



A Matter of Urgency:

US Compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor

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Section I: Introduction

In November 2009, the US Department of Labor (DOL) issued an official report to the International Labour Organization (ILO) on the measures taken to give effect to the provisions of ILO Convention 182, the Worst Forms of Child Labour Convention.¹ The report notes that "United States Government remains strongly committed to the elimination of the worst forms of child labor" and describes a variety of steps the US has taken to implement the Convention.

This "shadow report" is intended to complement the official US Government report by evaluating the US compliance with the Convention. It demonstrates that the US is not meeting its obligations under the Convention and that urgent action is needed to protect child laborers in the US and bring the US into compliance with the Convention.

Section II: US Obligations under the ILO Convention 182

President Clinton signed the ILO Convention No 182 in December 1999, following its ratification by the US Senate on November 5, 1999. The Convention, which has been ratified by 169 countries and is the most widely-ratified international labor convention, requires each country to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency."²

Under the Convention, "the worst forms of child labour" include "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."³ Exactly what constitutes such types of work is left to be

¹ US Department of Labor, "Report for the period of September 1, 2007 to August 30, 2009, made by the Government of the United States of America, in accordance with Article 22 of the Constitution of the International Labor Organization, on the measures taken to give effect to the provisions of the Worst Forms of Child Labor Convention, 1999 (No. 182) ratification of which was registered on December 2, 1999."

² The text of ILO Convention No. 182 is available via the ILO website at <http://www.ilo.org/ilolex/english/convdisp1.htm>

³ Worst Forms of Child Labor Convention, art. 3(d). Under the convention, the term "worst forms of child labour" also includes: "(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

determined by Member States, in consultation with employer and worker organizations and in consideration of international standards, particularly ILO Recommendation 190 on the Worst Forms of Child Labour.⁴ The Recommendation, adopted in 1999 in conjunction with the convention of the same name, states that:

In determining the types of work referred to under Article 3(d) of the Convention [the "worst forms of child labour" definition], and in identifying where they exist, consideration should be given, as a minimum, to:

- (a) work which exposes children to physical, emotional or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) work under particularly difficult conditions such as work for long hours or during the night or work which does not allow for the possibility of returning home each day.⁵

The Convention also requires signatories to periodically examine and revise, in consultation with worker and employer organizations, the list of the types of work that are determined likely to harm the health, safety, or morals of children.

In sum, as a party to ILO Convention 182, the US is required to prohibit employment of children in occupations that are likely to harm the health, safety, or morals of children and to periodically update the list of occupations that are likely to harm the health, safety, or morals of children. As shown in the next section, the US is not meeting these obligations under the Convention.

Section III: Evidence of Noncompliance with ILO Convention 182

The following factors are relevant to any consideration of US compliance: 1) existing labor law exempts various categories of children from protections against employment in hazardous agricultural jobs, 2) the regulations describing particularly hazardous agricultural jobs have not been updated in 30 years despite strong and longstanding recommendations to do so from the National Institute for Occupational Safety and Health, 3) existing labor law does not prevent children from working long hours in

or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties."

⁴ Ibid., art. 4.

⁵ International Labour Organization Recommendation Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, para. 3. Available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R190>

agricultural work, and 4) the laws protecting child agricultural laborers are not well enforced.

Existing labor law exempts various categories of children from protections against employment in hazardous agricultural jobs

The federal law that establishes child labor standards is the Fair Labor Standards Act (FLSA).⁶ In most cases, the law prohibits the employment of children in occupations that the Department of Labor (DOL) has deemed to be "particularly hazardous." However, the law includes a variety of exemptions and other provisions related to child farm workers that contravene ILO Convention 182.

Although the Convention defines a child as "all persons under the age of 18," the FLSA's restrictions on employment in particularly hazardous occupations do not apply to child farm workers aged 16 and above. Indeed, US government's 2009 report to the ILO on implementation of Convention acknowledges that the FLSA allows children ages 16 and 17 "to perform all work" and that "[t]here are currently no separate health and safety standards under federal law for child farm workers ages 16 or 17 engaging in hazardous work."⁷ The minimum age of 16 for particularly hazardous work under the FLSA is unique to agriculture; the minimum age for hazardous work in other sectors of the economy is 18.

Two additional exemptions allow employment of children younger than 16 to work in jobs that have been identified as being particularly hazardous for children. First, children of any age can be employed to do particularly hazardous agricultural jobs on farms owned or operated by their parent or legal guardian.⁸ Second, the age 16 minimum for particularly hazardous employment does not apply to children who are enrolled in a vocational education training program or who have completed a specified training program⁹

Classification of hazardous jobs in agricultural is dangerously out of date

Child laborers who are subject to the restrictions on employment in particularly hazardous occupations may still end up working in jobs that are in fact hazardous because, despite recommendations from another government agency, the DOL has not updated its regulations describing what occupations in agriculture are particularly hazardous to children in over 30 years. These regulations are called Hazardous Occupation Orders (or more commonly just Hazardous Orders or HOs).

Although ILO Convention 182 calls for the list of hazardous occupations to be "periodically examined and revised as necessary," the 11 HOs in agriculture have not

⁶ Information about the FLSA, including the full text of the legislation, is available via U.S. Department of Labor at <http://www.dol.gov/whd/flsa/index.htm>

⁷ Ibid.

⁸ 29 U.S.C. 213(c)(2).

⁹ 29 C.F.R. 570.72

been revised in more than 30 years. The DOL's failure to revise the agricultural HOs is particularly striking in view of the fact that eight years have passed since the National Institute for Occupational Safety and Health (NIOSH), under commission by the DOL, published a detailed study stressing numerous safety hazards to young workers and recommending improvements in the HO regulations.¹⁰

Key recommendations of the NIOSH report related to agricultural HOs include:

- Revising the exemption for 14- and 15-year-olds with tractor certification to require tractors to be equipped with a rollover protective structure (ROPS) and mandate the use of seatbelts.¹¹
- Revising the list of machinery which youth younger than 16 are prohibited from operating or assisting to operate to address the fact that many new types of machinery have been introduced on farms since the HO was originally drafted. To enable the HO to remain relevant as new machinery becomes available, NIOSH also recommended broadening the prohibition from lists of specific machines to machines that perform general functions.¹²
- Substantially reducing the maximum height at which youth younger than 16 may work on ladders, scaffolds, roofs, farm structures, vehicles, and machines.¹³
- Prohibiting youth younger than 16 from being employed to drive motor vehicles and off-road vehicles (including all-terrain vehicles), with or without passengers, on and off the highway.¹⁴
- Strengthening the existing HO regarding pesticide use in agricultural settings to better protect child laborers under 16 from chronic hazards of exposure to pesticides.¹⁵

Although the DOL has taken steps to implement some of NIOSH's recommendations for nonagricultural work, it has failed to respond meaningfully to the recommendations related to agricultural work. As a result, children are being employed to do the types of work explicitly called out by ILO Recommendation 190 for countries to consider when defining hazardous work under Convention 182. These types of work include: "work with dangerous machinery, equipment and tools"; work "at dangerous heights"; and work that may "expose children to hazardous substances, agents or processes."

In 2009, the ILO's Committee of Experts on the Application of Conventions and Recommendations noted NIOSH's recommendations and expressed "firm hope that the Government will take the necessary measures to address the NIOSH's

¹⁰ *National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders*, US Department of Health and Human Services, 2002. Available at http://www.youthrules.dol.gov/niosh_recs_to_dol_050302.pdf

¹¹ *Ibid.*, p. 67.

¹² *Ibid.*, p. 72.

¹³ *Ibid.*, p. 79.

¹⁴ *Ibid.*, pp. 81-82.

¹⁵ *Ibid.*, p. 90.

recommendations for changing the existing agricultural HOs."¹⁶ The DOL responded in its November 2009 submission on compliance with ILO Convention 182, and said only that "DOL values the NIOSH report's recommendations on agricultural HOs for youth employment and is still evaluating the appropriate course of action."¹⁷ The ILO Committee of Experts most recent review expressed renewed concern over the issue: "Noting that the Government has been referring to the envisaged amendments to the HOs for a number of years, the Committee requests the Government to take immediate measures to ensure that the NIOSH's recommendations for changing the existing HOs are followed up on and that the amendments to the HOs are effectively adopted pursuant to these recommendations as a matter of urgency, in particular with regard to the agricultural HOs."¹⁸

The DOL's failure to update the agricultural HOs has real consequences. Between 2005 and 2008, 43 children under age 18 died from occupational injuries in crop production—27 percent of all children who were fatally injured at work during this period.¹⁹ In 2000, the most recent year for which data are available, the risk of fatal injuries for all agricultural workers ages 15 to 17 was 4.4 times that of young workers in other workplaces.²⁰

Existing labor law does not prevent children from working long hours in agricultural work

As quoted above, ILO Recommendation 190 includes "work for long hours" among the types of work that countries should consider when defining hazardous work under the Convention. Under the FLSA, however, the only restriction on working hours in agriculture is that children cannot work during school hours.²¹ Apart from this requirement, there is no limit on how early in the day children may begin work or how late in the day they may work, and not even any limit on the number of hours they may work during the day.

In contrast, child workers who do not work in the agricultural sector receive more protection with regard to the number of hours they work. For example, 14- and 15-year-olds who are permitted to work in certain retail, food service and gasoline service station jobs cannot work during school hours, and in addition they cannot work before 7 a.m. or after 7 p.m. (after 9 p.m. in summer), and they cannot work more than 3

¹⁶ Report of the Committee of Experts on the Application of Conventions and Recommendations International Labour Office, 2009.

¹⁷ US Department of Labor, "Report for the period of September 1, 2007 to August 30, 2009, made by the Government of the United States of America, in accordance with Article 22 of the Constitution of the International Labor Organization, on the measures taken to give effect to the provisions of the Worst Forms of Child Labor Convention, 1999 (No. 182) ratification of which was registered on December 2, 1999," sec. III.

¹⁸ Report of the Committee of Experts on the Application of Conventions and Recommendations International Labour Office, 2010.

¹⁹ Human Rights Watch, "Fields of Peril," May 2010, p. 38.

²⁰ Ibid.

²¹ 29 U.S.C. 213(c)(1).

hours on a school day or more than 18 hours in a school week, or more than 8 hours on a non-school day or more than 40 hours in a non-school week.²²

Children employed to work such long hours in agriculture can be quite young. While the FLSA sets the normal minimum age in most industries at 16 years,²³ the law sets the normal minimum age for employment in agriculture at 14 years.²⁴ Moreover, there are three broad exceptions to the age 14 minimum, which result in children as young as 10 years old being permitted to work in agriculture. These exemptions to the minimum age requirements allow:

- Children of any age to work in agriculture where (a) the child is employed by a parent or guardian on a farm owned or operated by the parent or guardian, or (b) the child is employed, with the consent of a parent or guardian, on a farm which employed fewer than 500 man-days of labor (i.e., about seven full-time employees) during any calendar quarter in the previous calendar year.²⁵
- Children of ages 12 and 13 to work in agriculture where a parent or guardian (a) consents to the child's employment or (b) is employed on the same farm as the child.²⁶
- Children of ages 10 and 11 to work as hand-harvest laborers for up to eight weeks in a year where the employer has received a waiver from the DOL.²⁷

The laws protecting child agricultural laborers in are not well enforced

ILO Convention 182 includes a commitment to "take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention." Unfortunately however, even the relatively weak child labor protections that are in place are often not well enforced in the agricultural sector.

The DOL's Wage and Hour Division is responsible for enforcing the FLSA. In 2009, it found only 36 cases of child labor violations in agriculture, constituting only 4 percent of all child labor cases that year.²⁸ Part of the reason for this low number is that, until recently, the Wage and Hour Division has not tailored its investigative techniques to fit the particular work environment and characteristics of children working in the fields.²⁹ Many agricultural workers move from farm to farm and do not stay long in one place; they often work irregular hours, including very early in the morning and on weekends; they are frequently unfamiliar with their rights; they often do not speak English (or even Spanish in the case of indigenous language speakers from Mexico and Central America); and those who are undocumented tend to be wary of any government investigators.³⁰

²² 29 C.F.R. sec. 570.35.

²³ 29 U.S.C. 203(l).

²⁴ 29 U.S.C. 213(c)(1)(C).

²⁵ 29 U.S.C. 213(c)(1)(A)

²⁶ 29 U.S.C. 213(c)(1)(B)

²⁷ 29 U.S.C.213(c)(4)

²⁸ Human Rights Watch, "Fields of Peril," May 2010, p. 74

²⁹ Ibid. p. 75.

³⁰ Ibid.p. 74.

This challenge is compounded by the fact that only the secretary of labor — not individual employees or their parents — can sue an employer for violations of the FLSA's child labor provisions.³¹

Further, enforcement of occupational health and safety laws that protect all agricultural workers – children and adults – is incomplete because Congress has exempted from all enforcement activity related to the Occupational Safety and Health Act any farm that employs 10 or fewer employees and has not had an active temporary labor camp within the last 12 months.³² ILO's Committee of Experts on the Application of Conventions and Recommendations has expressed particular concern about this issue, urging "the Government to take immediate and effective measures to ensure that the necessary monitoring mechanisms are in place so that all farms are inspected and monitored, regardless of the number of persons they employ."³³

When violations are found, sanctions generally are weak and ineffective. In 2008, the average penalty was only \$890 per child illegally employed, which is only 8 percent of the maximum penalty of \$11,000 then in effect.³⁴ These penalty amounts do not represent penalties actually paid because assessed penalties may be negotiated downwards in order to resolve cases and avoid litigation.³⁵

In 2008, Congress raised the maximum civil money penalties for violations of child labor provisions resulting in death or serious injury, and in 2009 the Department of Labor added several hundred new labor inspectors and promised more robust enforcement of labor laws.³⁶ It remains to be seen whether these efforts will result in better protection for child farm workers.

In sum, current regulations are insufficient to keep child farm workers safe and the US is failing to meet its obligations under ILO Convention 182. Earlier this year, the ILO Committee of Experts on the Application of Conventions and Recommendations expressed "serious concern over the fact that children under 18 years of age are allowed, in law and in practice, to perform these types of work which are clearly hazardous" and pointedly urged the US government "to take immediate and effective measures to comply with Article I of the Convention."³⁷ It is urgent that the US

³¹ Ibid.p. 74.

³² Ibid. p. 82.

³³ Report of the Committee of Experts on the Application of Conventions and Recommendations International Labour Office, 2010.

³⁴ US Department of Labor, "Report for the period of September 1, 2007 to August 30, 2009, made by the Government of the United States of America, in accordance with Article 22 of the Constitution of the International Labor Organization, on the measures taken to give effect to the provisions of the Worst Forms of Child Labor Convention, 1999 (No. 182) ratification of which was registered on December 2, 1999," sec. II.

³⁵ Human Rights Watch, "Fields of Peril," May 2010, p. 76.

³⁶ Ibid. p. 10.

³⁷ Report of the Committee of Experts on the Application of Conventions and Recommendations International Labour Office, 2010.

complies with ILO Convention 182, both for the protection of child farm workers and to fulfill international commitments.

Section IV: Proposed Improvements to US Child Labor Law in Agriculture: CARE Act

Legislation currently under consideration in Congress has the potential to address some of the US violations of ILO Convention 182. Representative Lucille Roybal-Allard (D-CA) introduced the Children's Act for Responsible Employment (CARE Act) on September 16, 2009.³⁸ The bill amends the FLSA by establishing minimum age and working hours standards for children working in agriculture equivalent to the standards set under FLSA for all other forms of child labor. Specifically, it would raise the minimum age for particularly hazardous jobs in agriculture from 16 to 18. It would also limit the number of hours 14- and 15-year-olds can work and prohibit the employment of children ages 13 and younger in agriculture except for those working on farms owned and operated by their parents.

Additionally, the bill:

- Increases civil monetary penalties for child labor violations from \$11,000 to \$15,000, and creates a minimum penalty of \$500. The proposed legislation also sets a minimum penalty of \$15,000 for violations that cause the serious injury, serious illness, or death of any employee under the age of 18 years and increases criminal penalties to a maximum of five years imprisonment for certain aggravated child labor violations.
- Requires greater data collection from the DOL on the industries in which minors are employed (specifically agriculture), a record of the types of violations found, and an annual report on child labor in the US. The bill also requires employers to report serious work-related injuries or illnesses of minors.
- Strengthens protections for pesticide exposure in agriculture to take into account additional risks posed to children. Specifically, the proposed legislation requires the Secretary of Labor to incorporate the EPA's Worker Protection Standard for pesticides into the DOL's HOs.

Passage of the CARE Act is crucial to address the need for greater protections for child labor in agriculture in the United States. However, the CARE Act does not address the exemption of children employed by their parent or guardian on a farm owned or operated by the parent or guardian, from the FLSA's hazardous work, minimum age, and maximum hours protections. Further, to fully protect children from hazardous work, the DOL still needs to implement all of NIOSH's recommended updates to the HOs related to agricultural work. Thus, in the event of passage of the CARE Act, there will be a continuing need to advocate for protections for children employed on farms owned or operated by their parent or guardian and to encourage the DOL to move quickly to update the HOs.

³⁸ Additional information about the bill, including the full text, is available via OpenCongress at <http://www.opencongress.org/bill/111-h3564/show>

Section V: Conclusion

The United States is not fulfilling its commitment under ILO Convention 182 "to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency." Current US law allows children to work long hours in hazardous jobs. As a first step towards bringing the US into compliance with the Convention, ILRF recommends swift passage of the Children's Act for Responsible Employment. In addition, ILRF calls for rapid revision of the DOL's Hazardous Occupation Orders in agriculture and for the passage of legislation protecting children employed on farms owned or operated by their parent or guardian.

For more information about the International Labor Rights Forum, please visit www.LaborRights.org or contact +1-202-347-4100 or laborrightrights@ilrf.org.