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Charles T. Mantei

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ARTICLE

IT TAKES A VILLAGE TO RAISE A CHILD: THE ROLE OF THE ORGANIZATION OF AMERICAN STATES IN ELIMINATING THE WORST FORMS OF CHILD LABOR IN BRAZIL

CHARLES T. MANTEI, JD^{*}

It is often condoned in silence, or justified with the argument that poverty makes it unavoidable and that work is a useful form of preparation for adulthood. Because it is illegal, it has often been declared or assumed not to exist. However, the wall of silence, apathy and denial is beginning to crumble.

- Carol Bellamy

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^{*} Charles T. Mantei is an L.L.M. Candidate (May, 2001), University of Miami School of Law, International Law and Comparative Studies. Special Thanks to Advisor-Professor Hugo Caminos and Marcius Bueno Nery, Portuguese translator and researcher.

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I. INTRODUCTION

Eyes still pursed with sleep, they sharpen long knives and machetes, the sun just rising behind their small animated shadows. Soon they begin to slash, gather, and drag the *sisal* they harvest; tough, leathery leaves used to weave rugs, rope, and handbags. On any given morning, on this farm in Povoado de Jose Valerio, Brazil, a dozen or so children, ages nine to fifteen work a ten hour day hacking *sisal* leaves. Their work is ultra-hazardous. Sharp blades and processing machines used at the farms "have left many children and their parents with punctured eyeballs, missing fingers, scarred legs and amputated arms."¹ The children working in developing countries make up an estimated two hundred fifty million²; among them, at least two million children are laborers in Brazil.³

Particularly since 1991, the issue of child labor has peaked the Brazilian agenda as a critical issue confronting its leadership.⁴ Despite virtual universal condemnation of child labor, its discussion breeds a quagmire of dependent issues involving poverty; international labor and human rights;

1. Stephen Buckley, *The Littlest Laborers; In a Wealthier World, Children Still Hard at Work*, WASH. POST, March 16, 2000, at A1.

2. International Labour Organization [ILO], CHILD LABOUR, TARGETING THE INTOLERABLE, A NEW INTERNATIONAL CONVENTION TO ELIMINATE THE WORST FORMS OF CHILD LABOUR: FACTS AND FIGURES ON CHILD LABOUR (1999).

3. BUREAU OF INTERNATIONAL LABOR AFFAIRS, U.S. DEPARTMENT OF LABOR, *By the Sweat and Toil of Children: The Use of Child Labor in American Imports, Country Profile: Brazil* (1994), at <http://www.dol.gov/dol/ilab/public/media/reports/iclp/sweat/brazil.htm> (last visited Oct. 10, 2001) [hereinafter *ILAB 1994*]. Figures on child labor in Brazil vary widely depending on the statistical sampling, dates of study and source. This figure is based on a 1994 study by the Brazilian Institute for Geography and Statistics (IBGE) who found that approximately two million, or 14.3 % of children between ten and thirteen years of age were working in Brazil. (American Embassy-Brasilia, unclassified telegram no. 02523, March 30, 1994). In September, 1999, another local source, *Claudia*, declared, 3.5 million working children between the ages of five and fourteen; whereas *Veja*, a popular news magazine in their December 22, 1999 edition, found 2.9 million working children between the ages of five and fourteen (quoting statistics from UNICEF). Further, the Organization of American States in its 1999 annual study of human rights in Brazil found that there were "around three million minors between the ages of ten and fourteen who work."

4. Marta Maurás, et al., *Preface to UNICEF, CHILD WORK AND EDUCATION XI* (María Cristina Salazar & Walter Alarcón Glasinovich, eds., 1998).

national sovereignty; cultural relativism; and economic development and dependence, rendering its assail formidable. Still, Brazil forges ahead among Latin American countries as the first to adopt a comprehensive model at eliminating child labor with the assistance of the United Nation's Children Fund ("UNICEF"), and the International Labour Organization ("ILO"), collectively targeting where the worst forms of child labor persist.⁵ Definitive improvements in the current and future landscape of child labor in Brazil inspire hope, but unfortunately pale with the elusive tenacity of this disturbing social issue. To strengthen its efforts, Brazil may consider the Organization of American States ("OAS") for continued development of its child labor model, still in its infancy; thereby inaugurating regional objectives and standards, which may stimulate a hemispheric response to the elimination of child labor.

This note examines the problem of child labor from interdependent perspectives. Part II defines child labor and analyzes the inherent social and developmental impacts it urges on Brazilian children and society at large. Part III comprises an historical analysis of relevant Brazilian socio-economic, and political phenomena perpetuating child labor since the late nineteenth century. Part IV evaluates the modern Brazilian model and its application of national laws and social programs inspired by national and international human rights initiatives to address the child labor epidemic. Part V defines the OAS; its legal, advisory, and technical infrastructures; and its general policies and efforts at eliminating child labor. Part VI proposes a regional plan of attack on child labor in Brazil with a focus on the vigorous integration of ILO's International Programme for the Elimination of Child Labor (IPEC) initiatives within the OAS. Finally, this note concludes with a call for flexible, persistent, creative, cooperative measures and patient steadfastness, all of which will be required to transform the underlying social psychology that perpetuate child labor in Brazil, and elsewhere in Latin America.

5. ILO Publications, *IPEC Ratification Map* (2001), at <http://www.ilo.org/public/english/standards/ipec/ratification/map/index.html> (last visited Sep. 9, 2001). Brazil was the first country in Latin America to adopt the 1999 Convention on the Elimination of the Worst Forms of Child Labor. Brazil ratified it on February 2, 2000.

II. THE AMBIT OF CONCERN

A. *Dangerous Subsets of Child Work*

In a contemporary sense, child labor does not embrace all work that children perform.⁶ Executive Director of UNICEF, Carol Bellamy, observes that “children do a variety of work in widely divergent conditions.”⁷ In fact, she describes a continuum where at one end, work benefits the child, enhancing his or her “physical, mental, spiritual, moral or social development, without interfering with schooling, recreation, and rest.”⁸ At the most damaging end of the spectrum, child work emerges “palpably destructive or exploitative.”⁹ Bonded labor and prostitution rest at the latter end, essentially enslaving children.¹⁰ Unfortunately, much of child labor “falls into a gray area between these two extremes.”¹¹ UNICEF acknowledges, however, that child labor is exploitative if it involves full-time or overtime work; physically, socially or psychologically distressing labor or that in bad conditions; or labor with inadequate pay or too much responsibility.¹²

The ILO’s Convention No. 182, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor [hereinafter ILO Child Labor Convention] defines child labor in its worst forms as “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children.”¹³ Included in this definition are “debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.”¹⁴ The Convention proscribes “the use, procuring or offering of a child

6. See KATHLYN GAY, *CHILD LABOR: A GLOBAL CRISIS* 12 (1998).

7. Carol Bellamy, *THE STATE OF THE WORLD’S CHILDREN* 1997 24 (1997).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. See A. Bequele and W.E. Meyers, *First Things First in Child Labour: Eliminating Work Detrimental to Children*, in ILO CHILD LABOUR COLLECTION 1, 6 (1995).

13. Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 6, 1999, art. 3(a), at <http://ilo.org/public/english/standards/ipecc/ratification/convention/text.htm>. (last visited April 5, 2001).

14. *Id.*

for prostitution, for the production of pornography or for pornographic performances," or "for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties."¹⁵ Finally, the ILO instructs that "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," is the Convention's target for immediate elimination.¹⁶

Most agree then, that work posing harm to the child, that undermines the integrity of his or her person, inherent dignity and self-esteem, and that which deters social and psychological development, is the type of child labor that outrages the international community.¹⁷ Accordingly, more than ever, empirical studies analyze an array of harmful effects, both physical and psychological, typically visited upon the child exposed to harmful or exploitative labor.¹⁸

B. Physical Harm

In any country, the working children are exposed to a variety of physical, job-related hazards.¹⁹ Labor poses a greater risk of injury and harm to children than to adults.²⁰ Children are more prone to accidents due to fatigue; they are unskilled or incapable of some of the work processes; and they naturally exercise the naive discretion and judgment of a child.²¹ Moreover, accidents involving children tend to cause more severe harm than those

15. *Id.* at art. 3(b) and 3(c).

16. *Id.* at art. 3(d).

17. See ILO, TARGETING THE INTOLERABLE: A NEW INTERNATIONAL CONVENTION TO ELIMINATE THE WORST FORMS OF CHILD LABOUR, STRENGTHENING INTERNATIONAL LAW AGAINST CHILD LABOUR: A LOOK AT THE PROPOSED ILO INSTRUMENTS (1999). In 1996, the ILO developed standards reflecting two general types of child labor: 1) labor or activity contrary to fundamental human rights, such as slavery-like work performed by a child; child prostitution, or use of children in the production of pornography or trafficking of drugs; and 2) work that exposes children to grave hazards to safety or health or prevents them from receiving regular education. 1996 Governing Body Report, ILO Doc. GB.265/2 paras. 31, 40 (1996); Accord IL Conf., Resolution Concerning the Elimination of Child Labour, reprinted in Prov. Rec. No. 1, 83d Sess. at 11/35 (June 1996).

18. See generally, David L. Parker, M.D., M.P.H., *Child Labor: the Impact of Economic Exploitation on the Health And Welfare of Children*, 21 WHITTIER L. REV. 177 (1999).

19. See *id.* at 184.

20. See Alec Fyfe, CHILD LABOR 21-24 (1989).

21. See *id.*

involving an adult.²² In a recent study, forty percent of the accidents recorded in Brazil involving sugar cane machetes, have victimized children although these young workers represent less than thirty percent of all sugar cane laborers.²³ Studies show that children are more prone to disease and death from environmental exposure to pesticides, solvents and alkali that they encounter at worksites.²⁴ Children working in Brazil encounter harsh climates, sharp instruments, unwieldy loads, and are increasingly exposed to motorized machinery, mutilation, disease and pesticides.²⁵ In fact, one study notes that children working in the agricultural sectors of developing countries are more likely to die from exposure to pesticides than from all the most common childhood diseases combined.²⁶ At work, they risk physical harm when performing tasks “which are often heavy, beyond [their] strength and aptitude, during extended hours and with no protective equipment or even training for the task.”²⁷

The children who work at the charcoal kilns in Matao Grosso do Sul, typically work twelve hour days, only to break even in paying the amount that the employer charges them to work there.²⁸ The excess heat of the charcoal kilns (around 158 F^o) creates great clouds of smoke and dust which has caused an epidemic of pulmonary disease among all workers, including the children.²⁹ Similarly, children working in Arapiraca, Alagoas, suffer from the nearly seventy percent intoxication rate of farming “agrotóxicos” resulting in epidemics of bronchitis and asthma.³⁰

22. COMBATING CHILD LABOR 3 (Assefa Bequele & Jo Boyden eds., 1988).

23. See *Toils for Tots*, PROBLEMAS BRASILEIROS, reprinted in BRAZZIL ¶ 14 (Tereza d'Ávila Braga, trans., July, 1998), at <http://www.brazzil.com/p24jul98.html>. (last visited Feb. 27, 2001).

24. See *id.* at ¶ 14; David Pitt, *Child Labor and Health*, in CHILD LABOR AND HEALTH: PROBLEMS AND PROSPECTS 10, 21 (Usha S. Naidu & Kamim R. Kapadia eds., 1985); World Health Organization [WHO], *Children at Work: Special Health Risks*, Technical Report Series 756 (1987).

25. ILO, *Stop! Child Labour: Child Labour Today: Facts and Figures*, 3 (1996), at <http://www.ilo.org/public/english/bureau/inf/pkits/child1.html> (last visited Feb. 24, 2001); BELLAMY, *supra* note 9, at 39.

26. See J. Jeyaratnam, *1984 and Occupational Health in Developing Countries*, SCANDINAVIAN J. ON WORKING ENV'T & HEALTH, No. II (1985).

27. *Toils for Tots*, *supra* note 23.

28. Maria Helena Guimarães Periera, *Escavos do Carvão [Charcoal Slaves]*, MARIE CLAIRE, Oct. 1993, at 62.

29. *Id.*

30. Andréia Peres, *A Infância Roubada*, CLAUDIA, Sept. 1999, at 20.

In the neighboring State of Bahia, six and seven year-old children work forty hour weeks in the granite quarries, breaking approximately thirty kilos of stones with steel mallets each day.³¹ Protective equipment is not used, therefore, children are seriously injured, sometimes blinded, in frequent accidents.³² Even more threatening, however, is the hazard of contracting silicosis.

Children are also commonly found in brick factories, granite quarries, and granite crushing facilities. The latter has been described as placing workers at a significant risk of developing silicosis with a prevalence of 75%. Of the eighteen cases studied, seven children (39%) had silico-tuberculosis. Due to the extraordinary levels of dust exposure, these workers may have a mean latency of less than a decade prior to the onset of silicosis.³³

The effects of silicosis are most grave when exposure is continual and begins at an early age.³⁴ However, the young rock quarry workers maintain an even higher risk of silico-tuberculosis because of their poor nutrition, the unavailability of health care, and the restricted and unventilated work areas, which are common at the rock quarries in Brazil.³⁵

Child scavengers are closer to the cities. There are an estimated 50,000 child scavengers in Santana do Parnaíba, São Paulo who search ten hours a day each day, for aluminum cans, plastics, and cardboard in municipal dumps to sell as recyclables.³⁶ These child scavengers are exposed continuously to disease, to sharp objects, and to the risk of moving garbage trucks.³⁷

Physical harm inflicted on child laborers, however, is only part of the picture. This harm actually operates as a co-factor to the developmental impacts that concurrently bear on these children.³⁸ Though physical harm to children is most

31. *See id.* at 17-19.

32. *Id.*

33. Parker, *supra* note 18, at 185.

34. A. Ahlmark et al., *Silicosis from Quarrying and Working of Granite*, 22 BRIT. J. INDUS. MED. 285, 289 (1965).

35. Parker, *supra* note 18, at 186.

36. Peres, *supra* note 30, at 18-19.

37. Peres, *supra* note 30, at 18-19.

38. *See* Amelia Maria Noronha Pessoa de Quieroz and Ligia Gomes Elliot, *Projeto*

conspicuous, discreet analysis of contemporary research demonstrates that developmental neglect also degrades the status and position of children in society, which, in turn, negatively influences Brazilian society at large.³⁹

C. *Developmental Harm*

1. Educational and Vocational Development

Developmental harm relates primarily to the child's inability to receive an education or vocational training.⁴⁰ Child labor induces a general decline of education and causes illiteracy, which translates ultimately into a lack of skills development.⁴¹ For example, in the industrial districts of Manaus, Northern Brazil, adolescents are granted the status of "apprentice," but typically learn work on assembly lines, rather than the technical skills they might otherwise market to emerging economies.⁴² Child work is usually dull and repetitive, requiring long hours which frustrates school attendance.⁴³ While more than half of the working children and adolescents in urban Brazil combine work with school,⁴⁴ eighty percent of Brazilian children drop out of school entirely before the age of thirteen, despite compulsory education laws which mandate children attend school until the age of fourteen.⁴⁵ The larger problem is the government's failure

Semear: Equalizing Opportunities for Adolescents at Risk in Rio de Janeiro, in CHILDREN IN THE STREETS OF THE AMERICAS 193, 195 (Roslyn Arlin Mickelson ed., 2000).

39. *See id.*

40. Gerry Rodgers & Guy Standing, *The Economic Roles of Children: Issues for Analysis*, in CHILD WORK, POVERTY AND UNDERDEVELOPMENT 1, 34 (1981).

41. ILO, BUREAU OF INT'L LABOR AFFAIRS, U.S. DEPT OF LABOR, *Foreign Labor Trends: International Child Labor Study* 5 (1994); Assefe Bequele & Michele Jankanish, ILO, *Child Labor—An Overview*, in *Proceedings: Asian Regional Seminar on Child Labor: Education & Enforcement of Legislation*, (Feb 4-8, 1991) Annex III-1, at 33.

42. JATENE, SIMÃO ROBINSON, ROSYAN DE CALDAS BRITTO ET AL, *A MEIA-VIDA DA CRIANÇA NA AMAZÔNIA, BELÉM: UNAMAZ, UFPA (Pobreza e Meio Ambiente na Amazônia)* 3 (1993).

43. *See* JOINT ILO/UNICEF PAPER, *Strategies for Eliminating Child Labor: Prevention, Removal and Rehabilitation*, *International Conference on Child Labour, Oslo, Norway*, at <http://www.ilo.org/public/english/90ipecc/> (1997) (last visited Sep. 27, 2001).

44. *See* Deborah Levison, *O trabalho e a escolarização de crianças e adolescentes nas cidades brasileiras: liçõesdo levantamento PNAD - 85*, MINNEAPOLIS: CENTER FOR POPULATION ANALYSIS AND POLICY (1993).

45. *See* Alan B. Krueger, *International Labor Standards and Trade*, in ANNUAL WORLD BANK CONF. ON DEV. ECON. 1996, at 296 (Michael Bruno & Boris Pleskovic eds.,

to provide proper public education.⁴⁶ At least one author believes the government's sanctioning of large-scale public corruption or *clientismo* undermines the country's ability to provide educational services to most Brazilian children, which produces more children living and working in the streets.⁴⁷ Once these children experience the "dangerous freedom on the streets," they are less likely to adapt to a formal classroom setting, complicating efforts to teach them.⁴⁸

2. Psychological and Emotional Development

Children who labor young also commonly suffer from emotional and psychological disturbance.⁴⁹ In particular, occupations such as street work, military service, and child prostitution promise "more devastating psychological damage from living and working in an environment in which they are denigrated or oppressed."⁵⁰ The typical profile of a participant in Projecto Semear⁵¹ in Rio de Janeiro shows children working in the streets of Brazil suffer from emotional distress, which interferes with proper childhood development.⁵²

[These children] had not yet had much schooling or appropriate training and felt that they were powerless to change the violent conditions in their communities [which] contributed to their feelings of insecurity, impotence and inferiority. . . They were emotionally needy and unstable, aggressive, suspicious and distrustful of society. Their previous school experiences were largely

1997). See also BELLAMY, *supra* note 9, at 29 (In 1994, the Instituto Nacional de Educação e Pesquisa, Brasília found that 40 percent of primary school completion.).

46. See generally DAVID N. PLANK, *THE MEANS OF OUR SALVATION: PUBLIC EDUCATION IN BRAZIL 1930-1995*, 63-102 (1996).

47. See Roslyn Arlin Mickelson, *GLOBALIZATION, CHILDHOOD POVERTY, AND EDUCATION IN THE AMERICAS* 11, 30 (Roslyn Arlin Mickelson ed., 2000), (Quoting DAVID N. PLANK, *THE MEANS OF OUR SALVATION: PUBLIC EDUCATION IN BRAZIL 1930-1995* (1996)).

48. BELLAMY, *supra* note 7, at 55.

49. See Steven Klees and Irene Rizzini et al., *A New Paradigm for Social Change: Social Movements and the Transformation of Policy for Street and Working Children in Brazil*, in *CHILDREN ON THE STREETS OF THE AMERICAS* 79 (Roslyn Arlin Mickelson, ed., 2000).

50. *Intolerable*, *supra* note 2, at 7.

51. Quieroz & Elliot, *supra* note 38, at 194-195.

52. Klees et al., *supra* note 49, at 79.

negative and they left school. Most of them spent their days in the streets either loitering or working for drug dealers. Yet they were able to learn, create and grow. . .⁵³

Developmental problems associated with child work, ironically, tend to stem from and evolve into societal mechanisms that serve to perpetuate child labor for generations.⁵⁴

D. Societal Harm

1. The Perpetuation of Poverty

As one report aptly concludes, “[p]overty begets child labor begets lack of education begets poverty.”⁵⁵ The prevalence and accessibility of child labor results in widespread noncompliance with compulsory education laws that continually weakens child labor efforts, and recycles child laborers from generation to generation.⁵⁶ “Although children work because they are victims of poverty, by working instead of being educated, they tend to perpetuate the cycle of poverty.”⁵⁷

Similarly, many industries prefer child laborers and can easily manipulate their visibility because child laborers are cost effective, easily hidden and substitutable, ignorant of their rights, and not prone organize.⁵⁸ The widespread use of child

53. Quiroz & Elliot, *supra* note 38, at 195.

54. FYFE, *supra* note 20, at 171.

55. BELLAMY, *supra* note 7, at 41.

56. ILO, TARGETING THE INTOLERABLE: A NEW INTERNATIONAL CONVENTION TO ELIMINATE THE WORST FORMS OF CHILD LABOUR, CHILD LABOUR IN AGRICULTURE (1999).

57. ILAB 1994, *supra* note 3, at 4.

58. See BUREAU OF INT'L LABOR AFFAIRS, U.S. DEPT OF LABOR, *By the Sweat and Toil of Children: the Use of Child Labor, in U.S. AGRICULTURAL IMPORTS & FORCED AND BONDED CHILD LABOR* 21-28 (1995)[hereinafter ILAB, *Sweat and Toil*, 1995]. See also 4 BUREAU OF INT'L LABOR AFFAIRS, U.S. DEPT OF LABOR, *By The Sweat And Toil of Children: Consumer Labels And Child Labor* 100 (1997) [Hereinafter ILAB, *Sweat and Toil* 1997]

As recently as 1995, Pakistani soccer ball manufacturers denied that children were stitching soccer balls. The Human Rights Commission of Pakistan noted that . . . manufacturers seemed to have instructed their contractors not to talk about child labor, and taken the contractors to task, 'not so much for employing child labor as for letting it become visible.

Id. See also, Assefa Beguele & Jo Boyden, *Child Labor: Problems, Policies, and*

labor aggravates adult unemployment, exaggerates inequality of income and wealth, and decreases the overall wage adults are inclined to expect.⁵⁹ Collective efforts that would bring laborers and child laborers some degree of relief, but efforts to organize are "met with violence by employers."⁶⁰

As far as the workers and their families are concerned, they live in lamentable conditions, particularly now, when children of eight or nine years of age are being considered as workers, and as such, are starting out on a long road of suffering. In the same way, we are witnessing a whole new generation who do not have the minimum requirements for a joyful childhood, but are faced at a premature age with a life of the greatest difficulty, for mere survival, without adequate food, health or benefits of education.⁶¹

Another author concludes, "[i]t is abundantly clear that dependency on child labour recycles poverty and hopelessness by turning today's generation of child labourers into tomorrow's sick, unemployed, uneducated and unproductive adults who are tragic in their own lives and a burdensome weight on their countries' hopes."⁶²

2. Increased and Institutionalized Violence Against Children

For children who work in the streets, "about one in ten. . . become prone to engage in marginal and illegal work, such as begging and petty thieving."⁶³ Some are recruited into crime syndicates that teach them to pickpocket, rob, traffic drugs and prostitute.⁶⁴ In turn, these children, who serve the interests of organized crime, are responsive to violence, and are often the victims of violence themselves.⁶⁵ Children working in the street

Programmes, in *COMBATING CHILD LAB.* 1, 5 (Assefa Beguele & Jo Boyden eds., 1988).

59. See Jennifer Bol, *Using International Law to Fight Child Labor: A Case Study of Guatemala and the Inter-American System*, 13 AM. U. INT'L L. REV. 1135, 1146-47 (1998); Rodgers & Standing, *supra* note 42, at 37-38.

60. PETER LEE-WRIGHT, *CHILD SLAVES* 117 (1990) (citing J. Wyver, *Child Labour in Brazilian Agriculture*, in 6 *CRITIQUE OF ANTHROPOLOGY* 2, at 73 (1986)).

61. *Id.*

62. See Bol, *supra* note 59, at 1148, citing Pharis J. Harvey & L. Riggins, *Trading Away the Future: Child Labour in India's Export Industries II* (1994).

63. BELLAMY, *supra* note 7, at 41.

64. BELLAMY, *supra* note 7, at 41.

65. BELLAMY, *supra* note 7, at 40.

“must also contend with abuses from police officers, such as beatings, forced sexual relations, and extortion.”⁶⁶

In 1993, during what is now known as the *Igreja de Candelaria* Massacre, Rio de Janeiro police officers executed eight street children while they slept in front of a Roman Catholic church.⁶⁷ A report from one juvenile court in Rio indicates that street children working in the streets are killed each day at the request of merchants.⁶⁸ When children are forced to look for work in the streets, their lives become viewed as expendable; and there is a serious deterioration in their social status in some parts of Brazil from a class of vulnerable and defenseless citizens, to public nuisance and enemies of the state.⁶⁹

III. ECONOMIC, SOCIAL AND LEGAL DIMENSIONS AFFECTING CHILD LABOR IN BRAZIL: AN HISTORICAL ANALYSIS

A. *Child Labor in the Late Nineteenth and Early Twentieth Centuries*

Industrial revolutions in England, France, Belgium, Germany, Prussia and the United States were built, in no small measure, on the backs of children.⁷⁰ Apparently, a special relationship tends to emerge during processes of industrialization that draws children into the mechanism of technical evolution.⁷¹ In Brazil, this phenomenon is traced to the country's transition from slavery to free labor, precipitating an

66. Paul A. Goetz, *Is Brazil Complying with the U.N. Convention on the Rights of The Child?*, 10 TEMP. INT'L & COMP. L. J. 147, 148 (1996).

67. See Peter Muello, *Rio Street Urchins Rest Unnamed, Unmourned*, INDEP., July 25, 1993, at 16.

68. See Michael S. Serrill, *Unholy Confession: A Cop on Trial for Massacre of Street Children Stuns Brazil by Admitting an Appalling Crime*, TIME, May 13, 1996, at 36.

69. See Goetz, *supra* note 66, at 148. “In order to survive, street children often resort to criminal activity, angering local businessmen who view the children as bad for business. In response to the crimes perpetrated by homeless children, many business people hire death squads to ‘clean up the streets.’” *Id.* See also Martha K. Huggins & Myriam Mesquita, *Civil Invisibility, Marginality, and Moral Exclusion: The Murders of Street Youth in Brazil*, in CHILDREN ON THE STREETS OF THE AMERICAS 257 (Roslyn Arlin Mickelson, ed. 2000).

70. CAROLYN TUTTLE, *HARD AT WORK IN FACTORIES AND MINES: THE ECONOMICS OF CHILD LABOR DURING THE BRITISH INDUSTRIAL REVOLUTION* 1 (1999).

71. *Id.* at 9-18.

“ideology of labor as a ‘supreme principle’ of social organization” which began during the late nineteenth century.⁷² An emerging capitalist economy in Brazil transformed slaves into free workers in 1889.⁷³ Since this time, historians note that poor Brazilian children have always worked in agriculture and industry, essentially as slaves.⁷⁴ Despite child protective laws decreed as early as 1891, legislative measures could not compete with the rural entrepreneurs and their peers in the industrial sectors who ardently advocated child labor in the 1920’s and 1930s.⁷⁵

The exploitation of children in the early decades of the twentieth century . . . [shows] ‘a considerable number of children, as young as age five, working in the manufacturing industry in 1901 as unpaid apprentices.’ A 1917 edition of the newspaper *O Jornal Fanfulla* refers to ‘very young makeshift workers who can produce as much as an adult, but are paid a miserable wage.’⁷⁶

The decades following the early twentieth century brought radical shifts in demographics, which served to ingrain child labor even deeper into the fabric of Brazil’s nascent process of industrialization.

B. Child Labor in the Wake of Societal Transformation

1. Urbanization and Child Labor

From the early 1930’s a succession of reformations changed the face of Brazilian society as the country grappled with its metamorphosis from a predominantly agricultural society based on “export monoculture,” to its contemporary industrial economic structure featuring modest industrialization and urban

72. IRENE RIZZINI, ET AL., *BRAZIL: CHILDREN’S STRENGTH IS NOT IN THEIR WORK* 20 (María Cristina Salazar & Walter Alarcón Glasinovich eds., 1998).

73. *Id.*

74. IRENE RIZINI, *DO PÁTRIO DEVER: HISTÓRICO DA LEGISLAÇÃO PARA A INFÂNCIA NO BRASIL*, reprinted in FRANCISCO PILOTTI AND IRENE RIZZINI, *A ARTE DE GOVERNAR CRIANÇAS: A HISTÓRICO DAS POLÍTICAS SOCIAIS, DA LEGISLAÇÃO E DA ASSISTÊNCIA À INFÂNCIA NO BRASIL*, Rio de Janeiro: IIN/OAS, EDUSU and AMAIS (1995).

75. *Id.*

76. Rizzini, ET AL., *supra* note 72, at 21-22.

inundation.⁷⁷ Demographic and social changes occurred on an epic scale, as its population redoubled and moved into urban areas between 1940 and 1970.⁷⁸ Eighteen million people abandoned their lives in the Brazilian countryside and migrated swiftly to Rio de Janeiro and São Paulo from Northeast Brazil in the 1960's, and twenty four million followed in the 1970's.⁷⁹ In 1970, more than half of the population lived in urban sectors, which rose to 75.6 % by 1990.⁸⁰ The inability of the government to plan for massive urban growth led to gluts of unskilled laborers who sifted into the *favelas* (shanty towns) and *mocambos* (huts in the woods) on the city crests, bogs, and outskirts of the metropolises.⁸¹ In 1987, the *Pesquisa Nacional por Amostra de Domicílios* (PNAD - National Survey of Sample Households) found that 24.3 % of youths ages ten to seventeen work in these urban areas, most of whom migrate to work in the cities daily from the outlying *favelas* and *mocambos*.⁸²

2. Child Labor in Agricultural Sectors

In the agricultural sector, the work of children has scarcely changed from the days of slavery.⁸³ Since the early 1800's, farming has been the predominant form of work performed by children in Brazil, and until today, laborers often do so in exchange for a daily meal.⁸⁴ In the Northeast Brazilian sugar plantations, "whole communities have never escaped the plantations where their ancestors were slaves, still living in the same rudimentary housing conditions and doing the same back-breaking work as a hundred years ago . . . indistinguishable from slavery."⁸⁵ In the 1950's through 1970, family labor in the agricultural workforce grew from 54 % to over 80 %.⁸⁶

77. Nelly Moulin & Vilma Pereira, *Families, Schools, and the Socialization of Brazilian Children: Contemporary Dilemmas that Create Street Children*, in CHILDREN IN THE STREETS OF THE AMERICAS 44 (Roslyn Arlin Mickelson, ed., 2000).

78. *Id.*

79. Wright, *supra* note 60, at 114.

80. Wright, *supra* note 60, at 45.

81. Moulin & Pereira, *supra* note 77, at 44.

82. *Pesquisa Nacional por Amostra de Domicílios*, Síntese de indicadores, Rio de Janeiro (1996).

83. Wright, *supra* note 60, at 111-112.

84. Rizzini, *supra* note 74, at 25.

85. Wright, *supra* note 60, at 10-11.

86. Wright, *supra* note 60, at 111.

The Agricultural Census in Brazil recorded 4,581,500 working children by 1975, with 68 % working more than forty hours per week. In sugar plantations north and south I saw armies of children as young as six years old slowly slashing their way through the passive opposition of cane, which stands twice their height.⁸⁷

The 1980's observed a slight decline in children ages ten to fourteen working in agricultural sectors from 19 % in 1981 to 17 % in 1990.⁸⁸ However, in 1990, at least 43 % of all rural children in the ten to seventeen age group were working.⁸⁹

3. Child Labor During the Military Rule of Brazil, 1964 - 1985

The radicalization of Brazil during its military regime, juxtaposed against its illegitimacy and indifference to social issues of the poor majority, left child labor largely unchecked and at all-time highs.⁹⁰ By the end of the 1960's, the military dictatorship imposed an economic model termed the "Brazilian miracle," which marked a decline in inflation leading to significant economic development.⁹¹ This model however, continued to concentrate income and wealth into existing elite social classes, relying heavily on foreign capital.⁹² During the oil crisis of 1973, the economic model demonstrated flaws in its general conception, while for the next twenty years, Brazil generated an overwhelming increase in foreign debt and a surge in unemployment.⁹³ Inflation rose exponentially while the wages of the working class remained set, in effect eroding worker purchasing power, diminishing standards of living, and "made workers, as a class poorer and poorer, and more and more miserable."⁹⁴

Moreover, the military dictatorship's policy of repression frustrated Brazil's grass-roots emergence of non-governmental

87. Wright, *supra* note 60, at 111.

88. Rizzini, Et Al., *supra* note 72, at 25.

89. Rizzini, Et Al., *supra* note 72, at 25.

90. See Thomas E. Skidmore, *THE POLITICS OF MILITARY RULE IN BRAZIL, 1964-85*, 154-59 (1988).

91. *Id.* at 139-44.

92. See Moulin & Pereira, *supra* note 77, at 45.

93. See Moulin & Pereira, *supra* note 77, at 45.

94. See Moulin & Pereira, *supra* note 77, at 45.

organizations (NGO's) dedicated to assisting Brazil's street and working children.⁹⁵ Nevertheless, these organizations emerged during the early 1980's responding to the rampant social dilemma facing its children, and the pressure of international criticism.⁹⁶ Brazil's heightened political activism during its transition to democracy in the mid-1980's, ushered a fresh sensitivity to social issues, and the evolution of progressive social movements now operating in many regions of the country.⁹⁷

C. A New Era of Child Rights in Brazil 1990 - Present

Simultaneous with international child right movements, Brazil commenced a new era in legislative protection for its children in the early 1980's.⁹⁸ This era began with "the emergence of a new concept of childhood supporting the rights of children."⁹⁹ In 1982, the Brazilian Government and UNICEF introduced the Alternative Services for Street Children Project, incorporating initiatives from emerging NGO's and community projects to change social attitudes toward children "as active and responsible agents of their own destinies."¹⁰⁰ In 1985, partnerships formed between the children and volunteer 'street educators,' as part of the National Children's Movement, which prompted a national sensation in 1986, bringing honor to the concept of child rights.¹⁰¹ This concept evolved into a movement associated with re-democratization, leading to significant social and legal advances in the reform of child labor rights.¹⁰² In 1992, former UNICEF Director James Grant heralded Brazil's Child Rights reform as "the best child protection legislation in the world."¹⁰³ Some observe the movement in Brazil as "one of the most progressive transformations of laws protecting children and

95. See Klees, et al., *supra* note 49, at 90-91.

96. See Klees, et al., *supra* note 49, at 90-91.

97. See Klees, et al., *supra* note 49, at 86-91.

98. Norberto Bobbio, A ERA DOS DIREITOS 5 (1992).

99. See Rizzini et al., *supra* note 72, at 22.

100. Bellamy, *supra* note 7, at 59.

101. Anthony Swift, *Scared of Our Own Kids*, THE NEW INTERNATIONALIST, Feb. 1996, at 14-16.

102. See Fernanda Gonçalves Almeida & Inaiá Maria Moreira de Carvalho, *Projeto Axé: Educating Excluded Children in Salvador*, in CHILDREN ON THE STREETS OF THE AMERICAS 172 (Roslyn Mickelson, ed., 2000).

103. Director da UNICEF *Elogia Estatuto da Criança Brasileira*, O GLOBO, Sept. 6 1992, at 27.

youth seen anywhere in the world . . . The Child and Adolescent Statute has been characterized as a "sea change" in public policy toward children in Brazil.¹⁰⁴

1. Estatuto da Criança e do Adolescente (Child and Adolescent Act) 1990

The 1990 Child and Adolescent Act (Estatuto da Criança e do Adolescente (ECA) Federal Law No. 9.069) was enacted and incorporated into the 1988 Brazilian Constitution.¹⁰⁵ The ECA replaced the Juvenile Code (Código do Menor) adopted in 1979, and affirms Article 227 of the 1988 Brazilian Constitution:

It is the duty of the family, of society and of the State to ensure children and adolescents, with absolute priority, the right to life, health, nutrition, education, leisure, professional training, recreation, culture, dignity, respect, freedom and family and community life, in addition to safe guarding them against all forms of negligence, discrimination, exploitation, cruelty and oppression.¹⁰⁶

The emphasis in replacing the Juvenile Code was in perspective.¹⁰⁷ Where the Code refers to the class as "juveniles or minors," the ECA refers to the "child" and "adolescent," alluding to a "stage in all human life," rather than a rigid age or legal classification.¹⁰⁸ The movement aspired to associate this perspective with policies for the rights of children similar to those found in the United Nations' International Covenant on Civil and Political Rights¹⁰⁹, and the Universal Declaration of Human Rights¹¹⁰ after which it was modeled.¹¹¹ The ECA later

104. Klees, et al., *supra* note 49, at 79-80.

105. Moulin & Pereira, *supra* note 77, at 50; *See also Brazil, Children and Young Persons* (Text of Brazilian Legislation Concerning Child Rights, (Spanish): Ley núm. 8069 por la que se establece el estatuto del adolescente, y se dictan otras disposiciones, Diário Oficial, 1990-07-16. núm. 135, págs. 13563-13577, Errata. 1990-09-27. núm. 187, p. 18551 (visited Feb. 2001) at <http://natles.ilo.org/scripts/natlexcgi.exe?lang=E&doc=query&ctry=BRA&llx=12.01>).

106. BRAZ. CONST. (1989, art. 227).

107. *See* Klees, et al., *supra* note 49, at 87.

108. Klees, et al., *supra* note 49, at 87.

109. International Covenant on Civil and Political Rights, Dec. 16, 1966, UNTS 171.

110. *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR, UN Doc. A/810 (1948).

111. *See Id.* at 86. *See* Office of the United Nations High Commissioner for Human Rights, Status of Ratification of the Principal International Human Rights Treaties 1-3 at

"became an inspiration to Latin American countries (Venezuela and Peru used the Brazilian model to create their own child code) and [received] effusive accolades from Unicef"¹¹²

2. Brazil Adopts the International Rights of Her Children

In September 1990, Brazil ratified the UN Convention on the Rights of the Child¹¹³ consistent with the growing national movement and planned objectives in the child rights and general human rights theaters.¹¹⁴ In doing so, Brazil explicitly recognizes "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."¹¹⁵ In order to implement new social programs supporting these initiatives, from July 1990 until December 1999, Brazil adopted a variety of federal laws, normative instructions, and regulations explicitly outlining plans and programs to protect the rights of children.¹¹⁶

In 1999, Brazil was the first country in Latin America to

<http://www.unhcr.ch/pdf/report.pdf>. (last visited March 28, 2001). [hereinafter *Status of Ratification*]. Brazil ratified the UN Convention on Civil and Political Rights on January 24, 1992.

112. See Alessandra Dalevi, *Light and Shadow*, BRAZZIL, July-August 2000 at <http://www.brazzil.com/cvjrjul00.htm>. (last visited Sep. 27, 2001).

113. See *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989). See also Report of the Director-General to the International Labour Conference [IL Conf.] 69th Sess., 1983, at vi, cited in ILO, Governing Body Report, ILO Doc. GB.265/2 para. 31 (1996). This Convention entered into force nine months after its adoption by the United Nations, and has been almost universally adopted.

114. See *Status of Ratification*, *supra* note, 111.

115. *Convention on the Rights of the Child*, *supra* note 113, at Art. 32(1).

116. See ILO Datalex, Brazil: Children and Young Persons Laws, (visited Feb. 27, 2001), at <http://natlex.ilo.org/scripts/natlexcgi.exe?lang=E&doc=query&ctry+BRA&11x=12.01>. These laws include: Law No. 8069 Establishing the Child and Adolescent Statute and to Decree of Related Matters; Order No. 1323 (August 7, 1991) to Pronounce Norms and Setting Rules for National Discussion on the Basic Document Outlining the Project "Minha Gente"; Law No. 8242 (October 12, 1991) Creating the National Council on the Rights of the Child and Adolescent (CONANDA) and Decree of Related Matters; Decree No. 359 (May 26, 1992) Stipulating the project "Minha Gente," Created by Decree of May 14, 1991 and the Adoption of other Matters; Law No. 8642 (March 31, 1993) Planning for the Full Attention to the Child and Adolescent National Program and Institution (PRONAICA) and to Decree other Measures; Normative Instruction No. 1 (March 21, 1997) from the Secretary of Labor to Establish Pilot Projects in the States of Cear , Goi s, Minas Gerais and Praiba to Combat Child Labor and Related Measures..

ratify the ILO Child Labor No. 182 (concerning the prohibition and immediate action for the elimination of the worst forms of child labor).¹¹⁷ During the same month, Brazil adopted ILO Convention No. 138, which establishes a minimum working age of fourteen years old.¹¹⁸ At the turn of the century, the ILO declared "Child Labour Tops the Agenda in Brazil."¹¹⁹ For the past decade, Brazil has constructed a comprehensive model featuring innovative and constructive social intervention programs, NGO and trade union alliances, and education reform, to complement the legal framework it designed to end harmful and exploitative child labor within her borders.

IV. O MODELO BRASILEIRO (THE BRAZILIAN MODEL): MILESTONES ON THE LONG ROAD AHEAD

A. *Implementing a Child Labor Strategy*

1. The International Labor Office (ILO) and Brazil: An Innovative Partnership Against Child Labor

In 1991, the International Labor Organization began preparing for its International Program for the Elimination of Child Labor (IPEC) by concentrating an attack on child labor in twenty countries where the problem was prevalent.¹²⁰ The IPEC program is designed on a system of broad-based in-country partnerships to deal with child labor primarily from a developmental perspective, binding IPEC initiatives to national,

117. See ILO Publications, *IPEC Ratification Map* (visited March 30, 2001), at <http://www.ilo.org/public/english/standards/ipecc/ratification/map/index.htm>. (Brazil was the first country in Latin America to adopt the Convention on the Elimination of the Worst Forms of Child Labor, ILO Convention No. 182 (1999), ratified February 2, 2000). See also International Labour Organization, "New ILO Convention Outlaws Child Soldiers as Worst Form of Child Labour at <http://www.ilo.org/public/english/standards/ipecc/about/factsheet/facts03.htm> (last modified October, 2000). (The ILO unanimously adopted the Convention on Child Labor in June 1999).

118. See ILO Minimum Age Convention C138, June 26, 1973, art. 2, 1015 U.N.T.S. 297, available at <http://iblex.ilo.ch:1567/scripts/convde.pl?c138>.

119. International Labour Organization, *IPEC in Action: Latin America, Child Labour Tops the Agenda in Brazil*, at <http://www.ilo.org/public/english/standards/ipecc/publ/field/latin/index.htm> (last modified Oct. 18, 2000).

120. *Toils for Tots*, *supra* note 23.

economic and social policies.¹²¹ Considering the context of extreme poverty and parental unemployment (and underemployment), the ILO/IPEC aimed early on to change the futures of the 250 million children compelled to work (60 million of them in the worst forms of child labour).¹²² Brazil was the first country in the western hemisphere to sign a Memorandum of Understanding (MOU) with the ILO and immediately began developing its institutional strategy to address child labor in 1992.¹²³

Armed with a fresh but sophisticated legislative infrastructure, the Brazilian Government established the Child Labor Eradication Program (Programa de Erradicação do Trabalho Infantil, (PETI)) in 1992, which aimed at orchestrating the efforts of government with non-government efforts already underway.¹²⁴ To this end, Brazil formulated legislation to breathe life into the National Forum for the Prevention and Elimination of Child Labor in 1994 and Integrated Action Programmes (PAIs) in 1995, fusing Non-government organizations (NGO's); the Regional Office of the Ministry of Labor; employers' and worker's organizations; and local government sector initiatives into a comprehensive and unified front.¹²⁵ The National Forum sets priorities for the avoidance and eradication of the worst forms of child labor, and first identified priority areas demanding immediate intervention.¹²⁶ The statute implementing these programs was the first of its kind in Brazil, "transform[ing] the

121. Press Release, UN, Child Labour, Conflicted-Induced Trauma in Children, Among Key Topics in Third Committee Survey of Children's Rights. (Oct. 12, 2000), at <http://www.un.org/News/Press/docs/2000/20001012.gashc3590.doc.html>. The press release contains comments by Frans Roselaers, Director of the International Programme on the Elimination of Child Labour, in the Geneva office of the ILO.

122. *Id.*

123. See ILO-IPEC, *Highlights of 1998*, at <http://www.ilo.org/public/english/standards/ipecc/publ/policy/high-98/part1.htm> (last modified Oct. 1998). (Since 1992: Brazil, India, Indonesia, Kenya, Thailand, Turkey); See also Targeting the Intolerable: A New International Convention to Eliminate the Worst Forms of Child Labour, Participating Countries (1999) (on file with the University of Miami Inter-American Law Review).

124. Dalevi, *supra* note 114. See also ILO/IPEC, *Vale dos Sinos: Shoe Industry, Brazil*, at <http://www.ilo.org/public/english/standards/ipecc/about/factsheet/expls-98/example3.htm> (last modified Oct. 18, 2000) [hereinafter *Shoe Industry*].

125. ILO/IPEC, *15 Examples of Selected Successful Action Programmes: Mainstreaming Successful Approaches, National Level/Brazil*, at <http://www.ilo.org/public/english/standards/ipecc/about/factsheet/expls-98/example15.htm>. (last modified Oct. 18, 2000). [Hereinafter *Mainstreaming*].

126. *Id.*

government into a protagonist of NGOs revindications.¹²⁷

2. The Integrated Action Program (Programa de Ações Integradas - PAIs) Approach

PAIs are cooperative projects synthesizing spheres of social aid, education, health, law enforcement and social involvement.¹²⁸ They reflect the ILO's "multi-sectoral strategy" which involves specific, situation-tailored analysis using various government and non-government resources directed squarely at localized groups of child workers and their families.¹²⁹ The pilot PAI project was applied in the state of Mato Grosso do Sul in 1995, aimed at charcoal production sites,¹³⁰ and has been expanded to "tea plantations, sisal production, rock quarries, sugar cane plantations and mines."¹³¹ The main program objective is to simultaneously stop the child from working and transplant him or her into an educational environment.¹³²

Because PAIs target many children who work to provide income to their families, the program necessarily focuses on the household unit.¹³³ Preliminarily, the PAI provides financial means as immediate intervention while explaining to the family the federal, state, and municipal government and NGO assistance programs available to them.¹³⁴ The second phase concentrates on permanent income generation and employment

127. Dalevi, *supra* note 112. (quoting Wanda Engel, PETI coordinator, Brazil).

128. *Mainstreaming*, *supra* note 125, at 1.

129. See ILO/IPEC, *What is IPEC: IPEC at a Glance*, at <http://www.ilo.org/public/english/standards/ipecc/about/implementation/ipecc.htm>. (last modified Oct. 18, 2000).

130. See *O Trabalho Infantil No Brasil: Situação Actual e Perspectiva a de sua Eliminação 2-3*, at <http://www.mre.gov.br/ndsg/testos/trabin-p.htm> (visited Apr. 9, 2000) [hereinafter, *O Trabalho Infantil*].

131. ILO/IPEC, *Child Labour Convention Achieves Fastest Ratification Pace in ILO History: International Action is Building to Eliminate Worst Forms of Child Labour*, Press Release ILO/00/24, at <http://www.ilo.org/public/english/bureau/inf/pr/2000/24.htm> (last modified June 7, 2000).

132. *Id.*

133. *Id.* at 3.

134. See Florencia Ferrari, *Alerta Cidadania - Exclusão Social*, 5 JORNAL KLIKEDUCAÇÃO, at <http://www.escoladeprofessor.com.br/Conteudo/Referencia/CDA/ItemView/0,1655,1165-geografia-16,00.html> (last modified Apr. 10, 2001); see also *Mainstreaming*, *supra* note 127, at 2. (This program is widely known as the "Bolsa-Escola" educational stipend program, which replaces income generated by children with government subsistence grants with proof of child attendance in school).

for the parents.¹³⁵ Next, the program integrates these activities in communities where they find general incidences of child labor, based on disclosures and prior research.¹³⁶ As the pervasiveness of child labor in the area is uncovered, assessed, and situationally analyzed, the PAI model uses technical groups to mobilize various social organizations to operate on the targeted families in the area.¹³⁷ Once the operational scheme is designed, the PAI then redirects priorities on the federal sphere.¹³⁸ Finally, successful programs are replicated and expanded as models for other areas or regions in Brazil, with care to address local characteristics and unique circumstances.¹³⁹

3. Universalizing Basic Education - "Bolsa Escola" Program

"Any improvement made to education - whether by changing existing schools, by setting up creative and flexible approaches to education or by targeting working children specifically - will have a positive impact on child labour."¹⁴⁰ Accordingly, the Ministry of Labor has followed the PAI framework, to coordinate the widely acclaimed "Bolsa Escola" Program (School Fellowship Program) with the Ministry of Social Welfare and Assistance,¹⁴¹ to ensure universal education among children through the promotion of their attendance and retention in schools.¹⁴² The program provides low-income families with monthly allowances, predicated on the child's regular attendance in school.¹⁴³ Helping to replace the meager but indispensable income the child brings

135. *Id.*

136. *Id.*

137. See *Fórum Nacional de Prevenção e Erradicação do Trabalho Infantil [Actions Proposed at the National Convention to Prevent and Eradicate Child Labor]*, at <http://www.mtb.gov.br/sit/trabinf/ForumNac/historico.htm> (last visited Apr. 12, 2001). [hereinafter, *Fórum Nacional*].

138. *Id.*

139. *Mainstreaming*, *supra* note 127, at 2; see also Ferrari, *supra* note 136, at 5; see also *O Trabalho Infantil*, *supra* note 130, at 3.

140. BELLAMY, *supra* note 7, at 51.

141. Lena Lavinias, *The Appeal of Minimum Income Programs*, In *Focus Programme on Socio-Economic Security*, at <http://www.ilo.org/public/english/protection/ses/docs/lateng.pdf> (last modified Feb. 10, 2001).

142. *Mainstreaming*, *supra* note 125, at 2.

143. See IACHR/OAS, *Chapter V, Follow-up on IACHR Recommendation on its Reports on Member States, Brazil* (1999), at <http://www.oas.org/cidh/annualrep/99eng/chapter5.htm> (last visited Feb. 2001) [hereinafter IACHR/OAS Report Brazil, 1999].

to the family, the initiative grants families R\$50 (USD \$27) to keep children safe from arduous and hazardous labor.¹⁴⁴

Bolsa Escola was introduced in a bill before the São Paulo City legislature, who passed the legislation and launched the first program in the Federal District of Brasília,¹⁴⁵ and now it has expanded to various states including Amapá, Amazonas, Bahia, and Pernambuco.¹⁴⁶ In 1997, the government reported, "an estimated 2,100 children from charcoal and erva-mate production sites in mato Grosso do Sul and over 8,000 children from sisal and quarry processing in Bahia were able to leave backbreaking work and attend school," under the program.¹⁴⁷ The fellowships have targeted the families of 147,000 children in rural areas and 202,000 children in urban settings.¹⁴⁸ In Belo Horizonte, a pilot "Bolsa Escola" program cosponsored by UNICEF has helped more than 1,500 children, boasting a 92 % school retention rate.¹⁴⁹

4. Involvement in Business Communities and Trade Unions

a. Business Community Action

The Abrinq Foundation for the Rights of Children, initially an association of Brazilian toy manufacturers, pioneered efforts to bring employers into the movement against child labor.¹⁵⁰ Abrinq created the Child-friendly Companies program (Empresa Amiga da Criança), which distributes special product seals certifying the company does not hire children for production and that their suppliers also refrain from child labor exploitation.¹⁵¹

144. Lavinias, *supra* note 141, at 9-11.

145. *Toils for Tots*, *supra* note 23.

146. IACHR/OAS Report Brazil, 1999, *supra* note 143, at 8.

147. *Mainstreaming*, *supra* note 125, at 2.

148. U.S. Dept. of State, 1999 *Country Reports on Human Rights Practices, Brazil* http://www.state.gov/www/global/human_rights/1999_hrp_report/brazil.html (last visited Feb. 25, 2000) [hereinafter, US State Report on Brazil 1999].

149. *Id.*

150. *Toils for Tots*, *supra* note 23.

151. *Id.* See also Gay, *supra* note 6, at 94.

According to some reports, “[a]pproximately 200,000 children have been helped through this seal.”¹⁵² Abrinq has sought pledges from those who hire child labor in order to bring the children out of “production chains of the charcoal, citrus and footwear sectors.”¹⁵³ The program has enlisted the assistance of 300 businesses to provide community support including “financial adoption of day care centers, orphanages and community centers.”¹⁵⁴

In this vein, the Labor Relations Secretary and industry leaders have reached several agreements to lower drop-out rates by gaining support from companies who hire children.¹⁵⁵ Similarly, the National Agricultural Workers’ Confederation (CONTAG) recently headed a sweeping business community crusade to distribute informational brochures, broadcasting radio programs on child labor using a variety of press releases and articles, and producing a national seminar against child labor.¹⁵⁶

b. Trade Unions and Child Labor Standards

As powerful interest groups in Brazil, trade unions maintain a critical vantage from which to fight child labor.

[T]hey can monitor the working conditions of children and denounce child labour abuses. They are able to communicate to large numbers of adult workers the importance of education for their children, of protecting them against work hazards and of keeping them from premature engagement in the labour market. As a major pressure group, trade unions play an important role not only in collective bargaining at the workplace but in mobilizing support for the elimination of child labour and campaigning for policy change at all levels.¹⁵⁷

In Brazil, trade unions have inspired broad support for publicizing child labor and managed “to secure child labour

152. *Toils for Tots*, *supra* note 23.

153. ILO, TARGETING THE INTOLERABLE: A NEW INTERNATIONAL CONVENTION TO ELIMINATE THE WORST FORMS OF CHILD LABOUR, EMPLOYERS IN THE FIGHT AGAINST CHILD LABOUR. (1999) (on file with the University of Miami Inter-American Law Review).

154. *Toils for Tots*, *supra* note 23.

155. *Toils for Tots*, *supra* note 23. Examples include orange juice exporting conglomerate Abecitrus, footwear industry unions and associations in Franca, São Paulo.

156. *Toils for Tots*, *supra* note 23.

157. Bellamy, *supra* note 7, at 22.

clauses in contracts with employers in 88 municipalities in 8 federal states," by 1997.¹⁵⁸ Similarly, "the Brazilian Association of Citric Exporters, which supplies 80 % of the international market's orange juice pledged to eliminate child labour from its production."¹⁵⁹ In 1998, Nelson Morelli, a Brazilian labor rights leader spoke to a convention of the International Brotherhood of Teamsters in Tampa, Florida, calling for U.S. juice companies (including Minute Maid) who import orange juice concentrate from Brazil, to certify that its products are child-labor free.¹⁶⁰

In the Vale dos Sinos region, in the southern state of Rio Grande do Sul, the shoe industry is notorious for its "high incidence of child labour . . . [where] manufacturers . . . give sub-contracts to workshops which, in turn, sub-contract to small home-based informal industries."¹⁶¹ Since 1996, IPEC's ASBEM (an NGO initiative), sought to furnish new opportunities to child laborers in the Vale dos Sinos municipalities of Novo Hamburgo and Dois Irmãos.¹⁶² Under the mandates of the Permanent Forum for the Elimination of Child Labor, the Regional Office of the Ministry of Labor along with employers' and workers' organizations in the region successfully negotiated industry-wide standards against child labor embodied in its "Terms of Commitment."¹⁶³ Subsequently, the project developed its "Code of Conduct," which details labor standards reflecting a concerted effort against child labor, and the "Code of Conduct" has been adopted industry-wide.¹⁶⁴

As a result of the project, 149 child workers were withdrawn from work in the municipalities of Novo Hamburgo and Dois Irmãos and provided with rehabilitation. Many of these children have been mainstreamed into special education centres that provide extra-curricular activities and other support services.¹⁶⁵

An evaluation of the project is forthcoming, but varying reports are emerging from the area on the effectiveness of the program.¹⁶⁶

158. Bellamy, *supra* note 7, at 22.

159. Bellamy, *supra* note 7, at 64.

160. Gay, *supra* note 6, at 94-95.

161. *Shoe Industry*, *supra* note 124.

162. *Shoe Industry*, *supra* note 124.

163. *Shoe Industry*, *supra* note 124.

164. *Shoe Industry*, *supra* note 124.

165. *Shoe Industry*, *supra* note 124.

166. American Chamber of Commerce Brazil, *Sotaque Brasileiro*, at

5. Rehabilitation to Vocation: Street Education

The Child and Adolescent Act of 1990 attempts to reverse the decades of Brazil's military rule, where the common practice of the state in dealing with street and working children responsible for crime typically lead to incarceration.¹⁶⁷ Brazil's new paradigm revolves around a regime of "assisted freedom," granting young persons involved in street work band criminal activity a chance to repair damages and regain their lives.¹⁶⁸ Applying assisted freedom principles, the Catholic Archdiocese of Rio de Janeiro responded to the city's growing problem involving "street and working children," with Projeto Semear in 1987.¹⁶⁹ The project is situated on eleven acres at the foot of a mountain near a nature preserve in the Bangu neighborhood of greater Rio de Janeiro.¹⁷⁰

The project operates on the principle of "*não pivetes*," which refers to a concept devoid of the stigma of the delinquent or mischievous child (*pivete*).¹⁷¹ The approach integrates aspects of recreation, scholastics, and fundamental job preparation through an appeal to the child's mental, moral, spiritual and social development, rather than transplanting the child into the unfamiliar regiment of formal education.¹⁷² The program has assisted 1,200 at-risk adolescents in Rio de Janeiro, and sixty to seventy of these adolescents find apprenticeships each year through the program's *Pleitar* and *Integração* components.¹⁷³

In Salvador, Brazil's third largest city, one project, Projeto Axé, gained political and legal support from the National

http://www.amcham.com.br/revista/3590/02_01_html. (Apr. 2000) [hereinafter Sotaque Brasileiro].

167. Dalevi, *supra* note 112.

168. Dalevi, *supra* note 112. (Describing the CASE Program (Comunidade de Atendimento Sócio-Educativo - Community of Socio-Educational Care) a service provided by the Labor and Social Action Secretariat at Bahia created in 1998 for youths involved in criminal activities. "The place, which has 86 youngsters at the moment, looks more like a house than a prison as most similar institutions do. There the kids receive a formal education, practice sports and learn the arts, besides learning a profession. Among several courses offered, they can learn about computers, graphic arts, horticulture, and how to make bread.)

169. Quieroz & Elliot, *supra* note 38, at 193-95.

170. Quieroz & Elliot, *supra* note 38, at 196-97.

171. Quieroz & Elliot, *supra* note 38, at 197-204.

172. Quieroz & Elliot, *supra* note 38, at 197.

173. Quieroz & Elliot, *supra* note 38, at 201-202.

Movement of Street Boys and Girls of Brazil (Movimento Nacional de Meninos e Mininas de Rua (MNMMR)) in 1990.¹⁷⁴ The program involves the identification of “socially excluded” children, and uses innovative processes of relationship, psychology, and social pedagogy, premised on the “constructivist principle,” that the pupil is a subject of intelligence and of knowledge, who is endowed with a structure that is capable of learning contents and constructing bodies of knowledge and of achieving higher-level rational structures, provided he or she is furnished with the kind of environment necessary to that development.¹⁷⁵

The program features highly trained “street educators,” who systematically reconstruct and reorient the child to his or her citizenship as a young person of Brazilian society.¹⁷⁶ The Axé approach taps into the children’s emotional, cultural, and social fabrics in order to rehabilitate them from the harshness of street living and laboring; to integrate them into an educational or vocational training environment; and eventually “to steer them into the formal labor market.”¹⁷⁷

6. Research, Enforcement and Monitoring

It is true the phenomenon of child labor is elusive, transitory, illegal; and therefore, subject to special sampling problems, which aggravates its research, monitoring and enforcement.¹⁷⁸ Still, national statistical programs remain an important tool for policy changes, allocation of resources, and gauging the efficacy of program initiatives.¹⁷⁹ In May 2000, the

174. See Almeida and de Carvalho, *supra* note 102, at 174.

175. Almeida and de Carvalho, *supra* note 102, at 175.

176. Almeida and de Carvalho, *supra* note 102, at 175-76.

177. Almeida and de Carvalho, *supra* note 102, at 174-80. The process involves three independent steps: “1. Pedagogical flirting: Initial contacts with the children and youth are made and street education begins; 2. Pedagogical romance: the dialogue has been established and ties are formed between the instructor and the pupil, still in the street; and 3. Pedagogical coziness: The young person is now integrated into Projeto Axé activities and is making new plans for his life. Usually this means he is moving off the street.” *Id.*

178. See generally, Fúlvia Rosemberg, *From Discourse to Reality: A Profile of the Lives and an Estimate of the Number of Street Children and Adolescents in Brazil*, in CHILDREN IN THE STREETS OF THE AMERICAS (Roslyn Arlin Mickelson ed., 2000).

179. ILO/IPEC, *15 Examples of Selected Successful Action Programmes: Statistical Information and Monitoring Programme on Child Labour (SIMPOC)*, at <http://www.ilo.org/public/english/standards/ipecc/about/factsheet/expls-93/exempl4.htm>

Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística (IBGE)), the State Secretary of Social Action (Secretaria do Estado da Ação Social (SEAS)), and the Ministry of Labor organized a technical meeting to sharpen their research questionnaire as part of the ILO/Brazil Statistical Information and Monitoring Programme (SIMPOC) project.¹⁸⁰

The SIMPOC project coordinates ILO/IPEC initiatives with the ILO's Bureau of Statistics to assist individual countries like Brazil in developing a five-year plan to generate comprehensive national, sub-regional and regional quantitative and qualitative data on the dynamics of child labor.¹⁸¹ The data will provide Brazilian policymakers with more elaborate and accurate data to assist in the design, implementation, monitoring and assessment phases of their national and local programs.¹⁸² Questions focus on the pervasiveness of child labor; associated demographics; child labor occupations and work conditions; types of exploitation; educational opportunities; level of domestic employment; and the familial status of the children working.¹⁸³ SIMPOC is scheduled as part of Brazil's household survey in 2001, and the results and trend analyses are expected by 2002.¹⁸⁴

The results of this research will enable the Ministry of Labor and Employment to more effectively tailor its regular inspections run by specially trained inspectors who monitor child labor in Brazil.¹⁸⁵ Further, the Ministry of Labor has arranged an inter-ministerial working group committed to improve labor

(last modified Oct. 18, 2000). "The National Survey of Child Labour in the Philippines is an example of ILO-IPEC assistance to develop a dependable database for the formulation of policy and national programme of action on child labour . . . [and] stands out as an example of how a national statistical programme can be successfully used as important tool for policy changes, concrete action as well as advocacy." *Id.*

180. GLOBAL MARCH ORGANIZATION, *Steps in the Right Direction: Report on Government Efforts to End the Worst Forms of Child Labour*, at <http://www.globalmarch.org/worstformsreport/implementation/steps.html> (last visited Apr. 1, 2001) [hereinafter, GLOBAL MARCH, Steps 2000].

181. ILO/IPEC, *Statistical Information and Monitoring Programme (SIMPOC): an IPEC Tool for Comprehensive Analysis of Child Labor*, at <http://www.ilo.org/public/english/standards/ipec/about/factsheet/facts13.htm>. (last modified Oct. 18, 2000).

182. *Id.*

183. *Id.*

184. ILO/IPEC, *Country Program Progress Report: Brazil* (August, 2000) cited in GLOBAL MARCH, *Steps in the Right Direction*, *supra* note 182.

185. GLOBAL MARCH, *Steps in the Right Direction*, *supra* note 180.

inspection.¹⁸⁶ Essentially, trained officials are allowed to visit work sites, noting the conditions of employment and empowered to take actions to ensure that employers conform with child labor laws.¹⁸⁷ Effective labor inspection is integrally linked to the elimination and prevention of child labor, as well as “in changing attitudes towards it among those sections of the community which had previously accepted it.”¹⁸⁸ Although enforcing the law and prosecuting violations is difficult and costly, “the mere fact that inspectors target child labour can publicly expose the issue and lead to change.”¹⁸⁹

B. Brazil's National Program into the Millennium

The Child Labor Eradication Programme (PETI) has resolved to remove 866,000 children from work and place them into developmental environments by the end of 2002.¹⁹⁰ Accordingly, the federal government pledged at the end of 1999 to allocate R\$1 billion in the “Plano Plurianual” (PPA), and to efficiently use its budgetary and technical resources.¹⁹¹ The national plan also appropriated more than \$3 million to target 20,000 children oppressed by prostitution.¹⁹² Included in the national plan are components addressing the special circumstances of the girl child, and specifically targeting sexual violence and sexual exploitation of children.¹⁹³

Today, all twenty seven states in Brazil have incorporated a State Forum to administer local programs within the National Forum network.¹⁹⁴ Equipped with thirty three federal

186. U.S. DEPARTMENT OF LABOR, *Brazil Country Report on Human Rights Practices for 1996*, at http://www.state.gov/www/global/human_rights/1996_hrp_report/brazil.htm (last visited Jan.30, 1997) [hereinafter *Brazil Country Report 1996*].

187. *Id.*

188. ILO/IPEC, *Child Labour Inspection: New Convention Offers Improved Enforcement Prospects*, at <http://www.ilo.org/public/english/standards/ipecc/about/factsheet/facts10.htm> (last modified Oct. 18, 2000).

189. *Id.*

190. ILO/IPEC, *Country Program Progress Report: Brazil, August 2000* cited in GLOBAL MARCH, *Steps in the Right Direction*, *supra* note 180.

191. ILO/IPEC, *Country Program Progress Report: Brazil, August 2000* cited in GLOBAL MARCH, *Steps in the Right Direction*, *supra* note 180.

192. REUTERS, *Brazilia*, (July 11, 2000) cited in GLOBAL MARCH, *Steps in the Right Direction*, *supra* note 180, at 6-7.

193. ILO/IPEC, *Country Program Progress Report: Brazil, August 2000* cited in GLOBAL MARCH, *Steps in the Right Direction*, *supra* note 180.

194. ILO/IPEC, *Country Program Progress Report: Brazil, August 2000* cited in

programs¹⁹⁵ under five separate ministries;¹⁹⁶ billions of *Real* earmarked;¹⁹⁷ hundreds of non-government intervention entities; and one of the world's most comprehensive child labor legal schemes, it would appear that Brazil has the problem of child labor under wraps.¹⁹⁸ Unfortunately, nothing could be further from the truth because "both the magnitude and nature of [children's rights] problems remain the same and in few cases have there been qualitative changes that have entailed an effective alleviation of the harsh situation endured by broad sectors of the child and adolescent population in Brazil."¹⁹⁹

C. Challenges and Limitations

1. Child Labor Persists

Although Brazil's national forum for the prevention and eradication of child labor has significantly reduced the general incidence of child labor,²⁰⁰ the elusive contours of this problem are ever-expanding and simply overwhelming its administrative, social and legal frameworks.²⁰¹ Studies from 1995 and 1999 demonstrate that incidence of children laborers ages five to nine years has lowered from 519,000 (or 3.2 %) to 375,000 (or 2.4 %).²⁰² Child laborers ages 10 to 14 have also declined from 3.3 million in 1995 to 2.5 million in 1999 (from 18.7 % to 14.9 %). However, even after Brazil's passage of legislation raising the minimum

GLOBAL MARCH, *Steps in the Right Direction*, *supra* note 180.

195. MINISTÉRIO DO TRABALHO E EMPREGO, *Erradicação Trabalho Infantil, Ações de Combate ao Trabalho Infantil*, at <http://www.mtb.gov.br/sit/trabinf/acoes/acoes.asp> (last visited Apr. 1, 2001).

196. U.S. State Report on Brazil 1999, *supra* note 148.

197. Dalevi, *supra* note 112 (quoting President Fernando Henrique Cardoso, "The federal government is investing R\$4.25 billion (US\$2.36) to guarantee that the children and adolescents have their rights assured. Everybody who follows what the government does knows how children's education and health are a priority. The same can be said about our programs to eradicate child labor.").

198. Moulin & Pereira, *supra* note 77, at 50-51. (Valladares and Implizieri (1992) identified 620 NGOs in Rio de Janeiro).

199. IACHR/OAS Report Brazil 1999, *supra* note 143.

200. U.S. State Report on Brazil 1999, *supra* note 148.

201. *Brazil Country Report 1996*. "Federal, state, and local governments devote insufficient resources to street children. NGO's sponsor relief efforts, but demand far outstrips available resources." *Id.*

202. Ferrari, *supra* note 134, at 3.

work age to sixteen in December 1999,²⁰³ Brazilian reports still estimate that approximately 7.7 million children and adolescents between the ages of five and seventeen continued to be part of the labor force, which indicates significant, but comparatively modest progress in the past decade.²⁰⁴

Ten years after ECA's introduction, however, child labor is still a serious problem, and education and health care are far from universal. Institutions dedicated to children inspired by a mode that stresses punishment and repression are still thriving and hiding thousands of minors inside their walls. And public defenders continue without resources and infrastructure to do what the law asks them to. . . .²⁰⁵

Further, in the sugar cane plantations in northern Rio de Janeiro, children and adolescents who run the twelve mills in the region still represent one fifth of the overall work force employed there.²⁰⁶ The Bolsa Escola program in that area is addressing the forty thousand dropout children working in the plantations by paying a \$50 stipend to families where the children regularly attend classes, "but the Pernambuco Federation of Agriculture Workers (Fetape) says it has been progressing at a snail's pace."²⁰⁷ Where implemented, particularly in Brasilia, some cash transfer programs operate at the discretion of several "evangelical churches," issuing "citizen's checks," which operate like food stamps to the churches' faithful.²⁰⁸

2. Absenteeism and Drop-outs

Even where many children have left the work field, they still

203. IACHR/OAS Report Brazil 1999, *supra* note 143.

204. Luciana Garbin, *O Trabalho Infantil Ainda Recruta 7,7 Milhões*, CIDADES, at <http://www.estado.com.br/editoria/2000/07/10/cid181.html> (last modified July 10, 2000); see also *Toils for Tots*, *supra* note 23. "A few years ago, IBGE published a study called *Brazilian Social Inequality Features*, according to which almost 8 million children and teenagers worked at the turn of the decade (3.6 million worked and went to school at the same time". *Toils for Tots*, *supra* note 23.

205. Dalevi, *supra* note 112.

206. *Toils for Tots*, *supra* note 23.

207. *Toils for Tots*, *supra* note 23.

208. Lavinas, *supra* note 141, at 9.

may not have returned to school.²⁰⁹ Despite a recent Ministry of Education study demonstrating an overall increase in primary and secondary school enrollment, “school failure and absenteeism remain a grave problem, given that almost half Brazilian children do not manage to complete basic education.”²¹⁰ In some areas, the child laborer has difficulty adjusting to an educational environment and after receiving some of the stipend, returns to the familiarity of the worksite.²¹¹ “This project has to guarantee the education until the teenagers can change their lives, and it has to last at least until high school, otherwise we are throwing the money away.”²¹² To exacerbate the problem, there is no community support for the Bolsa Escola program in some areas, and the Federal District who conceived the Bolsa Escola program has completely abandoned it, even where progress was showing.²¹³ More seriously, families are entitled to the Bolsa Escola program for only one to two years, which makes the continued feasibility of the program attenuated.²¹⁴

3. The Conundrum of Enforcement

Just as the ILO hailed the efforts of Brazil to practically eliminate child labor in the shoe industry at Vale do Sinos²¹⁵ in the State of Rio Grande do Sul, reports from the area indicate a different reality.²¹⁶ Instead of working inside of the factories, children work in private studios, or inside their homes in arrangements of “quarterização” or “sub- subcontracting.” In most instances, the factories provide materials to fashion shoe buckles to people known in the neighborhood for operating private child labor studios, who in turn distribute the material among the children.²¹⁷ Even for factories interested in preventing child labor, this type of adaptation is very difficult to monitor, to

209. *Toils for Tots*, *supra* note 23.

210. U.S. State Report on Brazil 1999, *supra* note 143.

211. Garbin, *supra* note 204.

212. Garbin, *supra* note 204 (quoting Caio Magri, Manager of Political Articulation from Abrinq Foundation for the Rights of Children).

213. Garbin, *supra* note 204.

214. Lavinias, *supra* note 141.

215. *Shoe Industry*, *supra* note 124.

216. AMERICAN CHAMBER OF COMMERCE BRAZIL, *Pedra no Sapato*, at http://www.amcham.com.br/revista/359/02_html (last modified Apr. 2000).

217. *Id.* “From this is born a pact of silence between the parents, the studio owners and the shoe factory.” *Id.*

control, or even to see.²¹⁸

Carlos Gilberto Koch, President of the Shoe Makers Union, said recently "child labor at home always existed, but now the subcontract of the child labor is exonerating the factories and passing the problem on to the parents."²¹⁹ Transferred inside of the home, child labor is invisible to inspectors who cannot enter the homes without prior authorization.²²⁰ Susana Marquest of the local Ministry of labor guarantees that child labor has been eradicated in Novo Hamburgo, "in the formal studios it doesn't exist, but I can't put my hands in the fire in relation to the informal ones. . ."²²¹ In Porto Alegre the representative of the state Forum for the Prevention and Eradication of Child Labor, Eridan Magalhães, believes "in Novo Hamburgo child labor exists in small studios and in family homes and the neighboring cities the exploitation still exists inside of the factories."²²² In farming communities child labor is so pervasive because the culture ingrains the work of children into the social fabric.²²³ The problem with enforcement, says one commentator, begins with Brazilians themselves.

Brazil hasn't learned the meaning of citizenship. The majority of citizens do not have their rights effectively protected, although they are guaranteed by law . . . Police forces represent the law, but break the law themselves. Politics represent the people, but serve their own interests. They are corrupt. The result is an immense state of social exclusion where citizens are deprived of their own rights.²²⁴

Others attribute the continuity of the problem primarily to the economic crisis and unemployment.²²⁵

4. The Impact of Economic Crisis

The current economic crisis in Brazil may further jeopardize

218. *Id.* The typical family will deliver seven or eight million buckles over fifteen days and earns approximately R\$35. *See id.*

219. Sotaque Brasileiro, *supra* note 166.

220. Sotaque Brasileiro, *supra* note 166.

221. Sotaque Brasileiro, *supra* note 166.

222. Sotaque Brasileiro, *supra* note 166.

223. *O Trabalho Infantil*, *supra* note 130.

224. Ferrari, *supra* note 134, at 8.

225. Sotaque Brasileiro, *supra* note 166.

these programs in the near future and reverse the progress of Brazil's general anti-child labor movement.²²⁶ The global financial crisis that began in Asia in 1997, spread to Russia in 1998, and besieged Brazil in 1999.²²⁷ In January 1999, Brazil allowed its *Real* to shift against the dollar, which devalued it approximately thirty-six percent, leading to a striking plummet in its stock market and an unofficial unemployment rate close to 20 percent (officially 7.9 %) in April through September 1999.²²⁸ By contrast, Brazil's official unemployment rate in the late 1980's and early 1990's hovered around three percent.²²⁹ Coinciding with elevating unemployment, Brazil also encountered the ballooning of its foreign debt to US\$228,²³⁰ which precipitated inflation and an increase in costs for fundamental subsistence: the cost of buying a basic food basket rose three and a half percent in January, 1999.²³¹ This translates into a new wave of poverty where "[c]hildren become essential wage earners in this economic context . . . contribut[ing] to their families' subsistence and, in some cases of those truly homeless children, their own survival."²³² Despite progressive child protective laws and the notoriety of their plight, children will continue to suffer from the poverty afflicting their families. They must continue to work in formal and informal economies in order to survive, ultimately perpetuating the vicious cycle endowed to them, seemingly as birthright. However, abandonment of the effort at this point can only intensify the problem, as positive shifts in paradigm and social movement are beginning to take shape.

5. Regionalizing Efforts

Despite systemic and cultural impediments, the country of Brazil has contributed to a better life for millions of its youngsters who are increasingly viewed as citizens with rights, influencing other regions of Latin America. For some time now,

226. Mickelson, *supra* note 47, at 23.

227. See LABOR RIGHTS ORGANIZATION, *Workers in the Global Economy, Bearing the Burden: The Impact of Global Financial Crisis on Workers and Alternative Agendas for the IMF and Other Institutions*, at <http://www.laborrights.org/projects/globalecon/ips/ips3.html> (last visited Feb. 24, 2001).

228. *Id.*

229. *Id.*

230. See Mickelson, *supra* note 47, at 23.

231. See Mickelson, *supra* note 47, at 23.

232. See Mickelson, *supra* note 47, at 23.

the ILO has been developing regional plans with funding from the US Department of Labor which includes Brazil.²³³ Trade unions and NGO's in Brazil and other Latin American countries are beginning to regionalize their child labor efforts; pooling resources and sharing experience and knowledge, which promises a more sustainable approach to child labor.²³⁴ Taking these advances to a logical progression, a regional system involving the Organization of the American States (OAS) may help to institutionalize and sustain advances in the fight against child labor, even when individual countries like Brazil cannot maintain their momentum.

V. THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

A. *Legal Basis for the Organization of American States' Human Rights System*

Modeled after Europe's regional human rights system,²³⁵ the legal foundations of the Inter-American Human Rights system rely on the American Convention on Human Rights (American Convention)²³⁶ and the Charter of the Organization of the American States (OAS Charter).²³⁷ The OAS Charter was adopted at the end of World War II in 1948 at the Ninth International Conference of American States in Bogota,²³⁸ with a

233. ILO/IPEC, *Country Program Progress Report: Brazil, August 2000* in GLOBAL MARCH, *Steps in the Right Direction*, supra note 180.

234. See generally, *Quito Declaration: On the Enforcement of Economic, Social, and Cultural Rights in Latin America and the Caribbean*, 2 YALE HUM. RTS. & DEV. L.J. 215 (1998).

235. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222. [hereinafter European Convention]. See also A. Glenn Mower, Jr., REGIONAL HUMAN RIGHTS, A COMPARATIVE STUDY OF THE WEST EUROPEAN AND INTER-AMERICAN SYSTEMS 46 (1991). Of the twenty six rights and freedoms deserving protection in American Convention, eighteen are included in the European Convention.

236. American Convention on Human Rights, Nov. 22, 1969, art. 19, 1144 U.N.T.S. 123. [hereinafter American Convention].

237. Charter of the Organization of American States, Apr. 30, 1948, 119 U.N.T.S. 3 [hereinafter OAS Charter]; see also MOWER, supra note 237, at 43.

238. See Ninth International Conference of American States, Mar. 30-May 2, 1948 in THE INTERNATIONAL CONFERENCES OF AMERICAN STATES 1942-1954, 51 (Pan American

primary focus of preserving human rights in the Americas.²³⁹ The American Convention entered into force in 1978 and conceived a two-tier system incorporating the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights as the enforcement organs of the Inter-American Human Rights system.²⁴⁰ The system's legal authority rests on a system of multilateral consent and ratification.²⁴¹ Today, thirty of the thirty six American States have ratified the Convention and are members of the OAS, including Brazil.²⁴²

1. The Charter of the Organization of American States

At its adoption in 1948, the OAS Charter focused on the fundamental rights of the individual, with scant reference to children's rights.²⁴³ Article 49(a) instructed that member states "will exert the greatest efforts, in accordance with their constitutional processes, to ensure the effective exercise of the right to education, on the following bases: (a) Elementary education, compulsory for children of school age . . ."²⁴⁴ In fact, the Charter tersely specified human rights, significantly, as they appear in Article 3(1), "the fundamental rights of the individual without distinction as to race, nationality, creed or sex."²⁴⁵

2. The American Convention on Human Rights

The American Convention was adopted in 1969, entered into force in 1978, and significantly broadened the Inter-American notion of fundamental human rights.²⁴⁶ The Preamble to the

Union ed., 1958). [hereinafter Ninth International Conference].

239. See Mary Caroline Parker, *'Other Treaties': The Inter-American Court of Human Rights Defines its Advisory Jurisdiction*, 33 AM. U. L. REV. 211, 212 (1983).

240. American Convention, *supra* note 236, art. 33; see also Jo M. Pasqualucci, *The Whole Truth and Nothing But the Truth: Truth Commission, Impunity and the Inter-American Human Rights System*, 12 B.U. INT'L L.J. 321, 339 (1994). Notably, Cuba was removed from the OAS during the Fifth Meeting of Consultation of Ministers of Foreign Affairs in 1962. *Id.*

241. See Mower, *supra* note 235, at 43.

242. ORGANIZATION OF AMERICAN STATES, *History of the OAS*, at <http://www.oas.org> (last visited Feb. 24, 2001).

243. OAS Charter, *supra* note 237.

244. OAS Charter, *supra* note 237, art. 49(a).

245. OAS Charter, *supra* note 237, art. 3(1).

246. See American Convention, *supra* note 240.

Convention clarifies its purpose: "to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man."²⁴⁷ To this end, Articles 1 through 32 (Part II) of the American Convention enumerate the human rights protected and affirm the duties of states as members.²⁴⁸ Articles 33 through 82 (Part III) establish the independent enforcement bodies of the Convention: the Inter-American Commission on Human Rights (the Commission); and the Inter-American Court of Human Rights (the Court).²⁴⁹ Prior to the passage of two critical resolutions however, neither the Charter nor the Convention articulated a standard defining these rights.²⁵⁰

3. The American Declaration of Human Rights and The American Charter of Social Guarantees

Also at the Ninth International Conference of American States in 1948,²⁵¹ the delegates adopted the American Declaration of the Rights and Duties of Man (American Declaration),²⁵² and the Inter-American Charter of Social Guarantees.²⁵³ The American Declaration was not incorporated by reference to the charter, nor by its own terms did it retain the force of positive law.²⁵⁴ Nevertheless, the Declaration has evolved into an authoritative text articulating fundamental human rights observed in the Americas, particularly after the Court in 1989 issued its Advisory Opinion No. 10, bolstering its legal might.²⁵⁵ Today, the Declaration is considered a source of customary

247. See American Convention, *supra* note 240, at Preamble.

248. See American Convention, *supra* note 240, arts. 1-32.

249. See American Convention, *supra* note 240, arts. 33-82.

250. See American Convention, *supra* note 240, arts. 33-82.

251. See Ninth International Conference, *supra* note 238, at 161.

252. See American Convention, *supra* note 236.

253. Inter-American Charter of Social Guarantees in INTERNATIONAL CONFERENCES OF AMERICAN STATES 1942-59, 229 (Pan American Union, ed. 1958) (2d ed. Supp.) [hereinafter Guarantees].

254. See Inter-American Juridical Committee, Report of the Inter-American Council of Jurists Concerning Resolution XXXI of the Conference of Bogota (Inter-American Court to Protect the Rights of Man) (Sept. 26, 1949).

255. See Advisory Opinion OC-10/90, Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, 1989 Int'l Ct. of HR (ser. A) No. 10 (July 14, 1989).

international law,²⁵⁶ and is credited with inaugurating the concept of child rights into the Inter-American lexicon under Article VII, "all children have the right to special protection, care and aid."²⁵⁷ Although the Inter-American Charter of Social Guarantees has not attained the legal notoriety of the American Declaration, it similarly protects "children under fourteen from being employed and children under eighteen from engaging in dangerous work, and commits the states to guaranteeing conditions enabling minors to complete basic education."²⁵⁸

B. *The Inter-American Commission on Human Rights*

Established in 1959, the Commission's primary duty involves promoting and defending human rights in the Americas, as an advisory body to the OAS.²⁵⁹ Amended in 1965, the Commission's statute gave it authority to "examine communications submitted to it and any other available information . . . so that it may make recommendations. . .with the objective of bringing about a more effective observance of human rights."²⁶⁰

The amended statute requires States accused of human rights violations to respond to allegations, and authorizes the Commission to publish its findings of facts, conclusions and settlements.²⁶¹ The new statute also provides for inter-state complaints, friendly settlements, and on-site investigations.²⁶² Further, the statute endows the Commission power to request

256. See Thomas Buergenthal, *International Human Rights Law and Institutions: Accomplishments and Prospects*, 63 WASH. L. REV. 1, 16 (1988).

257. See American Declaration of the Rights and Duties of Man, May 2, 1948, O.A.S. Off. Rec. OEA/Ser. L./V/II.23/Doc. 21 Rev. 6 (1979)[hereinafter American Declaration].

258. See ORGANIZATION OF AMERICAN STATES, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Chapter VI: Recommendation for Eradicating the Recruitment of Children and Their Participation in Armed Conflicts, at <http://www.cidh.oas.org/annualrep/99eng/Chapter6a.htm> (last visited on Feb. 26, 2001) [hereinafter Recommendation on Child Soldiers].

259. See Regulations of the Inter-American Commission on Human Rights, June 29, 1987, art. 1, reproduced in INTER-AM. C.H.R., HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 105 (1985), OEA/Ser. L./V/II.65, doc. 6 (July 1, 1985)[hereinafter Commission Regulations].

260. See David Padilla, *The Inter-American Commission of Human Rights of the Organization of American States: A Case Study*, 9 AM. J. INT'L L. & POL'Y 95, 96 (1993) (quoting Statute of the Inter-American Commission on Human Rights, art. 9, General Secretariat of the Organization of American States & Human Rights 1960-67 601, 605 (1972)).

261. See Bol, *supra* note 59, at 1200.

262. See Padilla, *supra* note 260, at 95-96 (quoting Statute of the Inter-American Commission, art. 18).

advisory opinions from the Court regarding the American Convention or other relevant human rights treaties.²⁶³ The General Assembly approved the Statute in October 1979,²⁶⁴ which outlines the Commission's three primary functions: 1) processing individual complaints regarding allegations of human rights violations; 2) preparing reports on the status of human rights in the individual member states; and 3) proposing human rights initiatives to the OAS to promote contemporary human rights in the region.²⁶⁵ Since the 1980s, the Commission remains the primary vehicle for regional observation of human rights violations in the Americas.²⁶⁶

1. The Complaint Process

The dual competence of the Commission allows it to receive complaints from both state parties alleging that another Member State has violated the American Convention; and from any person(s) or non-governmental organization legally recognized in a Member State alleging a similar violation.²⁶⁷ Although a Member State has never brought a petition against another State; NGO's and individuals have successfully engaged this mechanism to gain access to the Commission's investigatory review function, and to the Court, through Commission referral.²⁶⁸

According to Article 46 of the Convention, a complaint must satisfy procedural requirements before the Commission may proceed on its prosecution, to include: 1. A statement of the facts giving rise to the alleged violation, and the name of the responsible state; 2. Proof of exhaustion of local remedies in accordance with international law; 3. Filing the petition within six months of notice of final judgment affecting the rights of the party alleging a violation; 4. The exclusivity of the Inter-

263. THOMAS BUERGENTHAL, ET AL., *PROTECTING HUMAN RIGHTS IN THE AMERICAS: SELECTED PROBLEMS* 14 (3d ed. 1990).

264. See ORGANIZATION OF AMERICAN STATES, GENERAL ASSEMBLY, *Resolution No. 447*, 9th regular session, (Oct. 1979).

265. See American Convention, *supra* note 236, art. 41.

266. Mower, *supra* note 235, at 68.

267. See American Convention, *supra* note 236, arts. 44 & 45.

268. See Ariel E. Dulitzky & Luguely Cunillera Tapia, *A Non-Governmental Perspective Regarding the International Protection of Children in the Inter-American System of Human Rights*, J. TRANSNAT'L L. & POL'Y 265, 283 -89 (1999).

American system as an international forum for judicial relief; and 5. The name, nationality, profession, domicile, and signature of the person or legal representative advancing the petition.²⁶⁹

Once the Commission receives a petition that satisfies procedural requirements, it may request information from the State who must cooperate,²⁷⁰ or risk the Commission's option of issuing a notice applying Article 42 of its regulations which establishes facts in favor of petitioner.²⁷¹ Article 47 requires the Commission to declare inadmissible any petition: 1. failing to state facts which tend to establish a violation of a protected rights; 2. which is meritless or out of order; or 3. is in substance identical to a complaint the Commission or another international judicial forum or organization has previously entertained.²⁷² The Commission may find the issue amenable to friendly settlement,²⁷³ or it may transmit a confidential report with its conclusions of law and recommendations to the State Member.²⁷⁴ After three months, if the State does not address the recommendations, the Commission may refer the case to the Court or publish its final report, whereby it is incorporated into the Commission's Annual Report presented before the General Assembly of the OAS.²⁷⁵ Since its inception, the Commission has referred only one case to the Court for an adjudication regarding a child's rights,²⁷⁶ and has never referred a case involving child labor.²⁷⁷

269. See American Convention, *supra* note 236, art. 46; see also Padilla, *supra* note 262, at 95-96 (quoting Statute of the Inter-American Commission of Human Rights, art. 34).

270. See American Convention, *supra* note 236, art. 48(1)(d).

271. See Commission Regulations, *supra* note 259, art. 42.

272. See American Convention, *supra* note 236, art. 47; MOWER, *supra* note 235, at 71.

273. See *The Structure of the Inter-American System: The Friendly Settlement before the Inter-American Commission*, 4 CEJIL GAZETTE 2 (1996).

274. See American Convention, *supra* note 236, art. 50(1)(2); see also Advisory Opinion No. 13/93, Inter-American Court of Human Rights, OEA/ser.L./V./III.29doc.4 (Jan. 10, 1994) (Spanish).

275. See American Convention, *supra* note 236, art. 51; Advisory Opinion, No. 13/93, Inter-American Court of Human Rights, OEA/serLV/III.29doc.4 (Jan. 10, 1994) (Spanish).

276. See Aunstraum Villagram, et. al., Case No. 11,383, Inter-American Court Human Rights, at <http://casaalianza.org/EN/human-rights/violations/bosques.shtml> (last visited Feb. 24, 2001) [hereinafter *Guatemalan Street Children Case*]; see also Richard J. Wilson & Jan Perlin, *The Inter-American Human Rights System: Activities During 1999 through October 2000*, 16 AM. U. INT'L L. REV. 316, 326-331.

277. See Dulitzky & Tapia, *supra* note 268, at 274.

2. On-site Investigations and Reporting

A second Commission function is prescribed in Article 18 of its Statute involves the on-site investigation of human rights situations in individual countries.²⁷⁸ As stipulated in Article 59, Commission investigators must have free access to privately interview any persons, groups, or institutions with information relevant to their inquiry.²⁷⁹ These reviews are initiated at the Commission's prerogative, or on request by a particular State Member²⁸⁰ or body politic of the OAS, with the consent of the subject State.²⁸¹ The Commission's intent behind conducting country inspections entails "bring[ing] human rights violations to the attention of the world community and to send a message that such violations would not be tolerated."²⁸² Recent activity of the Commission includes its Report on the Situation of Human Rights in Brazil (1997), the Dominican Republic (1999)²⁸³ and Peru (2000)²⁸⁴ in which it made a series of recommendations in each report with respect to the rights of the child, and wherein the Commission touched lightly on issues of child labor.²⁸⁵

3. Progressive Human Rights Measures

Finally, the Commission's Statute requires it to periodically recommend "progressive human rights measures" to the governments of the OAS.²⁸⁶ Operating as a clearinghouse of

278. See Padilla, *supra* note 260, at 96-97, n.7.

279. See Commission Regulations, *supra* note 259, art. 59.

280. See Commission Regulations, *supra* note 259, art. 58.

281. See Edmundo Vargas, *Las Observaciones In Loco Practicadas Por La Comision Interamericana de Derechos Humanos [Observations In Loco for the Inter-American Commission of Human Rights]*, translated in HUMAN RIGHTS IN THE AMERICAS 294-95 (Comision Interamericana de Derechos Humanos, Organizacion de los Estados Americans, ed., 1984).

282. See Claudio Grossman, *Moving Toward Improved Human Rights Enforcement in the Americas*, A.B.A. HUM. RTS. 16, 17 (2000).

283. See OAS/IACHR, *Report on Situation of Human Rights in the Dominican Republic*, OEA/Ser.L/V/II.104 Doc. 49 rev. 1 (Oct. 7, 1999).

284. See OAS/IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106 Doc. 59 (June 2, 2000).

285. See OAS/IACHR, *Report on the Situation of Human Rights in Brazil, 1997*, OEA/Ser.L/V/II.97 Doc 29 rev. 1, available at <http://www.cidh.org> (last visited on Feb. 28, 2001).

286. See Padilla, *supra* note 260, at 97 (quoting Statute of the Inter-American Commission of Human Rights, art. 18).

diverse interests, the Commission can request information on a range of human rights measures adopted by the individual States, and prepare studies and reports concerning such measures.²⁸⁷ A report is then generated to the government concerned and may be published after securing the subject State's observations, or it may be released in its original form after a deadline for State observations has passed.²⁸⁸

Finally, the Commission may also include progressive human rights measures in its annual report made to the OAS General Assembly where it reports the Commission's activities and progress made toward fulfilling the objectives of the American Convention.²⁸⁹ In 1999, the Commission proposed in its annual report a recommendation to eradicating the recruitment of children and their participation in armed conflicts, wherein the Commission urged American states "to repeal any laws or regulations that permit conscription or voluntary enlistment of adolescents under the minimum age allowed by international instruments . . . forbidding the recruitment of minors of 18 years to participate in armed conflicts."²⁹⁰

4. Special Rapporteur on the Rights of Children

The Commission may also engage special rapporteurs and working groups where clusters of human rights issues converge.²⁹¹ The Commission has appointed special rapporteurs to monitor a variety of issues including those involving displaced people, women's rights, indigenous people, prison conditions and freedom of expression.²⁹² During the 100th regular session of the Inter-American Commission, Dr. Helio Bicudo (Brazil) was named "to study and promote activities for evaluating [the children's] situation and to propose measures for member states

287. MOWER, *supra* note 235, at 71.

288. See Padilla, *supra* note 260, at 95-97 (quoting Statute of the Inter-American Commission of Human Rights, art. 62).

289. MOWER, *supra* note 235, at 72.

290. See OAS/IACHR, *Annual Report of the American Commission of Human Rights, Chapter VI, Recommendation for Eradicating the Recruitment of Children and Their Participation in Armed Conflicts*, available at <http://www.oas.org> (last visited Apr. 18, 1999) [hereinafter IACHR Child Soldiers]. The recommendation was unanimously adopted at the International Labor Conference, June 1999.

291. Grossman, *supra* note 282, at 18.

292. See Dulitzky & Tapia, *supra* note 268, at n.109.

to take.²⁹³

In the first report of the Rapporteur on the Rights of the Child, Dr. Bicudo outlined his objectives in October 1998 to include: "1) specialization and professionalization of the law on children and adolescents; 2) Child exploitation, in its various forms; 3) The impact of socioeconomic factors on the human rights of children."²⁹⁴ In 1999, the Special Rapporteur was urged to include the Commission's Recommendation for Eradicating the Recruitment of Children and Their Participation in Armed Conflicts in the Commission's Annual Report.²⁹⁵ Additionally, the Commission's Special Rapporteur has been coordinating efforts with one of the specialized organs of the OAS, the Inter-American Children's Institute in Montevideo, Uruguay, discussed *infra* at this part (Part V), subsection "D" of this Note.²⁹⁶

C. *The Inter-American Court of Human Rights*

The Inter-American Court is an autonomous organ of the Inter-American system, established on November 22, 1969, with the adoption of the American Convention in San Jose, Costa Rica.²⁹⁷ The OAS General Assembly approved the Statute of the Court in 1979, defining it as "an autonomous judicial institution whose purpose is the application of the American Convention on Human Rights."²⁹⁸ The Convention imparts two distinct judicial functions to the Court: an advisory; and a contentious jurisdiction.²⁹⁹

1. Contentious Jurisdiction

Under this authority, the Court has binding jurisdiction over

293. See OAS/IACHR, *Activities of the Inter-American Commission on Human Rights 1998*, at <http://www.cidh.oas.org/annualrep/98eng/Chapter%2011.htm> (last visited Apr. 21, 2001) [hereinafter Commission Activities 1998].

294. See OAS/IACHR, *Report of the Rapporteur on the Rights of the Child*, at <http://www.cidh.oas.org/annualrep/98eng/chapter%20vid.htm> (last visited Apr. 21, 2001).

295. See IACHR Child Soldiers, *supra* note 290, at 1.

296. See Commission Activities 1998, *supra* note 293, at 3.

297. See OAS/IACHR, *The Organization of American States, Its Organs* 10, at <http://www.cidh.oas.org/Basicos/Basic%20Documents/enbasl.htm> (last visited on Feb. 23, 2001) [hereinafter The Organization of American States].

298. See *id.*

299. American Convention, *supra* note 236, arts. 61-65.

matters concerning the interpretation and application of the Convention.³⁰⁰ Once the Court finds a violation, it may exercise discretion to fashion a remedy for the right violated right, and where appropriate, order fair compensation to the victims.³⁰¹ The statute requires that only the Commission, or parties who have recognized the compulsory jurisdiction of the Court may submit a case before it.³⁰² Cases invoking the Court's contentious jurisdiction are final and not subject to appeal, but parties dissatisfied with a particular judgment may request a clarification from the Court within ninety days of notification of judgment.³⁰³ The Court has recently decided a case involving the slaying of five Guatemalan street children applying international, national and Inter-American law.³⁰⁴ This case establishes important legal precedents relating to the nature and pervasiveness of street children and their rights, but to date the Court has not entertained a case adjudicating international rights proscribing child labor.³⁰⁵ Notably, Brazil accepted the Court's compulsory jurisdiction on December 10, 1998, in accordance with Article 62 of the American Convention.³⁰⁶

2. Advisory Jurisdiction

Observers view the consulting services of the Court as "the most extensive advisory jurisdiction of any international judicial body."³⁰⁷ Any OAS Member state may request an advisory opinion in regard to the interpretation of Inter-American instruments protecting human rights.³⁰⁸ Moreover, Article 64 of the Convention expands its advisory opinions to include 'other treaties concerning the protection of human rights in the American states.'³⁰⁹ Further, any OAS member may request

300. See American Convention, *supra* note 236, art. 62.

301. See American Convention, *supra* note 236, art. 63(1).

302. See American Convention, *supra* note 236, art. 61(1).

303. See American Convention, *supra* note 236, arts. 67-68.

304. See Guatemalan Street Children Case, *supra* note 276.

305. See Dulitzky & Tapia, *supra* note 268, at 284 - 89.

306. See OAS/IACHR, *Follow-up on IACHR Recommendations on its Reports on Member States*, at <http://www.oas.org/cidh/annualrep/99eng/chapter5.htm> (last visited Feb. 27, 2001).

307. See Dinah Shelton, *Improving Human Rights Protection: Recommendations for Enhancing the Effectiveness of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights*, 3 AM. U. J. INT'L L. & POL'Y 323, 325 (1988).

308. See American Convention, *supra* note 252, art. 64(1).

309. See American Convention, *supra* note 252, art. 64(1).

advisory opinions to determine the compatibility of the country's domestic laws with the Convention or 'any other treaty' referred to in Article 64.³¹⁰ In 1982, Peru requested an advisory opinion as to the extent of this jurisdiction.³¹¹ The Court concluded in its advisory opinion that it did indeed possess an advisory jurisdiction, "more expansive than that of all other international courts."³¹² Further, the Court held that a request for an advisory opinion would exceed the limits of its jurisdiction if it "raised issues concerning the obligations of non-OAS member states or non-OAS bodies or organs . . ."³¹³ In essence, its powers extend to the interpretation of any international human rights treaty where it bears directly on the human rights in a Member State.³¹⁴ Although advisory opinions are not binding, they tend to ease political strife, theoretically resolve issues, convey immense moral force, and bring awareness, attention and focus to important human rights issues.³¹⁵ To date, the Court has published 16 advisory opinions, yet none have address child labor or even the broader spectrum of child rights.³¹⁶

D. The Inter-American Children's Institute - A Specialized Organization of the OAS

The OAS Charter outlines various general organs under Article 51, but also refers to the "specialized organizations," or permanent institutions of the OAS system.³¹⁷ The Charter defines them as "inter- governmental organizations established

310. See American Convention, *supra* note 252, art. 64(2).

311. See Parker, *supra* note 239, at 246, n. 12 citing a letter from the Government of Peru to the Secretary of the Inter-American Court of Human Rights (Apr. 28, 1982).

312. See Parker, *supra* note 239, at 222.

313. Parker, *supra* note 239, at 222-223.

314. See Advisory Opinion No. OC-1/82 of Sept. 24, 1982, *Interpretation of the Meaning of Other Treaties, in Article 63 of the American Convention*, reprinted in 22 I.L.M. 51 (1983).

315. See J. Lauchian Wash, et al., *Conference Report, The Inter-American Human Rights System: Into the 1990s and Beyond*, 3 AM. U. J. INT'L L. & POL'Y 517, 528 (1988).

316. See *Advisory Opinions of the OAS*, at <http://www.oas.org> (last visited Mar. 8, 2001).

317. OAS Charter, *supra* note 239, at art. 51. The organs of the OAS listed under Article 51 include: the General Assembly, the Meeting of Consultation of Foreign Ministers Affairs, the Councils (the Permanent Council of the OAS, the Inter-American Economic and Social Council, and the Inter-American Council for Education, Science and Culture), the Inter-American Juridical Committee, the Inter-American Commission on Human Rights, the General Secretariat, the Specialized Conferences and the Specialized Organizations.

by multilateral agreements and having specific functions with respect to technical matters of common interest to the American States.³¹⁸ Currently six organizations maintain this status: the Inter-American Commission of Women, the Pan American Health Organization, the Pan American Institute of Geography and History, the Inter-American Indian Institute, the Inter-American Institute for Cooperation on Agriculture, and the Inter-American Children's Institute (INN).³¹⁹

The INN was established in 1927,³²⁰ and remains a permanent institution to the OAS in Montevideo, Uruguay.³²¹ Since 1989, the OAS General Assembly and the Directing Council of the INN, has been responsible for the inter-American plan of action for needy children, currently consisting of the programs on prevention of drug dependency, rights of the child and the family, rights of disabled children (PANDA), social policies for children (PROINFBI and ALIP), information for children and family (PIINFPA) and Civil Registry for Vital Statistics.³²²

In 1997, the General Secretariat ordered the restructuring of the "administrative dependencies" aligning all of the specialized organizations under the purview of the Office of the Assistant Secretary General, and redefined the INN mission.³²³

Under the Office of the Assistant Secretary General, the INN carries out a variety of mandates including:

1. Providing technical and administrative services to the Pan American Child Congress and the INN Directing Council, and assisting in carrying out their resolutions;

318. OAS Charter, *supra* note 237, art. 130.

319. See Thomas Buergenthal, *The Advisory Practice of the Inter-American Human Rights Court*, 79 AM J. INT'L L. 3, 4 (1985) See also IACHR, *The Organization of American States*, *supra* note 297, at 3.

320. INTER-AMERICAN CHILDREN'S INSTITUTE, INTER-AMERICAN CHILDREN'S INSTITUTE, 50TH ANNIVERSARY, 1927-1977 (1977).

321. See IACHR, *The Organization of American States*, *supra* note 297, at 3.

322. See Report of the Inter-American Children's Institute to the Special Committee on Inter-American Summits Management, OEA/Ser.G CE/GCI-23/95, at <http://www.summit-americas.org/CEGCI%2020Docs/CE-GCI-23-95-eng.htm> (Oct. 17, 1995).

323. See OAS GENERAL SECRETARIAT, Executive Order 97-2, *The Office of the Assistant Secretary General and its Administrative Dependencies*, at <http://www.oas.org/loegal/english/gensec/EX-OR-97.htm> (last visited Feb. 2001).

2. Organizing, coordinating, directing, and supervising the operations of the Institute's Work Program, including seminars, research and training centers;

3. Providing assistance to and coordinating with the host country for meetings for the Pan American Child Congress;

4. Entertaining requests from Member States for measures to improve the welfare of children, the family and the community;

5. Administering and executing programs and projects to promote the study of problems related to motherhood, infancy, adolescence and the family;

6. Preparing and publishing studies and reports on research as to the nature and importance of problems affecting youth for presentation to the General Assembly of the OAS; ***and importantly***

7. Maintaining lines of coordination with the agencies of the United Nations and other public and private national and international organizations with interests similar to those of the Institute, and with all areas of the General Secretariat of the Organization.³²⁴

Available reports do not demonstrate that the INN currently or ever has received a specific mandate to study or analyze the phenomenon of child labor. Nevertheless, the INN organized the Commission's recent Recommendation for Eradicating the Recruitment of Children and Their Participation in Armed Conflict, which is a positive step in the integration of anti-child labor policies consistent with Inter-American human rights philosophies.³²⁵

VI. PROPOSALS FOR REGIONALIZING THE PLAN OF ATTACK

The Organization of American States may be the world's most progressive regional human rights organization, featuring legal, administrative and technical infrastructures uniquely designed for regionalizing human rights efforts. Inherently concerned with the welfare of its children, the OAS evinced

324. See *id.* at Chapter VII, The Office of the Inter-American Children's Institute.

325. See IACHR Child Soldiers, *supra* note 290, at 3, n.1.

sensitivity to children and their particular vulnerability, long before popular culture awakened to the concept of their rights. While the Organization consistently demonstrates a willingness to broadly defend children's rights, in reality the OAS has been roundly criticized for its lack of efforts in this area, particularly with respect to child labor.³²⁶ As one author notes, the policies of the OAS apparently reflect the general air of apathy for children's rights in its constituent countries; "[c]hildren's rights in this region of the world are not respected or promoted, and worst of all, they are habitually ignored."³²⁷

Although Brazil may be similarly criticized, the country has developed a number of innovative programs, laws, policies and initiatives which can serve as a basic model from which to design the OAS child labor eradication strategy. These efforts are well designed under the guidance of the International Labor Organization, and have tremendous support worldwide. Further, they are evaluated for regional replication and adaptation. Despite the OAS' exceptional vantage to incorporate ILO/IPEC objectives on a regional front, to date, neither the ILO nor the OAS have forged a partnership to regionalize child labor efforts.³²⁸ Moreover, Brazil has underutilized the resources and services handled by the OAS, and may tap into the various protective, administrative and advisory mechanisms available to further its national child labor goals, while promoting the regionalization of its national effort.

326. See Janelle M. Diller & David A. Levy, *Child Labor, Trade and Investment: Toward the Harmonization of International Law*, 91 AM. J. INT'L L. 664, 676 (1997). "[L]ittle effort to eliminate extreme forms of child labor appears in the practice of the supervisory organs of the inter-American human rights system and the OAS Secretariat's developmental arm." *Id.* See also Joan Smith, *North American Free Trade and the Exploitation of Working Children*, 4 TEMP. POL. & CIV. RTS L. REV. 57, 113 (1994) (words of Hoda Badran, "[t]he deplorable status of children is the result of misguided development strategies that pay them little heed." *Id.*

327. See Dulitzky & Tapia, *supra* note 268, at 284.

328. E-mail from Pedro Americo, ILO/IPEC Coordinator Brazil, to Charles Mantei (Apr. 12, 2001) (on file with author). "[The OAS and] IPEC/ILO Brazil had never undertaken any joint action together vis-à-vis child labour. To tell you the truth, I have never heard about OAS participation in such area." *Id.* See also E-mail from Yolanda Chave Fahrni, ILO/IPEC Geneva, to Charles Mantei (Apr. 11, 2001) (on file with author). "Their (sic) is no partnership with OAS and IPEC so fare (sic)." *Id.*

1. Petitions to the Commission

In light of Brazil's ratification of the ILO Convention on the Eradication of Worst Forms of Child Labor, and Article 29 of the American Declaration, petitions from Brazil involving child labor issues ought to receive detailed scrutiny for prosecution. The Commission should assign priority to these cases in light of a child's ironic situation of depending on others to enforce her rights that he or she likely cannot completely understand. Moreover, the Commission can bring more, including child rights cases before the Court to issue binding resolutions. Now that Brazil has accepted the contentious jurisdiction of the Court, the Commission should make every attempt to forward the cases pending before it involving Brazilian children,³²⁹ to the Court for prosecution.

Brazil's NGO's should consider preparing class actions for the Commission review concerning egregious forms of child labor documented in Brazil. Jennifer Bol, in her 1998 Case Study of Guatemala³³⁰ has detailed the process Brazilian NGO's may use to increase access to the Commission to protect Child labor Rights. Her study includes a rich assessment of benefits and limitations using the Inter-American system to advance child labor petitions.³³¹ Similarly, Ariel E. Dulitzky and Luguely Cunillera Tapia from the Center for Justice and International Law (CEJIL) in Washington D.C., have formulated methods for designing petitions to the Commission for the protection of Children's Rights specifically for non-governmental agencies, which may serve as guidelines for preparing petitions in Brazil.³³² Moreover, Casa Alianza Latin American recently petitioned the Commission's Special Rapporteur on the Rights of Children of the Americas to evaluate the plight of sexually abused children in Costa Rica, and is an example of formal communications between the Commission and legally recognized NGO's.³³³

329. Namely, Edson Damiao Calixto (Case No. 11,285); Roselandio Borges (Case No. 11,290), and Aluisio Clvacanti Jr. & Claudio Aparecido de Moraes (Case No. 11,286).

330. *See generally*, Bol, *supra* note 59.

331. *See generally*, Bol, *supra* note 59.

332. *See generally*, Dulitzky & Tapia, *supra* note 268.

333. *See* Presentation to the Inter-American Commission on Human Rights on the Subject of the Commercial Sexual Exploitation of Children in Costa Rica, Mar. 3, 2000, at <http://www.casa-alianza.org/EN/human-rights/sexual-exploit/docs/0003audencia.shtml>.

2. On-site Investigation and Reporting

Brazil may request on-site monitoring of child labor abuses in Brazil through the Commission. When the Commission conducts a country review *in loco*, it should provide a specific component on child labor particularly in light of the broad ratification of the ILO's Convention on the Eradication of the Worst Forms of Child Labor, throughout the Americas. Until now, the Commission has relied on figures on the pervasiveness of child labor from the governments themselves, and therefore has not actually independently studied incidences of exploitative child labor through its own on-site inspection. In fact, the country studies pay meager attention to child rights issues, and have only recently incorporated segments dedicated to child labor (and only in the general context of children's rights). Consistent with the Commission's recent adoption of the Recommendation for Eradicating the Recruitment of Children and Their Participation in Armed Conflicts, on-site investigations must now report on the general incidence and progressive decline of children employed as soldiers in the Americas.

3. Special Rapporteur on the Rights of Children

The role of the special rapporteur must be expanded to consider the issue of child labor. The Commission's broad mandate will allow him to look at this issue, particularly in light of the goals of the American Declaration, the Declaration on the Rights of the Child, and the ILO's Minimum Age Convention and the Convention on the Eradication of the Worst Forms of Child Labor. Continued integration of the rapporteur's efforts with the Inter-American Children's Institute in Montevideo is vital. In his first report, the special rapporteur scarcely addressed the issue of child labor, though it is one of the most critical issues associated with children in the region.

4. The Inter-American Court of Human Rights

Brazil may request the Court's advisory opinion on various issues confronting child labor including how one might reconcile its treaty obligations under the ILO Minimum Age Convention and the ILO Child Labor Convention with existing laws, social

realities, and MERCOSUL.³³⁴ Although judicial intervention will not cure the problem of child labor as Judge Thomas Buergenthal aptly noted:

[L]ike medical doctors, who also treat mainly symptoms, courts can do a great deal of good without being able to affect the underlying causes. For example, there is a great need, in our hemisphere to legitimize the human rights debate, to give the people of our region some tangible examples of international human rights justice and to demonstrate that it is possible to resolve many human rights issues without resort to violence.³³⁵

Herein, the Court may provide insight and legitimacy to the regionalization of child labor policies in Brazil and in other countries who have adopted its compulsory jurisdiction. Further, the court's available remedies and ability to mobilize moral persuasion, are attractive and salutatory effects of bringing individual child labor claims before its jurisdiction.

5. The Inter-American Children's Institute

The INN's function and purpose demand the integration of international anti-child labor initiatives. The institute is specially programmed for regional initiatives involving child rights, and must modernize its agenda to include child labor. Its facilities and staff perform training, seminars, and research on children rights, and its own mandate requires it to adopt successful measures created in Member States for the purpose of advancing child rights. The INN is staffed to prepare studies and reports, and more importantly, is required to coordinate efforts with the United Nations and other international organizations with interests similar to its interests. The INN may adopt an array of proven successful anti-child labor components of the ILO/IPEC program such as:

1. Designing the OAS Partnership (or MOU) with the ILO to include various program components;
2. Coordinating a regional Global March campaign;³³⁶

334. Regional trade/custom union between Uruguay, Argentina, and Brazil.

335. See Scott Davidson, *The Inter-American Court of Human Rights* 5 (1992) (quoting Thomas Buergenthal, *The Inter-American Court of Human Rights and the OAS*, 7 *HUM. RTS. L.J.* 157, 164 (1986)).

336. Global March against Child Labor is actively supported by IPEC and involves a

3. Incorporating regional Statistical Information and Monitoring Program(SIMPOC) into its current child rights monitoring system;
4. Designing a regional child labor inspector's training and monitoring program;
5. A child labor data clearinghouse analyzing regional and sub-regional trends in child labor;
6. Hosting regional Non-governmental Organizations activities and conferences;
7. Publicizing successful child labor reform in the Americas;
8. Creating awareness and publicity campaigns condemning child labor;
9. Standardizing trade union codes of conduct for child labor;
10. Evaluating customs unions codes of conduct for child labor
11. Replicating successful models in the region; and
12. Assessing the feasibility of regional minimum wage programs.

The Inter-American Children's Rights Institutes holds the greatest promise of regionalizing child labor efforts in the Americas, yet may be the most underutilized of all the specialized institutions of the OAS. Considering its broad mandate, design, and function, the INN should begin expanding regional child labor standards and initiatives. When properly galvanized, this specialized agency, will advance the ILO/OAS child labor initiatives in the region, in unprecedented directions throughout the Americas. Moreover, the INN has the benefit of the Brazilian Model, designed for diverse ethnic, social, and demographic populations, with a decade of experience to share with the INN in program development.

VII. CONCLUSION

The wisdom of history predicts that eliminating child labor in Brazil will be a slow and uneven process, with poorer and

agricultural states lagging indefinitely. Opposition will be fierce for decades to come, and the laws will remain long inferior to the enormous social evolution that will finally assimilate effective national standards on child labor. In this respect, Brazil perhaps is fighting against time and history, attempting to control child labor within years; not decades, not centuries. Despite the renewed democratization and economic growth over time, Brazil has not transformed itself into an advanced, industrialized nation. It continues this struggle though, in reality it remains incapable of universalizing political ideals directly. Still, it has developed one of the world's most dynamic child labor reforms featuring unprecedented programs and community action unavailable to countries who industrialized a century ago. So, perhaps Brazil's time is coming soon. By simple destiny, the Organization of American States will play a lead role in Brazil's effort one way, or another. The progressive character of the OAS promises to provide Brazil with the assistance it needs to change its fate, ultimately. With the vigorous assistance of international and regional organizations and persistence in changing social norms and industry standards, perhaps there is hope that the one day soon, the working children of Brazil, and those everywhere in the world, will find a way to be only children.