



July 11, 2011

Office of Agreements and Scientific Affairs
Foreign Agricultural Service
U.S. Department of Agriculture, Room 4133-S
1400 Independence Ave., SW
Washington, D.C. 20250

Dear Madam or Sir:

**National Consumers League Submission in Response to the Request for Comment on
Guidelines for Eliminating Child and Forced Labor in Agricultural Supply Chains**

The following is a response to the U.S. Department of Agriculture Foreign Agricultural Service Request for Comment on Guidelines for Eliminating Child and Forced Labor in Agricultural Supply Chains (Federal Register Vol. 76, No. 70)

The National Consumers League (NCL) is the nation's oldest consumer advocacy group. For more than a century, NCL has worked to improve the lives of consumers and workers and to provide consumers with the information they need to make purchases that protect the rights, health, and safety of workers. For two decades, NCL has co-chaired the Child Labor Coalition, which has fought to ameliorate the worst forms of child labor in the U.S. and abroad.

NCL applauds the development of guidelines developed by the USDA Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products. While the guidelines represent the beginning of a long process, we see them as an important first step.

NCL has also long been concerned that agricultural products *produced within the U.S.* are produced with child labor and that children working in agriculture are exempted from many child labor protections enjoyed by other American children. ***We encourage USDA to work with other federal agencies to protect child farmworkers in the U.S. and to honor the obligations imposed by Convention 182.***

NCL supports the comments made by the International Labor Rights Forum and the Solidarity Center, two of the 28 members of the Child Labor Coalition working tirelessly to reduce child labor internationally. NCL also supports the comments of American University's Center for Human Rights and Humanitarian Law Program on Human Trafficking and Forced Labor.

Comments

Publicly available standards

NCL agrees that standards should be posted on company web sites and conspicuously posted in locations where workers can read and understand them. These postings should occur at every location along the supply chain.

Independent expert

NCL joins other commenters in recommending that companies should be encouraged or required to hire third party, independent experts to identify areas of child/forced labor risk along chains and that company's own pricing and procurement policies and their impact on forced and child labor should be examined by these experts.

Complaints

NCL agrees that companies should ensure that a safe and accessible channel is available to workers and other stakeholders to lodge complaints, including through independent monitors and verifiers. Company should [ADD: accept anonymous complaints and] also ensure that a transparent and accessible communications protocol is in place to notify victims and other affected stakeholders of complaints received and outcomes, with appropriate safeguards to protect victim's [ADD: and whistleblower's] privacy.

It is important to ensure that anonymous complaints will be accepted and investigated as workers in many countries are often afraid of coming forward openly and so consequently suffer in silence out of fear of retaliation.

We also recommend that the identity of whistleblowers, in addition to victims, is protected. This amendment is particularly important because whistleblowers might be in a position to speak up when workers are too afraid to report a violation.

Monitoring

NCL agrees with commenters that companies should hire outside experts to assist in the development of monitoring tools based on its standards on child labor and forced labor.

Company Program Elements

- Under sub-section A. 1., the guidelines rightly reference the ILO's standards on child labor and forced labor. This section would be strengthened by also referencing ILO core labor standards more generally (particularly freedom of association and collective bargaining), since compliance with and respect for broader labor standards would play an important role in reducing the likelihood of child labor or forced labor in the workplace.
- workers within a supply chain enterprise are the most effective supply chain monitors. Under sub-section A. 2, the guidelines would be improved by noting the importance of involving workers and their representative organizations in mapping the supply chain and identifying high risk areas.
- Sub-section B. explicitly mentions workers and their unions as key stakeholders who should be engaged in company-initiated communication. NCL approves of this approach.
- Under the same sub-section, the guidelines note that the “company should ensure that a safe and accessible channel is available to workers...to lodge complaints...” A “safe and accessible channel” only exists when the rights and ability of workers to self-organize—free of both employer and government interference, control and/or retribution—are vigorously enforced. Only then are workers truly free to effectively gather and convey important case-specific and systemic concerns to the company. Freedom of association and enabling the development of independent, democratic, and representative trade unions provide a sustainable domestic interest group uniquely capable of providing long-term protection against child labor, forced labor and other types of slavery. Just as labor unions routinely extend and compliment the enforcement capacities of governments in the arena of workplace safety, so too do they serve as protections against forced and child labor in a workplace. When there is a legitimate organization of workers with, workplace- level union representatives, workplace standards rise and labor laws are honored. Collective bargaining agreements, when achieved, further improve the workplace in these regards.
- Sub-section C.1. refers to remediation. The guidelines could be strengthened by noting that the remediation plan should be executed expeditiously.
- Quota systems in agricultural production are often one of the many causes of child labor and forced labor. Company programs should seriously consider abolishing quota systems within their supply chains and moving to a decent wage system. Piece-rate payment systems encourage child labor and should be eliminated or discouraged.

Independent Third-Party Review

- Consideration should be given to the challenges of domestic versus international verification or monitoring parties. In some cases, particularly where local or national governments or members of government are complicit in child labor or forced labor, unannounced visits by international parties become extremely difficult.
- Third party monitors and verifiers should all be required to work with unions where they exist to identify problems, to facilitate interviews with workers, etc. If a union does not exist in a workplace,

mechanisms should be created to ensure that the legitimate and independent voice of workers is still included in the investigations, deliberations and reports of third party monitors and verifiers.

Dissemination and Implementation

NCL supports the recommendation of the Center for Human Rights and Humanitarian Law that the State Department's Bureau of Democracy, Human Rights and Labor (DRL) with support from the Department of Labor should house a continued initiative to promote and implement the Guidelines developed by the Consultative Group. We agree that it is important to educate key stakeholders, from the business community, civil society and government about the Guidelines and how the Guidelines should be applied in supply chains.

Providing Oversight on Implementation of the Guidelines

We also agree that in addition to educating stakeholders and disseminating information publicly about the Guidelines, DRL should also provide oversight on the appropriate implementation of the Guidelines. With the successful promotion of the Guidelines, we anticipate additional demand for third-party, independent monitoring and verification programs. With scores of companies and third party initiatives claiming to address issues of forced and child labor, DRL should assess the work of these initiatives and provide a publicly accessible list of those programs that appropriately fulfill the criteria in the Guidelines. This compilation of acceptable programs should continue to be assessed and updated over time and we encourage DRL to work with each initiative to identify new ways to strengthen their programs.

Ombudsman

A key component in any initiative seeking to protect labor rights is an accessible system for workers, civil society organizations and concerned parties to lodge complaints and for those complaints to be settled appropriately. The report recommends that for company child labor policies to be comprehensive, company verification programs should require third-party monitoring and verification programs that are able to demonstrate experience, competence, independence, impartiality, and access to a confidential complaint mechanism for whistleblowers when companies and their third-party initiatives fail to meet the criteria in practice. If third-party initiatives do not meet the criteria, third party initiatives may contribute to the negative impact of business policies on workers and local communities by providing misleading information to the consumer. Therefore, DRL should provide a forum that can (1) accept complaints concerning the policy or practice of a third-party initiative and the company, (2) conduct investigations and (3) offer dispute resolution and adjudication for complainants. If the initiatives

continue to fail to meet the requirements of the Guidelines, they should not be eligible for the list of approved third-party initiatives.

Future of the Consultative Group

If the guidelines are to succeed, there is a need for ongoing multi-stakeholder engagement to promote and improve the Guidelines. The Consultative Group should design a proposal for its next iteration and structure. There should also be additional efforts to secure broader stakeholder participation before the end of the Group's mandate to ensure continued transparency and opportunities for a full range of opinions and advice to guide this process.

Conclusion

NCL wishes to express its support for the excellent leadership of the Department of Agriculture and the Consultative Group in developing these Guidelines. We are hopeful that the Guidelines will have a significant impact upon the elimination of child labor and forced labor in the production of agricultural products internationally. We also ask the Department in coordination with other federal agencies, especially the Department of Labor, to implement steps to protect farmworker children in the U.S. from abusive child labor.

Sincerely,

A handwritten signature in black ink, appearing to read "Lucy Greenberg". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the end of the name.

Executive Director

National Consumers League