the prohibition on child labour in its own operations and those of its suppliers and contractors in the biggest sugar producer in Southern Africa, Illovo Sugar Ltd.).

¹⁰³ See *Corporate Social Responsibility*, AM. SUGAR REF., INC., <http://www.asr-group.com/about-us/csr/> (last visited Sept. 13, 2014), for the Corporate Social Responsibility statement by American Sugar Refining, a company that operates nine refineries in five different countries including the U.S. and requires all of its suppliers to certify that they comply with all laws regarding child labour.

¹⁰⁴ See Joe Zacune, *War on Want, Coca-Cola: The Alternative Report 1* (2006), <http://www.waronwant.org/attachments/Coca-Cola%20-%20The%20Alternative%20Report.pdf>, for a discussion on an alleged mismatch between rhetoric and reality around child protection.

¹⁰⁵ *A Guide to Bonsucro*, BONSCURO 4, 9, 12 (2013), http://bonsucro.com/site/wp-content/uploads/2013/02/ENG_WEB_A-Guide-to-Bonsucro_1.pdf.

¹⁰⁶ *Members*, BONSCURO, <http://bonsucro.com/site/members/> (last visited Oct. 19, 2014).

contractors,¹⁰⁷ must comply with ILO Conventions Nos. 138 and 182 governing child labour.¹⁰⁸ As a result, wherever in the world the cane is being produced, the Bonsucro standard states that for all paid work there is a minimum age of eighteen for hazardous work and fifteen for non-hazardous work.¹⁰⁹ Work on family small holdings is permissible for children as young as thirteen, but only under adult supervision and when work does not interfere with the child's schooling and does not put that child's health at risk.¹¹⁰

To ensure there is thorough enquiry into the possible existence of child labour, auditors are instructed to first verify the system used by employers for checking workers' ages.¹¹¹ The employer's system should be systematic and draw on documentary evidence such as identification cards, with checks done by the auditor to make sure that employers are aware of how to detect fraudulent documents and have kept accurate records of hours worked.¹¹² In addition, if the sugar mill operates in an area where child labour exists, then the mill is also required to have a system in place wherein child labour can be reported for farms that lie outside the scope of certification¹¹³ (Bonsucro does not require mills to have all of their suppliers certified; if less than 100% are included in the scope, then only a respective percentage of the mill's production is considered as Bonsucro certified).¹¹⁴

If child labour is detected, the auditor is obligated to report this immediately to both the employer and Bonsucro.¹¹⁵ Since the absence of child labour is a core indicator in the Bonsucro standard, it also means that the reported sugar mill and/or farm cannot be certified. The signalling effect of failed certification is the disciplinary mechanism that Bonsucro wields; it clearly sends a negative message to buyers if one of their suppliers is a proven user of child labour. In cases where certification functions as a *de*

¹⁰⁷ The system for checking farms that supply cane to the sugar mill but lie outside the scope of certification is different. Instead of using detailed documentary analysis and interviews on-site, the system relies on evidence provided by the sugar mill that these un-certified suppliers still at least comply with core labour standards including on child labour.

¹⁰⁸ *Bonsucro Production Standard Version 4.0*, BONSCURO 17, 37 (2014), <http://bonsucro.com/site/wp-content/uploads/2013/02/Bonsucro-Production-Standard-v4.pdf>.

¹⁰⁹ This can be lowered to 14 in certain developing countries as per ILO Convention No. 138 art. 7.

¹¹⁰ This can be lowered to 12 in certain developing countries as per ILO Convention No. 138 art. 7.

¹¹¹ *Bonsucro Guidance for Production Standard Version 4.0*, BONSCURO 25 (2014), <http://bonsucro.com/site/wp-content/uploads/2013/02/Guidance-for-the-Bonsucro-Production-Standard-v4.0.pdf>.

¹¹² *Id.* at 25.

¹¹³ *Id.* at 25.

¹¹⁴ *Id.* at 17.

¹¹⁵ *Id.*

facto market access requirement — as in the EU biofuels market — a powerful financial incentive is added to this mechanism.¹¹⁶ Certification is *needed* to sell sugarcane in those markets.

In practice, however, because of the communications between the sugarcane miller seeking certification and Bonsucro Secretariat, it is more common for the mill to try and address child labour concerns ahead of any audit rather than undergo an inspection knowing they will fail. By engaging with producers for a long period prior to certification, both directly via pilot audits and indirectly via their member's projects, the idea is that Bonsucro can help effect change in the run-up to an audit rather than enforce change through it. For example, the NGO and Bonsucro member Solidaridad has recently worked to raise awareness about child labour in the Bolivian sugar sector and train farmers and workers on good labour practices, with a view to ultimately getting its industry-partners in the country certified by Bonsucro.¹¹⁷ In addition, by encouraging mills to better map their supply-chains and improve their control systems, the preparation for certification can itself improve legal compliance and help identify risk. This has been reported by mills themselves in their annual reports to the Bonsucro Secretariat.¹¹⁸

B. Fairtrade International

Like Bonsucro, Fairtrade International (also known as Fairtrade Labelling Organizations International or FLO) has a multi-stakeholder membership and uses third-party auditors in the form of a spin-out organisation, FLO-CERT, which inspects and certifies producers as well as audits traders in the supply-chain.¹¹⁹ However, since it is explicitly targeted toward small-scale farmers, the membership is more heavily weighted toward farmer representatives and NGOs than Bonsucro. Moreover, it also addresses the terms of trade of sugarcane production via a monetary premium that is ring-fenced for community investments.¹²⁰ This means that

¹¹⁶ See Elizabeth Fortin & Ben Richardson, *Certification Schemes and the Governance of Land: Enforcing Standards or Enabling Scrutiny?*, 10 GLOBALIZATIONS 141 (2013), for a discussion on the role of roundtable certification schemes in the EU biofuels market, some of which prohibit child labour, but not all.

¹¹⁷ *Towards a More Sustainable Sugar Cane Production in Bolivia*, *supra* note 101.

¹¹⁸ *Primary Outcome Report 2013*, BONSCURO 14 (Jan. 15, 2014), <http://bonsucro.com/site/wp-content/uploads/2013/11/Bonsucro-Preliminary-Outcome-Report-20131.pdf>.

¹¹⁹ Fairtrade International is an alliance of twenty-one national labelling schemes. Fair Trade USA (formerly TransFair) split from Fairtrade International in 2011 and launched a new set of standards. This section covers only the Fairtrade International certification system.

¹²⁰ Unlike other commodities certified by Fairtrade International, there is no minimum price guarantee for sugar producers. This was a decision taken by producers themselves. *About Sugar*, FAIRTRADE INT'L (2014), <http://www.fairtrade.org.uk/en/farmers-and-workers/sugar/>

a financial incentive for certification is built into the system itself. Finally, because it is a group of farmers that are certified under the Fairtrade system — as opposed to Bonsucro which certifies individual sugar mills — there is a requirement to establish a producer association to which individual farmers belong and that oversees implementation of the standard and administers the premium.¹²¹

The child labour criterion in the Fairtrade standard is similar to that in the Bonsucro standard. Farmers in the producer association must abide by a minimum age of eighteen for hazardous work and fifteen for non-hazardous work, or higher ages if required by law.¹²² Children younger than fifteen are permitted to help on the farm, but only after school or during holidays and only under safe conditions and the supervision of parents or guardians.¹²³ Again, this is a core requirement. Where Fairtrade differs from Bonsucro in terms of upholding its standard is in its more formalised oversight of implementation.

First, where the existence of child labour is likely, producer associations are required to undertake actions that tackle the root causes and report these actions in their Fairtrade Development Plan.¹²⁴ For instance, if there is no schooling in the area, effort should be made to encourage relevant authorities to provide access to education, as has happened in Malawi.¹²⁵ Second, there are graduated expectations. If child labour has been used in the past, after the first year of certification producer associations are asked to ensure that children do not enter even worse forms of labour.¹²⁶ After the third year, they are required to develop their own procedures to prevent child labour from being used again in the future.¹²⁷ Third, Liaison Officers work closely with producers to help them understand the implications of the Fairtrade standard. When guidance is needed on the issue of eradication and remediation of child labour, they refer the producers to technical teams in Fairtrade and other organisations specialising in child protection.¹²⁸

about-sugar.

¹²¹ *Fairtrade Standard for Small Producer Organizations*, FAIRTRADE INT'L 25-26 (2014), http://www.fairtrade.net/fileadmin/user_upload/content/2009/standards/documents/2014-07-16_SPO_EN.pdf.

¹²² *Id.* at 25.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Henry Matenda – KGCA, Malawi*, FAIRTRADE INT'L (2014), <http://www.fairtrade.org.uk/en/farmers-and-workers/sugar/henry-matenda>.

¹²⁶ *Id.* at 25-26.

¹²⁷ *Id.*

¹²⁸ *Fairtrade Labelling Child Labour Position Paper*, FAIRTRADE INT'L 9 (2009), http://www.fairtrade.net/fileadmin/user_upload/content/2009/about_fairtrade/Child_Labour_position_paper_FLO.pdf.

Thus, Fairtrade does a lot more than just send in auditors to the field to check for child labour. In 2014 in Paraguay, Fairtrade hosted a child labour discussion with sugarcane producers and held focus groups with school-going children, followed by training aimed at Board members and the technical representatives of the sugar cooperative seeking certification.¹²⁹ This training involved ways of establishing the self-governing system, deciding on the roles and responsibilities of the Child Labour Committee and identifying risk areas for the phased implementation.¹³⁰ However, at the same time an important litmus test for Fairtrade was happening in Belize, the world's biggest supplier of Fairtrade sugar. Five years into its certified status, Fairtrade auditors found child labour being used and so suspended the Belize Sugar Cane Farmers Association (BSCFA).¹³¹ The BSCFA quickly introduced corrective measures, hoping that the suspension would be lifted, although they acknowledged that "we cannot guarantee 100% that there is no child labour."¹³²

C. *The Programa Empresa Amiga da Criança (PEAC)*

PEAC, which translates as the Child Friendly Company Programme, was created in 1995 by the Abrinq Foundation, a Brazilian foundation that runs a variety of programmes designed to support children's rights.¹³³ As with Fairtrade, PEAC uses on-product labelling to communicate to consumers (Bonsucro being more of a business-to-business system where mainly off-product claims are made about its use, i.e. on company websites). However, in contrast to Fairtrade, and indeed Bonsucro, PEAC certifies companies rather than products.¹³⁴ This changes the nature of the certification system, which is less about monitoring at the farm level and more about policy change at the buyer level — in our case, for sugar mills and ethanol distilleries.

The label is awarded to companies that voluntarily comply with ten standards regarding children's rights.¹³⁵ This includes the requirements not

¹²⁹ Caroline Hickson, *Fairtrade Farmers Gear Up to Address Child Labour*, FAIRTRADE INT'L (Jun. 11, 2014), <http://www.fairtrade.net/single-view+M5f5ce14e33f.html>.

¹³⁰ *Id.*

¹³¹ *BSCFA Receives Training in Child Labor*, CTV3 NEWS (Oct. 5, 2014, 4:37 PM), http://www.ctv3belizenews.com/index.php?option=com_content&view=article&id=5333:bscf-a-receives-training-in-child-labor-&catid=43:economy&Itemid=111.

¹³² *Id.*

¹³³ FUNDAÇÃO ABRINQ, <http://internacional.fundabrinq.org.br/index.php/en/> (last visited Oct. 18, 2014).

¹³⁴ *Empresa Amiga da Criança Program*, FUNDAÇÃO ABRINQ, <http://internacional.fundabrinq.org.br/index.php/en/programs-and-projects/protection/empresa-amiga-da-crianca-program> (last visited Oct. 18, 2014).

¹³⁵ Andres P. Falconer, *Child Labor Labeling in Brazil*, in *THE WORLD OF CHILD LABOR:*

to employ children under the age of sixteen (except as apprentices who must be over fourteen) and not to employ any children in dangerous activities (the precise definition of which could not be discerned by the authors).¹³⁶ To address issues at the farm level, companies are required to make it explicit to suppliers that commercial relations may be affected if they are found to be using child labour.¹³⁷ In terms of upholding the standard, written commitments from the company must be submitted along with a declaration by the local labour authority that the company has a clean record.¹³⁸ Approval is decided by a committee and the label awarded for a period of one year.¹³⁹ The label may be removed if child labour is identified by a credible source.¹⁴⁰ PEAC also requires companies to run projects for the development of children, to offer child care to employees, and to ensure that employees enrol their underage children in school.¹⁴¹

Another difference between the approach of PEAC and that of Bonsucro and Fairtrade International is the importance that the former has attached to advocacy *around child labour*.¹⁴² The Abrinq Foundation has lobbied politicians in the run-up to presidential campaigns to take a stand on child labour and has explicitly targeted particular sectors known to be using child labour, including the sugarcane sector.¹⁴³ It has also tied its label to “signature pacts,” which involve public declarations joined by governments at multiple levels and other national and even international actors.¹⁴⁴ The *Pacto dos Bandeirantes* for the eradication of child labour in the sugar-ethanol industry was signed in São Paulo, the centre of the Brazilian

AN HISTORICAL AND REGIONAL SURVEY 354, 354–56 (Hugh D. Hindman ed., 2009).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Fischer & Falconer, *supra* note 68, at 36. It is worth noting that to remain “business friendly” the original idea that would have required companies to also be approved by labour unions was dropped for being excessively restrictive.

¹⁴⁰ *Id.* at 37–38. As with the definition of “dangerous work” the precise definition of a “credible source” could not be discerned. The cynical view might be that this ambiguity is purposeful, so as to give the Abrinq Foundation the option to dismiss challenges to its decision to award a particular company the label on the grounds that the child labour in question is not sufficiently dangerous or the complainant not sufficiently credible.

¹⁴¹ Falconer, *supra* note 135, at 355.

¹⁴² See Janet Hilowitz, *Labelling Child Labour Products*, INT’L LABOUR ORG, <http://www.ilo.org/public/english/standards/ipecc/publ/labrep/part2.htm> (last visited Oct. 23, 2014) for a discussion about the approach of PEAC (also referred to as “Abrinq Labelling Initiative”). Fairtrade also engages in advocacy work, but less so around child labour as a specific issue.

¹⁴³ Fischer & Falconer, *supra* note 68, at 64.

¹⁴⁴ *Id.* at 36.

sugarcane industry, in 1996.¹⁴⁵ By 2007, it had awarded seventy-six companies in the sugarcane industry with the Child Friendly Company label.¹⁴⁶

V. CONCLUSION: A BITTER HARVEST, A SWEETER FUTURE?

The previous section outlined the ways in which certification systems interact with stakeholders in the sugarcane industry around child labour issues. This went beyond just sending in teams of auditors to check if a set of standards are being met and involved things like political advocacy, practitioner training, industry awareness-raising and supply-chain management. This more expansive set of functions has been acknowledged by the DOL, which in its toolkit for reducing child labour and forced labour, recommends that “responsible business” use established certification systems as one way to engage stakeholders in the development of “social compliance programs”.¹⁴⁷ It also chimes with recent research into the progressive potential of certification and auditing practices. For example, in their paper on labour standards in the Brazilian sugarcane industry, Coslovsky and Locke show how external auditors formed coalitions with functional middle managers to make the case within the milling company for investment in new processes and improvements in working conditions.¹⁴⁸

In this concluding section, and recalling the argument made in Part III.B about the proliferation and potential incoherence of initiatives designed to tackle child labour, we consider how certification systems might be integrated into the broader landscape of child labour governance. To be clear, these are not recommendations made on behalf of Bonsucro: that is the job of the organisation’s membership. Rather, what we offer here are our own personal reflections on the potential for improvement in the world’s cane-growing areas, drawn from our reading of the literature and our experience working with different stakeholders involved in global sugar and ethanol supply-chains.

This is an important endeavour, since certification is not a magic bullet solution for child labour abuse. For starters, voluntary certification systems addressing such human rights issues do not typically have widespread

¹⁴⁵ *Id.* at 36 n.31.

¹⁴⁶ Joel Orlando Bevilacqua Marin, *The Sugarcane Alcohol Industry Efforts in Combatting Child Exploitation in Brazil*, in *Sugar Cane and Child Labour: Reality and Perspectives* 36, 36 (2011), http://www.sucre-ethique.org/IMG/pdf/child_labour_07-2011_2_.pdf.

¹⁴⁷ *Certification Programs*, U.S. DEP’T OF LABOR, http://www.dol.gov/ilab/child-forced-labor/step1/step1_6.htm (last visited Oct. 18, 2014).

¹⁴⁸ Salo V. Coslovsky & Richard Locke, *Parallel Paths to Enforcement: Private Compliance, Public Regulation, and Labor Standards in the Brazilian Sugar Sector*, 41 *POL. & SOC’Y* 497, 509 (2013).

market coverage. In 2012, just 2.7% of global cane production was compliant with the big four international certification standards.¹⁴⁹ True, this is likely to increase. Since that date, the Coca-Cola Company¹⁵⁰ and PepsiCo¹⁵¹ made commitments to source 100% of their sugar from certified sources by 2020, while Bonsucro has an organisational target to certify 20% of global sugarcane production by 2017.¹⁵² However, many areas in which sugarcane is being produced will still evade direct regulation by certification. Moreover, voluntary schemes tend not to attract the kind of producers that utilise child labour extensively and remain intransigent to its eradication.

All this said, we believe that voluntary certification schemes *are* capable of sending powerful signals to industry stakeholders that using child labour is increasingly untenable and better scrutinising actual agricultural employment practices on the ground. These functions are important ones but should be advanced as supplements to, rather than substitutes for, other private and public governance mechanisms.

A. Common and Comprehensive Standards

Much has been written on the problem of standards proliferation and the challenges posed for companies where they have to meet multiple, and sometimes contradictory, audit assessments.¹⁵³ The implicit argument here is that for harmonisation across standards and for practices of mutual recognition to be advanced, once one audit verifies the absence of child labour then all other systems can accept that finding. So far, efforts in this direction have been largely contained within categories of certification systems rather than between them. For example, the AIM-PROGRESS forum has been concerned with co-ordinating those systems managed by large multinational corporations which audit suppliers in their own supply-chains. Meanwhile, the ISEAL Alliance has been concerned with those systems created by coalitions of NGOs (sometimes in collaboration with

¹⁴⁹ See JASON POTTS ET AL., INT'L INST. FOR SUSTAINABLE DEV., THE STATE OF SUSTAINABILITY INITIATIVES REVIEW 275 (2014), available at http://www.iisd.org/sites/default/files/pdf/2014/ssi_2014.pdf. The big four international certification standards referred to are Bonsucro, Fairtrade, Rainforest Alliance/SAN and Organic. *Id.*

¹⁵⁰ *The Coca Cola Commitment: Land Rights and Sugar*, COCA-COLA CO., <http://assets.coca-colacompany.com/6b/65/7f0d386040fcb4872fa136f05c5c/proposal-to-oxfam-on-land-tenure-and-sugar.pdf> (last visited Oct. 19, 2014).

¹⁵¹ *Performance With Purpose: Sustainability Report*, PEPSICO 43 (2013), http://www.pepsico.com/Assets/Download/PEP_2013_Sustainability_Report.pdf.

¹⁵² *About Bonsucro*, BONSUCRO, <http://bonsucro.com/site/> (last visited Oct. 19, 2014).

¹⁵³ See Richard M. Locke et al., *Complements or Substitutes? Private Codes, State Regulation and the Enforcement of Labour Standards in Global Supply Chains*, 15 BRIT. J. INDUS. REL. 519, 524 (2013).

corporations, as in the case of Bonsucro) designed to be used in multiple supply-chains.

Less has been said about how the two types of certification system might relate to one another, and what should be the collective baselines and benchmarks as far as human and labour rights are concerned.¹⁵⁴ For instance, while there is common reference to Conventions Nos. 138 and 182 on the minimum working ages and worst forms of child labour, respectively, there is less agreement as to what constitutes the scope of certification (e.g. is work on a cane farm not directly related to sugarcane production included?) and what the procedures are for dealing with a farm found to be using child labour. One opportunity then, is for IPEC to join up these systems so that they become inter-operable.

Another opportunity exists in the form of peer-review, coordinated by the ISEAL Alliance or DOL for example, wherein regular assessments of the actual experience of identifying child labour are compared. As part of this, contributions from civil society actors working on this issue could be sought on how the process might be improved. To this end, our analysis suggests that the prohibition of child labour must go hand-in-hand with protection of basic rights of association and minimum wage for adults. Where these are not respected, there is little chance that children will not be put at excessive risk too.

B. Credible and Inclusive Monitoring

As noted above, there is much more to a certification system than just its standard. Worryingly, studies of certification practices have continued to find problems with the monitoring techniques used in certain auditing regimes, such as an over-reliance on data provided by managers and a failure to identify at-risk workers.¹⁵⁵ Scrutiny on these private forms of governance is only likely to increase — witness the fallout from the Rana Plaza collapse in Bangladesh, for example — and will surely create pressure for common monitoring requirements. These might include interviewing workers independently from management and being able to speak the vernacular language of at-risk groups.

More ambitious suggestions have been made to embrace participatory

¹⁵⁴ See Tim Bartley, *Certification as a Mode of Social Regulation*, in HANDBOOK ON THE POLITICS OF REGULATION 441, 446 (David Levi-Faur ed., 2012). A commonly cited danger is the “race to the bottom” among certification systems as each lowers their standards in order to increase their appeal among businesses seeking compliance. *Id.*

¹⁵⁵ Diana Auret & Stephanie Barrientos, *Participatory Social Auditing: A Practical Guide to Developing a Gender-Sensitive Approach*, in ETHICAL SOURCING IN THE GLOBAL FOOD SYSTEM 129, 132 (Stephanie Barrientos & Catherine Dolan eds., 2006).

audits, using techniques such as role-play and transect-walking¹⁵⁶ to allow workers (and possibly children, parents and healthcare/school professionals too) to more easily inform auditors about agricultural working practices.¹⁵⁷ Calls for more regular monitoring, rather than just a snapshot picture of a small sample of suppliers, have been made.¹⁵⁸ The focus by most multinational corporations only on their first-tier suppliers has been criticized, given the fact that many labour abuses happen within the subcontractors used by these primary suppliers.¹⁵⁹ Finally, some academics have demanded that for better transparency, auditing methodologies and audit results should also be made public.¹⁶⁰

The underlying purpose of all these demands is to make monitoring more credible by increasing the level of surveillance on producers and scrutiny on auditors. While this is an important facet of any certification system, consistent with our argument so far, we would also suggest that they cannot be reduced to watchdogs exposing recalcitrant companies. Rather, there is an important role to be played in working with them in a longer term process of improvement — a point we conclude with in Part IV.C.

To improve the effectiveness of certification systems, other academics have suggested that government regulation must be brought into the equation. One reason for this is that private regulatory initiatives are often used to deflect or defer application of public law rather than support it.¹⁶¹ This criticism was made by Indian activists about Rugmark (now GoodWeave International), the label launched in 1994 to certify that rugs had been woven without child labour.¹⁶² In terms of identifying instances of child labour, there are suggestions to link up certification systems that often lack power of enforcement and national labour inspectorates that often lack manpower.¹⁶³ For example, after the Rana Plaza Collapse, the UK's All-Party Parliamentary Group for Bangladesh recommended that retail brands and the Bangladesh Department of Inspection for Factories and

¹⁵⁶ This involves a small focus group of workers moving through the workplace and commenting on the issues faced in different sites as they pass them.

¹⁵⁷ Auret & Barrientos, *supra* note 155, at 139.

¹⁵⁸ *Id.* at 129.

¹⁵⁹ Genevieve LeBaron, *Subcontracting Is Not Illegal, but Is It Ethical? Business Ethics, Forced Labour, and Economic Success*, 20 BROWN J. WORLD AFF., 237, 243-45 (2014).

¹⁶⁰ Dara O'Rourke, *Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring*, 31 POL'Y STUD. J. 1, 24 (2003).

¹⁶¹ Locke et al., *supra* note 153, at 524.

¹⁶² GARY W. SEIDMAN, BEYOND THE BOYCOTT: LABOR RIGHTS, HUMAN RIGHTS AND TRANSNATIONAL ACTIVISM 96 (2007).

¹⁶³ The relationship between the public *Programa de Erradicação do Trabalho Infantil* and the private *Programa Empresa Amiga da Criança* in Brazil would be an interesting case in this respect.

Establishments in the ready-made garment industry “share best practices and coordinate audit efforts and health and safety standards.”¹⁶⁴ It also proposed that “[t]he auditing industry should be regulated and mandated to share all cases of non-compliance with workers’ organisations as a matter of law.”¹⁶⁵ Along with information-sharing, certification systems could also play a role as a coordinating body. For example, corporate participants at a recent UN Child Labour Platform meeting “warned that governments may feel ‘fatigued’ when engaging with multiple corporate actors on an individual/bilateral basis. The good practice emerging from this challenge is to interact with governments as a sector.”¹⁶⁶

Governments have also been invoked as a means of advancing certification systems, in what have been dubbed public-private or “hybrid” forms of transnational governance.¹⁶⁷ Regulatory regimes in timber (via the U.S. Lacey Act), minerals (via the U.S. Dodd-Frank Act) and biofuels (via the EU Renewable Energy Directive) have all evolved during the last decade in the direction of greater import transparency, more stringent sourcing requirements, and the adoption of certification systems to provide assurance.¹⁶⁸ Thus, we might speculate, as others advocate, that this could soon be followed by legislative requirements on import certification and labelling promotion in those agricultural sectors with a high incidence of child labour.¹⁶⁹

C. Open and Honest Assessment

We noted earlier the “name and shame” campaigns that have been trumpeted by coalitions of activists and media outlets.¹⁷⁰ While these have a

¹⁶⁴ *After Rana Plaza: A Report into the Readymade Garment Industry in Bangladesh*, BANGL. ALL PARTY PARL. GRP. 10 (2013), http://www.annemain.com/pdf/APPG_Bangladesh_Garment_Industry_Report.pdf.

¹⁶⁵ *Id.* at 12.

¹⁶⁶ *UN Global Compact Human Rights and Labour Working Group Child Labour Platform Meeting Report*, INT’L LABOUR ORG. 11 (June 17, 2014), <http://www.ilo.org/ipecinfor/product/download.do?type=document&id=24795>.

¹⁶⁷ Steven Bernstein & Benjamin Cashore, *Complex Global Governance and Domestic Policies: Four Pathways of Influence*, 88 INT’L AFF. 585, 594–95 (2012).

¹⁶⁸ See, e.g., Jolene Lin, *Governing Biofuels: A Principal-Agent Analysis of the European Union Biofuel Certification Regime and the Clean Development Mechanism*, 24 J. ENV’T L. L. 43, 46 (2012); Christine Overdest & Jonathan Zeitlin, *Assembling an Experimentalist Regime: Transnational Governance Interactions in the Forest Sector*, 8 REG. & GOVERNANCE 22, 40 (2012); Shannon Raj, Note, *Blood Electronics: Congo’s Conflict Minerals and the Legislation that Could Cleanse the Trade*, 84 S. CAL. L. REV. 981, 1000–01 (2010).

¹⁶⁹ See Shima Baradaran & Stephanie Barclay, *Fair Trade and Child Labor*, 43 COLUM. HUM. RTS. L. REV. 1, 58–62 (2011).

¹⁷⁰ See discussion *supra* Part III.A.

role to play in exposing the continued existence of abusive practices, especially among the worst offenders which in all likelihood have not opted into private governance initiatives, by their very nature they remain rather fleeting and can quickly drift off the policy agenda. For different reasons, the more institutionalised observatories established within the ILO and various government departments are also limited in drawing attention to the responsibilities of companies buying agricultural commodities. This is because they tend to be nationalist in orientation and focus on child labour within particular countries, whereas contemporary supply-chains are increasingly transnational in organisation and move commodities between different countries.

With this in mind, certification systems can play a role in (a) encouraging users of sugarcane products to recognise their responsibility all the way down the chain; (b) providing procurement officers and mill-level managers with information to support change; and (c) formalising dialogue between different stakeholders.¹⁷¹ Such dialogue need not happen via certification systems alone. Other forums include international sector-wide pacts like the Eliminating Child Labour in Tobacco Growing Foundation.¹⁷² Either way, there should be more transparency as to the existence of child labour in cane-based products and recursive assessments of anti-child labour programmes launched to eradicate it.

Not every programme will be a resounding success and it is important to reflect on these failures as much as it is to recognise the problem in the first place. Yet at the same time, it is also vital to celebrate the progress that is made, demonstrating the benefits of eradicating child labour to the mills, farmers, contractors, families and children themselves. These are the people who will make the difference; globally-oriented activities must not remain above them.

¹⁷¹ O'Rourke, *supra* note 160, at 24.

¹⁷² The Eliminating Child Labour in Tobacco Growing Foundation, founded in 2001, is a partnership of tobacco farmers and companies dedicated to protecting children from child labour wherever tobacco is grown. See M. G. Otañez et al., *Eliminating Child Labour in Malawi: A British American Tobacco Corporate Responsibility Project to Sidestep Tobacco Labour Exploitation*, 15 TOBACCO CONTROL 224–30 (2006), for a critical reflection on this project.