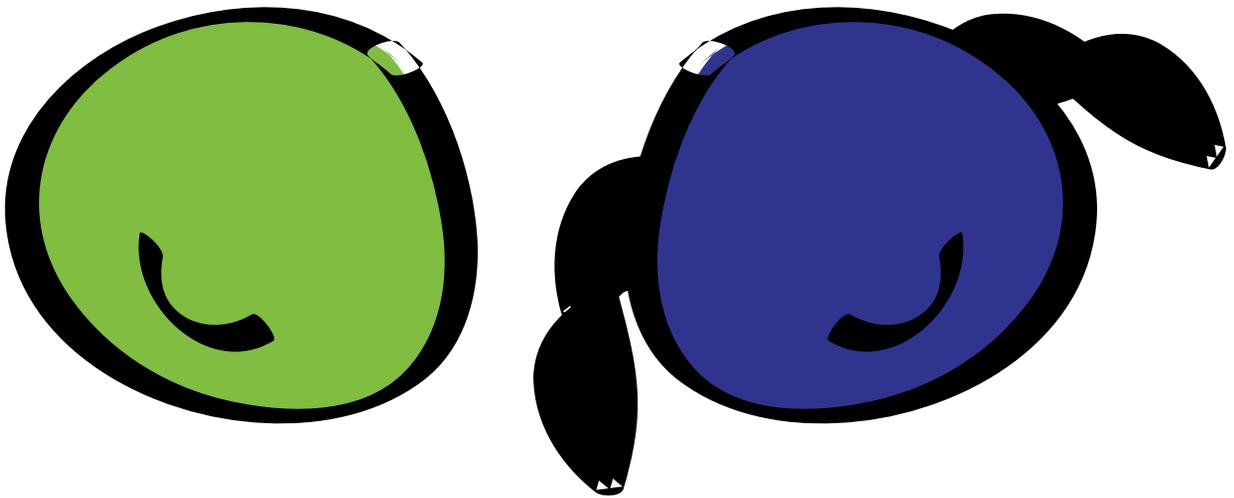


RESOURCE BOOK

FOR LABOUR INSPECTORS ON CHILD LABOUR AND TRAFFICKING OF CHILDREN FOR FORCED LABOUR



GLOBAL MARCH

Against Child Labour
Contra el Trabajo Infantil
Contre le Travail des Enfants

R E S O U R C E B O O K

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This Resource Book is a work in progress and is a part of Global March Against Child Labour's effort to end child labour and promote education for all children. The Resource Book was drafted in 2011 as part of Global March Against Child Labour's Project RAGS/C/009 funded by the Department for International Development .

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The original draft Resource Book in 2011 was developed by Priyanka Ribhu with support from Rohit Sharma and Nicholas Grisewood, and designed and illustrated by Vijay Singh.

This Resource Book has been advised by J.T. Jinkalappa, Addl. Labour Commissioner (In-charge), Govt. of Karnataka and Bhuwan Ribhu, Bachpan Bachao Andolan.

For more information contact:

Global March Against Child Labour

International Secretariat
L-6, Kalkaji
New Delhi 110019
India
Email: info@globalmarch.org
Tel: +91 11 49211111-12
Fax: +91 11 49211138

www.globalmarch.org

FOREWORD

Child labour is an impediment for national development posing a grave threat to the well being of children and perpetuating the vicious circle of poverty and illiteracy. The magnitude of the issue of child labour calls for concerted efforts from all stakeholders for successful alleviation. There is a need to focus on a concrete enforcement agenda for making the country child labour free by translating the micro-level interventions of the Labour Inspectors in the fields to macro-level policy changes at the national and global levels.

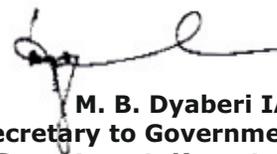
Having successfully convened the sensitization work shop for Labour Department (Bengaluru Division) Govt. of Karnataka earlier last year and further in an endeavour to sensitize the labour department about the recently notified Criminal Law (Amendment) Act 2013 that has defined and criminalized trafficking in persons and their subsequent employment, Global March Against Child Labour in consultation with Sri. M.B. Dyaberi, Secretary to Government, Labour Department, Government of Karnataka and Sri. J.T. Jinkalappa, Additional Labour Commissioner (In-charge), Labour Department, Government of Karnataka has developed this "Resource Book for Labour Inspectors on Child Labour and Trafficking of Children for Forced Labour" for augmenting the capacity of state labour inspectors and officials towards eliminating child labour and trafficking of children for forced labour in the new and emerging forms. The Resource Book emphasizes on the role of the Labour Inspectors in addressing trafficking of children for forced labour, interagency collaboration and the importance of rehabilitation, repatriation and re-integration of children withdrawn or rescued from work. The indicative training methodology elicited in this Resource Book fosters participative techniques like group discussions, case study analysis, guided dialogue, brainstorming sessions which in turn evoke a meaningful debate among the workshop participants.

Experience of conducting rescue operations with the labour departments across the country, supporting rehabilitation and re-integration of child labourers in mainstream society, designing and delivering trainings on child labour and trafficking for forced labour for various target groups have been pooled together to develop this Resource Book.

It is hoped that this Resource Book will augment the capacity of the Labour Inspectors and officials by effectively assisting them in disposition of their duties and responsibilities towards elimination of child labour pivoted with the overall well-being of the child. In the wake of the aforesaid changes related to trafficking in section 370 and 370A of Indian Penal Code 1860, the sensitization workshop based on the methodology elicited in this resource book will help stepping up the capacity of Labour Inspectorate particularly towards monitoring and inspection in cases related to child labour. We offer this Resource Book as a learning tool and an operational guide to actors in supporting child rights, promote the value of freedom and dignity for all human beings and foster a culture of partnership and prevention to protect children in hazardous working conditions. We hope that this Resource Book may inspire, so that what we have all worked towards may endure. This Resource Book is an example of collaborative efforts of the government and civil society towards addressing the issue of child labour. Therefore we sincerely hope that this endeavour will further strengthen this partnership to accelerate collective action and results.



Kailash Satyarthi
Chairperson
Global March Against Child Labour



M. B. Dyaberi IAS
Secretary to Government
Labour Department, Karnataka

ABBREVIATION

| | | |
|---------|---|--|
| BLA | = | Bonded Labour System Abolition Act, 1976 |
| CLPRA | = | Child Labour (Prohibition and Regulation) Act, 1986. |
| CWC | = | Child Welfare Committee |
| DM | = | District Magistrate |
| FIR | = | First Information Report |
| ILO | = | International Labour Organization |
| IPC | = | Indian Penal Code |
| IPEC | = | International Program for the Elimination of Child Labour |
| ITUC | = | International Trade Union Confederation |
| JJA | = | Juvenile Justice (Care and Protection of Children) Act, 2000 |
| NCLP | = | National Child Labour Project |
| NGO | = | Non-Governmental Organization |
| OS&H | = | Occupational Health and Safety |
| RTE Act | = | Right of Children to Free and Compulsory Education Act, 2009 |
| SDM | = | Sub-Divisional Magistrate |
| SSA | = | Sarva Shiksha Abhiyan |
| UN | = | United Nations |

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I. INTRODUCTION

This Resource Book targets labour inspectors and officials in their efforts to eliminate child labour and trafficking of children for forced labour. It is elaborated within the framework of the Constitution of India; the Child Labour (Prohibition and Regulation) Act 1986; Juvenile Justice (Care and Protection) of Children Act, 2000; Bonded Labour (Abolition) Act, 1976, various sections of the Indian Penal Code and the international instruments, namely, the United Nations Convention on the Rights of the Child, the ILO Convention No. 138 on the Minimum Age of Employment and the ILO Convention No. 182 on the Worst Forms of Child Labour, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.



This Resource Book was specifically designed to **support labour inspectors and officers working to combat child labour and trafficking of children for forced labour, who already have practical experience in this field.** Therefore, it will only briefly describe the definition and general overview of child trafficking, and rather focus on specific topics, identify challenges and present identified good practices.

This Resource Book aims to build the capacity of state labour inspectors and officials towards eliminating child labour and trafficking of children for forced labour in global supply chains like garment-manufacturing, sporting goods, mining, etc. This Resource Book helps to guide them in identifying and withdrawing children from employment and to monitor the proper rehabilitation of the children.

The Resource Book aims:

- to develop the knowledge about concept, scope, magnitude, forms and consequences on child labour and trafficking for forced labour;
- to prepare the trainees to take responsibilities for elimination of child labour and assure rehabilitation of children;
- to understand specific strategies to combat child labour and trafficking of children for forced labour in the context of manufacturing supply chains;
- to understand the need for pro-active role in coordinating with other departments/agencies for effective result;
- to suggest steps to avoid occurrence of child labour and trafficking of children for forced labour in their area through effective enforcement;
- to identify the problems in enforcement and plan solutions for them.

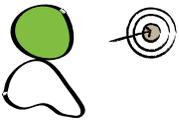
With knowledge and intention, and effective identification and implementation of the child labour and anti-trafficking laws, the participants would be better equipped to contribute towards elimination of child labour and trafficking for forced labour.

The task of inspection is primarily the education of the employer and workers to secure better implementation of the labour laws. It is important to train in the methodology of inspection and for the care and tact necessary to succeed in filtering out child labourers in the supply chain, enforcement of the legislative

framework and support the proper rehabilitation and reintegration of the child labourers and child victims of trafficking for forced labour in the communities. Sensitisation on the enforcement machinery is essential for change in attitude and approach towards the problem of child labour, and for effective compliance with the domestic and international legislation.

Enforcement of child labour laws is the key message of the Resource Book. Enforcement is both preventive as well as curative. Its impact goes beyond the case by demonstration and deterrence. Criminal conviction resulting in jail term has an electrifying effect where not only the convicted person but other employers also are careful not to employ children. Compared to any other intervention enforcement is more cost effective as well.

With reference to child labour, enforcement has two aspects. Firstly, to ensure that laws on free and compulsory education are implemented and all out of school children are put in school. Secondly, to enforce labour laws on employment of children and ensure that all of them are released from labour and rehabilitated.



This Resource Book can be used as a basis for both the aspects of the enforcement of child labour laws, and lays the ground for the content of training sessions.

How to use the Resource Book

The important icons are explained as follows:



Definition and concepts



Points to remember



Exercise and activities for better understanding

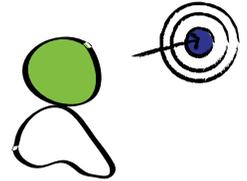


Important Questions & Answers

The Resource Book gains

The Resource Book is can be used as a reference, a training tool and will support:

- *Increased awareness on the child labour situation in the locality;*
- *Increased understanding of the issues of trafficking, forced labour and trafficking for forced labour;*
- *Identified and assessed current child labour responses of Labour Inspectorates, other enforcement agencies and key partners in combating child labour and trafficking for forced labour;*
- *Augmented knowledge on ILO Conventions and National Labour Laws regarding the employment of children and forced labour;*
- *Confirmed the functions and authority of labour inspectors as regards working children;*
- *A better understanding of child labour monitoring and the role of labour inspection in the process;*
- *Identified possibilities for collaborating and coordinating with other actors, agencies and organizations;*
- *Knowledge of child observation and interviewing techniques;*
- *Identified and assessed risks and hazards children are exposed to in different work situations;*
- *Awareness of the importance of working with and motivating others;*
- *Augmented knowledge of each phase of the inspection visit (preparation, conduct and follow-up) as regards child labour;*
- *Respect for the rights and needs of children;*
- *Considerations in taking action and nature of actions to be taken as regards children identified in different work situations;*
- *The general criteria and process for removal and referral of children from workplaces;*
- *Specific mechanisms for coordinating with other actors, agencies and organizations involved the removal and referral of child labourers;*
- *Knowledge of referral services and how to coordinate action more effectively and efficiently;*
- *A better understanding of the importance of raising awareness on child labour issues;*
- *Identification of procedures for child labour information dissemination and analysis;*
- *Establishment of child labour action plans for priority action areas.*



Suggested Approach in facilitating trainings



Lecture

This is to be employed for introducing the subject/topic at the beginning of the session.



Asking Questions

Questions can be asked to keep the participants attentive and also to stimulate discussions; they should never be asked in an irritating or threatening way.



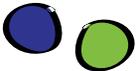
Sub-Groups discussions

It is an active method of participatory learning; helps participants become involved in the discussions and provide opportunities to all the participants.



Case Studies

Case studies given in the activity provide real life situations whereby the participants understand the subject. After presenting case studies, the salient features of the same should be discussed and recorded.



Role Plays

Act out the roles of child labourers and the people who interact with them to gain understanding of the different situations, the psychology and the awareness of the participants.



Action Plan

Action plan can be developed individually or as a group activity. Action plan is required to make participants think about the issues and develop a strategy for taking positive steps at their individual and collective levels to prevent child labour.



Guided dialogue

This will help the participants generate new ideas regarding the content of the training by gleaning points from the experiences of the individual participants.



Brain Storming

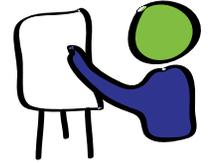
It is a technique used to encourage the participants to generate a wide variety of ideas. Participants must be encouraged to offer any idea however divergent which comes to their mind regarding the topic.

Role of the Resource persons

- Should be aware of the group dynamics and provide and promote equal opportunities to all
- Should ensure that different ideas/opinions are respected
- Should facilitate discussions
- Should lead discussions and at the end summarize the key points
- Arrange for field visit/guest speakers
- Should be very punctual and become a role model
- Should respect the knowledge and background of the participants
- Should make suitable preparations before the commencement of the training
- Should encourage group discussions, dialogues, questions etc.
- Should try to procure handouts, basic information, publications, video films, audio cassettes, charts, banners, posters, photographs etc.
- Should help the participants understand the orientation schedule
- Should avoid unnecessary discussions, arguments, etc.
- Encourage the use of songs and other activities etc.
- Help participants to learn from one another
- Try to ensure that no one dominates the session
- Encourage the silent participants to speak up and participate in the session
- Be democratic, allow participants to lead
- Recognize the contributions of the participants
- Prevent the withdrawal of participants from participation or discussion
- Document the training experience and report the same to appropriate authorities
- Obtain feed back and record suggestions for further improvement of the session in future.

II. PROGRAMME PLANNING

A. Child Labour and Labour Inspection



Concept, scope and magnitude of child labour

Introduction: the facilitator discusses child labour in general, child labour in the garment industry and the forms and categories of child labour in the garment industry (including hazardous child labour and worst forms of child labour).

The trainer facilitates discussion on:

- Who is a child – at what age does childhood end?
- What is meant by child labour?
- Differences between child work and child labour – harmful work, health consequences, effect on education and development.
- How many child labourers are there – by sectors, geographies, etc?
- What do the child labourers do?
- What risks do child labourers face?
- Why do children work – the demand-side and supply-side factors?
- What can be done to stop child labour?

The discussion will be focused on the current practice and what should be the ideal practice regarding child labour and young workers.

The facilitator asks the participants to identify the difference between child labour and child work using examples of work activities performed by children, the nature of the work, the health consequences, effect on education and development.

According to the International Labour Organization (“ILO”) “child labour” includes children prematurely leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development sometimes separated from their families, frequently deprived of meaningful educational and training opportunities that could open up for them a better future.

Any work that interferes with the completion of a child's education or is mentally, physically, socially and morally dangerous and harmful to children is considered child labour.

The legislation specifically dealing with child labour in India was passed in 1985. This was the Child Labour (Prohibition and Regulation) Act, 1986.

Child labour is the combination of two words: **child** and **labour**. The word child has been defined by various (national) enactments, which varies according to the very purpose of the enactment. Generally it is 14 years as the Child Labour Act, which is the special act for the purpose of prohibition of child labour, states that a child is a person who has not completed his fourteenth year of age. Whereas some of the enactments also prohibit child labour for more than 14 years i.e. the Mines Act, 1952: according to the Mines Act no person below eighteen years of age shall be allowed to work in any mine or part thereof.

The Child Labour Act aims to prohibit the entry of children into hazardous occupations and to regulate the services of children in non-hazardous occupations. The Act in particular, does the following:

- It prohibits the employment of children, i.e., those who have not completed their 14th year in specified occupations and processes (listed in the Schedule (Part A and B to the Act) e.g., zari making and allied processes);
- It lays down a procedure to make additions to the schedule of hazardous occupations or processes through the Child Labour Technical Advisory Committee;
- Regulates the working conditions of children in occupations where they are not prohibited from working, with provisions such as rest, holidays, restrictions of dole employment, etc;
- Lays down penalties for employment of children in violation of the provisions of this act and other Acts which forbid the employment of children.

“**Child work**” is work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist and is an integral part of a course, a programme of training or a programme of guidance or orientation.

The Hazardous List Schedule, of the Child Labour (Prohibition and Regulation) Act, 1986

**Part A
Occupations**

Any occupation concerned with: -

- (1) Transport of passengers, goods or mails by railways;
- (2) Cinder picking, clearing of an ash pit or building operation in the railway premises;
- (3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from the one platform to another or in to or out of a moving train;
- (4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
- (5) A port authority within the limits of any port;
- (6) Work relating to selling of crackers and fireworks in shops with temporary licenses;
- (7) Abattoirs/Slaughter House;
- (8) Automobile workshops and garages;
- (9) Foundries;
- (10) Handling of toxic or inflammable substances or explosives;
- (11) Handloom and power loom industry;
- (12) Mines (underground and under water) and collieries;
- (13) Plastic units and fibreglass workshops;

- (14) Domestic workers or servants and
- (15) Dhabas (roadside eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centres.
- (16) Diving
- (17) Caring of Elephant
- (18) Working in the circus

Part B

Processes

- (1) Beedi-making.
- (2) Carpet-weaving.
- (3) Cement manufacture, including bagging of cement.
- (4) Cloth printing, dyeing and weaving.
- (5) Manufacture of matches, explosives and fire-works.
- (6) Mica-cutting and splitting.
- (7) Shellac manufacture.
- (8) Soap manufacture.
- (9) Tanning.
- (10) Wool-cleaning.
- (11) Building and construction industry.
- (12) Manufacture of slate pencils (including packing).
- (13) Manufacture of products from agate.
- (14) Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.
- (15) "Hazardous processes" as defined in Sec. 2 (cb) and 'dangerous operation' as notice in rules made under section 87 of the Factories Act, 1948 (63 of 1948)
- (16) Printing as defined in Section 2(k) (iv) of the Factories Act, 1948 (63 of 1948)
- (17) Cashew and cashewnut descaling and processing.
- (18) Soldering processes in electronic industries.
- (19) 'Aggarbatti' manufacturing.
- (20) Automobile repairs and maintenance including processes incidental thereto namely, welding, lathe work, dent beating and painting.
- (21) Brick kilns and Roof tiles units.
- (22) Cotton ginning and processing and production of hosiery goods.
- (23) Detergent manufacturing.
- (24) Fabrication workshops (ferrous and non ferrous)
- (25) Gem cutting and polishing.
- (26) Handling of chromite and manganese ores.
- (27) Jute textile manufacture and coir making.
- (28) Lime Kilns and Manufacture of Lime.
- (29) Lock Making.
- (30) Manufacturing processes having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding or scraping of lead paint, burning of lead in enameling workshops, lead mining, plumbing, cable making, wiring patenting, lead casting, type founding in printing

- shops. Store type setting, assembling of cars, shot making and lead glass blowing.
- (31) Manufacture of cement pipes, cement products and other related work.
 - (32) Manufacture of glass, glass ware including bangles, florescent tubes, bulbs and other similar glass products.
 - (33) Manufacture of dyes and dye stuff.
 - (34) Manufacturing or handling of pesticides and insecticides.
 - (35) Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry.
 - (36) Manufacturing of burning coal and coal briquettes.
 - (37) Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather.
 - (38) Moulding and processing of fiberglass and plastic.
 - (39) Oil expelling and refinery.
 - (40) Paper making.
 - (41) Potteries and ceramic industry.
 - (42) Polishing, moulding, cutting, welding and manufacturing of brass goods in all forms.
 - (43) Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting.
 - (44) Saw mill – all processes.
 - (45) Sericulture processing.
 - (46) Skinning, dyeing and processes for manufacturing of leather and leather products.
 - (47) Stone breaking and stone crushing.
 - (48) Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form.
 - (49) Tyre making, repairing, re-treading and graphite beneficiation.
 - (50) Utensils making, polishing and metal buffing.
 - (51) 'Zari' making (all processes)'.
(52) Electroplating;
(53) Graphite powdering and incidental processing;
(54) Grinding or glazing of metals;
(55) Diamond cutting and polishing;
(56) Extraction of slate from mines;
(57) Rag picking and scavenging.
 - (58) Processes involving exposure to excessive heat (e.g. working near furnace) and cold;
 - (59) Mechanised fishing;
 - (60) Food Processing;
 - (61) Beverage Industry;
 - (62) Timber handling and loading;
 - (63) Mechanical Lumbering;
 - (64) Warehousing;
 - (65) Processes involving exposure to free silica such as slate, pencil industry, stone grinding, slate stone mining, stone quarries, agate industry.

Q&A



Q. WHO IS A CHILD?

A. Defining a “child” is a confusing area, but it is important to let the group to share their own views.

In India, the Juvenile Justice (Care and Protection) of Children Act 2000, defines a child as a person below the age of 18 years. This is in consonance with the United Nation's Convention on the Rights of the Child, a “child” is defined as an individual under the age of 18 years.

Labour inspectors, for example, are likely to view childhood ending at the minimum legal age for admission to employment. They are also likely to view childhood ending at the end of compulsory education, which is 14 years in India.

According to the ILO Worst Forms of Child Labour Convention, 1999 (No.182), “the term child shall apply to all persons under the age of 18”

Q. WHAT IS CHILD LABOUR?

A. Child labour is work performed by a person below the age of 18 years, which deprives the person of basic human rights, interferes in the education of the child, and is abusive, hazardous, exploitative and harmful to the health, safety, morals as well as the total development of the child.



“Young workers” are persons under the age of 18 who have attained the minimum legal age for admission to employment or work in their country and are therefore legally authorised to work under certain conditions. Whilst the ILO recommends 16 years as a general minimum age, the minimum age is determined by national legislation and can be set at 14,15, or 16 years. But this does not mean that young workers should be engaged in hazardous work.

Q. HOW MANY CHILD LABOURERS ARE THERE?

A. It is important to recognise that statistics often do not reflect the real scale of the problem. Children who work before they have reached the minimum age set out in the law for admission to employment or work are rarely taken into account in official statistics, because they are not supposed to exist. Moreover, most children work in the agricultural or informal sectors or at home, where it is difficult to include them in statistics. Finally, children who go to school and at the same time work for a few hours during the week days in the fields, a workshop or the street, are considered in official statistics to be attending school rather than working.

ILO child labour estimates: The ILO has attempted to estimate the number of working children. According to these estimates, around 215 million children between the ages of 5 and 14 are working, mostly in developing countries, of which about 115 million children are in hazardous work.

Census 2001 child labour estimates: The Government of India estimates that there were 12.67 million child labourers in India in 2001, while the non-government organisations estimate the figure to be around 60 million.

According to the 2001 census, Karnataka accounts for 822,615 child labourers which is 6.49% of all child labourers in India.

Q. WHAT WORK DO CHILD LABOURERS DO?

A. There are different types work that children do.

In the informal sector, which includes a vast range of traditional, unstructured, family, artisanal, and generally unregistered businesses, children may be found as paid workers, “apprentices”, unpaid workers without contracts, domestic servants, homeworkers or subcontractors.

In the formal sector, which includes private, semi-public or state enterprises of varying sizes, children may be employed as permanent workers, seasonal or daily workers, apprentices with or without contracts, and children who are on the premises with a parent and may be asked to help.

In Karnataka as is across the country, there is a strong gender stereotype with regards to the work that boys and girls. Girls often have to share the household burden by looking after younger siblings, cooking, cleaning, fetching water and firewood, cattle rearing, working on the farm and fields, etc. Girls are also preferred as domestic servants over boys. In the unorganised sector where most child labourers are found, child labourers often are in situation of bonded labour or forced labour, victims of trafficking and engaged in low-paid or unpaid, unskilled occupations which do not lead to any skill formation and are dangerous for the mental, physical and emotional well being of the children.

Q. WHAT ARE THE RISKS CHILD LABOURERS FACE?

A. Some of the risks faced by child labourers are as below:

- Work and activities that are mentally, physically, socially or morally dangerous and harmful to children.
- Deprives children of schooling or requires them to assume the multiple burden of schooling and work.
- Forces the children and their families to a downward spiral of poverty and deprivation.
- Greater risk of violence and abuse at the workplaces by the adults counterparts or employers.
- High vulnerability to physical injuries and sickness. It has been found that a very high proportion of children are injured or fall ill while working. Some of these children may never be able to work again.
- In sectors where machinery and equipment is involved, such as agriculture, the potential for injury is much higher.
- No potential for growth and development due to lack of education and skills.

Q. WHY DO CHILDREN WORK – THE DEMAND SIDE AND SUPPLY SIDE FACTORS?

A. The key factors for child labour can be classified as demand side factors and supply side factors.

There are “demand side factors”: causes which are specific to the employers of child labour: the causes why an employer employs a child and not an adult worker. Examples of demand side factors are the following:

- children work for low wages; whenever work has lower productivity, children are preferred as adults do not work;
- greed on the part of the employer to exploit un-unionized, disciplined child workers who work for long hours in sweat shops and do works which are repetitive and full of drudgery;
- low cost, low productivity technology;
- enforcement of child labour laws and labour laws have direct bearing on the demand of child labour. A single case of lack of enforcement encourages the competitors to indulge in more and more child labour;
- market demand;
- myths to justify child labour – perceived 'suitability' of children to certain types of work;

Next to demand side causes there are “supply side factors”: these are the causes that afflict the families and forces them to send their children to work:

- poverty;
- absence of social welfare schemes and social protection measures;
- inter-state migration;
- parental delinquency;
- school related reasons: e.g. distance, costs, lack of infrastructure etc.;
- attitudinal reasons: e.g. illiteracy and lack of information of the parents, acceptance of child labour as a way of life;
- poor enforcement of existing legislations.

Q. WHAT CAN BE DONE TO STOP CHILD LABOUR?

A. Some key headings under which proposals for action can be classified may be:

- Prevent children from starting work – provide free and compulsory education to all children;
- Abolish hazardous child labour immediately and all forms of child labour in the long term;
- Protect young workers;
- Enforce the existing legislations;
- Sensitise the key actors on the issue – including the employers and other workers;
- Hold the perpetrators of child labour accountable;
- Reinforce the capacities of intervening actors;
- Coordinate different actions within a child labour monitoring and remediation initiative.





Activity 1: The facilitator asks the participants if the following work done by child could be classified as child labour:

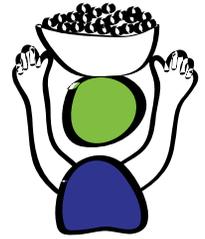
- working all the time instead of being in school;
- engaged in tasks that are overwhelming for long periods;
- working very late at night;
- working under very bad conditions (e.g. no food or water or extreme heat);
- working under duress (e.g. being beaten or forced to work);
- working but pay is being given to someone else.

Activity 2: Ask the groups whether they think the following would be considered child labour situations or not:

- A 12- year-old child minds his baby sister for two hours after school. (No)
- A 9-year-old girl moves to a relative's house. She has to help out with the housework and doesn't go to school anymore. (Yes)
- A 10-year-old child spends all day working in the fields every day of the week. (Yes)
- A 13-year-old boy accompanies his father on fishing trips for 2-3 days mainly during the school holidays. (No, as long as the fishing trips do not regularly interfere with his school attendance.)
- A 15-year-old is hired to spray any type of pesticides without protective clothing. (Yes)

Child Labour Situations

| | Visible | Invisible |
|---------------------|--|--|
| Concentrated | <p>Child labour which is concentrated and visible includes children who work in one place, are easily observed, and can be approached from outside.</p> <ul style="list-style-type: none"> • Seamstresses, tailors, embroiders, soccer ball stitchers, metal workers, woodworkers (and their helpers in open shops). • Bakers, confectioners, cooks (and their helpers) preparing food for passers-by. • Workers in small repair shops, e.g. automobile repair. • Service workers in congested areas, e.g. shoe shiners, car washers, car watchers. • Supermarket helpers, vendors, porters, cleaners, cashiers in markets. • Stone and brick breakers on road and building construction sites. • Plantation workers (sugar cane, coffee, vegetables), either alone or with their families. • In family production or harvesting for either domestic or export use. • Agricultural processing, fish processing. | <p>Children in these situations work together or near each other, but cannot be seen or are inaccessible to outsiders.</p> <ul style="list-style-type: none"> • Brick kiln workers, quarry workers. • Carpenters, helpers and carriers at construction sites. • Factory workers or helpers producing pottery, garments, glass, metal products, plastic goods, jewelry etc. • Factory workers processing food products. • Traditional carpet and textile weavers whether in groups of households or small workshops. • Cigarette makers. • Workers in match, explosive and firework factories. • Miners of coal and minerals. • Work on factory ships or on fishing fleets or fishing platforms. |
| Dispersed | <p>These children work alone and are, or may appear to be, self-employed.</p> <ul style="list-style-type: none"> • Delivery boys, messengers, and errand-runners. • Providing services or goods on the street, e.g. shoe-shiners, flower-sellers. • Hotel, restaurant, café workers who serve customers, wash dishes, clean the premises. • Entertainers and dancers who may move around with a troupe, camel jockeys, circus performers. • Professional beggars. • Helpers on long distance transport (buses, cargo steamers, passenger boats). • Children who guard fields against birds, monkeys, thieves. • Herders and those engaged in livestock care, milking, and fodder-gathering. | <p>These are the children most unknown and hardest to reach; they work in remote areas, isolated and powerless.</p> <ul style="list-style-type: none"> • Domestic servants. • Children working in family-based industries, such as craftwork. • Children who assist with subsistence hunting, gathering, fishing and agriculture. • Children involved in stealing, picking pockets, smuggling, the drug industry or pornography. • Sexually exploited children. • Children held under conditions of slavery or bondage. • Children recruited into armed groups or providing services in conditions of armed conflict. |



Case of the garment-manufacturing sector

Child labour in the garment industry is explained by the children's contribution to productivity, through output as well as profits. The contribution of child labour is more than that of adults. The exploitation of children through low wages can be the prime mover of profitability. It is also to be seen that it is customary to hire children for engaging in some of the garment-activities. While their presence was contributing to the productivity, there was a perception among the employers that children were not able to make as much of a qualitative contribution to the work as the adults. Higher profitability and productivity enjoyed by the units that employ child labour is at the cost of abysmally low and exploitative wage conditions of children, and a clear violation of the child rights and the child labour laws. This warrants policy action and legal enforcement in terms of the complete abolition of child labour.

Work hazards for children and young persons:

- Physically demanding work (flat knit operator, ironing, work at high temperatures)
- Sharp equipment and machinery
- Fast rotating machinery
- Cotton dust
- Lifting and carrying of heavy burdens
- Work, which demands extreme eye precision and of long duration (embroidery)
- Long working hours
- Night work
- Work with and exposure to hazardous chemicals (dyeing, bleaching, and printing).

Example of Child Labour

Case study of Alam

An investigation and rescue was carried out by an NGO on the complaint of a child, Alam. An eleven year-old, he used to work in a zari embroidery unit. He successfully escaped his employer as he was regularly beaten up and sexually abused. A layman on the street brought him to the NGO. He then informed that several children of his age were still trapped in the place of work. The children had to work 14 up to 16 hours a day and earned Rs. 30 – 50 a week. They were eating, working and sleeping in a small poorly lit room with no sanitation facilities. Within 2 days time, all the 23 children working there were rescued and sent to the Government run shelter home.

Consequences of Child Labour for development

Important consequences of child labour may be basically categorized into four categories, namely – on the child, on the business, on the society and on the nation.

On the child:

- robs childhood;
- deprives child's rights;
- suppressed development;
- decline fundamental right to education;
- poor health;
- exploitation.

On the business:

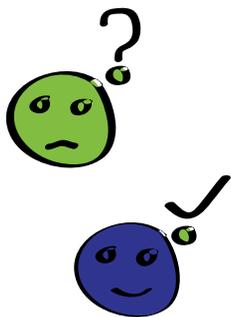
- failure to comply with the law can bring penalties and other state sanctions;
- potential bad publicity;
- blacklisting/boycott of the supplier/product/geography;
- poor productivity and quality - child has short attention span, less appreciation of quality and less capacity to use machinery efficiently.

On the society:

- perpetuation of poverty of child labour families;
- reproduction of child labour in the families of child labour;
- weakening of trade unions;
- increase adult unemployment;
- child trafficking;
- migration;
- illiteracy;
- economic inequality.

On the nation:

- child labour is a violation of human rights and child's rights;
- child labour is a violation of International Labour Standards; it may attract possible trade and social sanctions;
- suppresses development;
- defame the nation;
- hindrance in respect of making compulsory elementary education;
- barriers to the enforcement of minimum wages;
- increase unskilled, illiterate weak human workforce;
- increase national illiteracy rate.



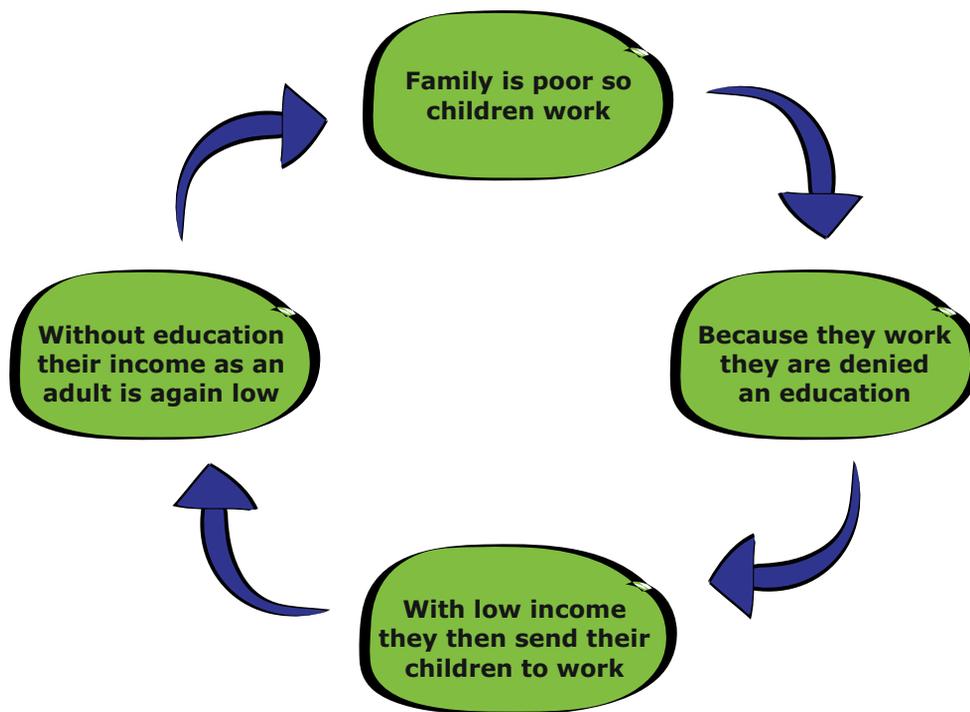
Myths and realities

The facilitator discusses the myths created by society to justify child labour and show that realities are different.

Among the different myths about child labour there are the following:

- poverty is the single major cause of child labour: the reality is that poverty is more widespread than the prevalence of child labour as many poor parents take on all hardships on themselves and send their children to school. One grave aspect is that child labour causes low skill, low income and consequent poverty.
- if children do not work, they and their families will starve: starvation persists even when all the members of the family, including children, are working. Starvation is the result of a combination of factors, including price policy, low income, lack of economic and physical access to food etc. When all the children are removed from work, both the wage and the labour market situations will improve and the poor parents get better work with remuneration.
- children themselves want to work; when children express their preference to work, it is because of their inability to conceive of an alternative. Children are compelled to work by the non-availability or lack of access to schools, an irrelevant school curriculum and physical abuse from teachers.
- work equips the children with skills for the future; the tasks allotted to child labour are simple and repetitive. 'Skill' is a misnomer when applied to the backbreaking toil and drudgery children engage in. Research shows that 95% of the children do not continue in the same jobs as adolescents or adults. This is - among other things - explained by the fact that cramped, harmful conditions a child's growth can stunt and ruin their health. In some cases toxic fumes result in lung damage and an early death; in other having to focus on tiny intricate work (such as embroidery) can ruin their eyesight.
- children work faster and have nimble fingers needed in certain types of work: in a few industry, myths of felt need have been floated which include, 'nimble finger' needed for e.g. carpet industry and sericulture industry;
- girl children of 'before puberty age group', preferred for pollinating cotton by propagating the idea that after puberty they lose divine ability for successful pollination.
- jobs provided by Western clothing companies are relatively safe compared to the alternatives. The reality is that child labour of the kind used by the clothing industry is immoral on the most basic level. For the benefit of Western consumers poor children are being exploited and denied a chance to enjoy their lives.

Cycle of poverty, illiteracy and child labour:



International and National Legislations

To understand and identify child labour, the elimination of child labour and to be aware about the consequences for the employer, knowledge about international and national legislation is obviously of high importance.



The facilitator gives a presentation and lecture on legislation; the international commitment, the constitutional provisions and national legal provisions:

International legislation

- UN Convention on the Rights of the Child (UNCRC);
- ILO Conventions;
- Other country Legislation: Like the US TVPRA and Executive Order List; move by the European Commission on tying trade with labour standards.

Constitutional Provisions

- Constitution of India;

National legal provisions relating to prohibition of child labour

- the Child Labour (Prohibition and Regulation) Act, 1986;
- the Indian Penal Code, 1860;
- the Juvenile Justice Act and the Juvenile Justice (Care and Protection of Children)(Amendment) Act, 2006;
- the Bonded Labour System (Abolition) Act, 1976;
- the Minimum Wages Act, 1948;

and other Legal Provisions Relating to Prohibition of child labour:

- the Children (Pledging of Labour) Act, 1933;

- the Factories Act, 1948;
- the Plantation Labour Act, 1951;
- the Apprentices Act, 1961
- the Right of the Children to Free and Compulsory Education, 2009.

Furthermore the facilitator expounds a short overview of the major case studies (case law) like the MC Mehta Case, Landmark Judgements.

The Child Labour (Prohibition and Regulation) Act, 1986, the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Bonded Labour System (Abolition) Act, 1976, are main legal instruments in the fight against child labour. It's therefore important to have awareness and a good understanding of these Acts: the objectives, the extent of application of the Acts, the various terms and definitions and an explanation of the list of certain occupations and processes as stated in the Child Labour Act in which the employment of the child labour is prohibited.

Juvenile Justice (Care and Protection) of Children Act 2000: According to this Act, the "Juvenile" as a person who has not attained the age of eighteen years. The legislation is to ensure the care, protection and development needs of the children who are either neglected or have come into conflict with law constituting delinquency.

"Sec. 23: Punishment for cruelty to juvenile or child. - Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

26. Exploitation of juvenile or child employee. - Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine.

27. Special offences. - The offences punishable under sections 23, 24, 25 and 26 shall be cognizable."

Right of Children to Free and Compulsory Education Act 2009, provides for free and compulsory education to all children of the age of 6 to 14 years. It defines 'free' as removal of any financial barrier by the state that preve

It also has special provisions for those children who are not enrolled or have drop-out of school such as child labourers. It provisions that such children be admitted to age appropriate class and that there is special training to enable such children to be at part with others and a child so admitted is entitled to completion of elementary education even after 14 years.

It is important to note that actions against occupiers for violation of child labour laws in is in addition to and not in derogation of the corresponding provisions of e.g. the Factories Act, 1948 and the Plantation Act 1951.

Karnataka State Acts, State Action Plan and State Monitoring Systems on Elimination of Child Labour

The facilitator illustrates several acts, plans and systems on elimination of child labour on national and state level.

- the Child Labour (Prohibition and Regulation) (Karnataka) Rules, 1998: states that no child shall be required or allowed to work in an establishment for more than twenty hours in any week and for more than five hours in a day. It also lays rules for health and safety of the children in the establishment.
- the Karnataka Shop and Establishments Act, 1961: a state act is applicable in the state territories only. This act states that no child below the age of 14 years shall be required or allowed to work whether as employee or otherwise in any shop and establishment. Further states that no child (less than 14 years) or young person (between 15 and 18 years of age) be allowed to work more than 6 hours in a day and is also prohibited from working at night.
- State Action Plan on Elimination of Child Labour;
- National Child Labour Projects ("NCLP's");
- Karnataka State Resource Centre on Child Labour;
- Legal Aid Cells, District Task Forces, Monitoring Committees and Cells.

State level, nation wide and worldwide

Furthermore the magnitude of child labour on state level, nation wide and worldwide (consequences as trade barriers according to e.g. the Trafficking Victims Protection Reauthorization Act ("TVPRA") can to be discussed since e.g. trade barriers can be outrageous.

According to the TVPRA the US Bureau of International Labour Affairs ("ILAB") can carry out additional activities to monitor and combat forced labour and child labour in foreign countries. These activities include the development and dissemination of a list of goods from countries that ILAB has reason to believe are produced by forced labour or child labour in violation of international standards.

Besides the TVPRA the Executive Order ("EO") is intended to ensure that US federal agencies enforce laws relating to forced or indentured child labour in the procurement process. There is however nothing in the EO 13126 List of Products that provides for trade sanctions or penalties against countries. US law already prohibits importing goods made with forced or indentured child labour. The EO is not intended to prohibit agencies from buying a product that appears on the EO list. Instead, it requires contractors who furnish such a product to make certifications designed to help ensure that forced or indentured child labour was not in fact used to make the product. The EO list differs from the TVPRA List, which is intended to promote efforts to monitor and combat forced labour and child labour in the production of goods in countries outside the US. As mentioned above the EO list covers forced or indentured child labour, while the TVPRA List focuses on a broader population, including adults in forced labour and children in exploitive labour that is not necessarily forced or indentured.

The US has put three countries on the EO list and TVPRA list: India, Thailand and Argentina. This means that no purchase from US can be made unless the buyer and seller get a certification that no child labour was used. Although there is no real penalty linked to the registration on this list, it is a perceived trade barrier that could emanate from the US. Besides that there is a reputational risk: other countries like Bangladesh/China will ask the US why they are buying from a country that is on the EO/TVPRA List as e.g. their country is not on one of these lists. The listing is a huge reputation risk for the Indian apparel industry that supplies to global retailers and brands.

Functions and Authority of Labour Inspectors as regards Child Labour

The facilitator asks the labour inspectors what is a usual day for them like, seeking information on the various central and state laws that the labour inspectors enforce, the time spent in investigating complaints related to child labour, field visits undertaken. The trainer asks the participants to indicate what percentage of their time is spend on child labour related matters and how many complaints do they deal with in a week.



Activity: The trainer asks the participant to answer the following questions privately:

1. What is the role of the labour inspectors in dealing with child labour?
2. What factors help you in your job and what factors hinder you in performing you job?

The Labour Department has the overall role of enforcing approximately 40 Central Laws are and an additional 10-15 State Laws relating to labour standards and welfare. Inspections under the various central and state enactments are mainly carried out by Labour Officers or designated inspectors.

Responsible for undertaking inspections under the following major enactments:

- Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
- Child Labour (Prohibition and Regulation) Act, 1986
- Contract Labour (Regulation and Abolition) Act, 1970
- Equal Remuneration Act, 1976
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- Maternity Benefit Act, 1961
- Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
- Liabilities and consequences for Employer if engaged child for labour

As regards child labour, the actions of the Labour Inspectors and their challenges is as below:

| Actor | Actions | Challenges |
|-------------------|---|---|
| Labour Inspectors | <ul style="list-style-type: none"> • Identify child labourers • Order the withdrawal of children from workplaces • Collect information on child labour • Contribute to child labour laws and policies | The labour inspection system covers only the formal sector, has limited resources and enforcement powers, and (in most cases) no specifically dedicated persons to follow up on child labour. |

Inspections are undertaken:

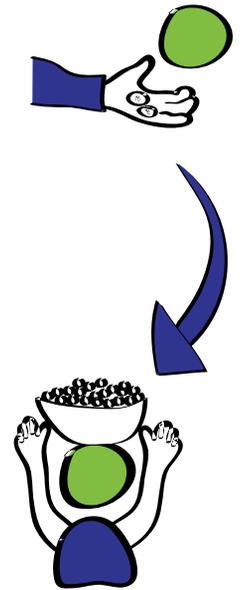
- suo moto
- complaint based

In central sphere overwhelming majority of inspections are suo moto. In contrast majority of inspections in States are complaint based.

B. Trafficking, Forced Labour and Labour Inspection

Contemporary forms of forced labour, including trafficking in human beings are often perceived as criminal matters beyond the reach of labour inspectors. However, there are many reasons why labour inspectors should play an active role in the global fight against forced labour and human trafficking.

- Contemporary forms of forced labour penetrate mainstream economic sectors through complex supply chains and the irregular movement of people across and within borders in search for work.
- Forced labour and human trafficking are gross violations of human and workers' rights. Forced labour is the antithesis of decent work, and freedom from forced labour is one of the four fundamental labour rights which labour inspectors are supposed to promote and safeguard.
- Forced labour and human trafficking generate significant profits and are often linked to other illegal activities such as tax evasion and social benefit fraud.
- Regular inspections on health and safety and/or illegal employment can reveal indicators of possible forced labour situations. Labour inspectors and other inspection authorities can play a key role in the identification of such cases.
- Labour inspectors can enter workplaces that are liable to inspection without a search warrant. They also have a wide range of discretionary measures at their disposal. This makes them an important partner of criminal law enforcement authorities.
- Labour inspectors have a potential role to play in the prevention of forced labour and protection of victims. As such, they are an important partner of government agencies, employers' and workers' organisations, and NGOs that deal with issues of forced labour and trafficking.



The ILO Forced Labour Convention No. 29 (1930) defines forced labour as:

“all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

The trainer uses interactive methods to elicit responses from the participants on their understanding of trafficking, forced labour, bonded labour.

Points of importance:

- *all work or service*
- *any person* – includes children;
- *menace of penalty* - not only to criminal sanctions but also to various forms of coercion, such as threats, violence, retention of identity documents, confinement or non-payment of wages. Poverty can also be construed as menace of penalty.
- *voluntary vs. involuntary* - If the employer or recruiter had used deception or coercion, consent becomes irrelevant. And, in case of children, their consent is irrelevant due to their vulnerability and age.



Human trafficking has been defined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (the Palermo Protocol) adopted in 2000. The Palermo Protocol distinguishes trafficking from smuggling through the element of exploitation, deception and coercion.

“ Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, or the removal of organs.”



Points of importance:

- *Activities*: recruitment, transportation, transfer, harbouring or receipt of a person;
- *Means*: force, deception, abduction, coercion, fraud, threats, abuse of power or a position of vulnerability;
- *Purpose*: exploitation, including forced labour, or removal of organs.

Types of forced labour and modern-day slavery:

- Traditional forms of bonded labour;
- Debt bondage and other forms of coercion;
- Forced child labour;
- Forced labour linked to migration;
- Forced labour as a result of organised criminal trafficking.

Some industries and sectors where children are trafficking into forced labour:

- Construction, including brick kilns;
- Agriculture and horticulture;
- Mining and logging;
- Food processing and packaging industry;
- Domestic service and other care and cleaning work;
- Factory work, mainly textiles and garments;
- Restaurants and catering;
- Sex and entertainment industry;
- Transportation;
- Various forms of informal economic activities, such as organised begging or hawking.

Forced Labour in Indian Context

The Supreme Court of India has ruled in:

1. People's Union for Democratic Rights (PUDR) vs. Union of India (1983):

“ ...Any factor, which deprives a person of choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and any labour or service which is compelled as a result of such 'force', it would be 'forced labour'...”

It further says,

“...Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word 'forced labour'... as described in Article 23 of the Indian Constitution.”

2. Bandhua Mukti Morcha vs. Union of India (1982):

“...Whenever it is shown that a labour is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic considerations received by him and is, therefore, a bonded labour...”

Additionally, under the Bonded Labour Act Section 15, 'whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor'.

Q. WHAT DOES IT MEAN FOR THE LABOUR INSPECTOR?

A. Any child who is found working for less than the minimum wage would effectively be presumed to be working as a forced labour (bonded labour) and the labour inspector has the authority to take action under the Minimum Wages Act, Child Labour Act and others.

Q. HOW CAN LABOUR INSPECTORS SUPPORT INVESTIGATION ON TRAFFICKING FOR FORCED LABOUR?

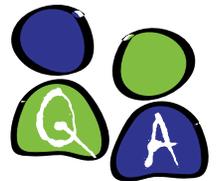
A. Labour inspectors have at their disposal a wide range of investigation methods, including the power to enter freely at any time of the day or night any workplace liable to inspection without prior notice. They can carry out inquiries freely and in particular speak with persons alone, examine documents and take samples, and even foreclose workplaces. They also have the power to issue orders with a view to remedying the defects, or to institute or recommend proceedings. These proceedings could ultimately also entail criminal proceedings, as in the case of Juvenile Justice Act and sections of the Indian Penal Code.

Labour inspectors collaborate with other agencies such as worker unions and employer association, and can support the identification of violations and ensure compliance of labour standards at workplaces.

CHILD TRAFFICKING AND CHILD LABOUR ARE INTER-RELATED ISSUES

It is a known fact that Children are often taken from their homes through enticement or deceitful promises of education or lucrative employment and put in situations of physical exploitation and slavery like practices such as forced labour. Therefore the issue of trafficking and child labour should not be seen in isolation. It is an established fact that children are trafficked to work in deplorable conditions in supply chains (especially in the unorganized sector).

Trafficking in persons has been recently defined and criminalised in the Indian



Penal Code, 1860 through the Criminal Law (Amendment) Act 2013, no. 13 of 2013 which was notified in The Gazette of India on 02 April 2013. Grassroots level experience of civil society organizations working against child labour in India reveals that most often child labourers are victims of trafficking. In fact trafficking is the greatest form of abuse and violation of child rights that leads to their physical exploitation, slavery or practices similar to slavery and servitude.

It is therefore of utmost importance for the law enforcement agencies that during and after rescue of the child, Standard Operation Procedure for Investigating the Crime of Trafficking for Forced Labour developed by United Nations Office on Drugs and Crime in the joint project Ministry of Home Affairs (MHA) – United Nations Office on Drugs and Crime (UNODC) should be effectively utilized. Also, the Protocol for Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour, 2008 of the Ministry of Labour and Employment of Government of India have detailed guidelines for planning and implementing action against child trafficking for labour.

"Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour" published by Ministry of Labour and Employment, Government of India (2008) opens with the following

“**There is an increasing trend of migration and trafficking of children for labour in different parts of the country. Compelled by the socio-economic conditions, a large number of children are migrating from economically backward areas to big cities for work. In many of these cases, these children are being trafficked by middle men and agents who are bringing them to the employers in the city by extending meagre advances to the parents and giving false assurances of lucrative jobs etc. These children work under highly exploitative situations like very long working hours, paltry wages, unhygienic and most difficult working conditions. Such children mostly work in industries like zari making, jewellery units, domestic help, dhabas, tea stalls, etc. Very often, they are kept within the confines of the work places and therefore, lack any kind of freedom and are vulnerable to abuse.**”

Although trafficking in persons is a criminal offence, but in contemporary times when we emphasize on the role of convergence of law enforcement agencies to protect the rights of the children, the role of labour inspectorate stands out as pertinent.



Let's carefully look at the Section 370 of the Indian Penal Code as amended under the Criminal Law (Amendment) Act 2013. The excerpt of the Gazette is presented hereunder:

'370. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by--
 First.-- using threats, or
 Secondly.-- using force, or any other form of coercion, or
 Thirdly.-- by abduction, or
 Fourthly.-- by practising fraud, or deception, or
 Fifthly.-- by abuse of power, or
 Sixthly.-- by inducement, including the giving or receiving of payments or

benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.-- The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or forced removal of organs.



Explanation 2.-- The consent of the victim is immaterial in a determination of the offence of trafficking.

- (2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.
- (3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.
- (4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.
- (5) Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.
- (6) When a public servant including police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life, which shall mean the remainder of that person's natural life.
- (7) If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.

In the case *Bachpan Bachao Andolan vs. Union of India and Others* on the 10th of May, 2013, Hon'ble Supreme Court of India ruled in “...However, even in respect of complaints made otherwise with regard to a child which may come within the scope of Section 155 CrPc, on making an entry in the Book to be maintained for the purposes of Section 155 CrPc, and after referring the information to the Magistrate concerned, continue with the enquiry into the complaint. The Magistrate, upon receipt of the information recorded under Section 155 CrPc, shall proceed in the meantime, to take appropriate action under sub-section (2), especially if the complaint relates to a child and, in particular a girl child...”

It should be borne in mind that the JJ Act also prohibits trafficking for purpose of child labour under Section 26 by saying that - “exploitation of juvenile or child employee- whoever ostensibly procures a juvenile or a child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earnings for his own purpose shall be punishable with imprisonment for a term which may extent to three years and shall also be liable to fine.” The said offence is cognizable (as per Section 27).

The following factors may be kept in mind while conducting the rescue operation:



Plan of action should be prepared to facilitate safety and protection of children including making of a rescue team comprising of the:

1. Police
2. Department of Labour
3. SDM or his representative
4. NGO's/complainant
5. Lady police/volunteer when rescuing a girl
6. Child Welfare Committee

This will ensure interagency collaboration.

The Labour Department shall be responsible for initiating and coordinating efforts towards legal action including lodging of FIR if required under appropriate criminal law.

Therefore whenever a case of child labour is reported whether by an NGO, an individual, a child himself/herself, Child Line 1098, or it comes during routine inspection of Labour Department, or by the Police, or by any other means, action should be taken for registration of FIR under Section 23/26 of Juvenile Justice (Care and Protection) Act, 2000, and all other relevant provisions of Indian Penal Code, 1860, Bonded Labour (System) Abolition Act, 1976, and Child Labour (Prohibition and Regulation) Act, 1986. Therefore, comprehensive action against trafficker/ employer should have at least one or more provisions of the Indian Penal Code, 1860, the Juvenile Justice (Care and Protection of Children) Act, 2000, The Bonded Labour (System) Abolition Act, 1976, the Child Labour (Prohibition and Regulation) Act, 1986, and any other applicable legal provision and complaints should be filed.

Investigation of all possible persons involved in trafficking of a child should also be taken up. The child may be counselled by a social worker/children's home, etc. for details of working and living conditions, as well as how (by whom) the child was trafficked for labour. Based on this information, proper investigation against the employers of the child as well as against the traffickers responsible for sending the child in the trafficking situation shall be initiated.

During the course of investigation/inquiry the following facts should also be kept into consideration:

- The child is brought to work only after making promises and allurements about the living and working conditions that are invariably false. Therefore, the child becomes a victim of kidnapping through enticement, or abduction, or through deceit.
- The consent of the parent might have been taken at the time of bringing the child, such consent is no consent as it has obtained fraudulently (without disclosing the actual living and working condition of a child, including working hours, wages and nature of employment).
- In case the child has been kept in employment through a contract (or an agreement for employment) with the child, the consent of the child remains immaterial as the child's consent is no consent. In May 2011, the GOI ratified the UN Trafficking Protocol which under Article 3 clearly

stipulates that the consent of the child is irrelevant even if it does not involve any of the means used for trafficking i.e. threat, force, fraud, abduction etc.

- If the child is moving from one place to another through deceit (regarding terms of employment), the child is a victim of abduction and should be treated as such.
- A child brought after false promises and allurements is also a victim of kidnapping and the investigation conducted as such.

All efforts must be made to protect the identity of the child as per the provisions of Sec.21 of the J.J. Act.

Under no circumstance should any interaction between the child and the employer/trafficker be allowed. After rescue, children should immediately be taken to Child Welfare Committee and put in protective care and custody of children's home formed under Section 34 of the Juvenile Justice (Care and Protection) Act, 2000.

The Labour Department should initiate proceeding for immediately recovery of the fine of Rs.20,000 to be recovered from the employer under the Supreme Court guidelines of M.C. Mehta Vs. State of Tamil Nadu 1996 6 SCC 756. After recovery, the said amount shall go to the Rehabilitation Cum Welfare Society of Child Labour in the native district of the child for his/her socio-economic and educational rehabilitation.

The Department of Labour should also initiate proceeding for the recovery of the back wages of the child as per the Minimum Wage Act, 1948.

All efforts should be made by all concerned agencies to target the economics of child trafficking. This may be done through cancellation of licences of establishments/factories, sealing, attachment and confiscation of property etc.

Before the repatriation of the child, efforts should be made by the Police to obtain as much information from the child about his/her traffickers as possible. This information must be uploaded to the district/state database on trafficked children and traffickers/employers.

The police should take all necessary precaution for the safety of the child and/or other witnesses wherever cases of organized trafficking is investigated.

The Statement of victim/witness may be recorded as soon as possible under 164 Cr.P.C. before the child's repatriation and Charge-sheet should be filed as soon as possible after investigation.

Before the child is repatriated back home for reunification, the Child Welfare Committee should undertake an inquiry for home verification specified in Form 13 of Juvenile Justice (Care and Protection of Children) Rules, 2007 (model rules).

The child's custody may be restored to the parent/guardian/fit person after receiving an undertaking specified in Form 11 in the above mentioned rule.

The Child Welfare Committee of the home district of the child shall be

responsibility to expedite release of all funds due to the child as well as his/her retention in school.

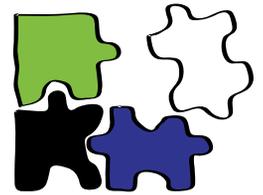
Grassroots level experience of civil society organizations working against child labour in India reveals that most often child labourers are victims of trafficking. In fact trafficking is the greatest form of abuse and violation of child rights that leads to their physical exploitation, slavery or practices similar to slavery and servitude. Additionally according to the definition given in section 2(g) of the Bonded Labour Act, bonded labour means service arising out of loan/debt/advance. It represents the relationship between a creditor and a debtor wherein the debtor undertakes to mortgage his /her services or the services of any of his/her family members to the creditor for a specified or unspecified period with or without wages accompanied by denial of choice of alternative avenues of employment, or to deny him/her freedom of movements, then the person would normally be covered under the definition of a bonded labour.

Improved (both qualitative and quantitative) labour inspections and continued surveillance can lead to detection of conditions that establish the employer-employee relationship with a clear and rational approach bringing to the fore conditions that qualify the case for trafficking/ bondage/ slavery/ servitude. As mandated by the *“Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour”* published by Ministry of Labour and Employment, Government of India (2008) in case rescue is conducted by Labour Department officials alone during normal course of inspection or on specific complaint, the responsibility of lodging an FIR, wherever required will be of the concerned labour department official under the appropriate criminal law.

This is all the more important in the unorganized sector where exploitation of workers and crimes like child/bonded labour are rampant. Thus it is imperative that the Labour Inspectors in the wake of Criminal Law (Amendment) Act 2013 must at the very least have a thorough understanding of applicability of relevant sections of IPC, Juvenile Justice (Care and Protection of Children) Act, 2000; Bonded Labour Act and the Child Labour (Prohibition and Regulation) Act, 1986.

The issue of trafficking of children for economic exploitation, especially in slavery like practices and related crimes requires a concerted and systematic attention of the Central and the State Government, as well as a convergence of various policies, procedures and schemes, for its solution. As trafficked children are often exposed to high risk situation they are vulnerable and in need of care and protection and often fall prey to the various kinds of exploitation including bonded labour, forced child labour, and other forms of physical exploitation, economic and sexual abuse. It is, therefore, necessary that effective steps be taken for investigating of cases relating to trafficking of children for child labour and/or forced labour underpinning collaboration of various law enforcement agencies.

C. Interaction and Collaboration with other Agencies



Coordinating with others

The mandate of the labour inspectorate must be established not only to guide its own action, but also for the sake of other government agencies, employers' and workers' organizations, and NGOs with a role to play in securing the rights of children, as well as the children and families themselves, so that they all understand the role of the labour inspectorate and utilize it effectively.

Labour inspection alone cannot solve the problem of child labour, but it can certainly make a very valuable contribution. This means cooperation with the ministries of education, health and social affairs whose mission it is to protect the safety and welfare of the public in general, and of children in particular. It means cooperation with local authorities, who can help locate the establishments employing child labour and facilitate access for the labour inspectors. It is essential to establish good working relations with employers and workers' organizations and others, such as the community, who can assist labour inspectors in carrying out their duties. The importance of cooperation and coordination has to be emphasized, because it creates an atmosphere where the labour inspectorate is viewed not only as reporting on violations, but as working together with all the actors involved towards the elimination of child labour. Working with government agencies, employers and workers, and other concerned groups such as NGOs is particularly important, as these groups are often well placed to identify instances of abuse and to support children once they have been removed from employment. Inspection procedures should specifically include cooperation with the police, social services and juvenile courts. The use of intermediaries has proved particularly useful in dealing with sensitive aspects of child labour, and they should encourage collaboration with employers' and workers' organizations through collective negotiation, structures representing workers, and other arrangements for dialogue at the level of the enterprise.

By preventing abuse of workers in their youth, society gains a more productive work force, and a new generation grows up that is healthier and better equipped for changing times. With **a culture of prevention**—i.e. stopping the problem before it starts—the advisory role and services of the inspectorate gain greater prominence and importance.

Prevention is not just a matter between an inspector and an individual enterprise. The key to all preventive action lies in the increasingly close relationship between labour inspectorates, employer organizations and industry groups, and trade unions, as well as technical, scientific and medical experts. These collaborations result in agreement on standards and action programmes which, when overseen by labour inspectorates on the ground, increasingly expose those enterprises which have not participated in or accepted the agreements, or which seek short-term profit by cutting corners.



Planning Coordination and Collaboration

Collaboration with other government departments and NGOs

Inspectors need to know about the policies, priorities, and structures of the social welfare and educational authorities. Most important, they need to know about the support programmes for children removed from work – those run by NGOs, governments, religious groups or others. For example, there may be special schools, non-formal education, vocational education, or skills training for children and economic assistance programmes for parents. In short, inspectors should understand that, except in situations of extreme hazard, which call for immediate action, the process of removing children from work should always be linked to some process of rehabilitation (education, training, etc.)

Cooperation with employer's organizations and trade unions

Inspectors must understand the fundamental role of organized employers and trade unions in any concerted effort to combat child labour. They must know about national plans on child labour if they exist. There may be a national steering committee with government, employer and trade union and other representatives of civil society. Awareness of, and participation in such arrangements at national level will also enable them to negotiate more effectively with local employers and local trade unions. During future planning about child labour action, the inspectorate will want to be actively involved – sharing what they know about child labour and identifying how they can work collaboratively with social partner responsibilities and other agencies and NGOs.

The machinery set up under the Child Labour Act for the purpose of enforcement is contained in the provisions of the Act. Enforcement procedures start with the appraisal stage (receiving of complaint), planning for an inspection, actual inspection and report preparation.

Institutions concerned with the enforcement of the Child Labour Act:

- the Central Government (Ministry of Labour);
- the State Government (Labour Department, Factory Department);
- Child Labour Technical Advisory Committee;
- Trade Unions;
- voluntary and non governmental organisations engaged in the task of elimination of child labour;
- parents
- media;
- society in general;
- police authorities;
- magistracy.

The intense cooperation amongst the different stakeholders can synchronise positive results in the direction of eliminating child labour.

- Explanation of the system of rescue, repatriation and rehabilitation: under which authority the child is rescued from the working place, under which authority the employer can be arrested;

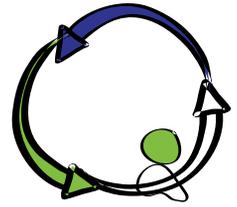
- Responsibilities of the various Departments (State Education Department, Social Justice and Empowerment Department, State Labour Department, Law and Justice Department, Health Department).

Some focus points:

- acting on child labour information received
- sharing child labour information gathered
- informing police of illicit types of work
- referring children to support programmes
- referring children to schools or informal education
- informing parents of economic assistance programmes
- following through the child labour 'case' with the juvenile courts
- participating in national steering committees against child labour
- informing other government departments of the child labour situation and advising on future priorities
- getting employers' organizations and trade unions more involved in the effort to combat child labour
- advising and informing non-government organisations on follow-up, rehabilitation and repatriation of child labourers rescued withdrawn from work.



D. Workplaces, domestic and global supply chains, and identifying children



The facilitator asks the participants to tell the 5 recent sectors in their localities in which child labourers were identified. The effort is made to link the sectors to domestic and global production chains.

Understanding child labour in supply chains

While much of child labour is part of subsistence level economic activity in the informal economy, a considerable portion occurs at the bottom end of domestic and global supply chains. Companies are increasingly concerned with child labour in their supply chains. They view it as inconsistent with company values, and a threat to their image and ability to recruit and retain top employees, as well as to the sustainability of their supply chain.

And there often is cause for concern: many child labourers work as part of supply chains. They are involved in the production of cash crops and manufactured goods that are exported directly, as well as in the production of goods that serve as inputs into final products; final assembly or finishing of these products often takes place in the importing countries. They are also involved in domestic supply chains.

The State regulations and normative processes are taking a backseat to either co-regulation with private sector or even self-regulation of the private sector to uphold the core labour standards, including zero-tolerance for child and forced labour. This has in recent times lead to the mushrooming of private charters, codes of conducts and the proliferation of a network of multiple stakeholders, among whom the public authorities (labour departments in case of implementation of labour standards) are at best one of the actors.

The normative role of the State actors, particularly the labour and factory inspectors in monitoring, regulation and when applicable penalising the violators, has seen a drastic marginalisation in recent times. The labour and factories inspectorate in most countries, including India, are grossly understaffed and ill-equipped to respond to the emerging forms of modern day slavery in domestic and global supply chains. Furthermore, many traditional forms of child and forced labour take place in the informal sectors that are difficult for the labour inspectors to reach.

Whilst most reputable companies use internal or external auditors to prevent child or forced labour being used in the manufacturing or allied processes, it is widely acknowledged that these procedures are not always effective. The reasons for this include inappropriate purchasing practices, poor quality auditing, inconsistent corrective action plans, "audit fraud"¹ and an inability to audit the entire supply chain². In spite of this, social auditing and certification is a multi-billion dollar business, and the best ally of the private enterprises in managing their social and labour 'risks'.

1. Ethical Trading Initiative (ETI), 16 November 2006, Getting smarter at auditing: tackling the growing crisis in ethical trade auditing. Report from ETI member's meeting.
2. Anti-Slavery (in partnership with ILO), 1 May 2008, The challenges in contemporary forms of slavery and forced labour in the international supply chain: mitigating risk, promoting abolition. Unpublished report.

For example child labour is found in the embroidery industry which supports the garment export business. This is partly because employers prefer to employ children, finding them more obedient and cheaper than adults.

Homeworking is one way in which child labour can find its way into the bottom of global supply chains. It is endemic in the Indian garment industry and it is customary practice for registered factories to outsource elements of production (embroidery, beading, embellishments and often whole garments) to sub-contractors who run small domestic units. Other work is distributed through a network of runners to individual homeworkers who are highly skilled at embroidery or beading.

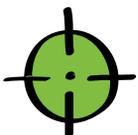
Analyzing Workplace

In the production supply chain, the orders placed in the formal sector often find their way into the small scale and informal sector. For example, the informal sector provides – handicraft production for embroidery, sequin or bead-work or crochet work, buttoning, finishing, packing among others. The work in these informal sector, mainly private individual/families working without formal registration with authorities, is often not monitored, and mostly likely is organised by middlemen/contractors who deal with the garment factories and buying houses in the formal sector. In homes, children especially girls are often involved to augment the family income or to fulfil the orders taken.

When researching or inspecting the informal sector's activities as part of a company's supply chain, it is important that when children are found working, they are not rashly removed and put on streets, but to assess the situation to provide for the best interest of the child in accordance with the domestic legislations and social security mechanisms.

Points to be noted in analyzing workplaces:

- Number and accessibility of entrances and exits;
- Positioning of workstations and machines;
- Fire hazards;
- Isolation of dangerous products and machines;
- Environment: ventilation, noise, dust;
- Circulation flows: movements of people, materials and vehicles;
- Any other possible sources of danger; and
- Any positive aspects regarding the layout and organisation of the workplace.



An absence of workplace inspection or policing is also a risk factor, even though it does not relate to the individual child. Any policies or programmes – or lack of them – that allow exploitative workplaces and practices to flourish, increase the likelihood of exploitation and/or trafficking for both adults and children.

Identifying Work Performed by Children

It is important to work with the entire supply chain in addressing child labour and preventing it in future. As responsible and accountable supply chain

drivers, it is important to communicate all aspects of good social and labour standards to all parts of the supply chain, but it is sometimes necessary as part of identifying problems of child labour to map and troubleshoot the supply chain, and to research those parts of complex supply chains where it is more likely that children may be found working.

Child labour may be found in cotton farming but also as part of sub-contracting to small free standing units, as part of the production of inputs such as zippers, buttons, poly bags, carton boxes, etc, and as part of work done by home-workers.

Activity:

- Consider a child labour situation where the details of the production process are not known and cannot be obtained.
- Draw up a diagram of the sequence of production using the standard symbols provided for you on the handout.
- You are given the sequence of production in a carpenter's workshop as an example.
- Identify operations you think children are likely to be involved in, mark them with an X; Evaluate whether these operations are likely to be dangerous or potentially harmful to children;
- Mark those considered dangerous/harmful with a D.



Visiting Methods and Observation Guides

Qualitative Inspections

There are (quantitative) inspections but there is a lack of quality (result productive) and well-planned inspections. To conduct qualitative inspections, the inspectors should try to focus on:

- planning and considerations for inspection;
- requirements for a physical inspection;
- considerations during inspection for effective prosecution (e.g. determination of age of the child);
- preparation of inspection report;
- behaviour at the inspection site;
- collection of evidence.

To keep in mind while planning inspection

- inspection policies;
- strategies;
- selecting;
- familiarising;
- keeping plans as flexible;
- keep secrecy/confidentiality.

Physical Inspection of the establishment or industry:

This inspection is to ascertain:

- the position with reference to engagement of child labour;
- whether there has been a breach of the Child Labour Act or other labour laws;
- whether the legal requirements as to the safety and welfare of child labour are being followed or not; and;



- the persons responsible for the breach of the law for the purpose of initiating action against them or for reporting.

Preparation of Inspection Report

The content of the Inspection Report is of high importance as the report is essential for the further course of action. The further course of action will depend upon the contents of the inspection report; it is essential that the inspection report should be prepared with care and serious application of mind:

- a report has to be prepared on the basis of the facts and figures collected at the inspection site;
- the report must give a systematic account of the engagement of child labour in the establishment;
- it must contain the findings of the inspection about the nature of compliance or breach of the legal provisions, factual particulars about the children employed, or the working conditions of child labour.

Documentation of the inspected production site

The inspector has to concentrate on what proofs would be relevant for her/him to ensure that the information of employment of underage children is backed by substantial proof.

Evidence to be collected will be to establish the above facts and may be as follows:

1. statements of occupier or other witnesses recorded at the time of inspection when child labour was found to be employed;
2. records/documents that may have been reviewed or of which copies had been taken at the time of inspection;
3. details of child labour engaged together with medical certificates, tokens or other documents/registers pertaining to the establishment;
4. inspection report prepared at the site;
5. any correspondence that was exchanged with the employer;
6. any evidence as to the conduct of the occupier or his agents;
7. evidence about the absence of working conditions that should have existed;
8. evidence on family relationship with the employer of the child labour;
9. age certificate of the child labour, if available.

The following points should be taken into consideration in relation to production/supply chains:

1. identification of production chain;
2. identification and influence of social background;
3. gathering data on children's earnings to elicit necessary information on child wages from employers, adults and children, for ensuring consistency and reliability of child wages;
4. child labour productivity.

Activity: Role Play

The facilitator asks 5 volunteers for the role play. The characters are as below:

Gokul, 12 year old, working in a ball-bearing unit

Sunil, adult co-worker at the ball-bearing unit

Madan, ball bearing unit owner

Shivkumar, labour inspector

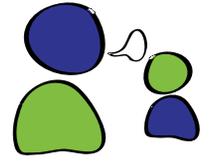
Geetha, social worker

The volunteers enact the scene of the rescue operation.



E. Interviewing children

While questioning child labour she/he should ask them if they have been tutored by their employer to give stock replies, denying their actual age or other particulars. The questions relating to children being members of the owner's family should be gone into in detail and ration-cards or similar documents should be verified.



When interviewing children it is important to remember that it is not the child who is violating the law, rather, it is the child's employer. The inspector should see her/himself as asking a favour from the child, not the other way around, and the child must therefore be looked upon as a partner exploring a particular situation. In this way the child can perhaps see the benefits of participating in the interview rather than it being the inspector who "demands" cooperation and may intimidate the child labourer. If the child agrees to an interview, s/he is asked to recount aspects of her or his experience – both in the work environment and outside. In that the inspector is asking the child's help in understanding the situation, the interviewer has to be sensitive to the child's emotional state, aware of the consequences of the questioning and must respect the child's right to speak or to keep silent. For satisfactory results, the interviewer should also create the right physical and psychological climate.

Whatever the child's reaction, the interviewer must try to create a non-threatening atmosphere, adopt an empathetic and caring approach and encourage the child to talk by asking open questions. Most of all, inspectors must **genuinely listen** to what the child is saying, but should also know when to stop if the child's memories and experiences are too intense or painful.



Key considerations while interviewing children

- The security of the child being interviewed must always be a priority. If there are any doubts that an interview may bring harm to the child, it must be avoided;
- Tell the child being interviewed what you are there for and how the information they are gathering will be used;
- Be sensitive to where the child is emotionally at any given time before, during, and after the interview;
- Be deeply aware of the consequences of your questioning, be constantly aware of what the child has to go through to give an answer, especially if in the process the child has to relive a painful experience, admit resentment for a person or situation, or accept the utter hopelessness of being caught up in the complexity of poverty and work;
- Respect the child's right to speak (what is said, how it is said, how much is said);
- Most importantly, respect the child's right not to speak, to refuse to answer a question: because s/he cannot or because the answer is too painful to express.
- Take all the time necessary. Interviews with children are likely to take longer than those with adults. Small talk, play, recurrent visits, patience and time are some of the major ingredients needed to obtain reliable data from children on delicate issues as family background or illegitimate child labour activities;

- Assurances of confidentiality must be given and observed.

Interviewing other key actors

- Key individuals who can provide information regarding the child's working conditions are likely to include: parents, employers, supervisors, co-workers, worker representatives, neighbours;
- The aim of these interviews is to collect information about the kinds of work children are involved in, their assessment of the hazards and risks children are exposed to and to compare information obtained from them with that obtained from the children themselves.
- To make an effective evaluation of the overall situation of the individual child, inspectors should visit other places where the child workers they interviewed go and question the key actors.

During the interview, specific topics should be covered to assist the interviewer in making an assessment as to the child labourer's status, with each interview tailored to the circumstances of the individual child. The purpose of the interview should be explained to the child.

Examples of topics to be covered during the interview include:

- Personal information – name, address, date of birth, nationality, identity;
- Recruitment – how was contact made?
- Travel – how did he/she get here?
- Exploitation – what activity were they involved in?
- Work – where and what were the conditions?
- Money – were they paid?
- Debts – what were they for?
- Contact – who he/she had contact with and how was it made?
- Freedom – were they free to move around?

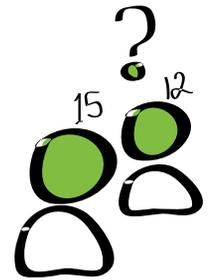
Answers to specific questions should not be taken in isolation during the identification of child labourers and child victims of trafficking for forced labour. It is necessary to assess, share and discuss information with other partners involved in the investigation before a decision is reached.

Remember: A person claiming to be the relative of child, may actually be the employer or labour recruiter or even the child trafficker.

Following the interview of the child, the inspectors attempts to establish the age of the child and then the case moves towards a first evidence gathering related to the investigation procedure. During the initial interview there may be a need for protection and assistance from outside agencies, therefore a referral should be made to the relevant departments, such as law enforcement, medical services and social services.

F. Determination of Age of the Child

In any child labour related enforcement the age of the child is very critical to substantiate that it constitutes child labour. The criticality of the conclusive proof of age in child labour related cases have to be clear. The inspector should pay special attention to ascertain the age of the child workers. The inspector has to be aware how he can obtain proper age certificate and ascertain the age of the child unambiguously for successful prosecution. **Age assessments plays a crucial role in the protection and care provided to the child, as well as the severity of the penalties on the employer and/or labour recruiter and/or trafficker.**



All Employer's should verify the age of the workers employed by them

Ages of workers have to be determined by the employer during the recruitment process. Regarding this responsibility employers have to be aware of the following:

- recording the Appropriate Minimum Age for Different Sectors and Types of Jobs;
- recruitment: set up an effective age verification system (documentary evidence is required: birth certificate, other ID card e.g. passport, medical certificate.);
- in-depth records of any young workers, their job roles, possible hazards and the hours they work (young workers are not in any job role allowed that has hazardous tasks involved);
- producing a policy to determine actions to take on discovering child workers on the site of the factory (a policy including what action should be taken if child workers are found working on the site).

The Labour Inspectors understanding the employers responsibilities checks on the identification provided during the inspection. The labour inspectors should note that a system for checking workers' ages at the time of recruitment should have been implemented. This should have involved an ID check and may involve medical verification of the worker's age where there was any doubt of the authenticity of the age. Where the use of fake ID is common or sophisticated, medical verification of workers' ages should have been used as standard practice.

In case of any doubt about the age proof:

- Contact source of original document, such as local government authority, medical officer, etc. for authentication;
- Ask for multiple original documents for cross comparison;
- Utilise specialised document authentication machinery to rule out falsification;
- In-depth interview using advanced interview techniques to cross-check information.



As stated under section 11 of the Child Labour (Prohibition and Regulation) Act, 1986, the employer is bound to maintain a register of working children wherein he should clearly indicate the age of the child. Failure to do so also attracts nominal penalty. Records should be kept of all young workers on the site. Records should record the worker's age, worker's permit to work, types of work

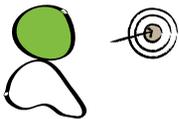
young workers have been assigned, hours of work.

Working age requirements

There are different minimum working age requirements for each type of workers (some light work can be done from the age of 15). However work in factories is considered as one of the worst forms of child labour, which means that the worker has to have the minimum age of 18 years old.

Action taken if child labour is found:

1. Immediate action;
2. Designing a Remediation Programme;
3. Continuing Support and Monitoring;



Authentic proof of age

The Child Labour (Prohibition and Regulation) Act, 1986 Section 10, stipulates the following:

“Dispute as to age – If any question arises between an inspector and the occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.”

However for the purpose of effective and reliable prosecution the inspector must first try to collect and use age certificate from the school or the registrar of births and deaths. As a last resort in cases where these are not available, Doctor's Certificate may be used. The certificate of age has to be issued by a registered medical practitioner. The youngest age is leading in case of a discrepancy of age.

Process of determination of age of the child

In the course of discussion with the child the inspector should try to ascertain if the child had earlier studied in any school and find out the exact address of the school if possible. He should also try to find out if the child was issued an age certificate from the revenue office in the village. If the child had an age certificate or if he had gone earlier to any school and the said school and the village of the child is nearby, one of the team members should be sent there to obtain the birth certificate of the child either from the school or the revenue office. The birth certificate is the most reliable document to establish the age of the child. In case the school or the child's village is far away or in some other state, appropriate correspondence may be made with the School Teacher, Village Accountant, Municipal Officer, or the Collector of that District to obtain such a certificate or a (family) identity card.

When the birth certificate or (family) identity card is not available from any source, then assistance of an authorized doctor may be obtained to ascertain the child's age (Child Labour (Prohibition and Regulation) Act 1986).

Indicators for determination of a child's age

In the handling of child labour it can be extremely difficult to determine and

verify a child's age. In many developing countries there is not only no registration of births, children have often during their childhood been ill with diseases and have been under nourished or received an unbalanced diet. Typically in developing countries, children are shorter. There is no 'one good method' to determine age, however, there are several methods, which are acceptable. The trainer clarifies the different methods and make clear that using two or three methods supplementing each other is better than using only one method as this will assure a fair treatment.

Next to earlier mentioned documents that are used to help determine a child's age, physical appearance, development and intellectual maturity of the child can be methods to determine the age of a child.

Regarding to determining the child's age by physical appearance and development, assessment of bones, muscles and teeth, check for soft hands and nails, body hair and voice-change are indicators.

In respect to intellectual maturity, the person inspecting/investigating should interview the child, make a recollection from memory of events, characters and the past work experience of the child.

Trainers have to ensure that person inspecting become confident to effectively enforce child labour laws by obtaining such certificates of age of the child worker, which cannot be contradicted. The factory management, contractors and sub-contractors have to become confident about their role in child labour enforcement.

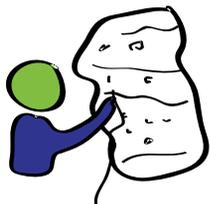
After all: cases can fail due to improper age certification of the child. This should be discussed and trainers should point out why such cases failed in the court and how such cases may be improved and made effective.

It is in that respect that there have been recently salient features of different enactments related to child labour and their age determination, burden of proving age, authorities giving age certificates, maintenance of register regarding age etc.

Indicators

| | |
|-----------------------|---|
| Doctor's certificate | <ul style="list-style-type: none"> • Assessment of bones, muscles and teeth. • Soft hand and nails |
| Intellectual maturity | <ul style="list-style-type: none"> • Interview/conversation with the child • Recollection from memory of event and characters • Past work experience |
| Age certificate | <ul style="list-style-type: none"> • Birth certificate • School certificate • Other certificate |





Shamshad is now 13 years old. But his supervisor claims that he is 15. Now he is working as embroider in a sub-contracted unit. He has worked here for the last two years. He was brought to Bangalore by a distant relative from his village in West Bengal. Shamshad puts sequins, beads and other fancy threads on t-shirts and blouses. Three years back Shamshad used to go to primary school. One year after taking admission, his parents pulled him out of school and sent him to Delhi with a relative to get a better life there. His parents were told he would go to a public school and also learn a trade in Bangalore. The relative as a token of his appreciation to the family for allowing Shamshad to travel with him were given Rupees 1000. Shamshad wasn't the only boy moving from his home to Bangalore, there were five other boys along with him, his cousins and friends between 10 – 12 years of age. Shamshad earns Rupees 50 a week now that he has been promoted from being a *shagird* (trainee). His employer tells him if he still has to pay back the Rs. 1000 that were given to his parents with interest. Shamshad hasn't gone back once home. He would like to go home and enroll in a school. He doesn't know if they'll still let him study.

Closing Discussions

As in any inspection visit it is vital that there is a full closing discussion with the key people, especially the manager or director of the enterprise, and any worker representatives, shop stewards, members of safety councils, or similar bodies. Even with children, a short final word to share with them some of what was found, what action the inspector has proposed or intends to take, and to reassure them that they will not suffer as a result, would be useful. To the employer, the visiting inspector will present her/his understandings regarding economic performance, financial constraints, individual relations, and accidents in addition to matters of employment, and solicit feedback. Such interchange is of value as it may give clues to whether conditions can be expected to improve or why children have been employed. And it is a means of cross-checking statistics and data from other sources, such as the manager's records. In the informal sector, small enterprises and family businesses there is usually only one person, the owner, who controls everything and in her or his absence, little will be achieved.



Following the discussion, the inspector/team prepares a summary report which will give information about:

- the enterprise itself, its ownership, address, name of manager, telephone, street and post, etc;
- the workers, particularly the ages of children employed, the nature of employment (seasonal, daily, intermittent, etc.), and the tasks they undertake;
- the working environment;
- hours of work (distinguishing, if necessary, between age groups) together with a note of any night work done, rest periods, etc;
- remuneration, whether on a time or piecework basis, for public holidays, from tips, and the nature of any benefits in kind such as meals,

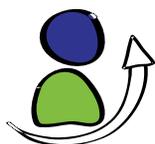
- accommodation, transport, clothing, etc; and
- any information on accidents or incidents, particularly if children were involved, and illnesses, etc.
-

Case Example

The labour inspectorate received information through neighbours, rumour and complaints from parents and children, that boys and girls between 11 and 14 years of age were employed under deplorable health conditions in a printing works; that they were exposed to dust, noise and fumes from heated glue; that they worked standing up for at least 48-hours a week; and were paid wages which were very much lower than the minimum rates. Before visiting the enterprise the inspector (hardly likely that more than one would go) sought to supplement available information by talking discreetly with neighbours, parents and trade unionists.

During the visit the manager of the enterprise claimed he only employed around 15 young persons over 15 years of age, all of whom were covered by a proper apprenticeship contract. During the inspection of the work place and discussions with the children, the information gathered prior to the visit enabled the inspector to persuade the manager of the enterprise to admit that he in fact employed around 30 young persons, including 10 who were under 15 years of age and could not be described as apprentices. Once this had been admitted it became possible to begin discussing a programme of school attendance for some of them and real apprenticeship for others and to talk about improving the safety and health and conditions of work of all the workers, both adults and children.





G. Referral, Rehabilitation and Follow-up

The facilitator discusses the key issues in elimination of child labour and elicits responses from the participants that can support their duties.

5Ps: Prevention, Protection, Prosecution, Partnership and Participation

The overall framework of elimination of child labour can be summed as the 5 P approach:

- **Prevention** – of child labour;
- **Protection** – of child labourers, particularly children in hazardous working conditions;
- **Prosecution** – of employers to create a deterrent in the society;
- **Partnership** – with other key government department and the civil society actors – trade unions, employer associations, non-government organisations, parents, community members, etc.;
- **Participation** – of the children in establishing the parameters of protection, supporting prosecution through their testimonies and partnership for remediation mechanisms.

Parents and families who are given a viable choice prefer to keep children out of the workplace and use other options. The issue of child labour cannot be resolved overnight, but as one of the top priorities we should be preventing and eliminating the participation of children in hazardous work. This is a complex task and will often involve Government policies aimed at promoting adult employment, raising incomes and improving living standards. Experience shows that no single action can have a significant impact unless it is developed in the context of a national policy promoting the welfare and sound development of children.

Strategies for the elimination of child labour, and especially hazardous child labour, can be classified using the hierarchy below.



The principal activities of the monitoring phase are:

- *Identification and assessment:* Girls and boys at work or in transit to work are identified.
- *Referral and Remediation:* If children are found, identified as child labourers and assessed to be at serious risk, they are removed and referred to services corresponding to their needs via a network of service providers and agreed procedures.
- *Protection and prevention:* The workplace is checked to see what types of work-related hazards exist and to which child labourers may be exposed, using a common set of tools.
- *Immediate data management and analysis:* After the monitoring visit information is recorded and reported upon for appropriate action.

The principal activities in the follow-up phase include:

- **Tracking:** Checking that girls and boys recovered are attending school or have been provided other suitable alternatives.

- Verification and quality control: Checking that the information on the status of the children recovered is updated and accurate.
- Providing information for enforcement or laws: Making information about violations of laws related to child labour available for enforcement officials and the judiciary.
- Information dissemination and analysis: Actively disseminating information to the regional and national levels. Information is used to review and promote anti- child labour laws, policies

Prevention

Prevention is the long-term aim. It is based on identifying children at potential risk and stopping them from starting hazardous work, and from entering the workplace. Investment in the prevention of child labour is the most cost-effective approach in the long run.

Systems of prevention need to be carefully designed by the State or non-state agencies. Families need income security and social benefits, such as health insurance, in order to survive the short-term and long- term plans. Parents must be able to see investment in schooling as a viable option for their children. Micro-insurance schemes organized by civil society groups at the local level can be linked into larger structures, such as banks and credit schemes. The State can help by providing start-up funds, matching workers' contributions and developing supportive laws. Self-help groups can provide assistance through co-operatives, mutual benefit societies and so on, that are usually financed by beneficiary contributions.

Withdrawal

Withdrawal (and rehabilitation) of children already carrying out hazardous work is another central strategy by:

- Identifying those children in hazardous work
- Removing them from workplaces, and
- Getting them into schools and/or skills training Children in the worst forms of child labour need urgent action for rescue and rehabilitation.

Measures used to withdraw children from hazardous work include:

- Persuasion – through dialogue with parents, children, employers or law enforcement authorities;
- Rescue operations – to urgently remove children from hazardous work.

Experience shows that community-based, integrated solutions tailored to the specific needs of each target group, with close community participation are the most effective. Alongside action to rescue child victims of the worst forms of child labour, a holistic approach is needed that attacks underlying family poverty through long term solutions, including access to land, housing and economic opportunities.

Withdrawing child labourers from work:

- Enforcement of child labour laws through labour department, police department, revenue authorities, child welfare committees, factory and industrial departments;

- Awareness programmes on the harms of child labour and the value of education;
- Inter-department coordination as well as inter-agency collaboration for the withdrawal/rescue and remediation of child labour
- Working with the trade unions, employers associations, non-government organisations and communities on protection of children, promotion of child rights and prevention of child labour;
- Involving national and local organisations for immediate provision of remediation and rehabilitation mechanisms.

Protection

Protection is based upon the reality that many children remain in the workplace in the short term:

- whilst prevention and withdrawal strategies are pursued, or
- because they have achieved the current minimum working age in their country (15-17 years)

These children remain at risk. So, there is a need to protect them whilst at work by improving occupational safety and health (OS&H) and working conditions and arrangements in the workplace. The basis for improving OS&H standards and protection is by strengthening risk management in the workplace. The process is commonly called risk assessment and has three stages:

1. Identifying the hazard which we can define as: "the potential to cause harm" – which can include such things as transport, machinery, long hours, chemicals, tools, and processes
2. Assessing or evaluating the risk which we can define as: "the likelihood that the harm from a particular hazard is realized" often, the risks for children are greater
3. Adopting protection and control measures to ensure the safety and health of workers, and ensuring compliance with health and safety standards.

Child Labour Referral mechanism

Under section 33 of Juvenile Justice Act, when a child is in need of care and protection is produced before the Child Welfare Committee, the Child Welfare Committee may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer.

the age and maturity of the child is decisive in determining what the best approach is. Older children may be given the opportunity of vocational training whereas younger children may be assisted to go to school.

it is recommended that companies (brands, retailers and suppliers) seek the assistance of concerned child rights NGOs when making an action plan.

Medical treatment in the short and medium-term may also be part of the action plan for remediation of child labour, if the child is sick or injured from work. Children who have injured themselves may be incapable of sustaining a living as adults, and they are need social support measures.

furthermore:

- verify the age of new employees birth certificate/medical certification;
- young workers (14-18) not employed at night or hazardous conditions;
- apprenticeships and vocational training / if minimum working age.

Importance of Rehabilitation

It is not the responsibility of the inspectors themselves to provide follow-up facilities for child workers being removed from work, but there **must** be a referral or link made with programmes and agencies which can do so. And, generally it is not enough to simply refer the children to school or social services but rather to follow them to verify if they have accessed the services they were referred to and that they are participating. Otherwise, they may simply be shifting to another line of work. Similarly, in the case of legal action, the cases need to be tracked to see if action is being taken. If citations, once made, are not prosecuted nor penalties imposed, there is little incentive for employers to take action.

The ultimate goal must always be kept in mind: that the child should be better off as a result of being removed, rehabilitated, or prevented from working. Inspection does not make that judgment, but it provides the information that enables others to do so.

The needs of the children rescued/withdrawn from work are different from those of the normal school-going children. They are generally of a higher age group and have different experiences and skills. They might have been subjected to verbal, physical and/or sexual abuse, which would necessitate intense counselling and psycho-social support. As a result, it is difficult to put them into mainstream schools with immediate effect. The government of India has implemented a special programme the National Child Labour Project (NCLP) in the country with a view of rehabilitating child labourers working in hazardous occupations and processes. The children withdrawn from work are put in special schools opened under the project as a transitioning mechanism where they are provided non-formal education, vocational training, stipend, nutrition, etc, and after a period of time they are mainstreamed into formal education systems or are take up additional vocational training after the completion of the non-formal education.

Another aspect of the rehabilitation mechanism is to ensure that the parents of the children are covered under various social protection programmes such as poverty reduction schemes, housing schemes, employment generations schemes, etc. so that the supply-side factors of child labour are mitigated and children are prevented from entering the workforce. Yet, another aspect is awareness generation programme in communities vulnerable to child labour and the markets where children come to work to achieve the goal of prevention of child labour.

Rehabilitation activities include:

- Health care and psychological support or counselling, particularly for those who have been exposed to traumatic situations;
- Legal aid and protection for children threatened with reprisals;
- Non-formal or basic education to bring older children up to grade level so

- that they can successfully enter or re-enter regular schools;
- Facilitating entry directly to regular schools for younger children, including provision of school supplies, and occasionally stipends, subsidies, or scholarships to offset costs of schooling;
- Vocational training for older children;
- Income substitution programmes for those in extreme poverty, for whom loss of income could mean lack of food or other basic necessities for themselves or the family.

Alongside these direct services for child workers, there are activities which are indirect but equally important in supporting the rehabilitation of the child worker. These are:

- Measures to improve the quality, accessibility, and availability of schools since, in many cases, children are drawn to work because the schools do not offer much promise.
- Sensitising parents, the children themselves, and other members of the community about the specific hazards of early work.
- Income support schemes for families of child workers, such as micro-credit and savings mobilization.

| Needs of the child | Possible service providers | Mechanisms |
|--|--|--|
| Basic needs (shelter, food, health care) | Child Welfare Committees, NGO, family, community | <p>Contact Child Welfare Committees for overall support for the basic needs of the child, and for discussing a process of remediation;</p> <p>Contact family members for remediation and in cases of trafficking for repatriation of the children;</p> <p>Contact NGO for the immediate provision of basic needs.</p> |
| Medical care and verification of age | Child Welfare Committees, NGOs, Doctors | <p>Contact the Child Welfare Committees for appropriate medical care to the children without any delay and immediately after removal from the workplace;</p> <p>If its is girl child, ensure that a female social workers or staff is present;</p> <p>An NGO should be associated in the process of medical examination, care and verification of age.</p> |
| Education | School | <p>Contact the concerned authorities at the National Child Labour Projects;</p> <p>Contact school teacher to discuss placement of the child in the school.</p> |

Trainer will discuss the various elements of a strategy to remediate and rehabilitate child labourers, instead of proposing a standard strategy. When a child is found in production or any where in the supply chain, it is important to have clear guidelines and practices for how to cope with the situation in a transparent and equitable manner which assists the child with compensation and education/vocational training. The action plan must also ensure what the roles of the company (retailer/brand), suppliers and family are and how to monitor the welfare of the child and follow-up obligations.

Rehabilitation may be statutory through state mechanisms and monetary compensation, or through non-state mechanisms.

- Rescue under Bonded Labour Act: Immediately upon rescue or withdrawal, if it is done under the Bonded Labour Act, a Release Certificate may be issued and an interim relief of Rs. 1000 per child may be given. The Release Certificate issued by the District Magistrate or the Sub-Divisional Magistrate shall entitle the child (or even adult) victim to a rehabilitation package of Rs. 20,000. The District Magistrate or the Sub-Divisional Magistrate shall write to the Resident Commissioner of the state to which the child belongs for the safe repatriation of the child or shall order a law enforcement authority to repatriate the child back to the parents safely.
- Rescue under Juvenile Justice Act or other legal provisions: If the rescue has been under the Juvenile Justice Act or any other legal provision, the rescued child labourer may be sent to a Shelter Home or Children's Home by orders of the Child Welfare Committee in accordance with the Juvenile Justice Act for the reception of the child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

Statutory Rehabilitation – under various laws

Statutory rehabilitation can take the form of the following:

- Injunction to introduce changes – under various sections of the Indian Penal Code
- Payment of fines – under Child Labour Act
- Recovery of the back-wages as per the Minimum Wage Act, 1948
- Temporary closure of firm until changes are introduced
- Temporary or permanent withdrawal of licence (e.g. of private employment agency)
- Refund of financial damage caused to victim
- Repair of moral damage with a lump sum
- Confiscation of assets
- Imprisonment – under various legal provisions



More in specific the consequences for the employer if engaged in child labour are the following:

1. fine the employer with a maximum of Rs. 20,000 per child;
2. initiate proceedings for imprisonment. For first offenders the maximum time is one year. For second offenders the maximum time in prison is two years;
3. make a case under the Bonded Labour Act the maximum time of imprisonment the employer faces is three years;
4. file a complaint for the recovery of the back wages besides the fine;
5. seize the employer's property;
6. foreclose the property, if the employer is unable to pay for the fines and back wages.

→ under various laws – Child Labour Act, Bonded Labour Act, Juvenile Justice Act, Indian Penal Code

Section 14 of the Child Labour Act lays down the penalties for the offenses under the Act. It states that (1) whoever employs any children or permits a child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than, three months but which may extend to one year or with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 20,000 or with both.

→ In case of repeat offense, the employer can face imprisonment, which may extend to 2 years.

Another important statute, which includes prohibiting exploitation of working children, is the Juvenile Justice Act. Section 26 states, 'whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earnings for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine'. Section 23 provides punishment for cruelty to juvenile or child. Offenses under Section 23 and 26 are cognizable. According to the Juvenile Justice Act, child means a person who has not completed his 18th year of age.

Repatriation of the Child and Follow-up

Repatriation is initiated either by orders of the District Magistrate/the Sub-divisional Magistrate or by the Child Welfare Committee.



Some of the key elements of the repatriation are:

- Assessing the current situation of the child – mental, physical and emotional;
- Assessing the home factors – the financial situation of the family, the home-based factors that could contribute to further exploitation, nature of the family, etc;
- Liaison with the relevant government and non-government agencies in the home state and district;
- Liaison with the National Child Labour Project (NCLP), Sarva Shiksha Abhiyan (SSA), State Child Labour Departments/Resource Centres;
- Mainstreaming the child into education – formal or non-formal;
- Accountability setting and follow-up.

LEGAL PROVISIONS IN CHILD LABOUR TRAFFICKING



| Situation of the child | Statute | Offence (Provision) | Section | Classification | Punishment | Explanation |
|---|------------------------------|--|------------------------------|---|------------------------|---|
| Children are lied to and enticed to be brought for work | Indian Penal Code (IPC) 1860 | a) Cheating | Section 417 and related | Bailable and non cognizable | Up to 1 year or fine | While trafficking a child often there is a concealment of a fact and deceit that would cause damage or harm to a person in body, mind, reputation or property. |
| | | b) Abduction: i) Abduction for wrongful confinement | Section 365, 367 and related | Non bailable and cognizable | Up to 7 years and fine | Through deceit or force a child is moved from one place to another and his/her movement is restricted. |
| | | ii) Abduction for slavery | Section 367 | Non bailable and cognizable | Upto 10 years or fine | After having moved through deceit or force, in the place of employment a child is in a position of detention against will, not getting minimum wage or movement being restricted. |
| | | c) Kidnapping through enticement | Section 363 | Cognizable and Bailable (Non-Bailable in Delhi) | Upto 7 years and fine | Children are enticed (induced, allured, persuaded etc.) out of illegal guardianship (of parents). Applicable for boys till the age of 16 years and girls till the age of 18 years |
| | JJ Act 2000 | Procurement of a child for hazardous employment | Section 26 | Cognizable and Bailable (Non-Bailable in Delhi) | Upto 3 years and fine | Child is procured for hazardous employment, etc. |

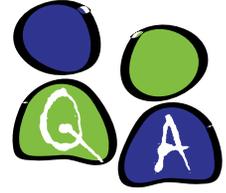
| Situation of the child | Statute | Offence (Provision) | Section | Classification | Punishment | Explanation |
|---|---|---|--------------|---|--|---|
| By paying some money to the parents as consideration or as advance | a) Indian Penal Code, 1860 | Buying of a person as a slave | Section 370 | Bailable and non-Cognizable | Upto 7 years and fine | Advance in money may be construed as purchase/ buying of a person for slavery |
| | b) The Bonded Labour System (Abolition) Act, 1976 | Punishment for advancement for bonded labour | Section 17 | Bailable and Cognizable | Upto 3 years and fine | Advancing any amount resulting in debt for bonded labour (bonded debt) Selling or disposing a child as a slave |
| Giving away the procured (Trafficked child) to the employer for monetary consideration for the purpose of employment. | a) Indian Penal Code 1860 | Selling a minor for the purposes of Prostitution. | Section 372 | Non Bailable and Cognizable | Upto 10 years and fine | Selling or letting on hire a child (below 18 years) for the purpose of prostitution or illicit intercourse or any unlawful immoral purpose |
| Employing the child | a) Child Labour (Prohibition and Regulation Act, 1986 | Employing the child in prohibited occupations and processes | Section 3/14 | Non-Cognizable and Bailable | Upto 1 year. Repeat offence upto 2 years and fine upto 20,000 (Min. 10,000 and max. 20,000 as per Supreme Court Guidelines | Employment of child below 14 years is punishable offence under Child Labour (Prohibition and Regulation) Act, 1986, when the child is employed in occupations and processes listed in Part 'A' & 'B' of the Schedule. In other occupations it is a punishable offence if the regulatory provisions mentioned in Para III of the Act are violated. |
| | b) JJ Act, 2000 | Procuring child/juvenile for hazardous employment | Section 26 | Cognizable and Bailable (Non-Bailable in Delhi) | Upto 3 years and fine | Keeping a child in a hazardous employment, bonded labour or withholding the earnings of the child using them for the known purpose |

| Situation of the child | Statute | Offence (Provision) | Section | Classification | Punishment | Explanation |
|---|---|--|-------------|-----------------------------|---------------------------|--|
| a) Not allowing the child to move freely, return home as per his/her will | Indian Penal Code, 1860 | Wrongful confinement of a kidnapped or abducted person/child | Section 368 | Cognizable and non Bailable | Upto 10 years and fine | A child kept in wrongful concealment/ confinement and who is kidnapped/ abducted to be punished in the same manner as kidnapping/abduction, in this case the purpose being slavery |
| b) Not paying wages or paying less than the minimum wage | a) The Bonded Labour System (Abolition) Act, 1860 | Enforcing forced or bonded labour | Section 16 | Bailable and Cognizable | Upto 3 years and fine | Where a person working for less than minimum wage, there is a presumption of bonded labour, consent being immaterial in case of children |
| | b) Indian Penal Code | | Section 373 | Bailable and cognizable | Upto 10 years and fine | Buying or obtaining possession of a minor/unlawful purpose |
| | | | Section 374 | Bailable and cognizable | Upto max. 1 year and fine | Compelling a person to labour against will. Applicable in all situation of bonded labour. |

In all of the above Situations it may also be noted that Section 370 of the Indian Penal Code shall be applied in situations where an Act, Means and End (i.e., a form of exploitation)exists as elaborated below:

| Statute | Section | Act | Means | End (Exploitation) |
|-------------------|--|------------|---|------------------------------|
| Indian Penal Code | 370 Whoever for the purpose of exploitation | Recruits | Using threat | Physical Exploitation |
| | | Transports | Using force or any other form of coercion | Sexual Exploitation |
| | | Harbours | Abduction | Slavery |
| | | Transfers | Practicing fraud, or deception | Practices similar to slavery |
| | | Receives | Abuse of power | Servitude |
| | | | Inducement | Forced Removal of Organs |

Frequently asked questions



1. Who is a child?

A child is a person who has not completed 18 years of age.

2. What is the child is above 14 years of age? Is s/he allowed to work under the law?

In Delhi according to the 15 July 2009 judgement in case Save the Childhood Foundation vs. Union of India & Ors [WP 2069/2005].

"...in Section 2(K) of the Juvenile Justice (Care and Protection of Children) Act 2000, the individual who is below 18 years of age should be considered as a child. Therefore in the course of raid, if child workers above 14 years of age are found, then they should also be liberated from the clutches of the employer(s) and handed over to the police."

Additionally, after ascertaining the nature and condition of work – if a case of forced labour is found, age is irrelevant.

3. What if the sub-contractor or the employer says that the child came asking for work, and consented to work for the wages s/he was offered?

The child (in law) does not have the right of contract. Thus, a child's consent is no consent. Moreover, even if the parents have consented, such consent is misinformed consent where the illiterate gullible parents are unaware of their rights and responsibilities. In case of wages below the stipulated government minimum wages, the provisions of the Bonded Labour Act are invoked and the employer has to prove the non-existence of bondage/slavery.

4. What if the employer reports full wage payments to the child?

Child below 18 years under the various acts cannot work. The employer must provide receipts of payments to the child for investigation records.

Model Child Labour Intervention

- A.** Ajith is a 12 year-old boy who has dropped out of school due to drought in his area in Andhra Pradesh. Ajith hopes someday he will be able to go back to school again. A recruiter comes to his village and offers his family to help him get to school and learn work in Bangalore city. His parents are happy because the recruiter gives them a small sum of money (Rs. 500) in advance. When they arrive in Bangalore city, Ajith is handed over to an employer and made to work in an automobile garage without any pay.

A client at the automobile garage notices, Ajith working at the garage and reports to the Karnataka State Resource Centre on Child Labour.

- B.** Wenni is a 10 year-old girl from a poor village in Mysore district. She helps her parents who are farm labourers. Wenni has never been to school. A woman in Wenni's village convinces her parents to send Wenni with her to the city. She promises that Wenni will have a good life in the city and also send money home. The woman hands over Wenni to a home in Bangalore as a domestic servant. Wenni has been working in the home for 3 years now and her employer has never let her visit her home. Wenni is told that she earns Rs. 2000 a month, but Wenni has never seen the money.

A neighbour complained to an NGO about Wenni when she heard her crying on the balcony one day.

Procedure to be followed:

1. Complainant can be:
 - a. Any citizen
 - b. Police officials
 - c. Labour Inspectors and officials
 - d. Non-government official
 - e. District Magistrate/Sub-Divisional Magistrate
 - f. Others
2. Inspection and preparation for removal of the child from the situation
3. Collaboration with the key agencies
 - a. District Magistrate (DM)/ Sub-Divisional Magistrate (SDM) for action under the Bonded Labour Law
 - b. Police officials for action under Juvenile Justice Act and relevant sections of the Indian Penal Code
 - c. Non-government organisation for rehabilitation, repatriation and follow-up
 - d. Child Welfare Committees
 - e. Legal Services Authorities
4. Legal Provisions
 - a. Child labour (Prohibition and Regulation) Act, 1986
 - b. Juvenile Justice (Care and Protection of Children) Act, 2000
 - c. Bonded Labour System (Abolition) Act, 1976
 - d. Inter-state Migrant Workmen (Regulation of Employment and Condition of

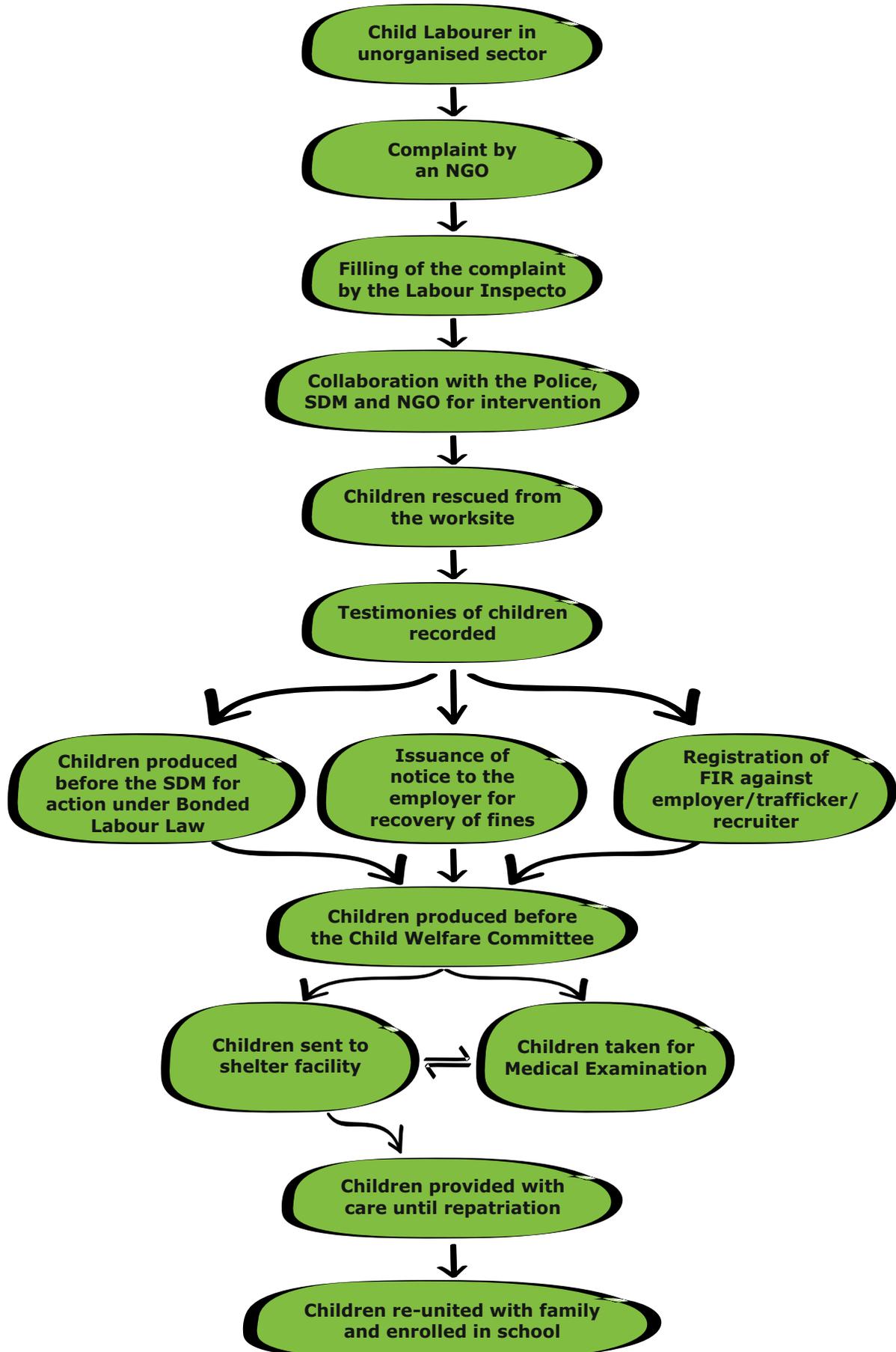
Service) Act, 1979

- e. Minimum Wages Act, 1948
 - f. Indian Penal Code
 - g. Supreme Court and High Court judgements
 - h. Right of Children to Free and Compulsory Education Act, 2009
5. Rehabilitation and re-integration of children with families (and/or communities)
6. Linkages with education institutions

Checklist in case of child labour intervention:

| | Yes | No |
|--|--------------------------|--------------------------|
| 1. Child rescued from the employer/ trafficker/ recruiter? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Details of the establishment recorded for filing prosecution and recovery of fines? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Evidence collected at the establishment for prosecution of the employer/trafficker/recruiter? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. DM/SDM involved in the rescue operation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Police officials present at the rescue operation for investigation of criminal offenses? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. State/District/Local legal department consulted? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Social Workers/NGO representatives present at the rescue operation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Interview and statement of the child labourers recorded? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Statements of the occupier of the establishment and the witnesses present recorded? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Challan filled for recovery of the fines from the employer? | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Refer the child rescued to the Child Welfare Committee? | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Medical examination of the children rescued? | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Registration of FIR against employer/trafficker: | | |
| a. u/s 314 of IPC | <input type="checkbox"/> | <input type="checkbox"/> |
| b. u/s 23/26 of JJA | <input type="checkbox"/> | <input type="checkbox"/> |
| c. u/s 16 of BLA | <input type="checkbox"/> | <input type="checkbox"/> |
| d. u/s 374 of IPC | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Shelter homes/Children's Homes facility to the children? | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Procedure initiated for recovery of the due wages to the children under Minimum Wages Act? | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. DM/SDM inquiry initiated under Bonded Labour Act? | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. Spot fine of Rs. 20,000 recovered from the employer under the MC Mehta judgment? | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. Children over 15 years in hazardous conditions referred to police/DM/SDM for proper prosecution? | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. Repatriation/re-unification with the family? | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. Children enrolled in schools? | <input type="checkbox"/> | <input type="checkbox"/> |

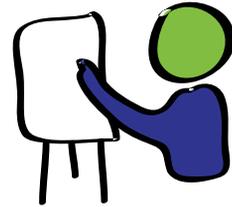
Suggested Steps



Brief Guide to distinguish between bad working conditions and forced labour³

Physical violence, including sexual violence

- Does the worker have any sign of maltreatment, such as bruises?
- Does the worker show signs of anxiety?
- Is there any other sign of mental confusion or traces of violence?
- Do supervisors/employers demonstrate violent behaviour?



Restriction of freedom of movement

- Is the worker locked up at the workplace?
- Is the worker forced to sleep at the workplace?
- Are there visible signs which indicate that the worker is not free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints?
- Is the worker constrained to leave the workplace?

Threats

- Does the worker make statements which are incoherent or show indoctrination by the employer?
- Do the workers report any threat against themselves, their co-workers or family members?
- Is there any sign that the worker is subject to racketeering or blackmailing (with or without the complicity of the employer)?
- Does the worker show anxious behaviour?
- Are workers forced to work excessive (unpaid) overtime or to carry out tasks that they prefer not to do, and are the workers threatened if they refuse?
- Is the worker in an irregular situation (e.g. migrant workers) and threatened with denunciation to the authorities?

Debt and other forms of bondage

- Does the worker have to repay high recruitment or transportation fees? If so, are these deducted from the salary?
- Is the worker forced to pay excessive fees for accommodation, food or working tools that are directly deducted from the salary?
- Has any loan or advance been paid that make it impossible to leave the employer?
- Are work permits bound to a specific employer? Has there been any complaint about the employer before?

Withholding of wages or no payment of wages

- Does the worker have a regular employment contract? If not, how are wages being paid?
- Is there any illegal wage deduction?
- Has the worker received any wage at all?
- What is the amount of the wage in relation to national statutory requirements?
- Do the workers have access to their earnings?
- Have the workers been deceived about the amount of their wages?
- Are wages paid on a regular basis?
- Is the worker paid in-kind?

Retention of identity documents

- Are the identity documents of workers in their own possession? If not, are they kept by the employer or supervisor? Why?
- Does the worker have access to the documents at all time?

3. ILO Committee of Experts on the Application of Standards see: ILO; Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement, Geneva, 2005

Glossary of Terms



A.

Auditing/monitoring

To ensure that a business or a supplier does not employ child labour, some type of assessment can be made. A single assessment is generally referred to as a social audit. Auditing is conducted internally or by outsiders and there are several approaches (internal/external/buyer). The terms auditing and monitoring are often used interchangeably.

B.

Basic Education

Basic education comprises both formal schooling (primary and sometimes lower secondary) as well as a wide variety of non-formal and informal public and private educational activities offered to meet the defined basic learning needs of groups of people of all ages.

Bonded Labour

The status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services. Bonded labour typically occurs when a person who needs a loan and has no security to offer pledges his/her labour, or that of someone under his/her control, as a security for a loan. In some cases, the interest on the loan may be so high that it cannot be paid. In others, it may be deemed that the bonded individual's work repays the interest on the loan but not the principal. Thus, the loan is inherited and perpetuated, and becomes an inter-generational debt. Bonded labour is identified as one of the worst forms of child labour in ILO Convention 182.

C.

Child

A person less than 18 years of age (UN Convention on the rights of the child, 1989).

Child Labour

Any work that interferes with the completion of a child's education or is mentally, physically, socially and morally dangerous and harmful to children;

Child Labour Laws

Legal instruments towards ending child labour. Agriculture is historically and traditionally an under-regulated sector in many countries. This means that child labour laws – if they exist – are often less stringent in agricultural industries than in other industries. In some countries, adult and child workers in agriculture are not covered by or are exempt from safety and health laws covering other categories of adult workers. Children, for example, are generally allowed to operate machinery and drive tractors at a younger age in agriculture than in other sectors.

Child Work

Work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist and is an integral part of a course, a programme of training or a programme of guidance or orientation.

Contractor and subcontractor

A contractor is an entity that performs a designated operation in the manufacturing process, under contract with a manufacturer. The contractor is paid a negotiated amount per piece or per dozen, and maintains its own workforce, provides its own machinery and equipment, and secures its own facilities.

The subcontractor is the entity that secures work from a contractor, often when the contractor needs help in meeting a deadline for completion of garments, or when the contractor cannot perform a specialized process in the assembly of a garment. The subcontractor signs a contract to perform part or all of the obligations of another's contract.

Compulsory Education

Compulsory education refers to the number of years or the age span during which children and youth are legally obliged to attend school.

Compulsory Labour

See forced labour.

Convention on the Rights of the Child ("CRC"):

The CRC is an internationally recognized agreement between nations that establishes a comprehensive set of goals for individual nations to achieve on behalf of their children. In general, the Convention calls for: freedom from violence, abuse, hazardous employment, exploitation, abduction or sale; adequate nutrition; free compulsory primary education; adequate health care; equal treatment regardless of gender, race, or cultural background; the right to express opinions and freedom of thought in matters affecting them; safe exposure /access to leisure, play, culture, and art.

The U.S. and Somalia are the only two nations that have *not* ratified the CRC while several countries have ratified it with restrictions.

D.

Debt Bondage

See bonded labour.

Developing Country

A nation having various degrees of economic development and common characteristics, including widespread poverty, high birth-rates, dependence on developed countries for aid – e.g. India, Peru, Zimbabwe.

Developed Country

An industrialized nation with common characteristics, including advanced technology, high per capita income – e.g. the United States, Italy, Japan.

E.

Exploitation

Exploitation is the undue benefit on one to cause an unfair loss to another. Ending the economic exploitation of children can only be possible when free, compulsory and quality education is assured for all children regardless of gender, race, religion and social or economic status. The elimination of child labour and education for all are two sides of one coin. One cannot be achieved without provision for the other.

F.**Forced Labour**

All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. In practice, it is the enslavement of workers through the threat or use of coercion, and it is primarily found among the most economically vulnerable members of society. Forced or compulsory labour is identified as one of the worst forms of child labour in ILO Convention 182.

Formal Education

As normally used, formal education refers to the structured educational system provided by the state for children. In most countries, the formal education system is state-supported and state-operated. In some countries, the state allows and certifies private systems, which provide a comparable education. Formal education is linked with schools and training institutions.

Formal Workers

Workers hired through 'formal' employment arrangements which are subject to the country's employment laws. These workers work in a defined workplace, for a known employer and with an employment contract.

H.**Hazard**

'Hazard' is closely associated with 'risk'. A hazard is anything with the potential to do harm. A risk is the likelihood of potential harm from that hazard being realized.

Hazardous child labour

Work in dangerous industries or workplaces where children are likely to meet exploitative situations by nature or circumstance. According to C 182, hazard child labour is work in dangerous or unhealthy conditions that could result in a child being killed or injured (often permanently) and/or made ill (often permanently) as a consequence of poor safety and health standards or working arrangements. Hazardous child labour is defined in R 190 as work involving: exposure to physical, psychological or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; exposure to dangerous machinery; equipment or tools; the handling of heavy loads, exposure to unhealthy environments (substances, agents, processes, temperatures, noise, vibrations); and work under difficult conditions including for long hours, at night or being unreasonably confined to the premises of the employer. Hazardous child labour is also covered under C 138.

Homeworkers

Part of the work such as stitching or finishing that is taken out to the local community, homeworkers. Homebased work is work done mainly by women, for a cash income, either in their homes or in a yard, garage or field near the home. Homebased work is often the only option available to poor women, who are required to remain within or close to the household due to gender-designated responsibilities and other concerns and restrictions. Their lack of access to resources, information, and the means to develop a wider range of skills makes them highly vulnerable.

I.**Informal Education**

Education provided in a non-formal setting. For example, non-traditional settings (such as classrooms on train station platforms for working children) and non-traditional curriculum

(mixture of basic reading, writing, and math with life skills lessons geared toward needs of targeted population of students). Sometimes information education supplements or replaces formal education, due to issues such as lack of access to traditional schools or other barriers.

Informal Sector

Definitions of the informal sector vary widely. In general, the informal sector refers to areas of economic activity that are largely unregulated and not subject to labour legislation. A more precise description of the informal sector by ILO suggests "these units typically operate at a low level of organization, with little or no division between labour and capital as factors of production and on a small scale." Furthermore, where labour relations exist, interactions are not based on contracts or formal arrangements; rather they are grounded on casual employment, kinship, and personal or social relations. Because employers in the informal sector are not accountable for complying with occupational safety measures, children who work in "hazardous" or "ultra-hazardous" settings likely run the risk of injury without any social protections. For this reason, households may be reluctant to indicate work by children in the informal sector, which can increase the probability of underreporting. In addition, because businesses in the informal sector are not usually included in official statistics, children working in informal sector enterprises do not show up in labour force activity rates.

Informal Workers

Workers who do not have a permanent job in a factory. Workers without a work contract that says how many hours they will work and how much they will be paid. Employers are employing informal workers as 'seasonal' labour, hiring when there are orders and firing when there are none. Employers are cutting their costs and increasing their flexibility by shirking their responsibilities to workers. Informal workers are bearing the risks and insecurity.

International Trade Union Confederation ("ITUC")

The International Trade Union Confederation (ITUC) is the main international trade union organization, representing the interests of working people worldwide. It has 312 affiliated member organizations in 156 countries and territories, with a total membership of 176 million workers. The ITUC was founded at its inaugural Congress in Vienna, Austria, in November 2006. It groups together the former affiliates of the International Confederation of Free Trade Unions ("ICFTU") and the World Confederation of Labour ("WCL"), along with trade union organizations which had no global affiliation. The ICFTU and the WCL dissolved themselves on 31 October 2006, to pave the way for the creation of the ITUC.

International Labour Organization ("ILO")

The ILO is the UN specialized agency which seeks the promotion of social justice and internationally recognized human and labour rights. It was founded in 1919. The ILO formulates international labour standards in the form of Conventions and Recommendations setting minimum standards of basic labour rights. Within the UN system, the ILO has a unique tripartite structure with workers and employers participating as equal partners with governments in the work of its governing organizations. The *Director-General of the ILO is Mr. Juan Somavia.*

ILO Convention 29 on Forced Labour ("C 29") and ILO Convention 105 Abolition of Forced Labour Convention ("C 105")

C 29 and C 105 are most frequently referred to when defining forced labour, as most other standards find their definition in these ILO Conventions. C 29 defines forced labour as: 'all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. Furthermore C 29 defines the

circumstances in which some forms of work are allowed to be used by national authorities (e.g. a national emergency), subject to a detailed list of conditions of guarantees. C 105 obliges governments to suppress and not make use of any form of forced labour (and specifically specifies purposes for which forced labour is forbidden).

C 29 has been ratified by 174 countries, C 105 has been ratified by 171 countries.

ILO Convention 81 ("C 81"): the Labour Inspection Convention

India has ratified the ILO Convention (No. 81) on labour inspections in industry (1947) (excluding part II: this part is on labour inspection in commerce). ILO Convention No. 81 defines the functions of the system of labour inspection as, among other things, 'to ensure the enforcement of the legal provisions relating to conditions of work and protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, employment of children and young persons, and other connected matters'.

ILO Convention 138 on Minimum Age for Employment ("C 138")

Each country that ratifies C 138 agrees to pursue a national policy designed to ensure the effective abolition of child labour and progressively raise the minimum age for admission to work to a level consistent with the fullest physical and mental development of young persons. C 138 sets the minimum age for *basic* work at no *less* than 15 years old, or the age of completion of compulsory schooling⁴. Developing countries may, initially, set the minimum age for basic work at 14. A country may set the minimum age for basic work higher than 14, but not lower. This means that a child under 14 should never work at all, under *any* circumstances. The minimum age for (hazardous) work, which is likely to jeopardize the health, safety or morals of a young person, is 18. C 138 has been ratified by 156 countries.

ILO Convention 182 on Worst Forms of Child Labour ("C 182")

ILO Convention 182 calls on states to quickly take immediate and effective measures to outlaw and eliminate the *worst* forms of child labour as a matter of urgency. "Child" in C 182 applies to all persons under the age of 18 years. The "worst forms of child labour" are: slavery and slavery-like practices, including forced labour and forced recruitment for armed conflict; prostitution or pornography; the use of children for illicit activities (drug trafficking); and "hazardous work," which is harmful to a child's health, safety or morals. C 182 has been ratified by 172 countries. C182 is the fastest ratified convention in ILO's history.

ILO Recommendation 190: Worst Forms of Child Labour

ILO Recommendation 190 supplements the provisions of C 182 and provides guidance to ratifying countries regarding its implementation. The Recommendation describes populations in need of specific attention regarding the worst forms of child labour, such as girls and children involved in hidden forms of work. It further provides guidelines to assist countries in determining the kinds of hazardous work that should be considered worst forms and thus prohibited to children. Finally, Recommendation 190 provides guidance regarding specific steps countries that have ratified C 182 should take in order to combat the worst forms of child labour, such as the collection and exchange of data on both the problem and best practices to address it; passage and enforcement of laws that penalize violations with criminal penalties; awareness raising about the problem; establishment of policies against the worst forms of child labour; and international cooperation through technical, legal, and other forms of assistance.

International Organization of Employers ("IOE")

The IOE represents 147 national employers organizations in 140 countries to the ILO and

supports a strong private sector role in developing countries. It was founded in 1920 and is located in Geneva. The IOE and its member federations have been playing an active role at the international and national levels to combat the problem of child labour. At the national level, several IOE member federations are actively involved in the effort to eliminate child labour, particularly through their involvement in the ILO's IPEC program. They raise awareness, develop policy initiatives, action to combat child labour in specific sectors and industries, as well as support the removal and rehabilitation of child labour.

International Program for the Elimination of Child Labour ("IPEC")

IPEC, the child labour program of the ILO, is a 90-country alliance against child labour. IPEC's **aim** is to work toward the progressive elimination of child labour by strengthening national capacities to address child labour problems, and by creating a worldwide movement to combat it. IPEC has ten years of experience in the design and implementation of programs to eliminate child labour and is active in 88 countries. IPEC stands ready to advise and assist ILO members according to their particular needs to implement ILO Convention 182. IPEC can support the development and implementation of national plans by providing legal advice, capacity-building expertise and technical assistance in the areas of data collection, awareness raising, program design and workplace monitoring. IPEC's *priority target groups* are bonded child labourers, children in hazardous working conditions and occupations and children who are particularly vulnerable, i.e. very young working children (below 12 years of age), and working girls.

L.

Labour Inspection

There are four types of child labour that the international community has declared to be particularly heinous: slavery, sexual exploitation, illicit activities, and hazardous work. The first three categories are likely to be illegal and the responsibility primarily of police authorities. Labour inspectors are going to be particularly concerned with the last category, although as part of a larger team and more comprehensive approach, they have a role to play with all. Classifying and understanding the precise employment status of the child is also important in unravelling the legal fictions commonly invoked to deny the existence of the employment of child labour. It is thus important for labour inspectors to be capable of identifying the precise employment status of working children whom they encounter during their inspection visits so that they can take the action which is appropriate to the specific situation.

Light Work

Under Article 7(1) of the ILO Convention 138 is stated that: "National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is—(a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received." Countries that have specified a minimum legal working age of 14 years may permit the employment or work of persons 12 to 14 years of age on light work as defined in Article 7(1) of Convention 138.

M.

Manufacturers

Manufacturers organise the making of the clothes. Manufacturers are the entity that coordinates all aspects of garment production and that sells the garments to retailers. Production functions include designing the garment, securing all components that will make up the finished garment, cutting the fabric, and assembling the garment. Cutting and assembly are examples of operations that are often completed by another entity, under contract with the manufacturer.

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Mapping

The making of surveying. Representation of a procedure, process, structure or system that depicts arrangement of a and relationships among its different components, and traces flows of e.g. energy, goods, information, materials money, personnel etc.

Migration

Many industrial and agro-industrial sectors like brick-making, salt manufacture, sugar cane harvesting, stone quarrying, construction, fisheries, plantations, rice mills and so on run largely on migrant labour. Families are forced to leave their homes and villages for several months each year in search for livelihood. It's common practice among migrant workers to include children as part of a family work unit. In these circumstances children begin to work with their parents from an early age and are unable to attend schools. Migration means drop out of schools and obstructs children in their development and future.

Minimum Age of Work

The minimum age of work is the age at which a child can enter into work. ILO Convention 138 states that the minimum age for admission to employment should not be less than the age of completion of compulsory schooling and should not be less than 15 years (14 for developing countries).

N.**Non-Formal Education**

Non-formal education is education organized outside formal systems, for instance with community groups and other organizations. Most typically, non-formal education is used to refer to adult literacy and continuing education for adults. This education is called non-formal because: it is not compulsory; it does not lead to a formal certification; and it may or may not be state-supported.

Non-Governmental Organization ("NGO")

NGOs are organizations not part of the government or are quasi-government agencies or agents.

P.**Primary Education**

Primary education, sometimes called elementary education, refers to school usually beginning at 5 or 7 years of age and covering about six years of full-time schooling. In countries with compulsory education laws, primary education generally constitutes the first (and sometimes only) cycle of compulsory education.

Q.**Quality education**

Children need the necessary skills and training if they are to succeed, thus affordable education of good quality which is relevant to the needs of children and their families is very important. In many countries the schools which are accessible to the poor families are underresourced and inadequate. Poor facilities, over-sized classes and lack of trained teachers lead to low standards of education. Quality education is a crucial component in the elimination of child labour.

R.**Rural areas**

In rural areas especially, household income is insufficient to meet the needs of families. Children work as cheap labour because their parents are poor and do not earn enough to support the family or to send their children to school. Since agricultural child labour is rooted in the livelihood systems of rural areas and the economic vulnerability of families, rural development strategies and programs aimed at improving rural livelihoods, creating

alternative income-generating activities, and addressing health and safety in agriculture, have a critical role to play in helping reduce the use of child labour and the level of hazards and risk associated with it.

S.

Seasonal Migration

Millions of families are being forced to leave their homes and villages for several months every year in search of livelihoods. The migration cycle begins around October-November and lasts for 6 months. It overlaps the school calendar. Children migrating with their parents are only able to go to school from June-November. One of the consequences of children migrating is that their education is disrupted. It's a huge problem to get migrant children back into school.

Subcontracting / Supplier

Term used when a company agrees a contract with another company to manufacture a product or part of it or to carry out a service (outsourcing). The second company is known as the subcontractor or the supplier.

T.

Trade Union

A trade union or a labour union is an organisation of workers that have banded together to achieve common goals such as better working conditions. The trade union, through its leadership bargains with the employer on behalf of union members and negotiates labour contracts (collective bargaining) with employers. This may include the negotiation of wages, work rules, complaint procedures, rules governing hiring, firing and promotion of workers, benefits, workplace safety and policies. The agreements negotiated by the union leaders are binding on the rank and file members and the employer and in some cases on other non-member workers.

Trafficking

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, carried out both within a country and across national borders. Trafficking refers to the process that puts children in a situation of commercial exploitation. Many of them end up working as slaves, prostitutes, soldiers, etc.. Child trafficking does not include cases of kidnapping where there is no commercial consideration.

The trafficking of children is identified as a worst form of child labour in ILO Convention 182.

U.

United Nations ("UN")

The UN was established in 1945 by 51 countries that committed to preserving peace through international cooperation and collective security. Today, nearly every nation in the world belongs to the UN: membership totals 192 countries. The UN is not a world government and it does not make laws. It does, however, provide the means to help resolve international conflicts and formulate policies on matters affecting all of us. At the UN, all Member States – large and small, rich and poor, with differing political views and social systems – have a voice and a vote in this process. Ban Ki-Moon is the current Secretary-General.

W.

Worst forms of Child Labour

The worst forms of child labour are outlined in Article 3 of C182 Worst Forms of Child Labour Convention (1999). They include:

- the practice of slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced recruitment of children for use in armed conflict;
- child prostitution and pornography;
- illicit activities, such as the production and trafficking in drugs;
- 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.

Suggested activities during the workshop



Activity 1:

The facilitator shall ask the following questions about Child Labour (Prohibition and Regulation) Act, 1986 (i.e. CLPRA).

- As on date, how many occupations and processes are prohibited under Child Labour (Prohibition and Regulation) Act, 1986?
- Is "Zari" making a hazardous process as per the CLPRA. What all does it include?
- According to Section 9 of the CLPRA, what are the 4 particulars (by the way of a written notice) that are required to be sent by the occupier to the Inspector?
- What are the details that have to be maintained by the occupier in the Register as per section 11 of CLPRA?

Activity 2:

Question – Answer – which of these following situation is hazardous child labour?

- 3 children working in a beedi making unit
- 7 boys of 10-12 years each working in a denim stone washing unit
- A 12 year old boy plucking and sorting rose petals in a factory making "Itr"
- A 13 year old girl teaching Mathematics to 6-8 year old children in the evening after attending school to earn some money for herself.
- Five, 10 year old boys assembling a door lock in a lock making factory.
- A 13 year old girl working at a roadside dhaba.
- A 9 year old boy cleaning the drains in a residential colony.

Activity 3:

Private Questions to the Labour Inspectors

1. What is the role of the labour inspectors in dealing with child labour?
2. What factors help you in your job and what factors hinder you in performing your job?

Activity 4:

Role play storyboard: Deepak is a 10 year old boy belonging to a poor embroider in a village near Jharsuguda. His parents can barely earn Rs. 40 per day. Deepak has a 4 year old sister as well. A person called Manoj approaches Deepak's parents saying that he can get Deepak placed in a vocational institute at Peenya, Bangalore where Deepak will be able to learn embroidery simultaneously completing his education. Manoj said that Deepak will be able to send Rs. 2000 per month to his parents and shall have enough for a comfortable pocket allowance for himself at Bangalore. Manoj said that Deepak will stay in the Vocational Institute's hostel and would get 3 meals every day. Manoj hands over Rs. 1,000 to Deepak's parents as an advance and takes him to Bangalore and gets him placed at a zari making unit. The employer is a ruthless fellow, who makes Deepak work for 14 hours a day and provides him with Rice and watery Dal within the premises. When Deepak cries and requests to be sent back to his village, he is often thrashed by his employer. Deepak is forced to stay in the dormitory with 29 other workers in the basement of the manufacturing unit. He is not allowed to go anywhere and once in three months the workers are taken to a temple within the city in a matador belonging to the employer. Deepak's daily earnings are Rs. 20/- only and he is not allowed to make any calls to anybody, not even his parents. He is not allowed to go anywhere. For the past 2 months Deepak has not been receiving any money. Additionally, almost every night Deepak is sexually harassed by his fellow workers in the Dormitory where he stays with them.

Actors: 9 in number

Questions to be asked to audience after dividing them in groups of 15 each:

- What laws are being violated in this case?
- What action can the Labour Inspector take in this case?

Activity 5:

In continuation to the case let herein above, an NGO activist somehow comes to know about Deepak and makes a complaint to the Labour Department at Bangalore. What would the Labour Inspector do in order to help Deepak?

All the participants will make a methodical Plan of Action to remediate Deepak. This will then be discussed in the forum. The facilitator will moderate.

Activity 6:

- Consider a child labour situation where the details of the production process are not known and cannot be obtained;
- Draw up a diagram of the sequence of production using the standard symbols provided for you on the handout;
- You are given the sequence of production in a carpenter's workshop as an example.
- Identify operations you think children are likely to be involved in, mark them with an X; Evaluate whether these operations are likely to be dangerous or potentially harmful to children;
- Mark those considered dangerous/harmful with a D.

Activity 7:

Two actors required, one essaying the role of Deepak and the other that of a Labour Inspector. Both of the actors will enact the interview.

Activity 8:

An open discussion with the audience regarding the issues faced while establishing the age of the children. Real life experiences will be shared.

Activity 9:

Final Skit: At the end of the workshop with all the information disseminated to the participants, a skit will be presented by the participants to show all the steps involved from Inspection --- withdrawal--- rehabilitation ----- follow up for statutory compensation --- re-integration-----repatriation.



GLOBAL MARCH

Against Child Labour
Contra el Trabajo Infantil
Contre le Travail des Enfants

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Priyanka Ribhu:
priyanka@globalmarch.org

Rohit Sharma:
rohit@globalmarch.org

Global March Against Child Labour

International Secretariat
L-6, Kalkaji
New Delhi 110019
India
Tel: +91 11 4132 9025

www.globalmarch.org

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