

MEMO: CODES UPDATE

NUMBER 5, March 2001

SPECIAL REPORT on the Fair Labor Association (FLA)

Why a “Codes Update” memo?

This periodic memo is circulated in Spanish to groups in Latin America in an effort to share information on developments and resources circulating in English about codes of conduct and monitoring. In response to a number of requests, we are also sharing the English version. Comments, criticisms and suggestions are always welcome.

FLA APPROVES SEVEN COMPANIES, ACCREDITS EXTERNAL MONITOR

On January 23, the Fair Labor Association (FLA) announced that it had approved seven major brand-name apparel and sports shoe companies to participate in its monitoring program. Those companies are: Nike, Reebok (for footwear only), Levi Strauss, Liz Claiborne, adidas-Salomon, Gear for Sports, and Patagonia. Two other major companies, Phillips-Van Heusen (P-VH) and Eddie Bauer, are reportedly “in the final stages of the application process.”

The FLA also announced that it had accredited the US non-profit organization Verité as its first “independent external monitor.” Verité is accredited to monitor compliance with the FLA code of conduct in Bangladesh, China (including Hong Kong and Macau), India, Indonesia, Malaysia, Mauritius, the Philippines, Saipan, Taiwan, Thailand, Turkey, Mexico and the US. This past week a second NGO was accredited – Phulki, in Bangladesh.

Note that monitors are accredited by country or geographic area and/or to carry out external monitoring of specific components of the FLA code of conduct. Thus an NGO or commercial social auditing firm could be accredited to monitor in a particular country or region. Monitors can be accredited to monitor the whole FLA code or specific section of the code, for instance the health and safety components.

In February, the Guatemalan independent monitoring group COVERCO (Commission for the Verification of Corporate Codes of Conduct / Comisión de Verificación de Códigos de Conducta) announced that it has applied to become an FLA-accredited external monitor in Guatemala.

According to COVERCO, they made this decision after the FLA confirmed that they could set the following conditions for companies and be accredited as an FLA external monitor:

1. In all monitoring work, COVERCO will take into consideration the highest applicable standard, the FLA Code, national law, and international law.
2. COVERCO owns all the data and analysis it produces.
3. COVERCO will make public key findings of its research and monitoring.
4. COVERCO reserves the right to participate in other groups and to seek other accreditations, and to monitor for companies that are not FLA members.

WHAT IS THE FLA?

Since it was launched in November of 1998, the Fair Labor Association (FLA) has been the subject of controversy in the US, Canada and, to a lesser extent, in Europe. Much less is known about the FLA, or the controversy surrounding it, in Latin America or Asia.

The FLA was the result of multi-stakeholder discussions, initiated by the Clinton Administration, called the Apparel Industry Partnership. While two important US unions in the apparel and retail sectors (UNITE and RWDSU) and the Interfaith Centre for Corporate Responsibility (ICCR) were originally part of the discussions that produced the FLA code of conduct, they decided to withdraw from the process when business and some NGO participants announced they had reached a tentative agreement, without the participation of the unions or ICCR.

US unions, ICCR and many other organizations involved in the US anti-sweatshop movement have criticized the FLA for:

- inadequate public disclosure requirements on factory locations and the results of monitoring;
- company control over the selection of external monitors;
- a lack of transparency in the monitoring, complaints and reporting processes; and
- inadequate code provisions on wages, hours of work, and how to address freedom of association in countries like China, where that right is prohibited or severely restricted.

Of the original organizations that participated in the drafting of the FLA code, the following NGOs continue to be FLA Board members: the International Labor Rights Fund, the Lawyers Committee for Human Rights, and the National Consumers League.

Other US church and non-governmental organizations that have joined the FLA Advisory Council include: the National Council of Churches, the United Methodist General Board of Church and Society, the Asia-Pacific Center for Justice and Peace, the Consumer Federation of America, the Robert F. Kennedy Memorial Center for Human Rights, the International Human Rights and Law Group, Physicians for Human Rights, and Minnesota Advocates for Human Rights.

Southern members of the FLA Advisory Council include: the Cambodian Human Rights and Development Association, the Cambodian Labour Organization, the Guatemalan Commission for the Verification of Corporate Codes of Conduct (COVERCO), the South African Human Rights Resource and Documentation Centre, the Indonesian Institute for Children Advocacy, the Malaysian Trades Union Congress, the Pakistan Institute of Labour Education and Research (PILER), and the Taiwan Grassroots Women Worker's Centre.

THE FLA AND US UNIVERSITIES

The FLA has also been a major target of Students Against Sweatshops protests at US universities. United Students Against Sweatshops (USAS) played a major role in the creation of the Workers Rights Consortium (WRC), an alternative code implementation body for universities that have adopted codes of conduct for university-licensed apparel. The WRC includes university administrators, students, labour and NGO representatives in its governing bodies, but specifically excludes companies from those bodies. (Homero Fuentes of COVERCO is also on the WRC Advisory Council.)

The FLA currently includes 153 US colleges and universities as members, while the WRC currently includes 74. Some universities are members of both initiatives.

Companies producing for universities and colleges affiliated to the FLA are required to become FLA members themselves. The involvement of universities in the FLA could therefore dramatically increase the number of US companies participating in its monitoring program. Approximately 500 university licensees have reportedly already registered to start the process of becoming “FLA compliant” companies.

Like COVERCO, FLA-affiliated universities are making additional demands on the FLA member companies for greater transparency. In response to student pressure, they are requiring companies producing university-licensed apparel to publicly disclose the names and addresses of all production facilities making licensed products for the universities. However, SAS groups in the US are continuing to oppose their universities’ participation in the FLA, and are demanding that they only affiliate with the WRC.

HOW WILL FLA MONITORING WORK?

Unlike other competing code initiatives, such as SA8000 and WRAP (the Worldwide Responsible Apparel Production certification program), the FLA does not certify individual factories as being in compliance with its Code. Instead, the FLA will attempt to certify that particular brands of participating companies are being manufactured in compliance with the FLA Code.

Participating Companies can choose which of their brands they want to have certified. For instance, Reebok is currently only seeking the certification of its footwear products, not its apparel products. However, companies are expected to gradually seek certification of all their brands and products lines. This system could result in different labour standards being applied in different production lines, with workers producing FLA brand-certified apparel having different working conditions

than those producing non-FLA brands within the same factory.

In order to gain certification of their major brands, a company must go through the following steps:

1. To become a Participating Company in the FLA monitoring program, the company submits its Internal Monitoring plan to the FLA Board for its approval.
2. If the plan is approved, the company begins implementing its internal monitoring program. If the plan is not approved, the company can revise and resubmit its plan. Internal monitoring (by the company’s own personnel) must cover at least one half of the applicable manufacturing facilities in the first year, and all applicable facilities in the second year.
3. The company selects and contracts FLA-accredited external monitors to carry out third party audits of applicable manufacturing facilities to verify compliance with the Code. The company can require that the auditor(s) sign a confidentiality agreement.
4. During the initial three-year implementation period, the auditors carry out “periodic inspections” of at least 30% of the facilities. After that period, the auditors conduct inspections of 10% of the facilities per year. However, based on a company’s performance during the implementation period, the FLA can vary the requirement for future annual inspections from 5% to 15% of applicable facilities.
5. The accredited auditors submit standardized compliance reports to the company, which then requires the manufacturing facilities to bring their practices into compliance with the Code. The auditors then verify that compliance has been achieved.
6. Within 60 days of submitting compliance reports to companies, the auditor submits

a report to the FLA Executive Director, including a description of instances of serious violations of the Code, and steps taken to correct the problem and prevent its recurrence. (This information is only made available to the Executive Director and other staff who have also signed confidentiality agreements.)

7. Every 12 months, the company provides the FLA a standardized report describing what it has done to implement the Code and to address instances of serious noncompliance.
8. The staff of the FLA will use the company reports to prepare a standardized annual public report, which will be approved by the Board. The report will exclude information considered proprietary or confidential.
9. At the end of the three-year initial implementation period, the FLA Executive Director advises the Board whether the applicable brands of a company should be certified as being in compliance with the Code, and recommend the level of external monitoring to be carried out in the coming year. If the company fails to achieve compliance with the Code, its status may be placed on a 90-day review.

WHO CAN BECOME AN FLA EXTERNAL MONITOR?

Although Verité, a US non-profit organization, was the first external monitor accredited under the FLA, monitors could potentially include multinational commercial auditing firms, local southern NGOs, research firms, university research groups, or consortia of health and safety experts. As stated above, companies, NGOs, or other organizations can apply to be accredited to carry out audits in one country or a number of countries, and/or to focus on a specific area of expertise, such as health and safety.

As with SA8000 and WRAP, under the FLA companies have the right to choose which

accredited external monitors they contract to do social audits, and what conditions they set on confidentiality of reports. Companies are therefore more likely to favour commercial auditing firms over local NGOs because the former are more trusted by companies and their suppliers, less familiar with or committed to labour rights, and more experienced at carrying out desk audits of company records.

The major incentive for companies to choose and contract local NGOs is to gain credibility with northern consumers and anti-sweatshop campaigners, and the trust and participation of southern workers in the monitoring process. Companies could conceivably contract commercial auditing firms to carry out audits of a contractor's records, and local NGOs to carry out interviews with workers in the same factory.

WHAT ARE THE ISSUES TO CONSIDER?

The reason southern independent monitoring groups might want to seek FLA accreditation is obvious. When major US brand-name companies become Participating Companies in the FLA monitoring system, they can only contract FLA accredited external monitors to carry out verification of Code compliance.

However, before southern, or even northern NGOs, seek accreditation as FLA external monitors, there are a number of issues that should be considered:

1. Do the FLA Code provisions provide a useful measure of labour rights practices?

The FLA Code is generally thought to have weak provisions compared to other multi-stakeholder codes, particularly in the areas of hours of work and wages.

In countries with strong labour legislation, code provisions may be a less important issue, since the FLA Code also requires contractors to meet legal requirements.

However, the FLA's weak code provisions could compel an honest monitor to give a seal of approval to excessive hours of work and grossly inadequate wages.

In countries like China where freedom of association is restricted by law, the FLA code only requires that contractors refrain from seeking the assistance of state authorities to prevent workers from exercising their rights.

It is still unclear how these FLA provisions will be interpreted in Mexico where "official" unions are often actively involved in suppressing organizing of independent unions.

2. Will you have some control of information and reports from investigations?

Because the FLA is a brand certification, rather than factory certification program, very little information is available to the public, or to workers and worker rights advocates, on whether specific factories meet the minimum standards under the Code and local law.

As well, overall reporting requirements for companies are very limited under the FLA. For instance, under SA8000, certified factories are listed on the Social Accountability International website, under the FLA they apparently are not.

Unless southern monitoring groups demand the right to own and make public information from their investigations, they will have very little control over how that information is used by companies that contracts them to carry out their audits.

3. Will workers be informed and provided secure channels to report violations?

Under the FLA, participating companies are required to ensure that contractors inform employees about the standards under the Code, both orally and by posting the code in the local languages in a prominent place in the factory, and to "undertake other efforts to educate the employees about the standards on a regular basis."

This last requirement on worker rights training is very vague and general. NGOs participating in FLA external monitoring should consider demanding more specific requirements for worker rights training so that the workers themselves can become ongoing monitors of workplace practices. Such training should be facilitated by the company, but carried out by local labour and/or human rights groups.

Under the FLA, companies are also expected to provide secure mechanisms for workers to make complaints when violations of the Code and local law occur. NGOs involved in the FLA should also consider negotiating with companies for specific requirements providing secure mechanisms for worker and third party complaints and guarantees that workers will not be punished or discriminated against if they make use of these mechanisms.

4. Will participation in the FLA negatively affect your relations with allies?

US and Canadian unions, student groups, and anti-sweatshop campaign organizations generally view the FLA as a company-controlled initiative that is more of a public relations exercise than a serious effort to eliminate sweatshop abuses. Participation in the FLA program could be viewed as providing credibility to a fundamentally flawed process.

WHAT ROLE SHOULD WORKER RIGHTS ADVOCATES PLAY?

Whether or not civil society groups are considering accreditation as FLA monitors, it is essential that labour, NGO and women's group are aware of the FLA and its monitoring and third-party complaints process. It is likely that a significant number of factories in Mexico and Central America will be included in the Participating Companies external monitoring plans.

The FLA monitoring program could have both positive and negative consequences for the work of labour rights advocacy groups in Latin America and Asia. On the one hand, the FLA might provide a new channel for groups to register complaints when violations occur in factories producing for FLA-certified brands. Under the FLA, third parties have the right to register complaints of “any significant and/or persistent pattern of noncompliance, or individual instance of serious noncompliance” with the Code in any manufacturing facility of a Participating Company.

However, the FLA’s process for reviewing complaints gives a great deal of power and discretion to its Executive Director, and a great deal of time and flexibility to the company to address the problems. The Executive Director has the authority to determine whether the information is “reliable, specific and verifiable,” and whether the third party making the complaint has been a reliable source of information in the past. If the Director decides the information is reliable and that the problems have not already been addressed by the company, he then asks the company and the external monitor to investigate whether the “alleged noncompliance” occurred. They have 45 days to report back. If their reports indicate that the violation did occur, then the external monitor is asked to verify whether the company has addressed the problem, and what steps have been taken to prevent it from reoccurring in the future.

Given the lengthy and bureaucratic nature of this process, it is unlikely that the FLA mechanism for reviewing complaints will be an effective tool for workers or their advocacy groups, particularly in cases in which violations of workers’ rights require immediate resolution, such as firings of workers for union organizing. As well, reports on violations of freedom of association, in which the violations are more difficult to

quantify and the facts are often in dispute, are less likely to meet the FLA’s requirements for “reliable, specific and verifiable” information than are more measurable issues like factory lighting or air quality. Of course, organizations registering formal complaints can also make those complaints public in order to put additional pressure on companies and the FLA.

The most potentially negative impact of FLA brand certifications is that they may be used by companies to discredit reports of southern labour, women’s and human rights organizations. Reports from FLA-accredited external monitors will likely be promoted by companies as “objective” and “professional,” as opposed to the “unprofessional” and “biased” reports of local, southern worker rights advocates. The fact that FLA monitoring reports are not publicly accessible, will make it next to impossible to challenge their accuracy or professionalism. The lack of public access to information on which factories pass external audits will make it even more difficult to challenge FLA claims that specific brands are in compliance with the FLA Code and local laws.

On the more positive side, the existence of the FLA monitoring system could be used by southern groups as an opportunity to pressure companies to facilitate worker rights training in order that workers know their rights under the FLA Code, the Conventions of the International Labour Organization, and the national labour code, and to establish secure mechanisms for workers to register complaints. It is worth noting that some of the US NGOs involved in the FLA, such as the International Labor Rights Fund, are committed to worker rights training as a key element in code monitoring.

The key question for southern independent code monitoring initiatives, unions, women’s and human rights organizations is how to effectively interact with the FLA and other

multi-stakeholder code monitoring initiatives. Options that should be further explored include:

- seeking accreditation as FLA external monitors, but setting conditions for working with companies, such as ownership of information and the right to publish reports;
- registering complaints through the FLA complaints procedure in order to test how or whether the system is useful and effective;
- demanding that companies facilitate worker rights training carried out by local labour and/or human rights groups so that workers themselves can act as ongoing monitors;
- demanding secure mechanisms for workers to register complaints when violations occur, and more effective and timely means of addressing those complaints;
- monitoring the monitors and publicly exposing serious violations taking place in factories producing FLA-certified brands.

For further information on the Fair Labor Association, visit their website at: www.fairlabor.org. The code, compliance document and some information on accreditation of external monitors is available in Spanish.

*New Resource on the ILO website:
The ILO website includes a new database on private sector social accountability initiatives. According to the ILO, this database on Business and Social Initiatives includes comprehensive information on private sector initiatives which address labour and social conditions in the workplace and in the community where enterprises operate. The database features corporate policies and reports, codes of conduct, accreditation and certification criteria, and labelling and other programs. It allows you to undertake customized searches to retrieve information on specific companies and organizations, countries, regions, business sectors and labour and employment issues. For further information, visit:
<http://oracle02.ilo.org/vpi/vpisearch.first?lang=en>*