

Supreme Court Decision in Nestle Child Labor Case Underlines Need for Meaningful Human Rights Legislation

After months of deliberation, the Supreme Court has released a disappointing decision in the case of six survivors who sued Nestlé USA and Cargill over trafficking and child labor in their chocolate supply chains. By an 8:1 majority, the Court held that the suit against Nestlé and Cargill under the Alien Tort Statute could not go forward as the abuses in question occurred overseas. While the decision is a grave disappointment for all of us who advocate for human rights and corporate accountability, it is not the sweeping dismissal that the corporations' lawyers argued for. Nor is it a ruling that in any way denies that hazardous child labor is present throughout Nestle and Cargill's supply chains - as well as those of the major chocolate companies. Instead, the decision highlights the urgent need for the U.S. to align itself and its laws with the growing international movement to hold corporations accountable through mandatory human rights due diligence laws.

While this decision is disappointing and a blow to the six men's case, it is not the sweeping corporate immunity that Cargill and Nestle's lawyers had argued for. Instead, the court decision seems to further clarify just what kind of situation the Alien Tort Statute applies to. In this case, "the companies provide funding, planning, marketing, pesticides, education... that all occurred in the United States," as Terry Collingsworth, one of the lawyers who crafted the case, [explained on our "For a Better World" podcast](#). In their ruling, the Supreme Court stated that, "allegations of general corporate activity—like decisionmaking—cannot alone establish domestic application of the [Alien Tort Statute]." Multinational corporations have developed these long supply chains of suppliers and contractors across many industries. This decision chooses to overlook the massive power that these big corporations have to set the conditions in their supply chains. Instead, it reaffirms the value of having supply chains out of sight and keeping abuses offshore.

Corporate Solutions Are Failing to End Child Labor

The case, officially *Cargill, Inc. v. Doe I*, spans over 15 years, and too many continuing failures of voluntary commitments to end child labor in the cocoa industry. The case was initially brought in 2005 as the chocolate industry missed its first deadline to voluntarily address child labor under the Harkin-Engel protocol. Now, this verdict comes just a week after the International Labor Organization's [latest report](#) warns that the rate of child labor is up for the first time in 20 years - and that growing inequality fueled by the global response to the pandemic is on track to increase that rate by an additional [9 million children by 2022](#). Regardless of the outcome of this specific Supreme Court case, it is high time for meaningful action on child labor.

It has been 20 years since the cocoa industry pledged to tackle child labor as part of the Harkin-Engel protocol, a voluntary deal struck to avoid binding legislation. In that time, we have seen numerous

corporate social responsibility programs rolled out. Our [“For a Better World” podcast](#) spoke to people at the front lines of the rollout of those corporate pledges, and advocates and lawyers tracking the results. The resounding conclusion is that these corporate-led solutions have had limited effectiveness. Pledges to end child labor have not been coupled with meaningful efforts to pay a living income and tackle the root causes of child labor: poverty. Indeed, the number of cocoa-growing families in poverty is not declining. Just 9% of cocoa farmers in Ghana earned a living income, according to the [2020 Cocoa Barometer report](#). Recently, 35 organizations from across the globe, including Fair World Project, signed onto [a statement calling on the chocolate industry to take real and meaningful action](#) to address those root causes, dubbing the industry’s collective silence “shameful and inappropriate.”

It’s pretty clear that Nestle and Cargill are willingly and knowingly profiting off of forced child labor. Their arguments before the Court emphasized the threat this case posed to their “competitive advantage.” The Supreme Court did not go so far as to endorse that argument. Yet the Court’s ruling that those abuses are just a consequence of [“general corporate activity”](#) is an indictment of their whole business model. Real solutions are needed that are fit to tackle the systemic scope of the problem.

Real Change Means Real Accountability

We need to transform our food and farming systems so that forced child labor isn’t a norm in global supply chains, one that is deemed regrettable but allowed to persist. The fair trade movement has long advocated for a vision of global supply chains that enrich communities and support fair livelihoods for families. Yet voluntary commitments and ethical labeling are not going to bring about the sort of transformative change that is needed. A market-based approach to change cannot compete in a market where the competition can bank on the worst forms of abuse to keep their costs artificially low. While we may ambitiously speak of a world that puts people and planet before profit, that’s actually contrary to the shareholder primacy that’s baked into our current economy. Corporations’ responsibility is to their shareholders and to maximizing profits. Transformative change also requires real accountability and raising the cost of corporate abuses.

The U.S. Needs Meaningful Human Rights Due Diligence Legislation

This Supreme Court decision establishes the U.S. as an outlier around the globe, choosing to narrow the scope of corporate accountability. Meanwhile, countries around the world are moving towards mandatory human rights due diligence legislation, legislation that puts the onus on corporations to proactively address abuses in their supply chains instead of waiting for brave people to speak up and find their way to international courts of law.

Such legislation needs to include meaningful requirements for corporate accountability and address the full scope of human rights. That means recognizing living incomes and fair livelihoods as a human right. That also means centering the voices of those most impacted both in crafting the rules and in creating mechanisms for enforcement. Meaningful corporate accountability also means including corporate liability



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and access to remedy for those who are harmed. The Supreme Court's decision in favor of Nestle and Cargill makes clear just how urgent such conditions are.

Read through the Supreme Court's decision and there is one perspective that is noticeably absent. Nowhere in the decision is there any acknowledgement of [the horrendous abuses that the six survivors of trafficking and child labor endured](#). Their case has been making its way through courts since 2005. In that time, another generation of young people have spent their youth doing hazardous work and risking their health and lives. Future solutions need to include these voices, and their right to live and work with dignity.