

CONFRONTING CHILD LABOR IN GLOBAL AGRICULTURAL SUPPLY CHAINS: THE WAY FORWARD

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I.	INTRODUCTION	43
II.	IDENTIFYING THE CHALLENGE	44
III.	A BRIEF SURVEY OF DEPARTMENT OF LABOR INITIATIVES	46
	A. Technical Cooperation Projects	48
	B. Innovative Engagement with the Private Sector on Supply Chain Challenges.....	51
IV.	TOWARD A CLEARER VISION.....	54
V.	CONCLUSIONS.....	56

I. INTRODUCTION

On April 4, 2014, the UC Davis *Journal of International Law and Policy* hosted a symposium titled “Confronting Child Labor in Global Agricultural Supply Chains.” The Symposium provided a unique opportunity to examine, with a cross-section of subject matter experts, a subject at the heart of much of what is done at the U.S. Department of Labor’s Bureau of International Labor Affairs (ILAB).¹ As the conveners noted in the Symposium program, child labor in global agricultural supply chains is a problem that persists notwithstanding substantial and expanding international efforts to combat it. These efforts include an array of laws and regulations, a growing number of well-designed multi-stakeholder initiatives, and advocacy efforts intended to engage those who may be benefiting (knowingly or unknowingly) from the use of child labor.

The challenge now for all of us, including U.S. government officials engaged with counterparts in other countries as well as other stakeholders, is to gain the confidence of all parties that there is shared purpose and common objectives. That includes interaction with the private sector, notably global

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¹ See generally *Int’l Labor Affairs Bureau (ILAB)*, U.S. DEP’T OF LABOR, <http://www.dol.gov/ilab/> (last visited Sept. 28, 2014) (describing ILAB’s overall purpose and institutional structure).

companies at the “end” of what are often complex supply chains, when it comes to considering its roles and responsibilities in addressing child labor vis-à-vis the still-paramount responsibilities of government authorities.

When pressing for the most effective private sector-driven initiatives to address supply chain issues, it is important not to lose sight of national governments’ lead responsibility to protect the interests of their own people consistent with well-established international human rights norms. Such international norms include the United Nations Guiding Principles on Business and Human Rights adopted in 2011,² as well as instruments of the International Labor Organization (ILO) that highlight the importance of strong national “safety net” programs.³

This paper examines different efforts that address the “worst forms of child labor” in the agricultural sector, how to make these efforts more effective, and how supply chain issues fit into the broader effort to combat what is considered to be “hazardous” child labor based on international definitions and applications of national law.

II. IDENTIFYING THE CHALLENGE

Part of the challenge is simply one of magnitude, given that the range of countries and sectors in which child labor persists in agriculture spans from cotton in Central Asia to cocoa in West Africa, from sugar in the Caribbean to palm oil in Southeast Asia.⁴

² Special Rep. of the Sec’y-Gen. on the Issue of Human Rts. and Transnational Corps. and Other Bus. Enters., *Guiding Principles on Bus. and Human Rhts.: Implementing the United Nations “Protect, Respect, and Remedy” Framework*, U.N. Doc. A/HRC/17/21 (Mar. 21, 2011) (by John Ruggie), available at <http://business-humanrights.org/sites/default/files/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>; see also, *UN Guiding Principles on Business and Human Rights*, BUS. & HUMAN RIGHTS RESOURCES CTR., <http://business-humanrights.org/en/un-guiding-principles-on-business-and-human-rights-1> (last visited Sept. 28, 2014) (detailed cataloging of information on the UN Guiding Principles, including their implementation and ongoing analysis).

³ In June 2014, the ILO released a new report that found that over 70% of the world’s population is not adequately covered by social protection programs. According to the “World Social Protection Report 2014/15: Building economic recovery, inclusive development and social justice,” only 27% of people globally, have access to comprehensive social security. As the ILO noted in issuing the report, “[s]ocial protection is a key policy tool to reduce poverty and inequality while stimulating inclusive growth by boosting the health and capacity of vulnerable segments of society, increasing their productivity, supporting domestic demand and facilitating the structural transformation of national economies.” See *More than 70 Per Cent of the World Population Lacks Proper Social Protection*, INT’L LABOR ORG. [ILO] (June 3, 2014), http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_244748/lang--ja/index.htm.

⁴ See generally Bureau of International Labor Affairs, *2013 Findings on the Worst Forms of Child Labor*, U.S. DEP’T OF LABOR (Oct. 7, 2014), available at <http://www.dol.gov/ilab/reports/child-labor/findings/2013TDA/2013TDA.pdf> [hereinafter TDA Report]

Another part of the challenge is the breadth of what underlies child labor, particularly in agriculture. These can range from inadequate educational infrastructure to geographical remoteness, from a lack of government capacity (often coupled with a lack of political will to address the problem through adequate law and enforcement tools) to traditional family structures and other cultural factors that are highly resistant to calls for change.

Each one of these involves multi-faceted, highly complex issues and a range of variables that present significant challenges to policymakers. For example, in the case of education, there are many factors that affect whether a household will send its child to school, work, or a combination of both. One of these factors is the cost, which may include income foregone in exchange for time spent in school, and the direct expenses of schooling.⁵ Further complicating the challenge are the widespread poverty, lack of economic opportunities, and adequate social safety nets (as documented in the aforementioned ILO Social Protection Report) in areas where child labor is most prevalent.

Finally, a substantial part of the challenge is defining the problem itself with adequate clarity. This begins with the ongoing effort—in the ILO, at ILAB, and elsewhere—to improve the quality of the data needed to better measure and pinpoint where the greatest problems exist. To that end, ILAB has made it a priority to fund research, including in the cocoa sector, and stronger data collection to better inform governments and other stakeholders in their assessments and program implementation.⁶

The definitional problem then extends to how to better explain—to government officials and farmers alike—exactly what is meant, in the

(most recent edition of the annual report mandated under the Trade and Development Act (TDA) of 2000 illustrating the global scale of child labor and the range of the worst forms of child labor).

⁵ *Id.*; see also Federico Blanco Allais and Frank Hagemann, *Child Labour and Education: Evidence from SIMPOC Surveys*, ILO (June 2008), available at <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=8390> (last visited Nov. 8, 2014) (discussing in detail the relationship between child labor and education). Even when education is free by law, other barriers may remain and impede access—such as lack of physical proximity to schools, inadequate transportation, and fees for materials. These barriers have a more pronounced impact on girls' school attendance. And in many cases when children do work, school attendance is heavily influenced by the nature and intensity of the work in which they are engaged. The ILO research cited above indicates that allocating more hours to work results in fewer hours spent in school, higher dropout rates, and lower overall literacy.

⁶ See ILAB News Release: *US Department of Labor awards \$1.5 million to Tulane University's Payson Center for research on child labor in West African cocoa-growing areas* (Oct. 25, 2012), available at <http://www.dol.gov/opa/media/press/ilab/ILAB20122111.htm>.; see also ILAB Technical Cooperation Project Summary: *Global Research on Child Labor Measurement and Policy Development (MAP)*, available at http://www.dol.gov/ilab/projects/summaries/GlobalResearchMAP_FY13.pdf (last visited Nov. 8, 2014).

agricultural sector, by “the worst forms of child labor” under ILO Convention No. 182.⁷ This extends, in turn, to how officials at the ILO and within national governments differentiate between permissible types of work by children in agriculture and the “worst forms.”

Accomplishing more in this regard—from improved data to more effective dissemination of information on the underlying challenges—is a critical part of mapping “the way forward” as stakeholders from government, labor and civil society, business, academia, and international organizations work together to confront child labor in global agricultural supply chains. From the perspective of ILAB, as the world’s largest single funder of projects to address child labor,⁸ achieving a clearer understanding on the part of national government officials and other stakeholders in recipient countries is critical to building confidence and developing shared strategies to confront such practices.

III. A BRIEF SURVEY OF DEPARTMENT OF LABOR INITIATIVES

ILAB has developed a varied set of approaches on how best to combat child labor in different countries and sectors. These are both “direct” and “indirect.” They are “direct” in the sense of funding research and technical cooperation projects, as well as producing comprehensive reports on the problem. ILAB’s “indirect” approaches include projects that support adherence to other labor rights, anti-discrimination and occupational safety and health activities, and the strengthening of national labor inspectorates.⁹

Each year, ILAB issues its *Findings on the Worst Forms of Child Labor* (the “Report” or “TDA Report”), which focuses on the efforts of U.S. trade beneficiary countries and territories to eliminate the worst forms of child

⁷ Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, art. 3. June 16, 1999, 87 I.L.O. C182 (entered into force Nov. 19, 2000), available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C182 [hereinafter Convention No. 182] (The United States ratified the Convention on Dec. 2, 1999) (defining the “worst forms of child labor”); see also Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, 87 I.L.O. R190, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312528:NO [hereinafter Recommendation No. 190] (describing in detail Convention No. 182 and the accompanying Recommendation No. 190).

⁸ See ILAB Factsheet, available at <http://www.dol.gov/ilab/media/pdf/ilab-factsheet.pdf> (last visited Nov. 8, 2014).

⁹ For examples of these types of projects, see ILAB Technical Cooperation Project Summary: PROMOTE: Decent Work for Domestic Workers to End Child Domestic Work, available at http://www.dol.gov/ilab/projects/summaries/Indonesia_PROMOTE.pdf (last visited Nov. 8, 2014); see also ILAB Technical Cooperation Project Summary: Country Level Engagement and Assistance to Reduce (CLEAR) Child Labor, available at http://www.dol.gov/ilab/projects/summaries/GlobalCLEAR_FY13.pdf (last visited Nov. 8, 2014).

labor through legislation, enforcement mechanisms, policies and social programs.¹⁰ The Report presents: (1) findings on the prevalence and sectoral distribution of the worst forms of child labor in each country, (2) country-specific suggestions for government action (since 2009), and (3) individual country assessments that identify whether “Significant, Moderate, Minimal, or No Advancement” has been made in each country (these were added in 2011).¹¹ It is intended to be a resource tool to foreign governments, as well as policymakers, academics, and others working on child labor and other labor rights issues, including in the formulation of trade and labor policies. The Report also serves as an important resource for ILAB in assessing future technical assistance and researching priorities as it seeks to combat child labor around the world.¹²

There are numerous initiatives that ILAB actively engages in to address the many aspects of child labor in agricultural supply chains, including those in key sectors discussed at the April Symposium such as cocoa, cotton, sugar, and tea. These initiatives include ILAB’s central role in administering the 2010 Declaration of Joint Action to Support Implementation of the Harkin-Engel Protocol, and the accompanying Framework of Action that is designed to ensure a coordinated approach to addressing the worst forms of child labor in cocoa-growing areas of West Africa. ILAB has been actively engaged in working closely with the governments of Cote d’Ivoire and Ghana, Senator Tom Harkin (D-Iowa), Representative Eliot Engel (D-New York), and leading companies and trade associations from the international cocoa and chocolate industry in these efforts. The parties to this Child Labor Cocoa Coordinating Group effort have utilized a mixture of project funding and oversight, government-to-government dialogue, detailed reporting, convening authority and stakeholder outreach, and engagement with additional private sector entities on supply chain responsibilities.¹³

With respect to cotton, ILAB has long been engaged in efforts to research, document, and report on child and forced labor in a number of different producing countries, including in the cotton fields of Uzbekistan. This has tied in with ILAB’s responsibilities in preparing the annual *Worst Forms of Child Labor* Report under the Trade and Development Act of 2000.¹⁴ The efforts also relate to ILAB’s objective of obtaining the widest

¹⁰ See TDA Report, *supra* note 4 at xvii.

¹¹ See *id.* at xx-xxi, xxiv, xxvii, xxxiii.

¹² See *id.* at xlv.

¹³ For an overview of ILAB’s work on child labor in the West Africa cocoa sector under Harkin-Engel, see *Child Labor in the Production of Cocoa*, U.S. DEP’T OF LABOR, <http://www.dol.gov/ilab/issues/child-labor/cocoa/> (last visited Sept. 28, 2014).

¹⁴ See generally The Trade and Development Act of 2000, H.R. 434, 106th Cong. §§ 412(b)(6)(D)-412(c) (2000) (discussing provisions relating to the definition of and annual report on the worst forms of child labor).

range of current information on actions being taken to address well-documented concerns about the use of child labor and forced labor in that country's cotton harvest.

To further that effort, in late July 2014, I had the opportunity to lead the first-ever Department of Labor visit to Uzbekistan for eight days of meetings with government officials and their colleagues from the trade union federation, chamber of commerce, and other organizations, as well as separate sessions with independent human rights advocates and journalists. Beyond strengthening ILAB's understanding of conditions in the cotton sector, ILAB's visit to a country long resistant to discussing these issues with outside parties was prompted in part by the Uzbekistan government's decision in mid-2013 to engage with representatives of the ILO.

This resulted in agreements to monitor the fall 2013 cotton harvest, and subsequently in April 2014, in a Memorandum of Understanding to establish a new ILO Decent Work Country Program for fuller engagement with the ILO.¹⁵ Decent Work Country Programs provide the "operational framework for ILO activities in a given country," and according to the ILO, the intent of Decent Work is to "constitute a programming tool to deliver on a limited number of priorities over a defined period within a more visible and transparent strategy to maximize the impact of the ILO's work."¹⁶

A. Technical Cooperation Projects

Yet, as important as these examples of high-level, government-to-government engagement are, the ILAB experience suggests that lower-profile initiatives are more likely to provide a clearer roadmap of the kinds of efforts needed to confront the worst forms of child labor in a sustainable way.

¹⁵ In the case of Uzbekistan, the ILO entered into a Decent Work Country Programme with the Government on April 25, 2014. See *Decent Work Country Programme of Uzbekistan Defines Priorities for 2014-2016*, ILO (Apr. 25, 2014) <http://www.ilo.org/public/english/region/eurpro/moscow/news/2014/0425.htm>. Beyond setting the framework for overall ILO engagement with Uzbekistan, it establishes as priorities of "the promotion of international labour standards and fundamental principles and rights at work, social dialogue, employment promotion through active labour market policies and entrepreneurship development, the promotion of occupational safety and health and the enhancement of social protection."

¹⁶ See *Decent Work Country Programmes*, ILO, <http://www.ilo.org/budapest/what-we-do/decent-work-country-programmes/lang--en/index.htm> (last visited Sept. 28, 2014). Through Decent Work Country Programs (Decent Work), the ILO will "support the implementation of the National Action Plan to eliminate child labour." See also *Decent Work Country Programme of Uzbekistan Defines Priorities for 2014-2016*, *supra* note 15 (press release announcing the signing notes that it "will also focus on the conditions of work and employment in agriculture, including in the cotton-growing industry, in order to promote their development in line with international labour standards and Decent Work principles.").

As administered by ILAB's Office of Child Labor, Forced Labor and Human Trafficking (OCFT), technical cooperation (also called "technical assistance") projects represent a central part of "the way forward." They typically involve partnerships with the different stakeholders who are most directly involved in efforts to confront child labor at the national and local levels— including government officials, employer and worker groups, and civil society organizations.

For example, from 2009 to 2013, ILAB funded the Rwanda Education Alternatives for Children (REACH) project, which withdrew and prevented over 8,500 children from engaging in exploitative child labor in agriculture on smallholder coffee, tea, sugar, and rice farms, as well as animal herding, through the provision of educational services for children and small business enterprise development training for parents.¹⁷

Building off this project, ILAB is now funding the Rwanda Education Alternatives for Children in Tea-Growing Areas (REACH-T) project through September 2017.¹⁸ REACH-T is a four-year, \$5 million project that is also implemented by Winrock International.¹⁹ Instead of trying to address child labor in the production of several agricultural goods, REACH-T focuses on reducing child labor in the tea supply chain by working with the government of Rwanda and the tea industry.²⁰

This focus was no accident. The decision to fund this project was informed by ILAB's existing research on the issue, including the *Worst Forms of Child Labor* Report and the Department of Labor's List, as required under the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005 and subsequent reauthorizations, and covering goods made by child labor or forced labor.²¹

¹⁷ See ILAB Technical Cooperation Project Summary: Rwanda Education Alternatives for Children (REACH), available at http://www.dol.gov/ilab/projects/summaries/Rwanda_REACH_CLOSED.pdf (last visited Nov. 8, 2014).

¹⁸ See ILAB Technical Cooperation Project Summary: Rwanda Education Alternatives for Children in Tea-Growing Areas (REACH-T), available at http://www.dol.gov/ilab/projects/summaries/Rwanda_REACH-T.pdf (last visited Nov. 8, 2014) [hereinafter ILAB REACH-T].

¹⁹ Winrock is a non-profit organization that describes itself as "providing solutions for global problems through projects that address: equitable access to goods and services, prevention of human trafficking and child labor, food security, enterprise development, natural resources management, and climate change." Areas of focus include agriculture, forestry and natural resource management, clean energy, leadership development, capacity building, and volunteer technical assistance. See *What We Do*, WINROCK INTERNATIONAL, <http://www.winrock.org/what-we-do> (last visited Nov. 3, 2014).

²⁰ See ILAB REACH-T, *supra* note 18.

²¹ See Bureau of International Labor Affairs, *List of Goods Produced by Child Labor or Forced Labor*, U.S. DEP'T OF LABOR (Dec. 1, 2014), available at http://www.dol.gov/ilab/reports/pdf/TVPRA_Report2014.pdf. As required by the TVPRA, ILAB maintains a list (the

The REACH-T project will:

- Withdraw and prevent over 4,000 children from exploitative child labor by providing scholarships and supporting youth with agricultural vocational education and improved employment opportunities through linkages with tea companies.
- Develop a mobile phone child labor monitoring system that links community-based monitoring to the Rwandan Ministry of Public Service and Labor.
- Provide training and technical support to district labor inspectors to strengthen enforcement of child labor laws on smallholder tea farms.
- Conduct two surveys on child labor prevalence in all tea producing regions of Rwanda.
- Improve sustainable livelihoods of target households through the provision of entrepreneurship and life skills training.
- Raise awareness on child labor, the benefits of education, and hazards found in the production of tea among cooperative members and tea companies.²²

Another innovative ILAB-funded project that was focused on combating the worst forms of child labor through education included a partnership with the coffee sector in Nicaragua. One component of this ENTERATE project, which was in place from 2008 to 2011, was to develop a corporate social responsibility strategy with coffee growers, the government, and civil society organizations.²³ The project also helped expand the public-private education partnership between the Nicaraguan government and coffee plantation owners in order to better support the children of coffee workers.²⁴ Under the ENTERATE project, owners of

“List”) of goods and their source countries that it has “reason to believe” are produced by child labor or forced labor in violation of international standards. The List is intended to raise public awareness about child labor and forced labor around the world, and to promote and inform efforts to address them. A starting point for action, the List creates opportunities for ILAB to engage and assist foreign governments. It is also a valuable resource for researchers, advocacy organizations and companies wishing to carry out risk assessments and engage in due diligence on labor rights in their supply chains. ILAB released its initial TVPRA list in 2009, and has updated it every year since, following a set of procedural guidelines issued in 2007. Beginning in 2014, ILAB is updating and publishing the List every other year, pursuant to changes in the law.

²² See ILAB REACH-T, *supra* note 18.

²³ See ILAB Technical Cooperation Project Summary: Combating the Worst Forms of Child Labor through Education in Nicaragua, “ENTERATE”, available at http://www.dol.gov/ilab/projects/summaries/Nicaragua_ENTERATE.pdf (last visited Nov. 8, 2014).

²⁴ *Id.*

coffee plantations built schools, the government provided teachers and support for school accreditation in the national educational system, and different non-governmental organizations provided extended day and school enrichment programs.²⁵ The project helped build a greater national capacity to conduct labor inspections on coffee plantations and implement a sustainable child labor monitoring system, particularly at the municipal level. It also identified potential ways to certify certain coffee production as free of child labor. Finally, it facilitated the sharing of “good practices” and lessons learned to additional geographical areas to replicate and expand the reach of the program.

The project resulted in the withdrawal or prevention of over 10,000 children from involvement in exploitative child labor, including in the coffee sector, through the provision of direct education and training services.²⁶ As a postscript, in March 2014, a Nicaraguan coffee grower who participated actively in the project, Isidro León-York, received the Department of Labor’s annual Iqbal Masih Award, the first private sector recipient of an award that recognizes global leadership in efforts to combat the worst forms of child labor.²⁷ This reflected the fact that he helped expand the program to a network of 26 additional coffee plantations in efforts to ensure child labor-free operations. Simultaneously, León-York used a portion of his farm’s profits to fund a school for the children of workers and committed to providing his workers and their families with adequate wages, food, and healthcare services.

B. Innovative Engagement with the Private Sector on Supply Chain Challenges

These technical cooperation projects represent just one part of a growing focus on engagement with the private sector—business, as well as labor, civil society, and other stakeholders—on supply chain challenges. That engagement includes policy initiatives and technical assistance projects. To that end, another critical element involves the implementation of the Guidelines issued by the USDA Consultative Group to Eliminate the

²⁵ See ICF International, *Independent Final Evaluation of Combating the Worst Forms of Child Labor Through Education in Nicaragua*, ENTERATE (2011), available at http://www.dol.gov/ilab/projects/summaries/Nicaragua_ENTERATE_feval.pdf (last visited Oct. 20, 2014).

²⁶ *Id.*

²⁷ See Thomas E. Perez, Sec’y of Labor, *Nicaraguan Coffee Produce Isidro León-York Awarded US Labor Department Iqbal Masih Award for the Elimination of Child Labor*, U.S. DEP’T OF LABOR (Mar. 20, 2014), available at <http://www.dol.gov/opa/media/press/ilab/ILAB20140468.htm>.

Use of Child Labor and Forced Labor in Imported Agricultural Products.²⁸

Established under the 2008 Farm Bill,²⁹ the Consultative Group developed and made recommendations to the Secretary of Agriculture regarding guidelines to reduce the likelihood that agricultural products imported into the United States were produced with the use of child or forced labor. These recommendations were adopted in April 2011 as formal guidelines without any change.³⁰

What makes the Guidelines an important part of “the way forward” is that they present a robust social compliance model based on independent third-party monitoring and verification, transparent reporting, and meaningful remediation programs. They reflect a consensus approach across three federal departments—Agriculture, Labor, and State—that often have conflicting policy priorities and objectives, as well as among senior representatives of industry, labor, civil society, academia, and other institutions with expertise concerning child and forced labor in global agricultural supply chains.

At the same time, they afford necessary flexibility. As the April 2011 *Federal Register* notice of publication states,

[a]s there are a wide variety of circumstances and relationships in commercial systems in the agricultural sector, the Guidelines focus on essential elements for credible, up-to-date monitoring and verification systems rather than prescribing specific detailed steps for all companies to use. There are many ways companies and other entities could implement these guidelines to fit their specific circumstances, and the methods which are suggested in the text are certainly not exhaustive.³¹

Independent monitoring and verification instruments are also among the elements of an effective compliance program set out in “Reducing Child Labor and Forced Labor: A Toolkit for Responsible Businesses,” issued by ILAB in December 2012, pursuant to legislative mandate.³² The Toolkit

²⁸ See Bureau of International Labor Affairs, *Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products*, U.S. DEP’T OF LABOR, <http://www.dol.gov/ilab/issues/child-labor/fcea.htm> (last visited Sept. 28, 2014).

²⁹ Food Conservation and Energy Act of 2008, Pub. L. No. 110-246, § 3205, 122 Stat. 1838 (2008).

³⁰ See generally Foreign Agricultural Service, *Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products*, FED. REGISTER (Apr. 12, 2011), available at <https://www.federalregister.gov/articles/2011/04/12/2011-8587/consultative-group-to-eliminate-the-use-of-child-labor-and-forced-labor-in-imported-agricultural> (requesting comment on guidelines for eliminating child and forced labor in agricultural supply chains).

³¹ *Id.*

³² An interactive version of the Toolkit is available at <http://www.dol.gov/ilab/child->

provides an innovative and interactive set of eight training “modules” (from initial engagement to transparency and reporting) that represent the first project of its kind produced by the U.S. government.

While the Toolkit is not intended to have a focus specifically on agricultural supply chains, its assessment of the “root causes” of child labor and forced labor is particularly relevant to the conditions found in agriculture. As noted above, these “root causes” include endemic poverty, inadequate or ineffective government resources that often follow from weak laws and/or lack of commitment to effective enforcement, lack of access to quality education, weak or non-existent trade unions and civil society entities, gender inequality, conflict, and even particular vulnerability to bad weather and natural disaster.³³

This is by no means an exhaustive list of initiatives. ILAB is engaged in other activities, both across the U.S. government and in its work with international institutions, that are intended to provide additional guidance concerning child labor (as well as, in some cases, adult forced labor) in agricultural supply chains.³⁴ The growing number of such initiatives reflects the increased attention to, and stakeholder engagement in, addressing these complex policy problems.

In the next section, the paper will examine the need to build into these efforts a clearer understanding of how and where to focus attention in order to ensure that they result in a more sustainable and inclusive approach to responding to the challenges of child labor in global agricultural supply chains.

forced-labor/ (last visited Sept. 28, 2014).

³³ Bureau of International Labor Affairs, *Addressing Root Causes*, U.S. DEP’T OF LABOR, <http://www.dol.gov/ilab/child-forced-labor/Addressing-Root-Causes.htm> (for information on root causes, expand the drop-down menu entitled “What Are the Root Causes of Child Labor and Forced Labor?”) (last visited Sept. 28, 2014).

³⁴ See OECD Investment Policy, *Responsible Business Conduct along Agricultural Supply Chains*, ORG. FOR ECON. COOPERATION AND DEV., <http://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm> (last visited Sept. 28, 2014) (concerning the work of the OECD and the Food and Agriculture Organization (FAO) on a project designed to help investors better identify and thereby avoid acting inconsistently with well-established principles of responsible business conduct in the agricultural sector) (The project includes a multi-stakeholder advisory group that is preparing guidance in accordance with the OECD Guidelines for Multinational Enterprises, with Terms of Reference for developing that guidance set out in February 2014; several meetings have been held in 2013-14 to advance this effort, and within the U.S. government the work is being coordinated by the U.S. Agency for International Development’s Bureau for Food Security. In July 2014, ILAB submitted comments on a draft guidance document. As noted, the initiative extends well beyond labor rights issues alone, although that is one explicit element; other issues covered include human rights more generally, land rights, animal welfare, the right to food, right to health, governance, and sustainable use of natural resources).

IV. TOWARD A CLEARER VISION

As noted at the outset, the impact of these and other program and policy initiatives is likely to be circumscribed absent a concurrent ability to articulate a clear and consistent vision of what constitutes “the worst forms” and focus project assistance, reporting, and engagement strategies with governments and other stakeholders on these practices.³⁵

ILO Convention No. 182 sets out, in Article 3, four Worst Forms of Child Labor:

- (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 or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; and
- (d) 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.³⁶

The ILO has clarified that labor that “jeopardises the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out, is known as ‘hazardous work.’”³⁷ Further guidance for governments on hazardous child labor activities that should be prohibited is, in turn, provided in the accompanying ILO Recommendation No. 190 (the “Recommendation”) concerning the Prohibition and Immediate Action for the Elimination Worst Forms of Child Labour, which notes in relevant part:

In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

³⁵ See generally TDA Report, *supra* note 4 (This Report, covering the 2013 calendar year, was issued on October 7, 2014 and covers 124 independent countries and 19 non-independent countries and territories). In this Report, ILAB includes a section describing the “worst forms” and referencing ILO Convention 182, Recommendation 190, and other relevant publications.

³⁶ Convention No. 182, *supra* note 7.

³⁷ Report of the Director-General, *A Future Without Child Labour, Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, ILO (2002); see International Programme on the Elimination of Child Labor, *Hazardous Child Labor*, ILO, <http://www.ilo.org/ipec/facts/WorstFormsofChildLabour/Hazardouschildlabour/lang--en/index.htm> (last visited Sept. 28, 2014).

(a) work which exposes children to physical, psychological 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 where the child is unreasonably confined to the premises of the employer.³⁸

It is critical to recognize that, under Convention 182, the determination of what constitutes such “hazardous work” is made at the national, not international, level.³⁹ Countries that ratify the Convention make a commitment to enshrine in their national laws a list of hazardous occupations prohibited for children below age 18, drawing on the non-binding guidance set out in the Recommendation concerning what should be considered hazardous.

The most salient of the items included in the Recommendation’s guidance with respect to agriculture are

. . . (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 . . . damaging to their health; [or] (e) work under particularly difficult conditions such as work for long hours⁴⁰

Particularly because determinations of what is “hazardous” are made at the national level, it is critical for the ILO, as well as donor institutions such

³⁸ Recommendation No. 190, *supra* note 7.

³⁹ The Trade and Development Act of 2000, *supra* note 14 (establishing the responsibility of the Department of Labor to report on the Worst Forms of Child Labor on an annual basis and providing that the “hazardous” work described in subparagraph 3(d) of the Convention should be “determined by the laws, regulations, or competent authority of the country involved,” thus reinforcing that the responsibility for doing so rests with individual governments – in consultation with workers’ and employers’ organizations and, as noted above, taking into consideration the guidance and standards set out in ILO Recommendation No. 190) (in preparing the annual report under this authority, ILAB uses Recommendation No. 190 as a guide for the interpretation of Article 3(d). ILAB also identifies the type of hazardous work in which children are engaged, or are at a risk of engaging, for each country covered in the report, and then applies international standards to the country’s legal framework in assessing whether adequate protections existed during the reporting period).

⁴⁰ Recommendation No. 190, *supra* note 7.

as the ILAB, to work closely with foreign governments and other stakeholders on the ground in addressing the worst forms of child labor. While the ILO has developed detailed education and training materials to advance this understanding,⁴¹ these need to be supplemented at the project-specific level where there is a greater likelihood of detailed engagement and ongoing interaction among a range of important stakeholder, including national government officials.

To that end, in the case of the Rwanda project described earlier, project implementers work directly with local stakeholders to examine the kinds of work children are performing, determine which aspects of the work are hazardous, and work to eliminate those hazards. At the same time, they allow for a reasonable amount of child work in agriculture that contributes to family livelihoods and does not interfere with education.

This reflects the importance of engaging with the widest cross-section of interested parties and establishing terms of engagement that are more likely to bolster effective coordination with national governments and other key stakeholders.

V. CONCLUSIONS

The above type of carefully calibrated approach mitigates concerns about the overbroad efforts to address child labor. This is an important step so that national governments and other stakeholders can come to more clearly understand the delineation between the “worst forms,” which clearly violate international legal standards and must be confronted actively, and other types of “children’s work” that will not be a target of such efforts.

That brings us back to the evolving challenges of confronting child labor in global agricultural supply chains and the innovative approaches discussed at April’s Symposium. During the course of that day of presentations and dialogue, the participants had the opportunity to discuss different diagnoses of the challenges of addressing child labor in agriculture, propose tools for better measuring how and where progress is being made, explain the status of legal frameworks at the national and international levels, and consider the growing range of multi-stakeholder initiatives developed in parallel to those regulatory frameworks.

⁴¹ See, e.g., International Programme on the Elimination of Child Labor, *Steps Toward Determining Hazardous Child Labour*, ILO (Oct. 1, 2006) available at http://www.ilo.org/ipecc/informationresources/WCMS_IPEC_PUB_5544/lang--en/index.htm (this is one part of a series, “Step by Step – Eliminating hazardous child labour” that also includes a brochure outlining the six steps for determining the hazardous child labour list (2003); a series of factsheets on technical points (2004); a pamphlet of country examples (2005); and a guide updated in 2012 designed for the tripartite consultative process within each country intended to result in either a new or a revised list of hazardous child labor for the country).

2014]

Confronting Child Labor

57

What the April Symposium revealed, in addition to providing a forum for sharing valuable information, was the importance of thinking innovatively about how to address what one panel described as the “various overlapping and sometimes conflicting perspectives” on the issue of how best to address and combat child labor in agricultural supply chains.

To that end, this paper has sought to consider how all of us can foster greater clarity concerning the most effective and appropriate roles and responsibilities of different stakeholders. Our goal here—indeed, our shared responsibility—is to improve the confidence of government officials and other stakeholders in the fact that we are all working toward the same end: addressing the “worst forms of child labor” in agriculture to advance more sustainable opportunities for children and their families alike.