Changes to India’s Child Labor Law  

November 2016

THE ISSUE:

How can FLA affiliates better guard against child workers in their supply chain in India after the passage of a new child labor law?

CHILD LABOR IN INDIA:

More than 165 countries around the world have signed onto the International Labour Organization’s (ILO) Convention No. 138, establishing 15 as the minimum age for work, or 14 for some countries where the “economy and educational facilities are insufficiently developed.” India has not yet ratified this convention. With 5.8 million children between the ages of five and 17 working in India, the ILO reports that the incidence of child labor is the highest among any country in South Asia.¹

Likewise, the U.S. Department of Labor reports that throughout the Indian garment industry, children are spinning yarn, producing silk and cotton fabrics, sewing and embellishing clothing, and working in cotton fields.² Children also often work in leather manufacturing, producing footwear and other accessories. The Labor Department finds that some child labor in all of these sectors is also forced labor. While the Labor Department report also noted that India had made “moderate progress” in addressing the worst forms of child labor as of 2014, the adoption of the Child Labor (Prohibition and Regulation) (CLPR) Amendment Bill³ in July 2016 may impede further progress toward reducing child labor.

ANALYSIS OF THE NEW LAW:

Civil society organizations have raised strong concerns about the law’s potential adverse impact on children. “Despite its progressive elements, the lacunae in this Bill are self-defeating. The definition of family and family enterprises is flawed,” says Nobel Peace Prize Laureate Kailash Satyarthi, founder of the non-profit Bachpan Bachao Aandolan (Save the Children Movement). “This Bill uses Indian family values to justify economic exploitation of children. It is misleading the society by blurring the lines between learning in a family and working in a family enterprise...India threatens to unravel the pace of progress by opening a back door for large number of children to enter workforce.”


³ http://bombayhighcourt.nic.in/libweb/actco/yearwise/2016/2016.35.pdf
The FLA shares concerns about the potential increased risk to children that may result from exemptions in the law.

First, while the new law ostensibly prohibits the employment of children under the age of 14, it also clearly provides an exception that children under 14 may work in what the law describes as a “family or family enterprise, which is other than any hazardous occupations or processes set forth in the schedule, after his school hours or during vacations.” This exemption directly violates the FLA Workplace Code of Conduct, which prohibits employing workers under the age of 15.

Second, by expanding the definition of “family” to include not only a child’s mother and father, but all of a child’s brothers, sisters, aunts, or uncles, the opportunities for exploitation increase exponentially. Under the law, a “family enterprise” may refer to work at home or to any family-run businesses. If suppliers contract work out businesses like these, brands may find child labor sanctioned by the Indian government within their supply chains.

Third, by reducing restrictions on work for adolescents, the law increases the likelihood that children will be involved in apparel manufacturing and agriculture. The new law dramatically reduces restrictions on the types of work permitted for children between 14 and 18 years. Only three hazardous categories remain off limits for young workers in this age group — mining, the production of inflammable substances or explosives, and loosely defined “hazardous processes.” Because of its limited focus, the provision creates a legal sanction for the employment of adolescent children in all other sectors. This includes work manufacturing or providing embellishments for clothing, footwear, or accessories, and in the agriculture sector, which is largely informal and family-run, and most often falls outside of any type of existing governmental labor inspection.

The law does include important enforcement mechanisms, such as higher penalties for violations, which will be directly distributed to rescued child laborers by local Child and Adolescent Labor Rehabilitation Funds. Still, child rights activists, civil society organizations, as well as the Indian Parliamentary Commission that reviewed the law, have suggested that the “family work” exemption will make detecting violations and enforcing penalties extremely difficult. Proving that specific family relationships within any particular business allow for the use of child labor under the law is likely to present tremendous challenges.

**FLA RECOMMENDATIONS:**

The FLA suggests that company affiliates:

- Strengthen their mechanisms for supply chain mapping to help identify areas at high risk for child labor engagement in India

- Strengthen their monitoring mechanisms in India, such as defining minimum requirements for adolescents in the informal sector and family-based work, bolstering age verification, and monitoring deeper tiers of the supply chain, particularly for supply chains where family-based work is present

- Effectively communicate company prohibitions on child labor and require local managers to conduct training programs and awareness-raising activities with all staff on child labor to ensure rigorous and constant assessments for child labor

- As a safety net, develop a child labor case management and referral mechanism within the company that can be used by the local managers when they encounter child labor issues

- Take advantage of consultations with the government of India, civil society organizations (CSOs), trade unions, multilateral agencies, and other labor rights groups to collaboratively work to strengthen labor inspection systems both in the formal and informal tiers of the supply chain

Find further recommendations on steps for the remediation of detected instances of child labor in the appended FLA guidance document, which defines any finding of under-age workers as requiring immediate attention, and outlines how FLA affiliates should respond to a child labor violation uncovered by an FLA-administered assessment.

---

4 http://bombayhighcourt.nic.in/libweb/actc/yearwise/2016/2016.35.pdf
Findings from FLA Independent External Monitoring (IEM) as well as recent reports about workplace conditions in the garment industry have revealed the presence of under-age workers in the supply chain. There are clear guidelines on minimum age, age verification, and special protection for young workers in the FLA Workplace Code of Conduct and corresponding Compliance Benchmarks and many multi-stakeholder initiatives have developed more in-depth guidelines for remediation. Without duplicating existing initiatives, the FLA proposes the following steps to be taken in relation to this issue.

**Part I: Amendment of FLA Monitoring Documents**

1. The FLA will amend the Monitoring Contract, an exhibit to the Monitoring Services Agreement signed by company affiliates, to ensure that a finding of under-age workers is categorized as a “red flag” issue, that is, an issue that requires immediate attention/remediation.

**Part II: Remediation Steps for Under-Age Workers**

1. If under-age workers are found during Independent External Monitoring of any part of the supply chain, Affiliated Company staff shall work closely with FLA staff and the supplier to develop a remediation plan that is both sustainable and preventative and that includes regular monitoring and follow-up to ensure no recurrence.

2. The Affiliated Company, working with the supplier, should ensure that an interim arrangement is made for the under-age worker depending on the age of the worker, as follows:

   a. If the under-age worker is prohibited from engaging in any type of work, the worker should be immediately suspended from all work, pending the conclusion of an agreement providing for arrangements under section 3 below;

   b. If the under-age worker is allowed to engage in light work, the worker should immediately be provided with such or, if no such work is available, be immediately suspended from all work, pending the conclusion of an agreement providing for arrangements under section 3 below;

   c. If the under-age worker is allowed to engage in normal work, e.g., non-hazardous work, the worker should immediately be provided with such or, if no such work

---

1 As defined in accordance with the FLA Code of Conduct Benchmarks and/or local law. In case of discrepancy between the FLA Code of Conduct Benchmarks and local law, the standard that provides the highest level of protection will prevail.
is available, be immediately suspended from all work, pending the conclusion of an agreement providing for arrangements under section 4 below.

d. If the under-age worker is suspended from all work, the worker should continue to receive, at a minimum, regular wages or the minimum wage, including all benefits, whichever is higher, and the average monthly overtime payments the worker received as calculated for the 6 month period preceding discovery. If the under-age worker undertakes work of a different type than before, the worker shall receive regular wages or the minimum wage, including all benefits, whichever is higher, and, when not allowed to work overtime, the average monthly overtime payments the worker received as calculated for the 6 month period preceding discovery. In no case, should the under-age worker be terminated or placed at risk of falling into worse forms of child labor.

3. In case an under-age worker falls under category II.2.a. or II.2.b., the Affiliated Company:

a. Working with the supplier, should seek to place the worker in a regular school, special school, or vocational skills training center until he or she reaches the minimum age to work. Relevant arrangements should ensure that the worker continues to receive at least the minimum wage as an incentive to complete school and not return to work, as well as receive subsidies towards the cost of schooling (school fees, uniforms, books, transportation, etc.).

b. Working through the supplier, will provide a guarantee of a job to the worker once he or she has reached the minimum age for work.

c. Working with the supplier, will make suitable alternative arrangements in situations in which there are no formal or informal education systems available or situations in which the worker does not want to go to school.

4. In case an under-age worker falls under the category II.2.c. and no normal work is available in the facility, the Affiliated Company, working with the supplier, should seek to secure the worker suitable employment at another place of employment in the general vicinity where the under-age worker will receive, at a minimum, regular wage comparable to wages earned before or the minimum wage, including all benefits, whichever is higher.

5. The Affiliated Company, working with the supplier, will develop an age verification system that seeks to prevent future instances of the noncompliance.

6. The Affiliated Company will engage with civil society organizations in the region to start addressing some of the root causes of child labor in the region.

7. The Affiliated Company will provide periodic updates to FLA staff.