

CHALLENGES IN ADDRESSING CHILD LABOUR

AN IOE APPROACH

INTERNATIONAL ORGANISATION OF EMPLOYERS

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The purpose of this document is to provide possible answers to difficult yet important questions that business is likely to face in the course of its engagement in addressing child labour.

DEFINING THE PROBLEM

At the outset, it is important to be clear about what is being addressed. The problem of child labour, which can have devastating impacts on children and on the economic growth of their communities, must be clearly defined before solutions can be found to address it.

Generally speaking, the place of children is not at work. During childhood, every child should have a right to education. However, the fact of employing children has, in a number of contexts, been understood to be positive. Through work, children can acquire marketable skills. They can also earn indispensable income for themselves and their families, which can be a necessity in developing countries and in poor families. This beneficial or adequate work for children must, however, be contrasted with activities that threaten the health, morals or future development of children and adolescents.

Unfortunately, activities from both ends of the spectrum, namely those that are beneficial or adequate and those that harm children, have all been referred to as “child labour”. For a long time, this broad term has confused the discussion at international and national levels and has hampered action against the abuse of children and adolescents. To ensure clarity in the context of companies’ actions in addressing the issue of working children, a distinction must be made between “the worst forms of child labour” (the “WFCL”) and “other forms of children at work”. In so doing, it is helpful to refer to the relevant international instruments of the International Labour Organization (the “ILO”), namely the ILO Convention on the Worst Forms of Child Labour (“ILO Convention 182”) and the ILO Minimum Age Convention (“ILO Convention 138”). Despite the fact that they are addressed to governments, these instruments can be a useful reference for all who are involved in the elimination of child labour.

WHAT ARE THE “WFCL ”?

The concept of the WFCL encompasses two main groupings of activities and applies to all children under 18 years of age. These groupings are based on ILO Convention 182.

- (a) The first grouping of activities that is considered criminal offences in most jurisdictions includes: slavery, trafficking, debt bondage, forced or compulsory labour, prostitution and pornography and illicit activities such as the production or trafficking of drugs. Bona fide and ethical companies are not engaged in the activities included in this category.*
- (b) The second grouping of activities included in the concept of the WFCL is work which, by its nature or the circumstances in which it is carried out, is likely to harm the health and safety, as well as the morals of children.*

Governments which ratify ILO Convention 182 are required, in consultation with national employers' and workers' organizations, to establish a list of those activities that, by their nature or circumstances, are likely to harm the health and safety and morals of children (the "List of Hazardous Work for Children"). In so doing, the List of Hazardous Work for Children becomes appropriate to the national context, including the economic, social and cultural realities.

Children who are engaged in the WFCL should be immediately and unconditionally removed from doing so. It is, therefore, important for business to be aware of the List of Hazardous Work for Children in the jurisdictions in which it operates.

WHAT ARE THE "OTHER FORMS OF CHILDREN AT WORK" ?

The concept of the "other forms of children at work" is founded on the basis of ILO Convention 138. These other forms relate to paid or unpaid work that do not fall within either of the two elements included in the definition of the WFCL and are beneficial (such as apprenticeships) or adequate for the development of children. In order to be considered as other forms of children at work, as opposed to the WFCL, the nature of the work and the conditions of employment must be consistent with all applicable national laws and regulations, including but not limited to working time, educational requirements and conditions of work.

WHAT IS THE PRIORITY FOR BUSINESS?

Where a company becomes engaged in the issue of child labour, its priority should be to work towards the complete and unconditional elimination of the WFCL. This should also include measures to address the needs of the affected children's families.

Once the WFCL have been completely addressed in a particular context, business can, where it is within its means and power to do so, explore efforts to promote beneficial conditions in the context of the other forms of children at work as a next step. Again, these measures should address the needs of the children's families.

It is important to be aware that the distinction between the WFCL, and other forms of children at work is not made in most contexts. The term "child labour" is generally used to refer to all work completed by all children, including all forms of children at as defined above. To ensure the best use of resources and effort, it will be necessary for business to clearly understand the difference between the two categories of child labour and take steps accordingly. This document focuses on the WFCL. However, when the term "child labour" is used in this document, it is intended to refer to the WFCL as well as other forms of children at work.

THE IMPORTANCE OF BUSINESS'S ENGAGEMENT

Besides those based on ethical and moral grounds, there are many reasons why business should participate in the elimination of the WFCL in the community in which it operates. It is in business's interest to do so.

First, the WFCL can have a direct impact on business. Companies with operations in locations where the WFCL are common may be concerned by its long term impact on the pool of trained labour, since children who work instead of going to school may have fewer opportunities to become skilled adult workers. Given the fact that the WFCL can stunt economic growth, companies may also be concerned about its impact on local consumer markets. The same can also apply to child labour depending on its nature.

Second, the WFCL in a company's supply chain can affect the public's perception of the company. This fact has led many companies to address the WFCL and the other forms of children at work, as part of their corporate social responsibility agenda.

Finally, business should become involved because it is uniquely placed to do so. Beyond its natural role in wealth creation and promoting economic growth, business can have a direct impact through its own initiatives or through its national employers' organizations. Employers' organizations have a comparative advantage in the areas of public advocacy and policy development and are uniquely placed to raise awareness of the problem and contribute to social alliances.

THE CHALLENGES FACED BY BUSINESS IN ADDRESSING CHILD LABOUR

There are many incorrect perceptions about the role of business in relation to child labour. These incorrect perceptions apply to both business's role in its perpetuation, as well as the role that business should play in its eradication. It is not uncommon for accusations to be made about companies profiting from the WFCL and, though these situations certainly exist, every case must be examined within its cultural and socio-economic context. Similarly, business is often seen as the principal actor in the elimination of the WFCL and other forms children at work. While business has an important role to play, its role cannot be seen in isolation of the role that other important social actors must also play.

In the course of addressing any form of child labour, regardless of its level of engagement, business will, at one point or another, be faced with choices that will require difficult decisions. These decisions may expose it to criticisms from third parties.

The following are common questions that companies may need to address in this context. Though consideration of the suggested approaches discussed below will not protect business from criticism, the pressure on business from outside forces may be tempered if its actions and positions are consistent with those of the international business community.

WHAT CAN BUSINESS REASONABLY BE EXPECTED TO DO TO ADDRESS THE WFCL OR OTHER FORMS OF CHILDREN AT WORK IN THE INFORMAL ECONOMY?

One of the biggest challenges in relation to child labour is the fact that the vast majority takes place in the informal economy and is consequently extremely difficult to reach. Business has been successfully involved in positive and innovative programmes to reach even the most difficult target groups. An effective way of doing so is through the national employers' organizations, which can, as stated above, play many important roles by virtue of their unique place in society.

Other than through national employers' organizations, it may be difficult for companies to have a direct influence on the elimination of the WFCL in the informal economy. This is true even where the company suspects that children are working in its supply chain. In those cases, business should not turn a blind eye to the issue. Using its sphere of influence, it should make reasonable efforts to ensure that there are no WFCL within its supply chain. Where its ability to have any impact is limited, a business should, where it is in a position to devote the necessary resources to do so, work with third parties to find viable solutions (see section on building alliances below).

Both the WFCL and other forms of children at work in the informal economy also take place on an individual level, such as with child domestic workers. In this context, companies can also play a role in promoting the importance of good working conditions and access to education for child domestic workers.

WHAT SHOULD BUSINESS BE AWARE OF IN BUILDING ALLIANCES WITH OTHER ACTORS WORKING TO ADDRESS THE WFCL AND OTHER FORMS OF CHILDREN AT WORK?

The distinction between the WFCL and other forms of children at work is presented in this document to promote clarity of meaning and to assist in setting priorities in addressing the issue of child labour. Other actors may not make such a distinction and their goal may be to target all child labour without distinction. Business should, therefore, be cognisant of the priorities of other actors to ensure that its goals and priorities are being met in any collaborative efforts.

Despite the foregoing, the elimination of the WFCL requires collaborative effort given its complexity. Business is encouraged to work alongside other stakeholders who have a proven track record and who share the same objectives. It is important to identify and promote synergies between stakeholders. Pooling efforts and resources with other likeminded partners in the design and implementation of programmes will increase the chances of providing effective long-term solutions for children and their families.

There are many possible groups and organizations that companies can partner with including: employers' organizations; chambers of commerce (where these are separate from employers' organizations); other companies; sectoral alliances; consumer associations; the media; non-government organizations ("NGOs"); local communities; and trade unions. The following are

comments about the three most common and natural partners for business, namely: local communities, NGOs and trade unions.

LOCAL COMMUNITY INVOLVEMENT:

Because of the potential impact on the social, economic and institutional development of the communities in which they operate, it may be useful for business, where appropriate, to solicit community-based participation. In the right circumstances, business can benefit from community engagement, which can lead to open, transparent and effective strategies against child labour. It can help to promote a respect for the culture, customs and values of the individuals and groups, including customers and employees, whose livelihoods may be affected by the actions of the business. Engaging the support of the community may also reduce the likelihood of children simply moving between employers or sectors.

WORKING WITH NGOS:

A number of NGOs have shown themselves to be innovative and dynamic in addressing both the WFCL and other forms of children at work and there are examples of successful working relationships between NGOs and companies. But care is needed. NGOs advocate singular issues, often to the exclusion of all else. By focusing on single issues, they are free of the constraints that hamper other organizations or governments that take a more pluralistic approach to the issues and see them in their totality rather than from one particular perspective. This can lead to real conflicts in trying to reach consensual agreements that inevitably involve compromise. It is, therefore, important for business to research such questions as: what does an NGO stand for; what is its funding source and whom does it represent, before engaging with it.

In order to ensure that partnerships with NGOs are constructive, it is important to clarify expectations from the outset. Only the company is in a position to know what is and is not possible for it to accomplish. This includes expectations around time lines, resource allocation and expected results. Similarly, a company should carefully consider whether to accept NGOs' assistance with monitoring since these arrangements have been known to work against the interest of companies. Where a company voluntarily agrees to monitoring, it should play a very active role in setting the parameters. Because NGOs often are well positioned to influence public opinions against the company, expectations should be clarified at the outset and regular communication should be maintained throughout the partnership.

WORKING WITH TRADE UNIONS:

Trade unions are another potential ally. The issue of child labour, which often simply includes both the WFCL as well as other forms of children at work, is increasingly forming part of the collective bargaining process. To the extent that any commitments are made in this context, it is important that business clearly understands the impact of these commitments. A trade union may not be in a position to understand the extent or limitations of a company's influence and reach over such parties as contractors and subcontractors. Though companies should strive to influence the third parties with whom they do business to adhere to ethical business standards, a trade union's expectations in this regard may be difficult to achieve.

Similar concerns should be noted in the context of framework agreements. The current trend is to include references to international instruments that contain provisions in relation to child labour with no distinction being made between the WFCL and other forms of child work. Most of these instruments were drafted to define governments' role and include actions that business cannot implement or control. It is, therefore, important to ensure that business does not assume a role that should be played by governments.

HOW CAN BUSINESS WORK WITH GOVERNMENTS TO BETTER DEFINE RESPECTIVE ROLES?

Government has a unique role in the context of the WFCL. It must establish and promote the necessary conditions and regulatory environment to stimulate productive employment. This role must be clearly distinguished from business's role.

Business must respect the authority of the national and regional governments in the territories in which it operates. This requires, first and foremost, that every business fully adheres to all applicable laws and regulations. A government's inability to enforce its laws, due to lack of capacity or other challenges, does not alter business's obligations in this respect. Business should not be seen to be taking advantage of any opportunities created by the difficult obstacles many governments face.

The case is more complex in jurisdictions with weak or nonexistent laws or regulations. When doing business in a country that does not have a legal framework in relation to child labour, a company may wish to apply the definitions of the WFCL versus other forms of children at work discussed above, which is based on ILO instruments. Any gaps, such as the absence of a List of Hazardous Work for Children, should be addressed with the national employers' organizations.

There is a growing movement in favour of placing responsibility for social policy directly on business. Business at the international level has been consistent and clear in asserting that business cannot assume the role of government in the area of social policy. The ultimate responsibility for social policy rests first and foremost with national governments. Business should encourage, employ and reinforce the application of relevant laws and policies and work within national development plans but the responsibility for setting these standards does not rest with business.

Notwithstanding the foregoing, business can and should partner with government and support its efforts in addressing child labour, particularly the WFCL. This can be accomplished in a number of ways, including but not limited to promotion, training or partnerships in specific programmes.

WHAT CAN BE REASONABLY EXPECTED OF BUSINESS WITH RESPECT TO REPORTING?

There is an ever-increasing pressure placed on business to design and implement credible disclosure and reporting strategies. This is particularly true in the context of voluntary initiatives such as the UN Global Compact or the FTSE4Good Index Series. The increasing importance of reporting is evidenced by the growth of the standardized reporting industry, which attempts to help business harmonize different types of reporting and meet the needs of internal and external stakeholders. Recently, a phenomenon has emerged referred to as “reporting fatigue” to describe the excessive demands placed on business in this regard.

It is frequently argued that, left to their own devices, companies will not be forthright and thorough in the way they report on their progress in relation to social issues and some governments have succumbed to the pressure by regulating reporting requirements for business. To the extent that national laws and regulations contain reporting requirements, business must comply with these requirements.

In the absence of such laws and regulations, or in cases where stakeholders request additional reporting, it is entirely up to the business to assess its capacity in this respect. Many companies see the value in taking steps, independent of any legal requirements, to be transparent to their stakeholders because they see the direct value to their shareholders in doing so. Transparency can result in increased credibility, which in turn can have a positive impact on the business.

However, there is more than one way to provide transparency and it is ultimately up to the business to determine the extent of its voluntary reporting. In the end, what matters is that a company follows national legal requirements and ethical business practices, and not whether it has an elaborate reporting strategy. This is particularly true in the context of the WFCL.

WHAT SHOULD BUSINESS BE AWARE OF BEFORE PARTICIPATING IN A CERTIFICATION OR LABELLING PROGRAMME?

The primary objective of labelling and certification schemes in this context is to assure consumers that the items they purchase were not produced by children.

The decision to participate in certification or labelling schemes is entirely up to the individual business. Though these may, at first glance, appear to be an effective solution, the extent of their benefit is far from evident. Before becoming involved, it is important to examine whether it will have the desired impact.

First, a label or certification that a product was produced without the use of the WFCL and other forms of children at work is not a guarantee. By their very nature, labels are difficult to control and are subject to manipulation.

Secondly, certification and labelling pushes the problem of the WFCL away from the company. They appeal to the feel good sensitivities of the consumer and the competitive drive of companies, which may misuse labelling to gain market share.

Thirdly, the schemes often only impact a small fraction of the children employed in the production of consumer goods for the export market. Of the children successfully removed from export factories, few will cease working. They may instead work in the production of goods for the domestic market, where conditions are generally less favourable. Whereas the position they might have held could be considered as other forms of children at work, they may be forced into the WFCL.

Finally, certification and labelling schemes do not necessarily address the root causes of the problem that has given rise to the need for the children to work. Measures that do not provide alternatives to work for children such as education opportunities and family income support will only cause further harm to the children and their families.

Keeping the above points in mind helps ensure that the certification and labelling scheme is effective.

WHAT SHOULD BUSINESS KNOW ABOUT CODES OF CONDUCT IN ASSESSING WHETHER OR NOT TO ADOPT ONE?

A Code of Conduct (a “Code”) is an operational statement of policy, values or principles that guides a company’s behaviour in relation to the development of its human resources and environmental management, as well as its interaction with customers, clients, governments and the communities in which it operates. Most Codes are not drafted to address only one specific area such as child labour. Rather, they generally cover a broad spectrum of issues. They are voluntarily entered into by companies and their organizations which are free to implement, adopt, publicise and monitor them at their discretion.

Codes of Conduct are one of the many examples of good practice that exist in the area of social initiatives but, as with labelling and certification, they may not always lead to the desired results. Codes implemented in isolation of other initiatives will be limited in their ability to address the root causes of the need for children to work. This is due not only to their very general nature but also to the difficulties encountered in their implementation and in the monitoring of their provisions.

Proponents of Codes argue that these can have a positive impact through supply chains since they often require contractors to conform to the Code of the company for which they are a supplier. Where a supplier violates the Code, for example by employing children in the WFCL or other forms of children at work, a company may feel justified in terminating the contract. This course of action may not be in the best interest of the children, who may be forced into even more dangerous forms of labour. It is much more effective, in the long-term, for companies to work with suppliers to ensure continuous improvement and terminate contracts with suppliers only as a last resort.

Companies with Codes are not necessarily better than those without. Ultimately, what is important is the conduct of the company, not the content of the Code, regardless of the means used to achieve the desired results.

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