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Using International Law to Fight Child Labor: A Case Study of Guatemala and the Inter-American System

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USING INTERNATIONAL LAW TO FIGHT
CHILD LABOR: A CASE STUDY
OF GUATEMALA AND THE
INTER-AMERICAN SYSTEM

JENNIFER BOL^{*}

Por es bello
amar el mundo
con los ojos
de los que no han nacido todavia
—Otto Rene Castillo (Guatemala)

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INTRODUCTION

In January 1996, twelve-year-old Craig Kielburger of Thornhill, Ontario confronted Canadian Prime Minister Jean Chrétien during his trade mission in Asia on the subject of child labor. The meeting made Kielburger a media celebrity and put child exploitation on the

Canadian government's agenda.¹ A few months later, the leader of a tiny U.S. non-governmental organization ("NGO"), the National Labor Committee Education Fund in Support of Worker and Human Rights in Central America, made allegations at a Congressional hearing on labor abuses that Kathy Lee Gifford's clothing line for Wal-Mart was manufactured by exploited underage workers in Honduras.² The ensuing brouhaha began with the television celebrity's indignant denial of the accusations in a tearful public outburst and led to her public crusade against the exploitation of children.³

The issue of child labor has captured the attention of academics as well. Although it appears to be an indisputable, universal concern, in reality, it creates a minefield of controversies. These controversies cut to the heart of the major issues in international relations today, including, state sovereignty, economic development, international labor rights, cultural sovereignty, poverty, racism, and inequality.

This paper addresses the issue of child labor by considering the usefulness of public international law, particularly international human rights law, as one potential solution to the problem of child labor. Specifically, it focuses on using the Inter-American system for the protection of human rights as a tool in the fight against child labor in Guatemala.

Guatemala provides a strong case study for the problem of child labor in Latin America. It is a country with some of the worst socio-economic indicators in the hemisphere and, despite a number of governmental and non-governmental initiatives to deal with the problem, child labor remains pervasive in many sectors of the economy. Guatemala has also ratified many international human rights instruments, including instruments on labor rights and children's rights, and has

1. See *PM Disappoints Child Labour Activist; Young Canadian Draws Vague Commitment from Chretien*, GUARDIAN, Jan. 17, 1996, at A10; G. Fraser, *School No Problem for Youthful Child-Labour Fighter*, GLOBE AND MAIL, May 2, 1996, at A14.

2. See Steven Greenhouse, *A Crusader Makes Celebrities Tremble*, N.Y. TIMES, June 18, 1996, at B4.

3. See, e.g., Barry Bearak, *Kathie Lee and the Sweatshop Crusade*, L.A. TIMES, June 14, 1996, at A1; Steven Greenhouse, *Live With Kathie Lee and Apparel Workers*, N.Y. TIMES, May 31, 1996, at B3; Susan Chandler & Wendy Zellner, *Prime Time for Sweatshops*, BUS. WK., June 17, 1996, at 44.

accepted the compulsory jurisdiction of the Inter-American Court of Human Rights.

The Inter-American system is a strong forum for examining the potential use of international human rights law in this area. The Inter-American system is a well-developed regional human rights system that has demonstrated a willingness to make broad judgments to ensure respect for human rights. Moreover, it has shown increasing concern about economic, social, and cultural rights, while functioning in an under-developed region.

Part I of this paper discusses why child labor is a "problem" by examining three different aspects of the issue: what child labor is, why we are concerned about it, and how it can be eradicated. Part II focuses on Guatemala, outlining the country's socio-economic conditions and briefly outlining where child labor is found. Part III considers what has already been done in Guatemala to eliminate child labor. Part IV discusses the potential role an international mechanism could play and considers some of the alternatives to using the Inter-American system. Part V addresses the Inter-American system, explaining what it is, what its advantages are, and how a child labor petition might proceed. This section also outlines the international human rights obligations that could be used to address child labor in the American Convention on Human Rights,⁴ the American Declaration on the Rights and Duties of Man,⁵ and other international human rights instruments ratified by Guatemala. Finally, Part VI examines the limitations of using international litigation in general, and the Inter-American system in particular, as a tool in the fight against child labor. The final section also includes a consideration of state responsibility, the difficulty of litigating economic rights, and the need for flexible remedies.

4. American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, OEA/Ser. L/V/II.23 doc. rev. 2, 1 (entered into force July 18, 1978) [hereinafter American Convention], *reprinted in* BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/Ser. L/V/II.71, doc. 6 rev. 1 [hereinafter BASIC DOCUMENTS].

5. American Declaration of the Rights and Duties of Man, May 2, 1948, O.A.S. res. XXX, adopted by the Ninth International Conference of American States, Bogota, Columbia, O.A.S. Off. Rec. OEA/Ser. L/V/II.23 doc. 21 rev. 6 [hereinafter American Declaration], *reprinted in* BASIC DOCUMENTS, *supra* note 4, at 17.

I. WHY ARE WE CONCERNED ABOUT CHILD LABOR?

A. WHAT IS CHILD LABOR?

The International Labour Organization ("ILO") estimates that there are at least 120 million children between the ages of five and fourteen worldwide who work full-time; when combined with the children for whom work is a secondary activity, the number jumps to 250 million.⁶ About ninety-five percent of these children live and work in developing countries.⁷ Asia accounts for more than fifty percent of child workers, but Africa has the highest percentage of child workers at one in three.⁸ In Latin America, an estimated twelve percent to twenty-six percent of children work.⁹ Statistics on the incidence of child labor, however, are extremely unreliable. Many developing countries do not have accurate records of economic activity and all states generally do not record illegal economic activity.¹⁰ Measuring the extent of child labor is also difficult because there is no generally accepted definition of "child labor."¹¹

The definition of "child" poses the first problem. Some cultures view childhood biologically rather than chronologically.¹² Thus, a child may be deemed ready to take on the responsibilities of adulthood upon reaching a biological stage rather than reaching a particular numerical age.¹³ In certain languages, there is no word for the period between infancy and adulthood; the word for "child" means

6. See INTERNATIONAL LABOUR ORGANIZATION, CHILD LABOUR: TARGETING THE INTOLERABLE 7 (1996) [hereinafter INTOLERABLE].

7. See BUREAU OF INT'L LAB. AFF., U.S. DEP'T OF LAB., BY THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN AMERICAN IMPORTS 2 (1994) [hereinafter ILAB 1994].

8. See *id.* at 10-11.

9. See ALEC FYFE, CHILD LABOUR 11 (1989) (citing ILO paper, U.N. seminar, 1985). According to ILO statistics compiled for 1995, the Latin American country with the highest percentage of working children is Haiti at over 25%, while about 16% of children in Brazil, Guatemala, and Dominican Republic are working. See *Economically Active Population, Estimates and Projections, 1950-2010*, 16 WORLD OF WORK, June/July 1996, at 13.

10. See ILAB 1994, *supra* note 7, at 9.

11. See Olga Nieuwenhuys, *The Children of the Rural Poor*, in CHILDREN'S LEFECORLDS: GENDER, WELFARE AND LABOUR IN THE DEVELOPING WORLD 24, 24-28 (1994).

12. See *id.*

13. See *id.*

solely a kinship relationship.¹⁴ Even accepting a chronological approach to age, not all cultures agree that childhood should last as long as it does in the West. Developing countries frequently argue that they lack the resources to keep children out of the workforce and in school as long as in Western countries.¹⁵

The United Nations Convention on the Rights of the Child ("UNCRC") defines childhood as extending to the age of eighteen unless domestic law provides otherwise.¹⁶ The ILO has also adopted a chronological approach to defining childhood, but has tried to take into account the realities of developing countries. In the Convention Concerning the Minimum Age for Admission to Employment ("ILO Convention No. 138"),¹⁷ the minimum age of work must not be less than the age of completion of compulsory schooling and, in any case, cannot be less than fifteen years old.¹⁸ The minimum age is eighteen years old for work that is "likely to jeopardise the health, safety or morals of young persons."¹⁹ In an effort to be sensitive to the needs of developing countries, however, the Convention allows countries whose economy and educational facilities are "insufficiently developed" to temporarily lower the basic age to fourteen.²⁰ Similarly, the minimum age for dangerous work can be reduced to sixteen "on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity."²¹ The Convention permits thirteen-year-olds to perform light work that is not likely to be harmful to their health or development, and that does not interfere with their education or

14. *See id.* at 24. Nieuwenhuys also notes that in some societies, girls are considered to have shorter childhoods than boys. *See* Alain Morice, *The Exploitation of Children in the Informal Sector: Proposals for Research*, in CHILD WORK, POVERTY AND UNDERDEVELOPMENT 136 (Gerry Rodgers & Guy Standing eds., 1981).

15. *See* FYFE, *supra* note 9, at 73.

16. Convention on the Rights of the Child, Nov. 20, 1989, U.N. Doc. A/Res/44/25, art.1, *reprinted in* 28 I.L.M. 1448 [hereinafter UNCRC].

17. Convention Concerning the Minimum Age for Admission to Employment, June 26, 1973, 1015 U.N.T.S. 297.

18. *See id.* art. 2(3).

19. *Id.* art. 3(1).

20. *See id.* art. 2(4).

21. *Id.* art. 3(3).

training. Once again, developing countries can reduce this age by one year.²²

Another definitional problem arises with the term "work." In the West, it is common and generally encouraged for children at a relatively young age to seek part-time employment delivering newspapers or babysitting.²³ In addition, a large number of children in all societies do some form of unremunerated work within the family unit.²⁴ In traditional and semi-agrarian societies, this form of child work is commonly viewed as "a rehearsal for adult life Given the absence of or the limited opportunities for vocational training, it performs an indispensable function in transmitting skills and in facilitating social adaptation."²⁵ Work within the family unit may also be considered to be a duty, an honor, or an expression of family solidarity.²⁶

Several scholars caution that it is dangerous to assume that working for one's family necessarily protects a child from the exploitation commonly found in the paid labor force.²⁷ Nevertheless, whether child work is within the family or the paid labor force, it is not always bad for the child or society:

[C]hild work can be a positive experience and, in the best circumstances, children's work can prepare them for productive adult life Therefore, children's work can be an integral part of family life and can contribute to their healthy development. It can also build their confidence and self-esteem. Child work can then be a painless and gradual initiation into adult life.²⁸

Child labor, then, really refers to a certain subset of child work. In 1983, the Director-General of the ILO defined "child labor" as:

22. See *id.* arts. 7(1) & 7(4).

23. See FYFE, *supra* note 9, at 3-4 (discussing positive examples of childhood work).

24. See *id.* at 14-15.

25. INT'L LABOUR CONF., 69th SESS., REPORT OF THE DIRECTOR-GENERAL, CHILD LABOUR 15 (1983) [hereinafter CHILD LABOUR EXTRACT].

26. See FYFE, *supra* note 9, at 71 (citing representatives of Algeria, Bangladesh, Columbia, Egypt, Ivory Coast, and Syria at a United Nations seminar in 1985).

27. See *id.*; Nieuwenhuys, *supra* note 11, at 198.

28. FYFE, *supra* note 9, at 21.

[W]ork that places too heavy a burden on the child; work that endangers his safety, health or welfare; work that takes advantage of the defenselessness of the child; work that exploits the child as a cheap substitute for adult labour; work that uses the child's effort but does nothing for his development; work that impedes the child's education and training and thus prejudices his future.²⁹

In essence, child labor is work that is both harmful to a child's physical, mental, or emotional development, and to the economic development of society as a whole.³⁰ One of its defining characteristics is exploitation—child laborers generally have no choice about whether they work or under what conditions they work.³¹ The introduction to Peter Lee-Wright's book, *Child Slaves*, articulately summarizes the difference between child work and child labor:

At about the age when most European children start full-time schooling, hundreds of thousands of their contemporaries start a lifetime of drudgery in the factories and fields of the Third World. By the hour at which the average European adult climbs out of bed, thinking of the eight-hour day ahead, many of those child labourers in the Third World will already have put in several of their 12 to 16 daily hours. For them, there is no overtime payment, no weekend off, no holiday and no future to speak of. These are not children doing a part-time paper-route to earn pocket money before going to school. They are the poor of the world; they work to save themselves and their families from starvation, and their number is increasing.³²

B. WHAT IS HARMFUL ABOUT CHILD LABOR ?

The real problem in America is not child labor, but child idleness. You cannot convince me that it hurts a child either physically or morally to make him work. Where one child, in my experience, had been injured from farm work, ten thousand have gone to the devil because of lack of occupation.—Senator Charles S. Thomas (1925)³³

Senator Thomas's opinion on child labor was not an uncommon sentiment in Western society in the nineteenth and early twentieth

29. Andrea Giampetro-Meyer, et al., *The Exploitation of Child Labour: An Intractable Problem?*, 16 LOY. L.A. INT'L & COMP. L.J. 657, 659 (1994).

30. See FYFE, *supra* note 9, at 21 (discussing the implications of child labor).

31. See *id.* at 18-19.

32. PETER LEE-WRIGHT, *CHILD SLAVES* 7 (1990).

33. RONALD B. TAYLOR, *SWEATSHOPS IN THE SUN: CHILD LABOR ON THE FARM I* (1973) (quoting Senator Charles S. Thomas).

centuries.³⁴ As the stories of Craig Kielburger and Kathy Lee Gifford demonstrate, however, public opinion on child labor today is quite different.³⁵ An increasing amount of academic research and writing is now considering the harmful effect of child labor. The types of harm identified in the writing can be divided into four groups: physical harm to the child, developmental harm to the child, exploitation of the child's status and position, and harm to the general society.

1. Physical Harm

Concern about the physical effects of work on children focuses on two different issues: children who work in inherently dangerous or unhealthy occupations and work that impacts more harshly on children than on adults doing the same job. The first issue is a moral concern that human beings under a certain age should not have to jeopardize their future development by working in a dangerous environment. Dangerous occupations include military service,³⁶ prostitution, mining, construction, industrial or agricultural work with dangerous machinery or chemicals, and street work.³⁷

A growing body of literature suggests that children often have a greater risk of injury or harm than adults in the same occupations.³⁸ Children are more likely to suffer workplace accidents due to fatigue, inattention, poor judgment, and insufficient knowledge of work processes. In addition, the machinery, tools, and layout of most work-

34. See SELECTED ARTICLES ON CHILD LABOUR 4 (Edna D. Bullock, ed., 1911) (noting that people approved of the apprenticing of young children under Elizabethan poor laws and that fear of idleness in children was a product of the "Puritan work ethic"). In the words of an 18th century educational reformer: "It was a disgrace to any Parish, to see the children of the Poor, who are old enough to do any kind of work, running about the streets ragged and dirty." PAMELA HORN, CHILDREN'S WORK AND WELFARE, 1780-1890, 9 (1994).

35. See INTOLERABLE, *supra* note 6, at 3 (noting that child labor is now a concern of both developing and industrialized countries).

36. See David C. Pitt, *Child Labour and Health*, in CHILD LABOUR AND HEALTH: PROBLEMS AND PROSPECTS 10, 21 (Usha S. Naidu & Kamim R. Kapadia, eds., 1985) (stating that "[t]here may be some benefits in regular food, clothing and shelter, and medical attention, but this can hardly compensate for the dangers of exposure to war or to the indoctrination into a violent philosophy that is part and parcel of a military education").

37. See *id.* at 20-21; FYFE, *supra* note 9, at 21-24.

38. See FYFE, *supra* note 9, at 21-24.

places are designed for adults.³⁹ When child workers do have accidents, they also tend to be more serious than those of adult workers.⁴⁰ For example, jobs that require children to carry heavy loads may lead to deformation of the pelvis or the spinal column because the bones of children are soft and not fully developed.⁴¹

Studies also show that child workers suffer more serious health effects from dangerous environmental conditions than adults.⁴² According to a 1984 study on occupational health in developing countries, children who perform agricultural work die of exposure to pesticides more often than from the most common childhood diseases put together.⁴³ Children working near chemicals or radiation also have a much higher incidence of disease than adults who work in the same environment.⁴⁴ Young workers are more susceptible to hearing loss than adult workers and have a lower heat tolerance.⁴⁵ Environmental effects may be exacerbated because child workers are usually given menial jobs involving greater exposure to solvents, alkalis, and toxic substances.⁴⁶

Child labor is also linked to poor health. Child laborers, in general, are susceptible to communicable diseases due to malnutrition, anemia, hard labor, fatigue, and inadequate sleep.⁴⁷ Malnutrition is a particularly serious problem.⁴⁸ Although poverty rather than work causes malnutrition, work increases nutritional needs that often can-

39. See COMBATING CHILD LABOUR 3 (Assefa Bequele & Jo Boyden eds., 1988).

40. See INTOLERABLE, *supra* note 6, at 8-9.

41. See Pitt, *supra* note 36, at 16; INTOLERABLE, *supra* note 6, at 8.

42. See COMBATING CHILD LABOUR, *supra* note 39, at 3 (citing WORLD HEALTH ORGANIZATION, CHILDREN AT WORK: SPECIAL HEALTH RISKS, Technical Report Series 756 (1987)).

43. See INTOLERABLE, *supra* note 6, at 3 n.3 (citing J. Jeyaratnam, *1984 and Occupational Health in Developing Countries*, SCANDINAVIAN J. ON WORKING ENV'T & HEALTH, No. II, 1985).

44. See *id.* at 8-9; Pitt, *supra* note 36, at 18.

45. See INTOLERABLE, *supra* note 6, at 9.

46. See *id.* at 8.

47. See P.M. Shah, *Specific Health Problems of Working Children: Alternative Approaches for Health Care*, in CHILD LABOUR AND HEALTH: PROBLEMS AND PROSPECTS, *supra* note 36, at 114-16 (discussing illnesses affecting working children in Africa, Asia, and South America).

48. See FYFE, *supra* note 9, at 21.

not be met.⁴⁹ Child work and malnutrition can become key factors in a vicious cycle. Malnutrition and anemia reduce productivity thus requiring more time to accomplish the same task. Overexertion caused by energy deficiency is most problematic in jobs where children are expected to lift or carry loads that were intended for adults, such as bales of hay or cartons.⁵⁰

Poor nutrient intake can also halt the growth spurts that normally occur in childhood.⁵¹ A study in Japan found a difference of four centimeters in height between a group of children who had begun working before the age of fourteen and a group who had begun working after the age of eighteen. The two groups of children were of comparable height at the age of twelve.⁵² At a moderate level of work, undernourished subjects were also found to require a significantly higher heart rate to accomplish the same workload as their better nourished counterparts.⁵³

2. Developmental Harm

Even where child work is not physically dangerous, it is harmful when it interferes with a child's opportunity to receive an education or vocational training. Child work is particularly a problem when the work itself is dull and repetitive and does not help the child develop skills. Lack of education has serious consequences on a child's ability to improve his or her position in the labor market in later years.

The availability of compulsory, free education is essential, but it is not enough in itself to guarantee an adequate level of schooling. In many cases, the cost of books and uniforms and the opportunity cost of taking a child out of the labor force prevent families from taking advantage of free education.⁵⁴ In addition, in countries with high unemployment and for many people who work in the informal econ-

49. *See id.*

50. *See Pitt, supra* note 36, at 16 (discussing the physiological effects of overloading on children whose bone structure is still soft).

51. *See Shah, supra* note 47, at 114-15 (discussing the effects of malnutrition on children); *see also* FYFE, *supra* note 9, at 21 (noting the adverse effect of poor nutrition and manual labor on growth spurts).

52. *See Shah, supra* note 47, at 115.

53. *See id.*

54. *See id.* at 113.

omy, families may not consider formal education to be worthwhile.⁵⁵ Unaccommodating scheduling and unpractical curricula contribute to this problem.⁵⁶

Work may interfere with education even when a child attends classes. Evidence suggests that the education and development of children who try to combine work with school can suffer considerably if the work is fatiguing or if the hours do not leave enough time for rest, recreation, and schoolwork.⁵⁷ Statistics on enrollment also do not reflect regularity of attendance, daily duration of studies, or the interference of seasonal jobs with education.⁵⁸

Finally, certain jobs can also negatively impact a child's social or emotional development. Developmental deficiencies are a general concern where children start working at too young an age, particularly where the work is outside of the family unit. Certain occupations such as street work, military service, and child prostitution are also widely considered to have a negative effect on a child's social development because children suffer "more devastating psychological damage from living and working in an environment in which they are denigrated or oppressed."⁵⁹

3. *Exploitation*

One of the unique characteristics of child labor is that the employers consider it a source of cheap labor and a means for quick profits.⁶⁰ Child workers are often hired specifically because they can be

55. See FYFE, *supra* note 9, at 25 (noting that periods of high unemployment augment labor divisions by providing an incentive for the rich to keep their children in school). Poor children are less likely to be able to finish even their primary education. *See id.*

56. See RICHARD ANKER & H. MELKAS, ECONOMIC INCENTIVES FOR CHILDREN AND FAMILIES TO ELIMINATE OR REDUCE CHILD LABOUR 9 (1996).

57. See CHILD LABOUR EXTRACT, *supra* note 25, at 17.

58. See Rodgers & Standing, *The Economic Roles of Children: Issues for Analysis*, in CHILD WORK, POVERTY AND UNDERDEVELOPMENT, *supra* note 14, at 9 (analyzing school activity patterns and the difference between school enrollment and school attendance).

59. INTOLERABLE, *supra* note 6, at 7.

60. BAL KRISHAN SHARMA & VISHWA MITTAR, CHILD LABOUR AND URBAN INFORMAL SECTOR 9 (1990); *see also* B.M. DINESH, ECONOMIC ACTIVITIES OF CHILDREN: DIMENSIONS, CAUSES AND CONSEQUENCES 34 (1988) (noting that children are paid less than adult laborers and have a less developed ego and sense of status consciousness).

paid less than adults. Employers reason that the decreased productivity of a child justifies the wage differential. Child workers, however, are frequently paid significantly lower wages than adults when the same amount of work is completed and workers are paid at a per piece rate.⁶¹

Wages are only one area in which child workers are exploited. Employers often have other motivations for hiring children. They may prefer to hire child workers because children are more likely to be docile workers.⁶² Children are also unlikely to know their rights or to be able to exercise them.⁶³ This is particularly true of workers under the age specified in domestic legislation because such workers have no legal rights and usually cannot unionize.⁶⁴ According to Bequele and Boyden: "Child labour is virtually synonymous with labour without representation or rights."⁶⁵

Children are easy to exploit physically and sexually because of their age and position in society.⁶⁶ Abuse of girls who work as domestics⁶⁷ or in export-processing factories is common.⁶⁸ Child prostitution is widely considered a particularly egregious form of exploitation.⁶⁹

61. *See id.*

62. *See* FYFE, *supra* note 9, at 120 (stating that "children make for an easily disciplined labour force because of their subordinate position in society"); *see also* DINESH, *supra* note 60, at 34 (noting that child workers are less afflicted by feelings of guilt and shame than adult workers).

63. *See* COMBATING CHILD LABOUR, *supra* note 39, at 7 (explaining that employers exercise considerable power and control over underage workers).

64. *See id.*

65. *Id.*

66. *See* Shah, *supra* note 47, at 116.

67. *See id.*; *see also* JAMES CHALLIS & DAVID ELLIMAN, CHILD WORKERS TODAY 18 (1979) (noting that the use of Amer-Indian children in Central and South America resembles chattel slavery); FYFE, *supra* note 9, at 15.

68. *See* KURT PETERSEN, THE MAQUILADORA REVOLUTION IN GUATEMALA 94 (1992) (discussing the rampant abuse of female employees by fellow workers and management in Guatemala).

69. *See* FYFE, *supra* note 9, at 23 (discussing the increasing worldwide incidence of child prostitution, child pornography, and the resultant sexually transmitted diseases).

4. Harm to Society

In addition to the harmful effects on the individual child, the widespread use of child labor has damaging effects on the larger society. The contribution of child labor to family income can be substantial and necessary for individual households.⁷⁰ On the macro level, however, child employment is associated with higher levels of adult unemployment, greater inequality of income and wealth, and a decrease in the overall wage rate for adults.⁷¹ One writer estimates that if all the workers under the age of eighteen in India were removed from the labor force, fifteen to twenty million unemployed adults would be able to find jobs.⁷² In addition, children who have to work full-time do not receive the necessary education or training to help them escape poverty as they grow older. "Although children work because they are victims of poverty, by working instead of being educated, they tend to perpetuate the cycle of poverty."⁷³

In developing countries, the cost of raising children may be less than the potential value of the child's labor to the family.⁷⁴ In other words, large families may be a form of investment. In the long term, however, large families perpetuate the problem of poverty. As one study of child labor concluded: "It 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."⁷⁵

70. See SHARMA & MITTAR, *supra* note 60, at 11.

71. See CHILD LABOUR EXTRACT, *supra* note 25, at 17; see also Rodgers & Standing, *supra* note 58, at 37-38 (discussing poverty and socio-economic inequality).

72. See S.B. Dayal, *Child Labour and the Nature of Ocular Morbidities: Precipitatory Problems for Eye Health Care*, in CHILD LABOUR AND HEALTH: PROBLEMS AND PROSPECTS, *supra* note 36, at 129.

73. ILAB 1994, *supra* note 7, at 4.

74. See, e.g., FYFE, *supra* note 9, at 25 (discussing the perpetuation of the division of labor along class lines).

75. PHARIS J. HARVEY & L. RIGGINS, TRADING AWAY THE FUTURE: CHILD LABOUR IN INDIA'S EXPORT INDUSTRIES at ii (1994).

C. HOW CAN CHILD LABOR BE ERADICATED?

Child labor is unquestionably one of the most difficult issues confronting national and international organizations, governments, and academics, particularly because the number of child laborers has continued to increase despite efforts to deal with the problem.⁷⁶ Some critics advocate for the immediate abolition of child labor through passage and enforcement of strict child labor and compulsory education legislation.⁷⁷ Through education, developing countries will draw much greater economic and social benefits in the long run. Mandatory education would prevent countries from hiding a lack of political will behind promises of progressive reform.⁷⁸ Implicit in this approach is an assumption that there is an international consensus on the definition and inherent unjustness of child labor.⁷⁹

The more popular view is that legislation, although necessary, is not sufficient to make a real impact on the problem of child labor.⁸⁰ In the words of one academic: "It may be easier in the first phase, to force employers to limit children's workdays and to provide adequate lighting and safety equipment rather than to force them to forgo child labour altogether."⁸¹ The causes of child labor demonstrate why it cannot be immediately abolished by legislation.

Child labor is a complex problem with many different causes. For example, the increasing emphasis on the export market in many developing countries has increased the child labor problem as employers search for the cheapest, most docile workforce in order to stay

76. See *ILO Puts Child Labour Fight on Front Burner*, in ILO WASHINGTON FOCUS 10 (1995) (noting that the child labor problem has accelerated since the 1980s, particularly in Africa and Latin America).

77. See *id.* at 3 (discussing programs in Bangladesh and Thailand that focus on moving children from the workplace to the classroom).

78. See *INTOLERABLE*, *supra* note 6, at 17 (noting that legislation encompassing factors such as education evidences a clear evolution of public policy). Such policy formation can be effective if accompanied by direct, practical action. See *id.*

79. See *id.* at 24 (stating that "worldwide anger about extreme forms of child labour needs to be translated into a programme for international cooperation in the field of economic and social policy").

80. See C. Grootaert & R. Kanbur, *Child Labour: An Economic Perspective*, 134 INT'L LAB. REV. 187, 188 (1995); Giampetro-Meyer, *supra* note 29, at 672.

81. Grootaert & Kanbur, *supra* note 80, at 200.

competitive.⁸² In some cultures, there is an element of social acceptability or tradition associated with child work.⁸³ Even where educational facilities exist and families can afford to send their children to school, some may choose to have their children work.⁸⁴ Female children are more likely to work because education is regarded as less relevant for them than for boys in many cultures.⁸⁵ Poor educational facilities, illiteracy, racism, labor scarcity, family size, corruption, and lack of willpower of government officials also contribute to the problem.

The major cause of child labor, however, is poverty.⁸⁶ Child laborers work in order to survive. A study in India demonstrates that as the number of working adults in the household increases, the proportion of working children to working adults tends to decline, demonstrating the close relationship between economic necessity and child labor.⁸⁷

The governments of countries where child labor is common also generally lack the resources to enforce child labor laws or provide adequate compulsory schooling.⁸⁸ In addition, structural adjustment programs mandated by the World Bank in recent years may have been partly responsible for increasing child labor.⁸⁹ A recent United Nations report on child prostitution made the following comment: "At times, the adjustment process fails to bear in mind sufficiently

82. See HARVEY & RIGGENS, *supra* note 75, at ii; see also FYFE, *supra* note 9, at 123.

83. See INTOLERABLE, *supra* note 6, at 12 (explaining that certain areas and families have "a tradition of children following in their parents footsteps").

84. See *id.*

85. See Alejandro Cussianovich, *Ser Pobre y Nino Hoy en Latino America*, in NINOS TRABAJADORES: EXPERIENCIAS Y REFLEXIONES 12-13 (1988); DINESH, *supra* note 60, at 29.

86. See *id.* at 3 (noting that the majority of working children are located in the developing economies of Africa, Asia, and Latin America); see also *id.* at 12 (stating that "poverty is the most important reason why children work").

87. See SHARMA & MITTAR, *supra* note 60, at 125.

88. See *id.*

89. See Commission on Human Rights, *Rights of the Child: Sale of Children, Child Prostitution and Child Pornography Report Submitted By Mr. Viat Muntarhorn, Special Rapporteur In Accordance With Commission On Human Rights Resolution 1193/82*, U.N. Doc. E/CN.4/1994/84 (1994) [hereinafter U.N. Report] (stating that "[m]any countries faced with the problem of the sale of children, child prostitution, and child pornography are under pressure from international financial agencies to adjust their economic programmes").

the needs of children and their families. Cutbacks in expenditure often have the greatest impact on the social services which affect the well-being of children and their families."⁹⁰ This report noted that in analyzing states' reports, the Committee on the Rights of the Child had found that:

[C]hildren in both poor and rich countries have been victimized by sweeping measures to curb inflation and encourage economic growth This has caused new poverty. Groups of vulnerable children, in particular, have been made to suffer: the girl child, the disabled, minority ethnic groups, orphans, displaced and refugee children.⁹¹

The United Nations report on child prostitution noted:

Even in the poorest countries, there is often a tendency to spend too much on arms purchases and too little on the development and protection of children. In this perspective, the argument advanced by many countries to explain the sale and trafficking of children on their territory, that they are "due to poverty," is not totally convincing.⁹²

There is much merit to this observation. Nonetheless, the major cause of child labor is still the poverty of individual families and governments.⁹³ As such, "[a]ttempts at abolishing child work at a stroke without compensatory improvements in income and welfare provision would only leave poor families worse off."⁹⁴

Pursuing child labor through legislation also tends to focus on children in the formal economy, ignoring the fact that a large number of children work in the informal sector and in family-based subcontracting enterprises that are notoriously difficult to monitor.⁹⁵ Forcing children out of the formal economy would increase child labor in these sectors. "While it is reasonably easy to exclude children from industry, it is far harder to oust them from the illegal workshops into which they find their way instead."⁹⁶ Furthermore, prohibitive legis-

90. *Id.*

91. *Id.*

92. *Id.* at 5.

93. See FYFE, *supra* note 9, at 2 (stating that "[i]n developing countries the vast majority of children continue to contribute to the family economy").

94. *Id.*

95. See BETRAYAL, A REPORT ON VIOLENCE TOWARD CHILDREN IN TODAY'S WORLD 8 (C. Moorehead, ed. 1990).

96. *Id.*

lation has the ironic consequence of making it more difficult to improve the working conditions of children who continue to work since these workers do not legally exist.⁹⁷

Even among those who agree that legislation alone is not the answer, there are several theories on how to deal with child labor. Two approaches do not focus directly on children. One view is that because child labor is largely a function of poverty, it will only disappear with increasing economic development. Thus, development should be pursued at all costs and human rights, including the elimination of child labor, will follow in due time.⁹⁸ This view is commonly espoused by developing states as a justification for expanding export-processing industries at the expense of basic labor rights.⁹⁹

While it is clear that the eradication of poverty is essential to the eradication of child labor, it is not clear that economic development is always directly related to this goal. For example, export-processing industries, the modern trend in economic development, have been criticized for providing few or no linkages with the domestic economy to spur long-term economic development and for generating little wealth that remains in the developing country.¹⁰⁰

Economic growth in some developing countries, in particular the so-called "Asian tigers," has been successful in generally increasing the wealth of the people. African and Latin American countries, on the other hand, have not demonstrated this same upward economic trend. This lack of economic growth may be partly attributable to un-

97. See, e.g., Grootaert & Kanbur, *supra* note 80, at 200; Rodgers & Standing, *supra* note 58, at 39; LAMMY BETTEN, *INTERNATIONAL LABOUR LAW: SELECTED ISSUES* 316 (1993).

98. See, e.g., S. ENKE, *ECONOMICS FOR DEVELOPMENT* 181 (1963) (praising the effects of a decrease in consumption and an expansion of the labor force on national growth and development); S.A. HEWLETT, *THE CRUEL DILEMMAS OF DEVELOPMENT: TWENTIETH CENTURY BRAZIL* 4 (1980) (attempting to explain why Brazilian development has required poverty and depression), both cited in Jack Donnelly, *Repression and Development: The Political Contingency of Human Rights Trade-Offs*, in *HUMAN RIGHTS AND DEVELOPMENT* 305, 305-6 (David P. Forsythe ed., 1989).

99. See Jose Luis Restrepo, *Prospects for Arresting the Crisis*, in *THE CRISIS IN LATIN AMERICA* 25, 40 (Terrence McGrath ed., 1987) (citing the Declaration of Montevideo, which states: "Lack of growth in our region is the cause for serious problems. It opens the door to instability and social tensions and it undermines the consolidation of democratic processes.").

100. See PETERSEN, *supra* note 68, at 33-34.

successful import substitution schemes adopted in the 1970s and 1980s; however, it has been suggested that weak government institutions may be the biggest variable in determining the performance of developing countries.¹⁰¹ Thus, merely establishing export processing factories in countries with corrupt and inefficient bureaucracies and dysfunctional judicial systems may not ultimately result in the level of economic development that is necessary to create improvements in human rights. In any event, it will take decades before improvements in human rights are visible. There is no reason why direct action to fight child labor and other human rights violations should not take place in the meantime.

Another view is that if labor rights in general were respected in developing countries, child labor would disappear.¹⁰² In other words, if freedom of association and the right to bargain collectively were routinely recognized, adult workers would be able to improve their working conditions and wages. The improved conditions and wages would result in the elimination of child workers because they are in direct economic competition with adults. An increase in wages for adults would also eliminate much of the need for children to work since most children work to help the family unit survive.¹⁰³

There is merit to this view. Unfortunately, unions in developing countries are generally weak and thus far have tended to be unconcerned with child labor. Efforts to link trade unions at the international level are only just beginning. In addition, this view assumes that improved adult wages and working conditions in the formal economy would provide sufficient economic incentive for most families to send their children to school rather than work. Given the causes of child labor, however, improvements to the education system and changes in cultural attitudes may also be necessary.¹⁰⁴ Thus, some form of direct action against child labor and general labor rights violations is desirable.

101. See Michael J. Trebilcock, *What Makes Poor Countries Poor?: The Role of Institutional Capital in Economic Development*, in *THE LAW AND ECONOMICS OF DEVELOPMENT* 15, 25-40 (Edgardo Buscaglia et al. eds., 1997).

102. Telephone Interview with Stephen Coats, Executive Director of the U.S./Guatemala Labor Education Project (Aug. 6 1996).

103. See *id.*

104. See FYFE, *supra* note 9, at 5-6 (noting that child work reflects social and cultural patterns, as well as a response to economic forces).

The view that some form of direct action is necessary in the fight against child labor is the more popular stance. The ILO approach, targeting the most abusive forms of child labor—including child prostitution, bonded labor, hazardous working conditions, and employment of very young children—has received strong support.¹⁰⁵ In fact, the ILO is now preparing a new child labor convention focusing only on these very abusive types of child labor.¹⁰⁶ The new convention aims to overcome the limited number of ratifications of ILO Convention No. 138, the ILO's most current child labor convention.¹⁰⁷

Many people also now advocate helping working children attain a greater voice.¹⁰⁸ In many cultures, childhood is viewed as a time of innocence and dependency, a status that can be harmful in societies where child labor is common.¹⁰⁹ The position of children has been compared with that of women. Both groups are subject to exploitation in wages and conditions because of their social status and their need to work to survive. The difference, however, is that children are a much broader, less homogeneous group without the capability of being heard or of negotiating their demands.¹¹⁰ As Fyfe notes, child workers are in a paradoxical position. While they are exploited because of their social status, adult intervention to protect them perpetuates this separate status.¹¹¹

The idea of forming child worker associations has received increased attention in recent years as a way of ensuring that children themselves are part of the solution to child labor and that a balance is struck between protection and the autonomy of children.¹¹²

105. See ILO, *US Signs Pact to Fight Child Labour*, in ILO WASH. FOCUS, *supra* note 76, at 3; *Global Plan on Child Labour Adopted*, 30 UN CHRONICLE 54-55 (June 1993); ILAB 1994, *supra* note 7, at 5.

106. See FYFE, *supra* note 9, at 131-35 (discussing the low ratification rates and the ILO's plans).

107. See *id.*

108. See *id.* at 5 (describing an approach where the focus is moved away from protecting children and toward the development of their capacity for self-determination).

109. See *id.* at 2-4.

110. See ROBERTO GUTIERREZ ARANGO, *DRAMA Y TRAGEDIA DEL MENOR TRABAJADOR* 25 (1984); see also MARIA CRISTINA SALAZAR, *NINOS Y JOVENES TRABAJADORES: BUSCANDO UN FUTURO MEJOR* 27 (1990).

111. See FYFE, *supra* note 9, at 171.

112. See *id.* at 7; SALAZAR, *supra* note 110, at 24.

Movimiento de Adolescentes y Niños Trabajadores, Hijos de Obreros Christianos ("MANTHOC"), a loose association of local groups of working children in Lima, Peru, is probably the most well-known organization. Members of this organization meet regularly at the local and national levels to discuss the problems they confront as working children, to propose community development projects, and to suggest measures for providing financial assistance to members.¹¹³ A percentage of the members' earnings is contributed to a communal fund to pay for activities.¹¹⁴ The group produces a newsletter and has constructed its own building, which contains space for meetings, a library, and an overnight refuge.¹¹⁵ According to Boyden:

The need to cater specifically to working children in Lima is so great, and the response so poor at present, that it is essential to build on programmes whose priorities have been set by the children rather than by adults who have little understanding of the children's needs and problems. This is perhaps the only way to ensure that the provision is truly appropriate.¹¹⁶

There are no easy answers to the problem of child labor. As the characteristics of child labor vary from country to country and from community to community, many different types of solutions are needed. Domestic policies and legislation, international pressure on governments and corporations, and international commitment to poverty alleviation are all essential to the solution.

This paper focuses on an approach that has not yet been tried—the use of international litigation, specifically through the Inter-American system. The paper does not intend to imply that this should be the only approach to child labor, nor that it would be a good approach in every situation. The goal is merely to assess the viability of this technique as another potential tool in the arsenal of weapons against exploitative child labor.

113. See Jo Boyden, *Working Children in Lima, Peru*, in *PROTECTING WORKING CHILDREN* 24, 43 (W. Myers ed., 1991).

114. See *id.*

115. See *id.*

116. *Id.* at 44.

II. GUATEMALA AND CHILD LABOR

A. ECONOMIC AND SOCIAL CONDITIONS IN GUATEMALA

It must be apparent to the most casual observer that Guatemala possesses natural advantages which, if properly utilized, should make it possible for the Republic to achieve a relatively favourable position among the nations of the Americas, both in living standards and in financial stability.¹¹⁷

Penned two years before the 1954 C.I.A.-backed coup, which toppled the leftist regime of Jacobo Arbenz and plunged Guatemala into forty years of military dictatorships, civil war, and economic instability, the words of the International Bank for Reconstruction and Development ("IBRD") report are laden with dramatic irony. The economic potential of Guatemala viewed against the harsh reality of its extreme economic and social conditions makes this country one of the great tragedies of the Americas.

Located just south of Mexico, Guatemala is the largest country in Central America, with a population of about ten million.¹¹⁸ Between forty percent and sixty percent of the people are indigenous descendants of the Mayan peoples; the rest are known as *ladinos*.¹¹⁹ Guatemala has the largest economy in Central America. In 1994, its gross domestic product ("GDP") was US\$12.9 billion, almost sixty percent greater than that of El Salvador or Costa Rica, and more than seven times greater than that of Nicaragua.¹²⁰ Despite its size and relative wealth, however, Guatemala is characterized by an extremely unequal distribution of wealth and land, and by serious racial and class

117. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEV. (IBRD), THE ECONOMIC DEVELOPMENT OF GUATEMALA: REPORT OF A MISSION SPONSORED BY THE IBRD IN COLLABORATION WITH THE GOVERNMENT OF GUATEMALA 3 (1952).

118. THE WORLD BANK, WORLD DEVELOPMENT REPORT, 1996, FROM PLAN TO MARKET 188 (1996). The population figure tends to vary considerably in different sources due to unreliable census information.

119. While the term *ladino* connotes a mixture of Indian and Spanish blood, in fact, the distinction between *ladinos* and Indians is based more on lifestyle and culture. Again, unreliable census data are responsible for the wide variation in the proportion of the population reportedly composed of indigenous peoples.

120. See THE WORLD BANK, *supra* note 118, at 210; see also T. BARRY, INSIDE GUATEMALA: THE ESSENTIAL GUIDE TO POLITICS, ECONOMY, SOCIETY AND ENVIRONMENT 81 (1992).

divisions.¹²¹ Guatemala's GDP at US\$1,200 per capita is one of the lowest in all of Latin America.¹²² While half a million peasants are landless, two percent of the population own about sixty-five percent of the arable land.¹²³

Traditionally, Guatemala has been almost exclusively an exporter of primary products, particularly coffee, but also sugar, cotton, bananas, meat, and cardamom.¹²⁴ Its status as a primary producer makes Guatemala dependent on the world price of these commodities. Guatemala's primary producer status was also partially responsible for the economic troubles experienced by it and other Latin American countries during the 1980s.¹²⁵

High debtloads acquired during the 1970s to finance unsuccessful import substitution schemes combined with a deterioration in the terms of trade, including high international interest rates and a decreased influx of capital, led to the Latin American debt crisis of the 1980s.¹²⁶ Despite its heavy debtload, Guatemala had been in a good position to respond to growth opportunities in the early 1970s.¹²⁷ Floods in 1974, a major earthquake in 1976, and the oil crisis combined to boost the rate of inflation to eighteen percent by 1976, although GDP continued to grow through the late 1970s.¹²⁸ Negative economic growth, including negative output and a decline in real wages, only occurred in the 1980s when the world price and demand for coffee dropped sharply.¹²⁹ Internal political turmoil in Guatemala contributed to the disastrous economic effects of the 1980s as the

121. See BARRY, *supra* note 120, at 81.

122. See THE WORLD BANK, *supra* note 118, at 188. Only Bolivia, Haiti, Honduras, and Nicaragua have lower per capita GDP measurements. See *id.*

123. See BARRY, *supra* note 120, at 102.

124. See THE WORLD BANK, *supra* note 118, at 188; BARRY, *supra* note 120, at 85, 105-7. The country's primary trading partner is the United States. Other significant partners include Costa Rica, El Salvador, Germany, Italy, Japan, and Mexico. About one-quarter of exports go to other Central American countries.

125. See BARRY, *supra* note 120, at 81.

126. See PETER CALVERT, GUATEMALA: A NATION IN TURMOIL 129-33 (1985) (discussing the economics of Guatemala's export industry).

127. See *id.* at 128.

128. See *id.* at 129.

129. See BARRY, *supra* note 120, at 105-6 (discussing the drop in coffee prices during the 1980s).

government channeled a large proportion of the budget into military spending and the United States terminated aid.¹³⁰

Throughout Latin America, the reality of the "lost decade" for the average person was high unemployment, a decrease in the average real wage, and cuts in social spending.¹³¹ Guatemala was one of the hardest hit countries, its per capital GDP falling 18.2 percent.¹³² The already highly inequitable distribution of wealth widened and the overall poverty level increased dramatically. During this period, the wealthiest ten percent of Guatemalans increased their percentage share of wealth, while the average real wage fell thirty-five percent and the real minimum wage fell almost fifty percent.¹³³ The World Bank estimates that poverty increased from sixty-three percent in the early 1980s to eighty-three percent in 1987, with extreme poverty increasing from thirty-two percent to sixty-four percent.¹³⁴ Rapidly increasing population and increasing poverty were exacerbated by a decrease in social spending during the 1980s, partly as a result of requirements under structural adjustment programs imposed by financial institutions such as the World Bank.¹³⁵

Guatemala has experienced growth in its GDP since 1987, one of the longest periods of growth in Latin America, although the average rate of growth has not been very high.¹³⁶ The country has also succeeded in diversifying its economy. Since the 1980s, non-traditional

130. See *id.* at 107 (discussing the history and nature of United States military aid to Guatemala).

131. See *id.* at 10; EL IMPACT DE LA CRISIS ECONOMICA EL AJUSTE Y LA DEUDA EXTERNA SOBRE LA NINEZ EN AMERICAN LATINA (2d ed. 1993), for statistics and personal anecdotes on the effect of the debt crisis on Latin American children.

132. See Andres Bianchi, *Crisis, Adjustment and Debt in Latin America: 1981-1985*, in THE CRISIS IN LATIN AMERICA, *supra* note 99, at 9. Along with Guatemala, the worst countries were Bolivia, El Salvador, Venezuela, Argentina, and Uruguay.

133. See BARRY, *supra* note 120, at 97.

134. See *id.*

135. See U.N. Report, *supra* note 89, at 4; *International Working Group on Child Labour*, 1 IWGCL NEWSLETTER at 8-9 (1995).

136. See BARRY, *supra* note 120, at 85. Only Chile and Columbia had a longer period of positive growth in 12 years, although their growth rates are also higher. See *The Economic Experience of the Last 15 Years: Latin America and the Caribbean*, U.N. Economic Commission for Latin America and the Caribbean at 16, U.N. Doc. LC/G.1925 (SES.26/17) (1996).

exports have increased dramatically.¹³⁷ These include non-traditional agricultural exports such as strawberries and, more importantly, manufactured goods such as apparel.¹³⁸ In 1991, for the first time, the income from extra-regional exports of non-traditional goods surpassed that of coffee.¹³⁹

Despite modest growth, however, the majority of the population is still worse off than it was in the 1970s.¹⁴⁰ Haiti, the country with the lowest life quality index in the Western Hemisphere, spends more on education, has half the number of malnourished children, and the same number of births attended by medical staff as does Guatemala.¹⁴¹ The Guatemalan government agency, SEGEPLAN, estimated in 1991 that eighty-nine percent of the population lives in poverty; sixty-seven percent in extreme poverty.¹⁴² High unemployment and underemployment also remain a problem.¹⁴³

B. CHILD LABOR IN GUATEMALA

The situation of most Guatemalan children is so serious that profound and massive measures are needed to ensure their human rights, for the sake of their physical safety, their legal guarantees, their education, family, nutrition and physical, mental and moral growth.¹⁴⁴

Like most third world countries, Guatemala is very youthful; 46.5 percent of the population is under the age of fifteen and over half are under the age of eighteen.¹⁴⁵ One study estimates that thirty-five per-

137. See BARRY, *supra* note 120, at 85.

138. See *id.* at 107-9.

139. See *id.*

140. See *id.* at 95 (discussing the increase in poverty levels since 1980).

141. See *id.* at 98.

142. See *id.* at 97.

143. See CENTRO DE ESTUDIOS DE GUATEMALA, DATOS BASICOS SOBRE LAS CONDICIONES DE VIDA EN GUATEMALA 13 (1994) [hereinafter CENTRO DE ESTUDIOS] (finding that by the end of 1991 the official unemployment rate was 53%).

144. *Fourth Report on the Situation of Human Rights in Guatemala*, Inter-Am. C.H.R., OEA/Ser.L/V/II.83, doc.16 rev. at 98 (1993) [hereinafter *Fourth Report*] (concluding that given the enormity of the problems in Guatemala, the announced solutions only represent a step in the right direction).

145. See CENTRO DE ESTUDIOS, *supra* note 143, at 2; COMISION PRO-CONVENCION SOBRE LOS DERECHOS DEL NINO (PRODEN) INFORME SOBRE LA SITUACION DE LOS DERECHOS DE LOS NINOS, NINAS Y ADOLESCENTES DE GUATEMALA 1 (1995) [hereinafter PRODEN].

cent of Guatemala's five million children start work at the age of six years.¹⁴⁶ The Comision Pro-Convencion Sobre Los Derechos del Nino estimates that 1.5 million children must work to help their families survive,¹⁴⁷ while the state statistics agency, the Instituto Nacional de Estadistica ("INE"), estimates that 1.16 million workers are underage.¹⁴⁸ The government also estimates that twenty-six percent of the economically active population are children.¹⁴⁹ The Committee on the Rights of the Child noted that working children are not a new phenomenon for any cultural group in Guatemala; however, it concluded that never before has the presence of child labor been so pervasive or so dramatic a threat for the survival of the family.¹⁵⁰

The poor state of the education system in Guatemala contributes to the child labor problem. Although the Constitution provides for compulsory education for all children until the age of fourteen,¹⁵¹ in reality, only fifty-eight percent of children between the ages of six and eleven attended school in 1980 and this statistic increased only nominally by 1990.¹⁵² Moreover, only thirteen percent of the population over the age of fifteen has finished primary school,¹⁵³ less than eight percent of the population goes on to secondary school, and only two percent reach the university level.¹⁵⁴ Rural areas are the hardest hit. "[I]n the rural areas the free public education to which all are in theory entitled is not enforced, and those who have had schooling

146. See CENTRO DE ESTUDIOS, *supra* note 143, at 13.

147. See PRODEN, *supra* note 145, at 4.

148. See CENTRO DE ESTUDIOS, *supra* note 143, at 13.

149. See *Comments of Ms. Caceres, Vice-Minister of Labor and Social Welfare, Guatemala*, in CHILD LABOUR: WHAT IS TO BE DONE? REPORT OF PROCEEDINGS OF THE INFORMAL TRIPARTITE MEETING AT THE MINISTERIAL LEVEL 50 (ILO, June 12, 1996).

150. See *Consideration of Reports of States Parties, Initial Report of Guatemala*, U.N. Doc. CRC/C/3/Add. 33, Sess. No. 12, revised in U.N. Doc. CRC/C/SR.306-308, SR.306 at 25 (1996) [hereinafter UNCRRC Consideration].

151. See CONSTITUCION POLITICA DE LA REPUBLICA DE GUATEMALA (Decreto-Ley Numero 46-85/47-85, 1985), art. 74.

152. See *Fourth Report*, *supra* note 144, at 6 (finding that in the last ten years figures on the net and gross rates of primary education have remained virtually unchanged).

153. See CENTRO DE ESTUDIOS, *supra* note 143, at 8. The average number of grades completed in the United States is nine. In most Latin American countries it is five. In Guatemala, however, it is only 1.7. See *id.*

154. See *id.*

have seldom had more than two years at most."¹⁵⁵ Education has also been negatively affected by militarization, not only because public funds were channeled into counter-insurgency programs during the civil war, but also because teachers were a frequent target of political killings and disappearances.¹⁵⁶

In 1991, government spending on education was only 1.2 percent of GNP—the lowest in Latin America.¹⁵⁷ By 1996, this figure increased to 1.9 percent.¹⁵⁸ UNICEF estimates that there is one active teacher for every 400 Guatemalan children. There is a deficit of 30,000 to 50,000 teaching positions with only 500 to 1,000 positions created annually.¹⁵⁹ Furthermore, only five percent of schools have bilingual education in Mayan languages,¹⁶⁰ even though over one-half of the population is indigenous.¹⁶¹ The result has been one of the highest illiteracy rates in the region. The average illiteracy rate is fifty-two percent, but in rural areas and among indigenous peoples, it reaches as high as eighty-five percent for women.¹⁶² This rate is increasing at a rate of 1.3 percent per year.¹⁶³ The illiteracy rate of children under the age of fifteen is the second highest in the region after

155. CALVERT, *supra* note 126, at 30 (describing the disparity in the literacy rate between the Indian community and the rest of Guatemalan society).

156. See CENTRO DE ESTUDIOS, *supra* note 143, at 10.

157. See 40 U.N. STATISTICAL YEARBOOK 74 (1995); CENTRO ESTUDIOS, *supra* note 143, at 9 (stating that spending on education is between 1.5% and 1.7% of GDP and noting that UNESCO recommends that 7% of GDP be spent on education).

158. See UNCRC Consideration, *supra* note 150, at 8.

159. See CENTRO DE ESTUDIOS, *supra* note 143, at 9 (estimating that there is deficit of 30,000 positions with 1,000 new positions created each year); PRO-JUSTICE AND PEACE COMMITTEE OF GUATEMALA, HUMAN RIGHTS IN GUATEMALA: 1992, 59 (1992). There is a deficit of 50,000 jobs with 5,000 new jobs announced annually. Only 500 jobs, however, are actually created. See *id.*

160. See CENTRO DE ESTUDIOS, *supra* note 143, at 9.

161. See DEPARTMENT OF STATE, GUATEMALA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1996 (1997) (stating that although more than half of the population is comprised of indigenous people, they remain largely outside of Guatemala's economic and social mainstream). The Report found that many rural indigenous people are illiterate and do not speak Spanish. See *id.* As a result, these people have very limited educational opportunities, resulting in fewer employment opportunities. See *id.*

162. See DEPARTMENT OF STATE, COUNTRY REPORTS FOR HUMAN RIGHTS PRACTICES FOR 1993, 459 (1994) [hereinafter DOS COUNTRY REPORTS]; CENTRO DE ESTUDIOS, *supra* note 143, at 8.

163. See CENTRO DE ESTUDIOS, *supra* note 143, at 8.

Haiti.¹⁶⁴ Because of the extreme poverty, high birth rate, and underfunded and underdeveloped education system, child labor is prevalent in many different sectors of the Guatemalan economy.

I. Agriculture

In terms of soil and climate conditions, few countries are better equipped than Guatemala for agricultural development. The varied regional conditions provide a place for almost every type of agriculture known in the Western Hemisphere. As such, agriculture accounts for approximately twenty-five percent of Guatemala's GDP, employs half the workforce, and comprises two-thirds of its export income.¹⁶⁵ In comparison, only Bolivia and Haiti have such a high proportion of the population employed in agriculture. Agriculture's share of total employment, however, has been falling since the 1950s. Guatemala has traditionally concentrated on the production of bananas, cardamom, coffee, and sugar.¹⁶⁶ Other agricultural products include beans, cacao, chicle, cotton, hemp, rice, tobacco, and wheat.¹⁶⁷ Guatemala also has extensive forest resources.¹⁶⁸

The U.S. Department of Labor estimates that about one-third of the seasonal agricultural workers migrating to the southern coast each year are children.¹⁶⁹ Children, generally between the ages of twelve and fourteen, do the same work as adults but are paid half the wages.¹⁷⁰ On sugar cane plantations, children reportedly help their

164. See *Fourth Report, supra* note 144, at 6 (noting that in 1990, 45 out of every 100 adults could not read or write).

165. See DEPARTMENT OF STATE, 1996 COUNTRY REPORTS ON ECONOMIC POLICY AND TRADE PRACTICES (1997) [hereinafter ECONOMIC REPORT] (detailing Guatemala's income, production, and employment rates from 1994 through 1996).

166. See *id.*

167. See CALVERT, *supra* note 126, at 129 (discussing the various agricultural crops produced in Guatemala).

168. See *Fourth Report, supra* note 144, at 9 (finding that Guatemala is losing 153,000 hectares of forest land each year).

169. See BUREAU OF INT'L LAB. AFF., DEP'T OF LAB., BY THE SWEAT AND TOIL OF CHILDREN II: THE USE OF CHILD LABOR IN U.S. AGRICULTURAL IMPORTS AND FORCED AND BONDED CHILD LABOR 62 (1995) [hereinafter ILAB 1995] (finding that over 300,000 people in Guatemala migrate to the southern coast to work on coffee, cardamom, cotton plantations, and sugar cane).

170. See *id.* at 62 (citing U.N. Subcommittee on the Prevention of Discrimination and Protection of Minorities, *Rights of Children in Guatemala, Submission of*

parents by cutting or trimming the cane with machetes and picking up loose stalks that fall off loaders and trucks.¹⁷¹ According to Commission reports on the use of child labor, this seasonal migration has a profound impact on the life and development of thousands of Guatemalan children. They are impeded from attending school and many abandon their studies completely. Even more troubling, by the age of ten, many children become sick or die from the inhumane conditions under which they are forced to live and work while working on the coast.¹⁷²

It is difficult to quantify the number of children working in the coffee industry, which is found in almost every province in Guatemala. One study estimates that ninety to ninety-five percent of the children who work in coffee-producing communities are working in the coffee industry.¹⁷³ A 1990 report found that men were being fired and replaced by women and children because the latter were cheaper to employ.¹⁷⁴ When children are old enough to reach the lower tree branches, they begin helping their parents during the harvest by picking and sorting beans, carrying sacks of coffee, and sometimes handling fertilizers, insecticides, and herbicides without proper safety equipment.¹⁷⁵ These children work from eight to twelve hours per day, often without legally required benefits.¹⁷⁶ They also run the risk of insect bites and stings, frequent accidents from machetes and other tools, and wounds from coffee branches. Other medical infirmities include intoxication from exposure to herbicides, rheumatic fever, and respiratory problems from the climatic conditions.¹⁷⁷

the International Federation of Human Rights, U.N. Doc. E/CN.4/Sub.2/1991/NGO/15, at 3 (1995)).

171. *See id.* at 74.

172. *See* PRODEN, *supra* note 145, at 3. The Committee on the Rights of the Child also commented on the situation of migrant children in its consideration of Guatemala's report in 1996. *See* UNCRC Consideration, *supra* note 150, at 7, para. 34.

173. *See* M.E. VILLAREAL & C. PERALTA CHAPETON, *MENORES TRABAJADORES EN ALTO RIESGO, TOMO I: SECTORES PRODUCTIVOS DE LA CAL Y EL CAFE* 35 (1995) [hereinafter PAMI TOMO I]

174. *See* ILAB 1995, *supra* note 169, at 66 (describing the employment conditions on coffee plantations in Guatemala).

175. *See id.*

176. *See id.* at 65; *cf.* INTOLERABLE, *supra* note 6, at 8 (describing the most common situations in which child workers encounter occupational hazards).

177. *See* PAMI TOMO I, *supra* note 173, at 47.

While many children do go to school, their attendance is often irregular as a result of the four to five month period when work requirements make school attendance unlikely.¹⁷⁸ A Department of Labor study noted that full-time employment of children in Guatemala's coffee industry is declining on the larger plantations where schools, and sometimes even daycares, are being established.¹⁷⁹ These plantations, however, are often heavily pressured by parents to allow child labor, likely due to both financial and cultural reasons.¹⁸⁰ Community leaders, interviewed in one study, who thought that eliminating child labor was impossible without first eliminating the poverty, exploitation, and lack of protection associated with rural workers.¹⁸¹ Teachers who were interviewed thought the best approach was not to prohibit child labor but rather to improve the conditions of work and protect the physical integrity of workers. They also suggested that, to end exploitation, employers pay an adequate salary and ensure that the maximum allowed hours of work are enforced.¹⁸²

2. Industry

Although fewer children work in industry than in agriculture, child labor in the industry sector tends to receive greater attention from the international community. This focus on industry is due to the sector's greater visibility and the greater ease of legislating against labor violations in this area. The industries that attract this greater attention include export-processing factories, construction, the lime industry, fireworks factories, and mining.

Export-processing factories: Known as *maquiladoras* or *maquilas*, export-processing factories emerged as an economic force in the 1980s. Support from the Guatemalan government, aid from the United States, and duty-free exemptions under U.S. trade legislation contributed to this emergence. In 1986, there were twenty *maquilas*

178. See *id.* at 41.

179. See *id.* at 21.

180. See ILAB 1995, *supra* note 169, at 4 (discussing parents' negative attitudes toward schooling). According to the Department of Labor Report, many parents feel that children's experience working on farms is more useful than formal classroom training. See *id.*

181. See PAMI TOMO I, *supra* note 173, at 59.

182. See ILAB 1995, *supra* note 169, at 59.

with 4,000 workers.¹⁸³ By 1991, there were 225 assembly plants with 50,000 workers.¹⁸⁴ By 1993, *maquilas* were the fourth largest generator of foreign exchange in the country.¹⁸⁵ Presently, the largest single investor is South Korea, although ninety percent of the products are shipped to the United States.¹⁸⁶ Approximately ninety percent of these export-processing factories are garment assembly plants.¹⁸⁷ While the majority of the factories are located in Guatemala City, some exist in smaller towns, in particular, Quetzaltenango and Chimaltenango.¹⁸⁸ In these towns, the factories subcontract to families and small businesses in order to retain cheaper labor costs. This practice has led to an increasing cottage industry in small towns. The businesses are known as *maquilas de hormigas* or ant factories.¹⁸⁹

Women constitute the majority of the workforce in the *maquilas*.¹⁹⁰ About forty percent of the workers are under the age of eighteen.¹⁹¹ Labor organizer, Flor de Maria Salguero de Laparro, testified before the U.S. House Subcommittee on Labor-Management Relations that child workers as young as eleven or twelve are not uncommon in the *maquilas*.¹⁹² Although the percentage of working girls under the age of fourteen is reportedly declining in Guatemala City, factories located outside the capital and subcontracting enterprises are more likely to continue to employ young children.¹⁹³

183. See INTER-CHURCH COMMITTEE ON HUMAN RIGHTS IN LATIN AMERICA, CRISIS OF STATE—STATE OF CRISIS: HUMAN RIGHTS IN GUATEMALA 16 (1995) [hereinafter ICCHRLA].

184. See BARRY, *supra* note 120, at 113 (discussing the growth of *maquilas*).

185. See ICCHRLA, *supra* note 183, at 16 (discussing the role of *maquilas* in the foreign markets).

186. See *id.*

187. See BARRY, *supra* note 120, at 114 (specifying the products produced at the *maquilas*).

188. See *id.*

189. See *id.*

190. See ICCHRLA, *supra* note 183, at 16 (noting the role of women in *maquilas*); see also PETERSEN, *supra* note 68, at 41 (noting that women constitute 75% to 80% of the workforce in Guatemala City but only 50% in rural areas).

191. See ICCHRLA, *supra* note 183, at 16 (detailing the ages of workers in *maquilas*).

192. See *id.* at 68.

193. See ILAB 1994, *supra* note 7, at 68 (noting the continued employment of young children by factories in small towns).

Work in the *maquilas* is not inherently dangerous. Wages, however, are generally below subsistence level and working conditions are abysmal. According to the Inter-Church Committee for Human Rights in Latin America, employees report working nearly eleven hours per day, six days per week, for half of what is necessary for basic subsistence.¹⁹⁴ Locking employees in the factory overnight to ensure a shipment is finished on time is a common practice.¹⁹⁵ Moreover, physical and sexual abuse is reportedly rampant, though rarely reported to the Ministry of Labor.¹⁹⁶ Women are usually fired if they become pregnant.¹⁹⁷

The Pan-American Health Organization reported in 1993 that work in Guatemalan assembly plants was "performed in inadequate health conditions."¹⁹⁸ Factories are located in warehouses that "lack proper lighting, ventilation, and washroom facilities."¹⁹⁹ The temperatures in the factories range from freezing in the early morning hours to extremely hot during mid-day.²⁰⁰ Additionally, only a few factories have fans on the shop floor.²⁰¹ Factories generally have only two doors that are kept locked during the day despite the high incidence of earthquakes in the region.²⁰²

Construction: Construction is one of the most dynamic sectors of the Guatemalan economy. Children rarely work on large-scale construction projects that pay the legally guaranteed minimum wage and benefits. They are more likely to work in rural areas on small-scale projects.²⁰³ Children of eight to ten years of age are called apprentices. They generally combine school and work, accompanying their

194. See ICCHRLA, *supra* note 183, at 16 (explaining the working conditions in the factories).

195. See PETERSEN, *supra* note 68, at 89; see also *Fourth Report*, *supra* note 144, at 88 (describing abusive employment practices in the *maquilas*).

196. See PETERSEN, *supra* note 68, at 94.

197. See ICCHRLA, *supra* note 183, at 17 (noting that pregnant women are fired so owners can avoid paying maternity leave benefits).

198. *Fourth Report*, *supra* note 144, at 113 (discussing findings made by the Pan-American Health Organization).

199. ICCHRLA, *supra* note 183, at 17.

200. See PETERSEN, *supra* note 68, at 70.

201. See *id.* at 71 (noting the lack of proper ventilation in the *maquilas*).

202. See *id.* at 73.

203. See M.E. VILLAREAL & C. PERALTA CHAPETON, MENORES TRABAJADORES EN ALTO RIESGO. TOMO II: SECTORES PRODUCTIVOS DE LAS CONSTRUCCION Y COHETERIA 13-17 (1995) [hereinafter PAMI TOMO II].

fathers to the construction sites in their free time to do odd jobs such as transporting, digging, and cleaning. As a result, they are completely dependent upon their fathers for any monetary compensation. Children over the age of ten are called assistants. These children typically engage in dangerous work such as bricklaying.

The risk and danger these children are exposed to is immense. Electrocution, the third most common accident among construction workers, is the result of poorly trained workers. Additionally, pertinent information, such as where cables are laid, is frequently not provided to the workers. Other risks include falling from buildings and scaffolding, falling into unmarked holes, and suffering injuries from tools and materials such as lime. Children are also often used in the construction of shafts where falls, asphyxia, and earthquakes are great risks. According to one teacher:

el trabajo de ayudante de albanil esta definitivamente prohibido para estos menores por dos razones fundamentales: Primero, porque es un trabajo peligroso y pesado para un menor de edad y, segundo, porque el constante contacto de menores con personas que no estan calificadas, cultural ni moralmente, los expone a practicas degradantes.²⁰⁴

Lime: Lime is a white powder used in the production of cement and mortar. It is also commonly used as a fertilizer. In Guatemala, lime is produced in marginal areas characterized by poor education and health facilities. Children begin working at lime production facilities at the age of six or seven. They have no legal rights and are dependent on their fathers for money. Both boys and girls often work alongside their parents performing such tasks as transporting wood and stone, tending ovens, and filling sacks with lime. When interviewed during a study, one 16-year-old worker commented: "Este es el trabajo mas duro que existe; jamas desearla que mis hijos se dedicaron a el."²⁰⁵

204. *Id.* at 30. *Translation:* The work as a construction worker assistant is definitely prohibited for these minors for two fundamental reasons: First, because it is a dangerous job and very strenuous work for a minor and, second, because the constant contact of minors with culturally and morally unqualified people exposes them to degrading practices.

205. PAMI TOMO I, *supra* note 173, at 25. *Translation:* This is the hardest work that exists; I would never want my children to do it.

Risks at these lime facilities include cave-ins, injuries from carrying heavy loads, and significant health problems. Common health problems include hair loss, intoxication from inhalation of lime, serious skin problems, injuries on the hands from contact with lime, irritation of the eyes, nasal hemorrhages, and conjunctivitis.²⁰⁶ Schooling for children is a low priority, not only because it interferes with work but also because it is perceived to be useless. Most working children only reach the third grade. Moreover, there is a high rate of absenteeism, repeat years, and permanent dropouts.²⁰⁷

Fireworks production: The presence of child labor in this sector of the Guatemalan economy is extremely disturbing. *Cohetes* are small firecrackers that sound like firing guns when they explode. They are a popular expression of happiness for people of all ages and cultures in Guatemala, as well as a central part of most fiestas. They are, however, highly explosive, toxic, and flammable. Most risks are associated with their production and include loss of vision or hearing, amputation, and even death. Large-scale employers prefer to hire young children because of the agility of their hands. Most children working in this industry, however, work in small family operations. Families involved in the production of *cohetes* are usually poor and live in substandard housing with no electricity or water. One study of this industry found that the majority of children in grades one to three combined work and school, but only ten percent of the students in grade six were not working.²⁰⁸

Mining: Finally, Latin American mines, particularly small-scale mines in remote areas, employ children in all aspects of production. Children are hired to extract, transport or separate ore, or dig tunnels.²⁰⁹ Often the children are used to dig tunnels or mine spaces that are too small for adults.²¹⁰ Hazards include exposure to harmful particles, gases, and fumes that can cause respiratory diseases greatly increase the risk of silicosis, pulmonary fibrosis, asbestosis, and emphysema.²¹¹ Physical strain, fatigue, musculoskeletal disorders, and

206. *See id.* at 8.

207. *See id.* at 10.

208. *See* PAMI TOMO II, *supra* note 203, at 43.

209. *See* ILAB 1994, *supra* note 7, at 7.

210. *See id.*

211. *See* INTOLERABLE, *supra* note 6, at 13.

injuries from falling objects are also risks.²¹² Guatemala has a significant mining industry, including copper, nickel, silver, and zinc resources.²¹³ Information is not available on the extent to which child labor is found in Guatemalan mines.

3. Informal Sector

Street children are an enormous and growing problem in Latin America. These children are pushed to the streets by extreme poverty, a high birth rate, inequitable land distribution, government and military repression, urbanization, family disintegration, and lack of education and work opportunities.²¹⁴ Street children are a particular problem in Guatemala, which has the second highest number of poor and indigent children in Latin America after Peru.²¹⁵ The United States House of Representatives estimates that 5,000 children live on the streets of Guatemala City and another 1.4 million work there.²¹⁶ Childhope USA estimates that this number will double by the year 2010.²¹⁷

The average age of street children in Guatemala City is 11.6 years.²¹⁸ Girls are younger on average than boys.²¹⁹ Younger children usually beg for money.²²⁰ Older boys collect bus fares, shine shoes, perform, or steal.²²¹ Girls are usually prostitutes, although a few do cleaning or odd jobs.²²² Casa Alianza, an organization that works with street children in Guatemala City, estimates that most street

212. *See id.*

213. *See* PETERSEN, *supra* note 68, at 95.

214. *See* FYFE, *supra* note 9, at 3 (noting that Latin American has the highest incidence of children working in the informal sector).

215. *See* CENTRO DE ESTUDIOS, *supra* note 143, at 3 (providing data about the number of poor and indigent children in Guatemala).

216. *See* T. Rice Lave, *Breaking the Cycle of Despair: Street Children in Guatemala City*, 27 COLUM. HUM. RTS. L. REV. 57, 59 (1995) (discussing the 1991 U.S. House of Representatives Fact Sheet concerning street children around the world).

217. *See id.* (statement of Marilyn Rocky, Regional Director, Childhope USA).

218. *See id.* (citing *El Drama de los Niños de la Calle*, SIGIO VEINTUNO, July 24, 1993, at 2).

219. *See id.* at 59-60.

220. *See id.*

221. *See* Lave, *supra* note 216, at 59-60.

222. *See id.*

children eat less than one meal per day.²²³ Health problems include skin, dental, gastro-intestinal and respiratory problems, trauma, and sexually transmitted diseases.²²⁴ In addition, street children constantly face the threat of violence at the hands of both non-state and state agents, including the police and the army.²²⁵

Researchers have conducted studies of street children in Brazil, Bolivia, Paraguay, and Peru.²²⁶ These studies found that more boys than girls tend to be on the streets.²²⁷ Girls usually end up in domestic service instead—the lowest paying job with the longest hours. The majority of street children still have contact with their families and claim to attend school, though attendance is usually infrequent. Most want to work, but few have high ambitions. Fear of violence and the need for emotional support are rated as their largest concerns.²²⁸

According to Carlos Palacio, Program Director for Childhope in Guatemala City, it is not money itself that is the real key to child street labor but the lack of meaningful employment opportunities for adults. Palacios states: “Only if the families have the opportunities to have work will [there] be the possibility for the kids to go back to school If you don’t give any support to the families it will be very difficult to change.”²²⁹

223. *See id.*

224. *See id.*

225. *See id.* at 66; *see also* U.N. Report, *supra* note 89, at 22 (noting the threats of violence facing street children).

226. *See* W. E. Myers, *Urban Working Children: A Comparison of Four Surveys from South America*, 128 INT’L LAB. REV. 321 (1989) (comparing the following surveys: B. Espinola et al., *En La Calle: Menores Trabajadores De Las Calle En Asuncion* (1987); Z. Andrade Goncalves: *Modo De Vida E Representacoes De Meninos De Rua* (1985); M. Chej de Penaloza, *Situation Del Menor En Alto Riesgo En La Ciudad De Cochabamba* (1987); W. Alarcon Glasinovich, *Pobreza Urbana y Trabajo Infantil En Lima Metropolitana* (1986)).

227. *See id.* at 325.

228. *See* Myers, *supra* note 226, at 333-34.

229. Telephone Interview with Carlos Palacios, Program Director for Childhope in Guatemala City (August 22, 1996).

4. Domestic Service

Domestic workers are "the invisible child laborers."²³⁰ There is little statistical data pertaining to the actual numbers and working conditions of these workers, who tend to be young women and girls.²³¹ Several articles and reports, however, note the long hours, low pay, and extreme vulnerability of these workers to all forms of abuse.²³² Domestic workers usually work six or seven days per week for room and board and occasionally a little pocket money.²³³ Most domestic workers are completely isolated, having no opportunity to meet other domestics or learn their employment rights.²³⁴ Employers bring young workers from rural areas to work in the city. Because the children do not know anyone and are unfamiliar with a city environment, they are extremely vulnerable to abuse.²³⁵

Fyfe comments that in Latin America, "[t]he employing family may rationalize virtual imprisonment in the home as caring for the girl's morals, but traditionally, they are available to the sons of the family. If they become pregnant, however, they will be turned out, forcing many of them into prostitution to care for their illegitimate children."²³⁶ Once a domestic worker has a child, securing work in a home is practically impossible.²³⁷

230. ILAB 1995, *supra* note 169, at 144.

231. See Promotion and Protection of the Rights of Children: Report of the Secretary General, U.N. GAOR, U.N. Doc. A/52/523 (1997) (stating that the extent of child labor is difficult to determine because statistics are not easily accessible).

232. See, e.g., ILAB 1995, *supra* note 169, at 144 (stating that although there has been little recent written documentation of child labor, incident reports continue); Myers, *supra* note 226, at 327-8, U.N. Report, *supra* note 89, at 22 (taking note of several important reports on the labor situation in Central America); Boyden, *supra* note 113, at 40-41.

233. See generally Boyden, *supra* note 113, at 40 (commenting on the conditions that young domestic workers endure).

234. See FYFE, *supra* note 9, at 115 (attributing the lack of social opportunity to isolated conditions brought on by unreasonable labor demands).

235. See *id.* at 115 (describing instances in which young rural children are entrusted to a fictitious family member and subsequently subjected to ill treatment in urban labor situations).

236. *Id.* at 115.

237. See Boyden, *supra* note 113, at 40 (discussing the lack of employment opportunities available to young women with babies).

5. Military Service

Military service by minors under the age of fifteen is contrary to both the Convention on the Rights of the Child²³⁸ and the 1977 Protocols to the Geneva Conventions.²³⁹ Although Guatemala has prohibited forced military recruitment of all ages since 1995, MINUGUA, the United Nations mission in Guatemala, found cases of participation of minors under the age of fifteen in both army and guerilla units, as well as in the army-organized civil defense patrols.²⁴⁰ Guatemala's Human Rights Procurador estimates that the military forced 400 youths under the age of eighteen into military service between 1991 and 1994,²⁴¹ even though the worst of the long civil war was over. In its 1994 report, the Inter-American Commission found that Guatemala had not taken steps to stop forced military recruitment of all ages.²⁴² The Commission further found that military recruitment was discriminatory, selectively choosing poor farmers, students, or the mentally retarded.²⁴³

6. Child Work in the Home

Children in all cultures perform some amount of work in the home. In Latin America, however, many children, particularly girls, work full-time in the home cooking, cleaning, and caring for younger siblings, enabling the adults in the household to work outside the

238. UNCRC, *supra* note 16, art. 38.

239. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, Dec. 12, 1977, 1125 U.N.T.S. 3, art. 77 (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, Dec. 12 1977, 1125 U.N.T.S. 609, art. 4(3c) (Protocol II) (stating that as a guarantee of humane treatment, children under the age of 15 cannot be recruited for or partake in military action).

240. See HUMAN RIGHTS WATCH WORLD REPORT 1996: GUATEMALA 93, 95 (1996).

241. See PRODEN, *supra* note 145, at 11 (stating that youths are presently forced to participate in military action).

242. See Stephen J. Schnalby, *The Santiago Commitment As a Call To Democracy in the United States: Evaluating the OAS Role in Haiti, Peru, and Guatemala*, 25 U. MIAMI INTER-AM. L. REV. 393, 480 (stating that Guatemala failed to disband the military following a recommendation to do so by the Inter-American Commission).

243. See *Fourth Report*, *supra* note 144, at 48-49 (criticizing discriminatory recruiting actions of the Guatemalan military).

home.²⁴⁴ Although some consider this work as less exploitative than working outside the family, at the very least, full-time work in the home still interferes with a child's education.²⁴⁵ Furthermore, children who work in the home may be more prone to exploitation as they completely rely on their parents for any form of support.

Perhaps of greater concern is the large and growing number of family-based sub-contracting enterprises. As noted above, this form of enterprise is common in the production of fireworks and in the export-processing industry.²⁴⁶ In the garment *maquilas*, labor costs are up to twenty-five percent cheaper when sub-contracted to family businesses, making this a popular arrangement with companies.²⁴⁷ The whole family must work together in these small businesses in order to make enough to survive.²⁴⁸ Unfortunately, the labor inspection system in Guatemala can not adequately monitor even the large factories, much less the many small, family-based businesses that exist across the country.²⁴⁹

7. Child Labor and the Female Child

On the streets, in the military, and in most areas of the formal sector, child workers are predominantly male. Only in domestic service, prostitution, and in the *maquiladoras* do female child workers predominate.²⁵⁰ Girls are also more likely to perform unremunerated work in the home.²⁵¹ PRODEN suggests that girls are particu-

244. See PETERSEN, *supra* note 68, at 92 (citing data revealing that in Guatemala 21% of children between twelve and fourteen are working in order to contribute to family income).

245. See FYFE, *supra* note 9, at 157 (citing statistics that reveal a steady increase in the total number of female children who do not attend school in many less developed countries).

246. See *supra* note 208 and accompanying text.

247. See BARRY, *supra* note 120, at 114 (comparing the cost of labor within the cottage industries of the *maquilas* to the cost of labor in large factories in Guatemala city).

248. See *id.* at 114 (stating that rural families who formerly engaged in traditional weaving are now involved in the garment assembly and sewing operations of the *maquilas*).

249. See PETERSEN, *supra* note 68, at 66 (commenting on the inadequate inspection system in Guatemala).

250. See BARRY, *supra* note 120, at 113 (stating that *maquiladoras* employ mostly young women).

251. See *id.* at 166.

larly affected by the continuance of child labor since they are the first to be removed from school in the short term.²⁵² This leads to lower education levels for women and, in turn, fewer employment opportunities.²⁵³ Also, low education levels tend to exacerbate high birth rates and high infant mortality.²⁵⁴ Commentators agree that girls are the first to lose out on education both because they are needed to help with domestic work and because they are less valued than boys.²⁵⁵

The UNCRC commented that "ill-treatment of children appeared to be endemic in Guatemala, where the notion seemed to persist that they were not autonomous individuals, but the property of the family."²⁵⁶ Furthermore, the Latin American culture of machismo, which encourages males to be physically and sexually aggressive while teaching women to be submissive,²⁵⁷ tends to leave female children particularly vulnerable to exploitation.

III. ATTEMPTS TO DEAL WITH CHILD LABOR IN GUATEMALA

A number of attempts have been made to address the problem of child labor in Guatemala, including domestic legal provisions and administrative programs, as well as the threat of United States trade sanctions. Thus far, however, these attempted solutions have made little headway.²⁵⁸

On paper, Guatemalan law provides for the protection of children. The Guatemalan Constitution guarantees the protection of minors

252. PRODEN, *supra* note 145, at 4.

253. *See id.*

254. *See id.* note 145, at 4 (citing A. PIO, AJUSTE ECONOMICO Y DESARROLLO SOCIAL. COMPLEMENTARIDAD O CONFLICTO? 9 (1992)).

255. *See* BARRY, *supra* note 120, at 167 (commenting that girls work twelve to fourteen hours a day and are not considered valuable economic components of society).

256. *Consideration of Reports of States Parties*, Initial Report of Guatemala (CRC/C/3/Add.33 cont'd), U.N. Doc. CRC/C/Sr/307, 12th Sess., June 3, 1996, at 8, para. 47.

257. *See* BARRY, *supra* note 120, at 167 (discussing trends in gender relations as Guatemala becomes more commercialized).

258. *See* Timothy A. Glut, *Changing the Approach to Ending Child Labor: An International Solution To An International Problem*, 28 VAND. J. TRANSNAT'L L. 1203, 1223 (criticizing the current national and international attempts to curtail child labor).

and the right to an education and contains a lengthy and specific list of minimal social rights of labor legislation.²⁵⁹ The Constitution also provides that international human rights treaties and agreements ratified by Guatemala have precedence over domestic law.²⁶⁰

The Guatemalan Labor Code complies with ILO Convention No. 138 by providing a minimum age of employment of fourteen years. The General Labor Inspector ("IGT") has discretion to grant permits to younger children for apprenticeships, when "extreme poverty" warrants, or when the work is light in duration and intensity.²⁶¹ Children under the age of sixteen are prohibited from dangerous or unhealthy work as established by regulation or on inspection of the IGT, and all minors are prohibited from engaging in night work.²⁶²

Guatemala's minimum age limits comply with the lower age limits allowed for developing countries in ILO Convention No. 138.²⁶³ Even this lower limit, however, goes unenforced. The United States Department of Labor estimates that 5,000 minors have authorization to work underage, but thousands more work without permits.²⁶⁴ Problems with enforcement can be blamed on both lack of resources and lack of political will.²⁶⁵

The labor inspection system is totally inadequate due to a shortage of inspectors, lack of legal power, and corruption. Inspection is virtually non-existent outside of the capital city with only a handful of inspectors to cover the country, leaving several areas unmonitored.²⁶⁶ The 1992 Request for Review of Guatemala's GSP status noted an incident where two children were seriously injured while performing agricultural labor. Sadly, no inspectors investigated the plantations

259. See CONSTITUCION POLITICA DE LA REPUBLICA DE GUATEMALA, arts. 51, 71, 102.

260. See *id.* art. 146.

261. See CODIGO DE TRABAJO, Decreto No. 1441, art. 150 (Guatemala).

262. See *id.* arts. 148-149.

263. The Committee on the Rights of the Child has recommended that Guatemala increase the minimum age to fifteen. See *Report on the 12th Session of the Committee on the Rights of the Child*, U.N. Doc. CRC/C/54, July 1, 1996, at 34 para. 216 [hereinafter UNCRRC Report].

264. See DOS COUNTRY REPORTS, *supra* note 162, at 459.

265. See PETERSEN, *supra* note 68, at 69 (attributing poor labor conditions to ineffective regulation and ineffective administration).

266. See *id.* at 65 (describing the underfunded and understaffed inspection departments in Guatemala).

where the injuries occurred.²⁶⁷ Within the city, another handful of labor inspectors is responsible for 14,000 enterprises and more than 300,000 workers.²⁶⁸ Although the Carpio regime increased the number of inspectors, there are still far too few of these mostly self-trained individuals to monitor the number of businesses in Guatemala City.

Resources, however, are not the only problem. *Maquila* owners often refuse to allow inspectors to enter the plant.²⁶⁹ Bribery of underpaid inspectors is also commonplace.²⁷⁰ As one worker told Petersen in an interview: "All they do is talk with the boss over some coffee. They never want to talk with us, even though we are the ones who suffer."²⁷¹ Even if an inspector does find a labor code violation, the fines are so minimal that any deterrent effect is lost.²⁷² The 1992 GSP Petition/Request for Review commented:

Enforcement is reflected . . . not only in inspections, but in fines that have real bite (not minimal fines employers treat as a normal cost of doing business), in punishing employer representatives who obstruct the formulation of a conciliation tribunal (a problem noted by the Subcommittee), in reinstatement of workers, in satisfying court judgments against employers and other marks of labor law enforcement. These are the "markers" of an effective labour law enforcement effort, and they are lacking in Guatemala.²⁷³

One of the most important reasons why labor legislation is unenforced in Guatemala is because the judicial system is extremely

267. See *Petition/Request for Review of Guatemala's GSP Status 26* (June 2, 1992) [hereinafter *GSP Petition*] (urging the government to take stronger actions to protect children from exploitation).

268. See *id.* at 33 (citing government data stating that there were fifteen inspectors in the city in 1992); PETERSEN, *supra* note 68, at 65 (stating that there were thirty inspectors in 1992).

269. See BARRY, *supra* note 120, at 140 (stating that the inspectors are often denied access to plants and are thus unable to investigate complaints); PETERSEN, *supra* note 68, at 62.

270. See *GSP Petition*, *supra* note 267, at 34 (stating that bribery is indicative of ineffective labor code enforcement).

271. PETERSEN, *supra* note 68, at 67.

272. See *GSP Petition*, *supra* note 267, at 34 (arguing that employers consider the small fines a cost of doing business).

273. *Id.* at 8-9.

weak.²⁷⁴ A system of labor courts is supposed to address violations of labor legislation. Like other aspects of Guatemala's judicial system, however, the labor courts are completely ineffective.²⁷⁵ According to the U.S./Guatemala Labor Education Project, only three of the 1,000 cases of a collective nature that were before the labor courts in 1997 were resolved.²⁷⁶ In its *Fourth Report*, the Inter-American Commission condemned the weak response of the judiciary to "constant complaints of attacks on minors or institutions that try to preserve their lives, safety and rights."²⁷⁷ With respect to the labor courts, they quoted a Guatemalan magistrate who publicly announced that judges were "unable to require enforcement of the labor laws and even rulings, judgments and resolutions, which owners and businessmen ignore in flagrant disregard for the law."²⁷⁸

The Guatemalan government has announced and implemented a number of administrative programs aimed at eradicating child labor. In 1989, the Comision Pro-Convencion Sobre los Derechos del Nino ("PRODEN") was established, and in 1990, the Human Rights Procurador created the Instancia del Defensor de la Ninez Guatemalteca to monitor the rights of children.²⁷⁹ The government noted these accomplishments in its recent report to the United Nations Committee

274. See BARRY, *supra* note 120, at 168 (stating that the Guatemalan judicial system is inefficient).

275. See Glut, *supra* note 258, at 1223 (stating that labor courts in Guatemala are not only backlogged and understaffed, but defendants are often free to select which judge will hear their case).

276. Interview with Stephen Coats, Executive Director of the U.S./Guatemala Labor Education Project (April 17, 1997); see also *Petition Against the Republic of Guatemala for Violations of the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention to Prevent, Sanction and Eradicate Violence Against Women*, Case 11.477, Inter-Am. C.H.R. 6, (unpublished, 1996) (noting that none of 408 cases before the courts in 1994 were resolved).

277. *Fourth Report*, *supra* note 144, at 98.

278. *Id.* at 91 (quoting the Hon. Jose Mendez Estrada in LA HORA, Oct. 15, 1992).

279. *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1992, Addendum Guatemala*, U.N. Comm. On the Rts. Of the Child, U.N. Doc. CRC/C/3/Add.33 (1995) [hereinafter *Initial Report of Guatemala*] (reporting on the measures Guatemala has adopted which give effect to the rights recognized in the Convention on the Rights of the Child).

on the Rights of the Child.²⁸⁰ This report also detailed the government's recent adoption of a national literacy strategy, including a plan to coordinate alternative schools on Sundays for working children.²⁸¹ The government also planned to distribute information about child labor and the Convention to adults and children throughout the country.²⁸² Additionally, it compiled information on the socio-economic status of working children.²⁸³ When this report was considered by the Committee in 1996, the government noted other initiatives, including a Social Investment Fund to combat poverty in rural areas and a school allocations program to compensate parents for the loss of earnings entailed in sending their children to school.²⁸⁴ Furthermore, the government committed, under the peace accords, to significantly increase the amount of money spent on education and health.²⁸⁵

The *Fourth Report* noted a few other projects. In 1991 the government announced the creation of a community homes project where young children could be cared for and educated, and it established a school snack program for 1.5 million children.²⁸⁶ The government also planned a national project entitled the "Strategic Plan to Resolve the Problems of the Children of the Street" with support from the Inter-American Institute of Human Rights.²⁸⁷ NGOs, sometimes with the help of government agencies, have also done a great deal of work to promote the interests of children. The work of these groups ranges from spreading knowledge of the UNCRC to providing food, lodging, and education to street children in Guatemala City.²⁸⁸

As positive as these steps are, the actual impact on working children has been negligible. Under the Guatemalan government's 1991

280. *See id.* at 11-13.

281. *See id.* at 50-51.

282. *See id.* at 64.

283. *See id.* at 22.

284. *See Initial Report of Guatemala, supra* note 279, at 50.

285. UNCRC Consideration, *supra* note 150, CRC/C/SR.306 at 7 and CRC/C/SR.308 at 2 & 5.

286. *See Fourth Report, supra* note 144, at 95 (detailing positive efforts undertaken by the Guatemalan government).

287. *See id.* at 97 (noting that implementation was slated for late 1993).

288. *See Lave, supra* note 216, at 79, 92-97 (detailing the work of NGOs including Casa Ahanza, the main provider of services to street children).

Human Development, Children and Youth Policy, a plan to establish a community homes project for the care and education of children under the age of six, only 0.1 percent of the targeted population was reached by 1993.²⁸⁹ The amount of money spent on social assistance and welfare in 1990 represented only 0.4 percent of public spending and amounted to only 1 Quetzal per child (about US \$0.20).²⁹⁰

After considering the Guatemalan government's report, the Committee on the Rights of the Child commented favorably on the Guatemalan delegation's openness "in acknowledging the problems, difficulties and challenges facing the State party in implementing the principles and provisions of the Convention."²⁹¹ The Committee went on to note, however, the inadequacy of the measures adopted by Guatemala to implement the Convention and the insufficient measures taken to promote widespread awareness of the Convention. The Committee also expressed numerous concerns about: the adequacy of measures to ensure the economic, social, and cultural rights of children; the fact that the majority of children were not attending school; the "inadequacy and ineffectiveness of the measures designed to ensure the establishment of appropriate standards and to monitor the working conditions of children;" the persistence of child labor and the government's "lack of accurate assessment [of the] dimensions of the phenomenon;" the insufficient support given to families with severe problems; and the alarming persistence of violence against children.²⁹²

The *Fourth Report* also noted, with respect to street children, that the government programs are laudable but:

[T]he goals and accomplishments announced thus show that these solutions are far too modest for the enormity of the problems The solutions being suggested seem even more inadequate when one considers the enormity of the acts attributable to State agents, which demonstrate how many are utterly uncommitted to a policy of respecting children and mi-

289. See *id.* at 91 (detailing aspects of the Human Development, Children and Youth policy aimed at reaching poor children).

290. See *id.* at 91 (describing Guatemalan social policies). The Guatemalan unit of currency is the Quetzal. See *id.*

291. UNCRC Report, *supra* note 263, at 31, para. 193.

292. *Id.* at 32-34 paras. 201-214.

nors and to their growth and development in freedom and responsibility.²⁹³

Indeed, despite these programs and legislation prohibiting child labor, the number of working children in Guatemala continues to grow.

In reality, the government's efforts to eradicate child labor can be likened to using a bandage to stop bleeding from a gaping wound. The Guatemalan state would argue that, as a developing nation, it simply cannot afford either a bigger bandage or the major surgery needed to correct the problem. The lack of resources of both the state and the NGOs working within Guatemala, as well as the difficult economic circumstances described above, are serious limitations. No one expects child labor to be eradicated overnight.

Nevertheless, part of the problem is a lack of will on the State's part, if not its outright collusion with the economic elite. The factory and plantation owners believe they have a stake in ensuring that the socio-economic status of the majority does not improve. For example, the government has refused to entertain even modest proposals for land reform that are widely considered necessary to rebalance the distribution of wealth.²⁹⁴ In the name of economic development, the government has wholeheartedly assisted the growth of the *maquiladora* industry despite the reputation of the *maquilas* for their labor abuses, including use of child labor.²⁹⁵ A few years ago, a hidden camera at an exposition sponsored by the U.S. Agency for International Development caught government representatives from several Central American countries, including Guatemala, underbidding each

293. *Fourth Report*, *supra* note 144, at 98 (stating that massive measures must be undertaken to resolve the human rights dilemma facing Guatemalan children).

294. See ROBERT TRUDEAU, *GUATEMALAN POLITICS: THE POPULAR STRUGGLE FOR DEMOCRACY* 98 (1993) (describing government opposition to agrarian reform); cf. Jim Handy, *Democracy, Military Rule and Agrarian Reform in Guatemala*, in *CENTRAL AMERICA: DEMOCRACY, DEVELOPMENT AND CHANGE* 27, 29 (John M. Kirk & George W. Schuyler eds., 1988) (describing various governmental efforts to redistribute land).

295. See PETERSEN, *supra* note 68, at 132-35 (describing government efforts to support the *maquilas*); Jennifer Bol, *Using the Inter-American System to Pursue International Labour Rights: A Case Study of the Guatemalan Maquiladoras*, 55 U. TORONTO FAC. L. REV. 351, 357 (1997).

other in an attempt to offer the lowest wage rates to a potential American investor.²⁹⁶

Guatemala has consistently refused to intervene in situations of gross violations of labor rights, including violence against union organizers. The *Empresa Exacta* case,²⁹⁷ currently before the Inter-American Commission, is one example. Workers from the *Empresa Exacta* plantation were owed back pay and took their case to the courts. After two years without any judicial response, they decided to stage a sit-in at the plantation. The military arrived, opened fire on the workers, and killed several employees. At the government's request, this case is in the "friendly settlement" stage at the Commission, but little is happening.

The twenty-two complaints taken to the ILO's Committee on Freedom of Association between 1984 and 1995 also demonstrate the government's lack of will to ensure labor rights. Allegations by national and international trade unions to this committee range from failure to recognize unions to lack of governmental response to the threats, murders, and disappearances of union leaders. In several cases, the government has not responded to the complaint or has responded partially or only in general terms, a source of frustration to the Committee.²⁹⁸

296. See *60 Minutes: Hiring Rosa Martinez* (CBS television broadcast), cited in Lance Compa, *Labor Rights and Labor Standards in International Trade*, 25 L. & POL'Y INT'L BUS. 165, 174-75 (1993) (detailing minimum wage abuses world wide).

297. Case 11.273, Inter-Am. C.H.R. (1996) (Guatemala) (hereinafter *Empresa Exacta* case).

298. See Complaint against the Government of Guatemala presented by the Unified Trade Union Confederation of Guatemala (CUSG), Report no. 259/Case no. 1459 (1988), available in ILOLEX. See, e.g., Complaints presented by the World Federation of Trade Unions, the National Committee of Trade Union Activity of Guatemala and the Autonomous Trade Union Federation of Guatemala against the Government of Guatemala, Report no. 238/Case no. 1262 (1984); Complaints against the Government of Guatemala presented by the Latin American Central of Workers (CLAT), Report no. 287/Case no. 1666 (1992), available in ILOLEX. In 1988, the government responded to a complaint with full details; the Committee commented that this was "particularly gratifying since for many years the committee has had occasion to regret the Government's lack of cooperation in the procedure and since it was obliged, many times, to examine the substance of a great many complaints without having any information or observations from the Government at its disposal."

The low level of spending on social services, particularly education, also shows that the lack of a concerted effort to stop child labor is not entirely attributable to a lack of resources. In 1994, Guatemala spent 15.2 percent of its budget on defense and 29.5 percent of its budget on social services—including health, education, social security, welfare, housing, and community services.²⁹⁹ Despite increasing poverty and an unofficial end to the civil war, this represents a fifty percent increase in the defense budget and a slight decrease in social spending since 1980.³⁰⁰ In comparison, El Salvador spent 8.7 percent of its budget on defense and 39.4 percent on social services in 1994;³⁰¹ Nicaragua spent 5.7 percent and 45.5 percent respectively,³⁰² and Costa Rica spent zero percent and 61.3 percent, respectively.³⁰³

U.S. trade mechanisms have been used to pressure Guatemala and other developing countries into taking their human rights commitments more seriously. The General System of Preferences (“GSP”)³⁰⁴ is designed to give non-reciprocal duty preferences to developing economies, such as Guatemala, to promote exports of manufactured goods.³⁰⁵ Amendments to this legislation in 1984 provided that these preferences could be taken away for failure to comply with internationally recognized worker rights, which included a minimum age for employment.³⁰⁶

299. See THE WORLD BANK, *supra* note 118, at 214 (tabulating budget spending worldwide).

300. See *id.*

301. See *id.*

302. See *id.*

303. See *id.* at 214-15.

304. General System of Preferences Renewal Act of 1974, 19 U.S.C.A. § 2461-2467 (West 1980 & Supp. 1998).

305. See Matthew Bazzano, *Child Labor: What the United States and Its Corporations Can Do To Eliminate Its Use*, 18 *HAMLIN J. PUB. L. & POL'Y* 200, 210 (1996) (stating that the President can take workers' rights into account when granting trade preferences); Elizabeth Iglesias, *Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates*, 28 *U. MIAMI INTER-AM. L. REV.* 361, 366-69 (detailing the GSP process, including the labor rights conditionality).

306. See 19 U.S.C.A. § 2462(b)(2)(G) (West 1980 & Supp. 1998). A number of other U.S. statutes also condition trade on recognition of internationally recognized worker rights. The GSP legislation, however, is the only one which provides a petition and review procedure.

Between 1986 and 1992, American labor rights groups have challenged Guatemala's GSP status every year. The first time, Guatemala was held to be in compliance. For the next five years, the petitions failed for lack of information.³⁰⁷ In 1992, a petition that contained allegations of child labor violations was accepted. The GSP Subcommittee undertook a full review of Guatemala's labor conditions. The threat of losing its GSP status prompted the Guatemalan government to pass revisions to update its Labor Code and authorize the only existing union in a *maquila* plant.³⁰⁸ In the end, Guatemala's GSP status was not revoked.

While the GSP's labor rights clause has had some positive effect by pressuring governments like Guatemala, its reach is limited. The statute only requires that States take steps to improve labor standards.³⁰⁹ Since these standards are not explicitly linked to the relevant ILO conventions, American administrators have a great deal of discretion in interpreting the vaguely stated obligations.³¹⁰ More importantly, the legislation lacks legitimacy as a unilaterally-imposed sanction applied by a country that has not ratified most ILO conventions and has an imperfect record with respect to labor rights.³¹¹ Most

307. See Amy Belanger, Note, *Internationally Recognized Worker Rights and the Efficacy of the Generalized System of Preferences: A Guatemalan Case Study*, 11 AM. U. J. INT'L L. & POL'Y 101, 124-25 (1996) (stating that the United States rejected the petitions because they failed to meet informational requirements).

308. See ANN. REP. INTER-AM. C.H.R., *Guatemala*, 399 OEA/Ser.L/V/II.85, 413 n.26 (1993). The CAMOSA union at the Phillips Van Heusen factory was recognized in 1992. See Fiona Ortiz, *Guatemala Workers Cheer Recognition of New Union*, TORONTO STAR, Mar. 20, 1997, at C4. The company has recently announced it would negotiate with the union. See *id.*

309. See Iglesias, *supra* note 305, at 367 (outlining the requirements for presidential certification).

310. See *International Labor Rights Educ. & Research Fund v. Bush*, 752 F. Supp. 495, 497 (D.D.C. 1990), *aff'd*, 954 F.2d 745 (D.C. Cir. 1992) (holding that "GSP contains no specification as to how the President shall make his [GSP] determination").

311. The United States has ratified only one of the core ILO conventions on freedom of association, the right to organize and bargain collectively, the prohibition of forced labor and child labor, and equality of treatment. See Table 2, *infra*. For a discussion of labor rights abuses in the United States, see Dennis Hayashi, *Preventing Human Rights Abuses in the U.S. Garment Industry: A Proposed Amendment to the Fair Labor Standards Act*, 17 YALE J. INT'L L. 195 (1992) (detailing labor abuse in the American garment industry); Neil Freedman, Comment, *A Human Rights Approach to the Labor Rights of Undocumented Workers*, 74 CAL.

frustrating for groups trying to use this mechanism has been the reticence of the government to actually apply trade sanctions, unless a country is not considered to be a foreign policy concern of the United States.³¹² To date only ten countries have had their trade privileges suspended or revoked under this legislation, although dozens have been petitioned.³¹³

A lawsuit by human rights groups against President Bush and the U.S. Trade Representative in 1990 alleged that the government failed to enforce the worker rights provisions of the GSP legislation consistent with the language and intent of Congress.³¹⁴ The plaintiffs also alleged that the government improperly screened petitions on the basis of factors not covered by the legislation and did not make the reasons for its decisions clear.³¹⁵ In dismissing the case, the district court held that the President must always be given wide discretion in areas of foreign policy, and the apparent total lack of standards in the legislation made court interpretation impossible.³¹⁶

These problems highlight the difficulties of using unilateral trade sanctions to target human rights violations, such as child labor. Although unilateral trade sanctions could potentially provide a significant amount of pressure on states like Guatemala to make changes, they lack the legitimacy necessary to be a consistent and effective tool to fight child labor. Linking trade and labor rights at the multi-

L. REV. 1715 (1986) (discussing labor rights violations affecting undocumented workers).

312. See e.g., Theresa Amato, Note, *Labor Rights Conditionality: United States Trade Legislation and the International Trade Order*, 65 N.Y.U. L. REV. 79, 116 (1990) (stating that sanctioned countries are usually politically disfavored).

313. See Benjamin Davis, Note, *The Effects of Worker Rights Protections in United States Trade Laws: A Case Study of El Salvador*, 10 AM. U. J. INT'L L. & POL'Y 1167, 1173 (1995) (describing the petition process as having substantive and procedural deficiencies); see also Karen Travis, *Women in Global Production and Worker Rights Provisions in U.S. Trade Laws*, 17 YALE J. INT'L L. 173, 184 (1992) (noting that the GSP program continues to be the major tool used for challenging worker rights violations). These ten nations include: Burma, Liberia, Mauritania, Nicaragua, Romania, Syria, and Sudan. In addition, Chile, Central African Republic, and Paraguay were reinstated in 1991. See Davis, *supra*, at 1173 n.28 (listing countries punished under GSP legislation).

314. See *International Labor Rights Educ. & Research Fund*, 752 F. Supp. at 496.

315. See *id.* at 498-99.

316. See *id.* at 499.

lateral level would have greater legitimacy, but attempts to do so have not been successful. Moreover, trade sanctions provide an all-or-nothing solution—either a country loses its trade benefits or it does not. This process is not directly aimed at curing the problem, since it does not provide flexible remedies designed specifically for actual improvement of labor conditions.

IV. USING INTERNATIONAL LAW TO FIGHT CHILD LABOR

A. WHY THERE IS A ROLE FOR INTERNATIONAL LAW

The Guatemalan state has adopted thus far grossly inadequate measures to deal with the growing problem of child labor. Pressure on the government to address the problem has been limited and ineffective. As a result, there may be a role for international law and international litigation in fighting child labor in Guatemala.

Use of international tribunals has three inter-related advantages over other methods: pressure, publicity, and legitimacy. International law is frequently criticized as being unenforceable. However, the ability of international bodies to pressure states to uphold their international obligations should not be underestimated. Recommendations and judgments from international bodies can apply much greater pressure than can be applied from interest groups either within the state or internationally. This increased pressure is due in large part to the greater publicity attached to an international forum.

Tribunals with the authority to deliver binding judgments have the greatest potential to pressure states into compliance with their international obligations. Several international human rights treaties have monitoring bodies that require states' parties to write regular reports detailing compliance.³¹⁷ As noted in Part VI, these requirements are not always met. Nevertheless, reporting requirements also apply some pressure on states to explain their actions. Such pressure is likely to have some effect on Guatemala, which is concerned with its

317. See Laurence Helfer & Anne Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE L.J. 273, 338 (describing the reporting procedures of the UNHRC regarding the International Covenant on Civil & Political Rights); Marilla Sardenberg, *Committee on the Rights of the Child: Basic Processes*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 263, 272 (detailing reporting requirements of the UNCRC under the Convention on the Rights of the Child).

international image and has attempted during the past decade to shed the notorious reputation it gained during the Civil War.³¹⁸ Since its return to democracy in 1986, Guatemala has ratified about fifty international human rights instruments, including the International Covenant on Economic, Social, and Cultural Rights ("Economic Covenant"),³¹⁹ the Convention on the Elimination of All Forms of Discrimination Against Women, and several ILO Conventions.³²⁰ Guatemala was one of the first countries to ratify the UNCRC in 1990.³²¹

Publicity of human rights issues in international human rights bodies increases the pressure on states to comply with their international obligations. If publicity of a case or an issue reaches a significant number of people across the world, it serves to legitimize and popularize human rights issues. Popularization may in turn lead to pressure on other actors who have a role to play in reducing the incidence of child labor. For example, publicity could lead to stronger lobbying for companies to adopt corporate codes of conduct or to set up independent monitoring of subcontracting arrangements.³²² Negative publicity also puts pressure on institutions such as the World Bank to be more careful about the effects of development programs or structural adjustment policies on the population of developing countries.

318. See Stephanie Roos, *Democracy and Elections in Guatemala*, 21-SPG FLETCHER F. WORLD AFF. 97 (1997) (providing a broad view of the Guatemalan government's injustices to its own people and examining reform efforts).

319. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, 6 I.L.M. 360 (entered into force Jan. 3, 1976) [hereinafter Economic Covenant].

320. See Lance Compa, *International Labor Rights and the Sovereignty Question: NAFTA and Guatemala, Two Case Studies*, 9 AM. U. J. INT'L L. & POL'Y 117, 146 n.169 (stating that Guatemala ratified a number of ILO Conventions, including union rights conventions).

321. See Lave, *supra* note 216, at 81 (stating that Guatemala was the sixth country to ratify the UNCRC).

322. See generally Lance Compa & Tashia Hinchliffe-Darricarrer, *Enforcing International Labor Rights Through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT'L L. 663 (1995) (examining private sector efforts to police labor rights through corporate codes of conduct); Jorge Perez-Lopez, *Promoting International Respect for Workers Rights Through Business Codes of Conduct*, 17 FORDHAM INT'L L.J. 1 (1993) (examining the application of codes of conduct to American corporations located abroad).

Finally, international human rights bodies generally have a high degree of legitimacy since states have chosen to ratify the treaties that create these bodies and the norms that they apply. In contrast to unilaterally imposed sanctions, such as American trade legislation, there is a high degree of legitimacy in the norms contained in widely-ratified international instruments, and states are more likely to comply with the recommendations or judgments of such bodies if they have agreed to uphold such norms. The legitimacy derived from international instruments is particularly relevant to the issue of child labor since not all countries agree on the definition of childhood or how states should deal with the problem.

There are, of course, many limitations to the use of the international legal system, some of which will be discussed in Part VI. Certainly, the judgment of an international tribunal cannot cure child labor; it is not in itself the surgery that is needed. But as Judge Thomas Buergenthal of the Inter-American Court has noted:

My fellow judges and I are neither so naive nor inexperienced as to think that the Court, or, for that matter, any judicial institution, can solve all or even most human rights problems confronting our hemisphere Like 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.³²³

B. INTERNATIONAL LEGAL OPTIONS

There are several international mechanisms available to examine whether Guatemala has breached its international obligations with respect to child labor. Most of these mechanisms are bodies established to monitor U.N. treaties and have previously considered the problems facing children in Guatemala. A brief outline of these mechanisms demonstrates their limitations in applying pressure to the Guatemalan government, and why the use of the Inter-American system may be a better option.

323. 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)).

1. *Committee on Economic, Social and Cultural Rights*

The Economic Covenant,³²⁴ which deals specifically with the economic exploitation of children in art. 10(3), was ratified by Guatemala in 1988. The eighteen-member Committee on Economic, Social, and Cultural Rights is composed of independent experts from all over the world who receive reports on measures adopted by the states parties pursuant to their obligations under the Economic Covenant.³²⁵ The Committee is dependent on states' parties submitting reports under the Convention as required.³²⁶ Despite attempts to improve its effectiveness at supervising the Convention, however, overdue reports and failure to report are common. In addition, governments frequently do not send experts to Geneva to discuss their reports with the Committee.³²⁷ The Committee is authorized to make comments and recommendations to states' parties on ways to improve their observance of the Covenant.³²⁸ The reports or summaries thereof can be forwarded to the Commission on Human Rights, specialized agencies of the United Nations, or the General Assembly.³²⁹

Guatemala's latest report to the Committee on Economic, Social, and Cultural Rights was examined during the Committee's fourteenth session in 1996. Among the Committee's recommendations were a call for increased emphasis on social welfare, including health and education, and greater attention to commitment for women's rights, union rights, and protection against child labor.³³⁰

2. *Committee on the Rights of the Child*

The UNCRC has also provided for a body to receive and review reports of states' parties on measures they have taken to comply with the Convention.³³¹ Like the Committee on Economic, Social, and Cultural Rights, this Committee is highly dependent on voluntary

324. Economic Covenant, *supra* note 319, at 46.

325. See BETTEN, *supra* note 97, at 432 (discussing state parties' negative views towards the reporting procedures).

326. See *id.*

327. See *id.*

328. See Economic Covenant, *supra* note 319, Pt. IV arts. 19-21.

329. See *id.* art. 22.

330. See *Committee on Economic, Social and Cultural Rights Concludes Fourteenth Session*, Press Release HR/4298 (May 21, 1996).

331. See UNCRC, *supra* note 16, arts. 43-45.

compliance by states' parties with their reporting obligations and is limited to making comments and recommendations for improvements.³³² Guatemala was one of the first countries to ratify the UNCRC.³³³ The Committee received the initial report in 1995 and examined it in 1996. As noted above, the Committee expressed concern over the inadequate measures taken by Guatemala to address the issue of child labor. One of the Committee's recommendations was that "all necessary measures be adopted to ensure that children have access to education and that they are protected from involvement in exploitative activities."³³⁴

3. *The Human Rights Committee*

Like the committees above, the Human Rights Committee is a United Nations treaty body, functioning under the International Covenant of Civil and Political Rights ("Civil and Political Covenant").³³⁵ The Human Rights Committee differs from the two committees considered above, however, since it not only considers regular reports of states parties but can also hear complaints lodged by individuals.³³⁶ Unfortunately, this mechanism is very limited since individuals can only petition against states that have ratified both the Convention and its Optional Protocol.³³⁷ Many states, including Guatemala, have not.

Even if Guatemala had signed the Optional Protocol, this method of recourse would not be effective. NGOs do not have standing to bring petitions under the Optional Protocol; complaints must be launched by actual victims of human rights violations, or if the vic-

332. See Stephanie Farrior, *The International Law on Trafficking in Women and Children For Prostitution: Making It Live Up To Its Potential*, 10 HARV. HUM. RTS. J. 213, 236 (describing the limitation on Committee recommendations as a drawback to state reporting procedures).

333. See Lave, *supra* note 216, at 81 (stating that Guatemala was the sixth nation to ratify the UNCRC).

334. UNCRC Report, *supra* note 263, at 37 para. 231.

335. G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter *Civil and Political Covenant*].

336. See *Report of the Human Rights Committee*, 39 U.N. GAOR Supp. No. 40, at 110, U.N. Doc. A/39/40 (1984) [hereinafter *Report of the Human Rights Committee*].

337. See *Economic Covenant*, *supra* note 319, art. 1.

tim is unavailable, by the victim's representatives.³³⁸ In countries like Guatemala, it is difficult for complaints to be brought forward because most people are extremely poor and unaware of their rights. The nature of economic rights makes them particularly difficult to pursue where the actual victim must bring the petition. In the case of child labor, for example, the individual victims of violations are children, and in most cases, neither they nor their parents want them to stop working in the short-term. Governments, after all, generally, do not directly force children to work. The problem is that governments fail to act to ensure that labor rights and children's rights are protected.³³⁹

The regular reporting requirements under the ICCPR face the same limitations as the previous two committees. The Human Rights Committee is dependent on states' parties complying with reporting requirements and is not a tribunal capable of delivering a binding judgment.³⁴⁰ The Committee's Final Views ask states' parties to provide information on what they have done to remedy any breach of their obligations; however, the Committee lacks the power to enforce compliance with these views.³⁴¹

Finally, the Human Rights Committee is limited to examining allegations of violations of the rights contained in the Civil and Political Covenant.³⁴² Although Article 24(1) provides for the right of children "to such measures of protection as are required by his status as a minor, on the part of his family, society and the State,"³⁴³ this instrument does not deal specifically with the issue of child labor or other economic rights.

When the Committee considered Guatemala's initial report in 1996, the Guatemalan delegation admitted that, until 1994, the coun-

338. *See id.*

339. *See* Janelle M. Diller & David A. Levy, *Child Labor, Trade and Investment: Toward the Harmonization of International Law*, 91 AM. J. INT'L L. 663, 668 (1997) (arguing that "[m]ost extreme forms of child labor are perpetrated by private actors with the acquiescence of public officials").

340. *See Report of the Human Rights Committee, supra* note 336, at 117 (describing the Committee's attempts to urge compliance with its decisions by appointing rapporteurs and conducting on-site fact-finding missions in individual countries).

341. *See id.*

342. *See* Civil and Political Covenant, *supra* note 335, art. 40.

343. *Id.* art. 24(1).

try had not complied with its obligation of submitting reports under the Covenant.³⁴⁴ The only issue concerning children raised in the consideration of the 1996 report was the problem of street children.³⁴⁵

4. *The International Labour Organization*

Child labor has been a central concern of the ILO since the founding of the organization. Several conventions address the subject of minors. The most important convention is ILO Convention No. 138, which provides for a minimum age of employment.³⁴⁶

States' parties are expected to submit reports at regular intervals describing the measures taken to comply with the conventions they have ratified.³⁴⁷ An independent Committee of Experts on the Application of Conventions and Recommendations ("CEACR") evaluates member states' compliance with conventions in a non-public examination.³⁴⁸ If reports of states' parties are unclear or incomplete, the government in question may be asked for more information.³⁴⁹ In serious cases, the Committee may decide to include a case in a "special paragraph" in its report, or more rarely, to list it as a "continued failure to implement" a Convention.³⁵⁰ The Committee reports to the ILO Conference. The Conference Committee on the Application of Conventions and Recommendations then hears selected cases. This Committee is unique among international bodies because it is composed of representatives not only of governments, but also of em-

344. See *Human Rights Committee Begins Consideration of Guatemala's Initial Report*, Press Release HR/CT/459 (March 26, 1996).

345. See *Human Rights Committee Continues Considering Guatemala's Initial Report*, Press Release HR/CT/463 (March 28, 1996).

346. See Breen Creighton, *Combating Child Labour: The Role of International Labour Standards*, 18 COMP. LAB. L.J. 362, 371 (1997) (discussing the role of ILO Convention No. 138 in establishing minimum age standards).

347. See ILO Convention No. 138 Concerning Minimum Age for Admission to Employment, June 26, 1973 [hereinafter ILO Convention 138], in INTERNATIONAL LABOUR ORGANISATION, INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS: 1919-1981, 730 (1982).

348. See Creighton, *supra* note 346, at 372-73 n. 48 (describing the CEACR review process).

349. See VICTOR YVES GHEBALI, THE INTERNATIONAL LABOUR ORGANIZATION: A CASE STUDY ON THE EVOLUTION OF UNITED NATIONS SPECIALISED AGENCIES 238 (1989).

350. See *id.* at 225.

ployer and employee organizations. Reports of the Conference Committee are usually adopted by the plenary Conference.

The ILO has several specialized mechanisms as well. The Committee on Freedom of Association is a special committee of the ILO Governing Body set up to deal specifically with allegations of violations of the right to freedom of association.³⁵¹ In addition, Article 24 of the ILO Constitution provides for representations to the ILO from international or national employer or employee organizations if a member state fails to effectively ensure the provisions of a Convention.³⁵² A tripartite committee of the Governing Body examines these representations and communicates them to the government involved.³⁵³ If a response is not received from the government or is inadequate, the representation may be published.³⁵⁴

Finally, Article 26 of the Constitution provides for inter-state complaints.³⁵⁵ These complaints are also examined by the Governing Body and communicated to the government in question. The matter may be settled, or a Commission of Inquiry may be appointed to thoroughly consider the complaint.³⁵⁶ Such an inquiry includes calling witnesses, examining documentation, and making unannounced visits to the member state. The Commission of Inquiry writes a report containing its conclusions and recommendations that is sent to the Governing Body and the governments involved and is then published.³⁵⁷ Governments must inform the Director-General of the ILO whether they accept the recommendations and, if not, whether they intend to refer the complaint to the International Court of Justice ("ICJ").

Guatemala has ratified 169 ILO conventions, including ILO Convention No. 138 and most of the conventions containing core labor rights (see Tables 1 and 2). In 1994 and 1995, Guatemala did not submit any of the reports that were due; however, all of its reports

351. *See id.* at 238.

352. *See* Creighton, *supra* note 346, at 383.

353. *See* GHEBALI, *supra* note 349, at 238.

354. *See id.*

355. The Governing Body may also decide to submit a representation to the complaint procedure.

356. *See* Creighton, *supra* note 346, at 383.

357. *See id.* at 385 n.106.

were submitted in 1996.³⁵⁸ As an illustration of the insufficient pressure applied by the ILO, the CEACR noted in its individual comments on Convention No. 105 in 1996 that its concern about compulsory penal work in Guatemala "has been the subject of comment for more than ten years."³⁵⁹ Guatemala has also been the subject of more than 100 direct requests for information from the Committee in the past few years with respect to its reporting obligations on various conventions, including ILO Convention No. 138.³⁶⁰

Table 1. ILO Child Labor Conventions Ratified by Guatemala

No.	Title	Ratified by Guatemala
5	Minimum Age (Industry), 1919	No
59	Minimum Age (Industry) (Revised), 1937	Yes
7	Minimum Age (Sea), 1920	No
58	Minimum Age (Sea) (Revised), 1936	Yes
10	Minimum Age (Agriculture), 1921	Yes
15	Minimum Age (Trimmers and Stokers), 1921	Yes
33	Minimum Age (Non-Industrial Employment), 1932	No
60	Minimum Age (Non-Industrial Employment) (Revised), 1937	No
112	Minimum Age (Fishermen), 1959	Yes
123	Minimum Age (Underground Work), 1965	No
138	Minimum Age, 1973	Yes

358. See International Labour Organization, REPORT OF THE CEACR: GENERAL REPORT AND OBSERVATIONS CONCERNING PARTICULAR COUNTRIES, International Labour Conf., 81st Sess. (1994); REPORT OF THE CEACR: GENERAL REPORT AND OBSERVATIONS CONCERNING PARTICULAR COUNTRIES, International Labour Conf., 82nd Sess. (1995); REPORT OF THE CEACR: GENERAL REPORT AND OBSERVATIONS CONCERNING PARTICULAR COUNTRIES, International Labour Conf., 83rd Sess. (1996) [hereinafter REPORT OF THE CEACR, 1996].

359. REPORT OF THE CEACR, 1996, *supra* note 358, at 248.

360. See *Individual Direct Requests Concerning Convention No. 138* (submitted 1994, Feb. 1995, and Dec. 1995), available in ILOLEX; REPORT OF THE CEACR, 1996, *supra* note 358, at 367.

There has never been an inter-state complaint made against Guatemala at the ILO. One representation, which was made under Article 24 by unions, alleged non-observance of the two conventions on forced labor.³⁶¹ The decision is still pending. As noted above, Guatemala has been the subject of several complaints to the Committee on Freedom of Association.³⁶² The Committee has noted its deep concern about the seriousness of allegations of violence against union organizers. The government's response to these complaints, when they have occurred at all, has often been inadequate.³⁶³

Table 2. Other Core ILO Conventions Ratified by Guatemala

No.	Title	Date of Ratification
29	Forced Labour Convention, 1929	1989
87	Right of Association and Protection of the Right to	1952
98	Right to Organize and Collective Bargaining Con-	1952
100	Equal Remuneration Convention, 1951	1961
105	Abolition of Forced Labour Convention, 1957	1959
111	Discrimination (Employment and Occupation) Con- vention, 1958	1960

5. The International Court of Justice

Unlike the other mechanisms explained above, the International Court of Justice is a full tribunal with the authority to deliver a binding judgment.³⁶⁴ Unfortunately, Guatemala has not accepted the compulsory jurisdiction of this court. Moreover, only states have

361. See *Representation by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Public Servants International (PSI)*, art. 24, available in ILOLEX (alleging non-observance of C29 and C105 on forced labor).

362. See generally, *supra* note 298.

363. See generally, *supra* note 298.

364. See generally Anthony Clark Arend, *Do Legal Rules Matter? International Law and International Politics*, 38 VA. J. INT'L L. 107, 131 (1997).

standing to bring claims before the ICJ.³⁶⁵ As with other human rights claims—perhaps even more so with child labor, given its controversial nature—it is extremely unlikely that any state would bring a claim against another state on this issue. Even if child labor were considered, the judgments of the ICJ tend to be quite conservative compared to those of regional human rights tribunals, reflecting the lesser degree of consensus on both international law and jurisdiction facing this truly universal forum. The ICJ would thus be a poor choice of forum to bring a novel complaint such as a child labor petition.

V. THE INTER-AMERICAN SYSTEM FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

Guatemala appears to have improved its compliance with its reporting obligations to the various treaty bodies in recent years, indicating a greater willingness to be bound by the norms the treaties apply. None of these mechanisms would allow an individual complaint on the subject of child labor in Guatemala or give NGOs standing to launch such a complaint. Furthermore, only the ICJ could provide a binding judgment, but it is not an available option for Guatemala because Guatemala has not subjected itself to the jurisdiction of the ICJ.

The ILO mechanisms are probably the strongest options presented thus far because they involve both regular reporting and a complaint procedure. The representation and complaint mechanisms do not, however, allow individuals to bring complaints and tend to be used infrequently. As for the Committees, they are hampered by their reliance on the reports of states' parties, which are frequently late or incomplete. As with all the monitoring bodies, concern about human rights violations is limited to diplomatically worded suggestions. The ILO Committees can send observations to a government in breach of its obligations; however, these observations never contain stronger language than "concern" or "regret."³⁶⁶

365. See Statute of the International Court of Justice, June 26, 1945, ch. II, art. 34(1), 59 Stat. 1055, 3 Bevans 1179.

366. See BETTEN, *supra* note 97, at 398.

For these reasons, as well as the increased legitimacy of regional human rights systems over universal ones, the Inter-American system is the best choice of an international forum for a child labor complaint against Guatemala. The Inter-American system for the protection of human rights is a two-tiered system consisting of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.³⁶⁷ The system accepts petitions from individuals or groups alleging human rights violations.³⁶⁸ Petitions must first be sent to the Commission, which sits in Washington, D.C.³⁶⁹ After receiving all the relevant information, the Commission writes a report containing its conclusions and recommendations.³⁷⁰ If the dispute is not amenable to a friendly settlement, the Commission may decide to send the case to the Inter-American Court of Human Rights, located in San Jose, Costa Rica, for a binding judgment.³⁷¹

The Inter-American Commission is very similar to the regional human rights system in Europe upon which it was modeled.³⁷² The later development of the Inter-American system, however, combined with the specific political situation in the region, allowed it to improve on the framework of both the European and the United Nations systems.³⁷³ Shelton authoritatively states that the Inter-American system "has evolved into the most ambitious institutional framework in the world for promoting and protecting human rights."³⁷⁴

This section will first outline the history and function of the Inter-American Commission and Court, the two principle human rights in-

367. See American Convention, *supra* note 4, art. 33.

368. See *id.* art. 44.

369. See *id.*

370. See *id.* art. 41.

371. See Thomas Buergenthal, *The Inter-American Court of Human Rights*, 76 AM. J. INT'L L. 231, 232 (1982).

372. See European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222, art. 19 (entered into force Sept. 3, 1953) [hereinafter European Convention].

373. *But see* INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS 481 (Frank Newman & David Weissbrodt eds., 2d ed. 1996) (stating that the European Court is "unique among international bodies because routinely it imposes sanctions on governments for violating the human rights of their nationals").

374. 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, 323 (1988).

struments they apply, the American Convention on Human Rights, and the American Declaration on the Rights and Duties of Man. The section will then consider the benefits of this system over other human rights bodies. Finally, the section will take a closer look at what a child labor petition in the Inter-American system might look like, including the relevant human rights norms that could be applied.

A. WHAT IS THE INTER-AMERICAN SYSTEM?

The Inter-American human rights system functions within the framework of the Organization of American States ("OAS"), a regional organization of the United Nations based in Washington D.C. Any American state can become a member of the OAS by ratifying the OAS Charter.³⁷⁵ Today, all 35 American states have ratified the OAS Charter and are member states³⁷⁶ with the exception of Cuba, which was removed from the OAS by a resolution of the Fifth Meeting of Consultation of Ministers of Foreign Affairs in 1962.³⁷⁷

Among the principles affirmed in the OAS Charter are respect for the fundamental rights of the individual without distinction as to race, nationality, creed, or sex, as well as economic and social standards toward which states are to progress.³⁷⁸ The Conference, at which the Charter was adopted, also adopted a more expansive human rights document. The American Declaration of the Rights and Duties of Man developed from a resolution on the protection of human rights adopted at the Inter-American Conference on Problems of War and Peace in March 1945 in Mexico City. The presentation and

375. Charter of the Organization of American States, April 30, 1948, art. 4, 2 U.S.T. 2394, 119 U.N.T.S. 3 (1967) (entered into force Dec. 13, 1951), 6 I.L.M. 310 [hereinafter OAS Charter]. The Charter was adopted at the Ninth International Conference of American States in Bogota in 1948 by the 21 American states who participated: Argentina, Bolivia, Brazil, Chile, Columbia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, and Venezuela.

376. The 14 later additions are: Barbados, Trinidad & Tobago (1967); Jamaica (1969); Grenada (1975); Suriname (1977); Dominica, St. Lucia (1979); Antigua and Barbuda, St. Vincent and the Grenadines (1981); Bahamas (1982); St. Kitts and Nevis (1984); Canada (1990); Belize, and Guyana (1991).

377. See Jo N. Pasqualucci, *The Whole Truth and Nothing But the Truth: Truth Commissions, Impunity and the Inter-American Human Rights System*, 12 B.U. INT'L L.J. 321, 339 n.108 (1994).

378. See OAS Charter, *supra* note 375, arts. 3(k), 29-51.

adoption of the American Declaration at the 1948 conference made it the first international instrument of its type adopted at this level, although it did not achieve the status of a convention.³⁷⁹

The OAS Charter also created a number of organs. The most important is the General Assembly, the political body that decides on the general policy and action of the organization and is composed of all member states.³⁸⁰ Other OAS organs are the Meeting of Consultation of Ministers of Foreign Affairs, three Councils (the Permanent Council, the Inter-American Economic and Social Council, and the Inter-American Council for Education, Science, and Culture), the Inter-American Judicial Committee, the Inter-American Commission on Human Rights, the General Secretariat, and a number of specialized organizations, such as the Pan American Health Organization.³⁸¹ The Inter-American Commission on Human Rights, which became a principle organ of the OAS following an amendment to the Charter in 1965,³⁸² has the primary responsibility for promoting and protecting human rights in the hemisphere.

The Inter-American Commission is composed of seven members elected for four-year terms by the Council of the OAS from names submitted by OAS member states.³⁸³ The Commission was created in 1959 at the Fifth Meeting of Consultation of Ministers of Foreign Affairs in Santiago, Chile. The Resolution, entitled "Human Rights," created the Inter-American Commission to watch over the rights set out in the American Declaration.³⁸⁴ The resolution also requested the Inter-American Council of Jurists to prepare a draft convention on human rights and a draft convention creating an Inter-American

379. See BASIC DOCUMENTS, *supra* note 4, at 6.

380. See OAS Charter, *supra* note 375, ch. IX, art. 53.

381. See *id.* arts. 60, 79, 92, 104, 111 & 112.

382. The amended Charter entered into force in 1970. Article 51 makes the Commission a principle organ. See OAS Charter, *supra* note 375, art. 51. Article 112 states that the Commission's principle function shall be "to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters." *Id.* art. 112.

383. See Jose Mendez & Jose Vivanco, *Disappearances and the Inter-American Court: Reflections on a Litigation Experience*, 13 HAMLINE L. REV. 507, 520 (1990).

384. *Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, Chile*, Final Act, at 10, OAS Off. Rec., OEA/Ser.C/II.5, (August 12-18, 1959) [hereinafter *Fifth Meeting*].

Court and other organs “sufficient to assure the protection and observance” of the rights enumerated in the convention.³⁸⁵

This draft convention on human rights became the American Convention on Human Rights.³⁸⁶ Closely modeled on the European Convention on Human Rights and the United Nations Civil and Political Covenant, it was drafted in 1969 and entered into force on July 18, 1978 on the deposit of the eleventh instrument of ratification. The purpose of the American Convention is to accord protection, both in the international sphere and under the domestic law of the American states, to the “essential rights of man.”³⁸⁷ As of 1997, twenty-five of the thirty-five OAS member states had ratified the American Convention.³⁸⁸

Originally, the Commission was conceived of more as a study group concerned with abstract investigations of human rights than as a body pursuing individual complaints. The character of the Commission was reflected in the limited authority given to the Commission under its first statute.³⁸⁹ The Commission had no authority to send individual communications to governments nor could it oblige them to respond or explain what had happened where a violation of rights was alleged.³⁹⁰ The Eighth Meeting of Consultation in 1962 gave voice to this frustration, stating that “the inadequacy of the faculties and attributions conferred upon [the Commission] by its Statute” had made it difficult “for the Commission to fulfill its assigned mission.”³⁹¹ The Meeting recommended that the statute be broadened and strengthened.³⁹²

The Commission’s statute was amended in 1965, giving it authority “[t]o examine communications submitted to it and any other

385. *Id.*

386. *See generally* American Convention, *supra* note 4.

387. *Id.* at preamble.

388. The 10 member states who have not ratified the Convention are: Antigua & Barbuda, Bahamas, Belize, Canada, Cuba, Guyana, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and the United States.

389. *See generally* Claudio Grossman, *Proposals to Strengthen the Inter-American System of Protection of Human Rights*, 32 GERMAN Y.B. INT’L L. 264 (1990).

390. *See generally id.*

391. *Eighth Meeting of Consultation of Ministers of Foreign Affairs, Punta del Este, Uruguay*, Final Act, at 16-17, OAS Off. Rec., OEA/ser.C/II.8, (1962).

392. *See id.*

available information, so that it may address to the government of any American State a request for information . . . so that it may make recommendations . . . with the objective of bringing about a more effective observance of fundamental human rights."³⁹³ Specifically, the new statute required that an accused state respond to allegations against it. The statute also gave the Commission the authority to publish resolutions with its conclusions and recommendations on petitions once fact-finding was completed.

The statute was approved in October 1979,³⁹⁴ and has strengthened the Commission's ability to act on individual petitions. The statute also provides a procedure for inter-state complaints and for friendly settlement.³⁹⁵ For the first time, specific authorization to carry out on-site investigations appears.³⁹⁶ Of particular importance is the inclusion of the power to request advisory opinions from the Court on the interpretation of the American Convention or other relevant treaties.³⁹⁷

The Commission has several distinct functions besides examining complaints brought forward by individuals or groups. These include initiation of its own proceedings with respect to human rights violations, conducting country-wide studies on human rights conditions, including on-site visits,³⁹⁸ providing interim measures,³⁹⁹ making

393. Statute of the Inter-American Commission on Human Rights, art. 9, GENERAL SECRETARIAT OF THE ORGANIZATION OF AMERICAN STATES, ORGANIZATION OF AMERICAN STATES & HUMAN RIGHTS 1960-1967 601, 605 (1972), cited in David Padilla, *The Inter-American Commission of Human Rights of the Organization of American States: A Case Study*, 9 AM. U. J. INT'L L. & POL'Y 95, 96 n.4 (1993).

394. Approved by Resolution No. 447 taken by the General Assembly of the OAS at its ninth regular session, held in La Paz, Bolivia, Oct. 1979.

395. See Statute of the Inter-American Commission on Human Rights, *supra* note 393, art. 18.

396. See *id.* art. 18(g).

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

398. The country reports and on-site investigations are one of the most successful parts of the Inter-American system. Shelton notes that an on-site investigation in El Salvador discovered torture chambers and disappeared persons, while a visit to Panama succeeded in obtaining the repeal of an objectionable law affecting the right to a fair trial. See Shelton, *supra* note 374, at 327. She goes on to note that in Nicaragua:

The strength of the Commission report resulted in a resolution of the OAS calling for the overthrow of the country's government. As characterized by the Commission, this

recommendations for the promotion and protection of human rights, serving as a consultative organ of the OAS on human rights matters, and advising the Inter-American Court in both contentious cases and advisory opinions.⁴⁰⁰

The Inter-American Court of Human Rights was established in 1979.⁴⁰¹ The Court is composed of seven part-time judges from OAS member states who are elected for seven-year terms by states who are parties to the American Convention.⁴⁰² The court derives its authority from the American Convention, the Statute of the Court, and the Rules of Procedure.⁴⁰³ The Court has the authority to hear contentious cases between states, or against one state at the request of the Commission, regarding violations of the American Convention.⁴⁰⁴ As with the International Court of Justice and the European Court, however, states must accept the jurisdiction of the Court—either generally or on a case-by-case basis—before it can hear a dispute.⁴⁰⁵ Between 1979 and 1988, nine states accepted the compulsory jurisdiction of the court; by 1995, seventeen of the twenty-five parties to the American Convention had accepted it.⁴⁰⁶

resolution, for the first time in OAS history, deprived an incumbent government of a member state of legitimacy based on that government's human rights violations committed against its own population.

Id. Any OAS state may be the subject of a country report that may arise via individual or inter-state petitions, via requests of the OAS General Assembly, via the Commission's own motion, or at the request of the government involved. Nearly half of the member states have been the object of country reports so far.

399. Both the Commission and the Court are authorized to take immediate measures where there is immediate danger. This authority allows them to act with a speed "unparalleled in other human rights institutions." Shelton, *supra* note 374, at 330. Shelton notes, for example, that it took the Commission three and a half weeks to get a representative in Chile after the 1973 coup whereas it took the United Nations five years. *See id.* Shelton also notes, however, that quick responses have been more positive with respect to country studies than in individual cases. *See id.*

400. *See* BUERGENTHAL, *supra* note 397, at 231-33.

401. *See id.* at 231.

402. *See* American Convention, *supra* note 4, art. 52(1).

403. *See* BUERGENTHAL, *supra* note 397, at 232.

404. *See* American Convention, *supra* note 4, arts. 61-64.

405. *See id.* art. 62.

406. The eight parties to the American Convention who have not accepted the compulsory jurisdiction of the court are Barbados, Brazil, Dominica, Dominican Republic, Grenada, Haiti, Jamaica, and Mexico.

Besides its contentious jurisdiction, the Inter-American Court has "the most extensive advisory jurisdiction of any international juridical body."⁴⁰⁷ Advisory opinions can be requested by any OAS member state or organ with respect to the interpretation of instruments concerning the protection of human rights in the Americas.⁴⁰⁸ Although these instruments most commonly concern the American Convention, the American Declaration, or the OAS Charter, the Court has held that its powers extend to the interpretation of any international human rights instrument if it directly relates to human rights protection in a member state.⁴⁰⁹ States can also seek to test the compatibility of their domestic law with Inter-American instruments.⁴¹⁰ Advisory opinions are not binding, but as one scholar comments, they carry considerable moral force, help focus international attention on human rights violations, and defuse political tensions.⁴¹¹ The Court also has the authority to order provisional measures in cases of urgency.⁴¹² The Inter-American Court is the only system that authorizes such measures to be taken before the Court is seized of the case.⁴¹³

B. BENEFITS OF USING THE INTER-AMERICAN SYSTEM

Although it is by no means a perfect system, the Inter-American system attempts to correct many of the deficiencies of the other international bodies. It does not rely solely on regular reports from states' parties. Rather, similar to its counterpart in Europe, it is designed specifically to investigate and decide alleged human rights violations brought forward by individuals. The element of the Inter-American system that has the greatest potential for improving human rights is its rules concerning access by non-state actors. Shelton comments that "[t]he provisions governing private access to the In-

407. Shelton, *supra* note 374, at 325.

408. See American Convention, *supra* note 4, art. 64(1).

409. 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).

410. See American Convention, *supra* note 4, art. 64(2).

411. 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).

412. See American Convention, *supra* note 4, art. 63(2).

413. See European Convention, *supra* note 372, sec. IV.

ter-American system afford greater possibility in filing petitions than in any other international human rights system and give the Commission great flexibility in implementing its procedures."⁴¹⁴

The Inter-American system is the first human rights system to allow individual petitions and remains the only system that makes individual petitions automatic and mandatory.⁴¹⁵ By contrast, the Human Rights Committee and the European Commission on Human Rights⁴¹⁶ can only examine individual complaints if the state in question has expressly accepted that body's competence to do so.

Perhaps even more compelling than the right of individuals to petition, is the right of any organization recognized in a member state to bring a petition.⁴¹⁷ This allows NGOs to bring petitions on behalf of victims. This is absolutely crucial to an effective human rights system in the Americas where extreme poverty, illiteracy, and political violence prevent individuals from knowing and exercising their rights. This is also crucial to the possibility of a child labor petition, since victims of child labor or their representatives are unlikely to have the resources or the desire to pursue their rights in a lengthy and expensive international proceeding.

Another advantage of the Inter-American system is its two-tiered structure. If the Commission's recommendations are not adopted, the Commission can decide to refer the case on to the Inter-American Court for a binding judgment, provided that the state in question has

414. Shelton, *supra* note 374, at 327.

415. In 1978, when the American Convention entered into force, military regimes known for gross violations of human rights controlled much of Latin America. See Thomas Buergenthal, *The OAS and the Protection of Rights*, 3 EMORY J. INT'L DISP. RESOL. 1, 23 (1988). Consequently, the development of the individual complaint mechanism was hampered. See *id.* Originally, the need for domestic remedies and the Commission's inability to force the government to respond also hindered the individual complaint mechanism. See Cecilia Medina, *The Inter-American Commission of Human Rights and the Inter-American Court of Human Rights: Reflections on a Joint Venture*, 12 HUM. RTS. Q. 439, 441 (1990). In addition, states were not likely to follow recommendations and Commission opinions on individual cases that never reached the OAS. See *id.*

416. See European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 25(1), 213 U.N.T.S. 222, 236-39, reprinted in RICHARD B. LILICH & HURST HANNUM, INTERNATIONAL HUMAN RIGHTS DOCUMENTARY SUPPLEMENT III (1995) (authorizing petitions against parties which have acknowledged the competence of the Commission to review complaints).

417. See American Convention, *supra* note 4, art. 44.

ratified the American Convention and accepted the jurisdiction of the Court. The Court issues binding decisions and may award compensation to victims under Article 63 of the American Convention.⁴¹⁸

As with all international mechanisms, it is impossible to ensure enforcement. Nonetheless, the potential to enforce decisions is greater for a tribunal that hands down a binding judgment than for a treaty body that merely expresses concern or makes suggestions for change. This is particularly true since states have expressly accepted the jurisdiction of the Court to hand down such judgments. As a regional body, the decisions of the Inter-American Commission and the Inter-American Court are also backed by a greater degree of consensus than the ILO governing body, the Human Rights Committee, or the ICJ. Because of this consensus, the opinions of the Inter-American Court tend to be more liberal than those of the truly international bodies such as the ICJ. The Inter-American system also contemplates applying international pressure on countries to encourage compliance with the Court's decisions by requiring the Court to report noncompliance to the OAS General Assembly.⁴¹⁹ In the past, however, reports to the General Assembly have not had a significant effect.⁴²⁰

C. TAKING CHILD LABOR TO THE INTER-AMERICAN SYSTEM

Taking the issue of child labor in Guatemala through the Inter-American system would first require a petition to the Inter-American Commission alleging a violation of a right or rights enunciated in the American Convention or the American Declaration, the key human rights instruments in the Inter-American arsenal.⁴²¹

By creating binding treaty obligations, the American Convention is the most important of these instruments. Unfortunately, it is primarily a document on civil and political rights. Article 26, the obligation of progressive development, is the only right under the rubric of eco-

418. *See id.* art. 63.

419. *See id.* art. 65.

420. *See* Interview with Denise Gilman, Human Rights Specialist with the Inter-American Commission (March 20, 1997) [hereinafter Gilman Interview].

421. Guatemala ratified the Convention in 1978 and accepted the compulsory jurisdiction of the court in 1987. *See* 5 HUMAN RIGHTS: THE INTER-AMERICAN SYSTEM 330, app. 2 at 11 (Thomas Buergenthal & Robert E. Norris eds., 1993) [hereinafter Buergenthal & Norris].

conomic and social rights.⁴²² Under this Article, states pledge only to "adopt measures . . . with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States"⁴²³ While this may appear to limit the usefulness of the American Convention in the realm of child labor, many of the provisions under the heading of civil and political rights can be interpreted to apply to the child labor problem in Guatemala.

Most importantly, Article 19 of the American Convention imposes a positive obligation on the state to provide a minor with "the measures of protection required by his condition as a minor on the part of his family, society, and the state."⁴²⁴ Although this is obviously a vague obligation, the measures of protection that a state must take under Article 19 can be interpreted using the rights enumerated elsewhere in the American Convention, as well as Guatemala's other international obligations. The Commission often uses this approach. For example, in a recent case on violence against street children in Guatemala, other rights in the American Convention and in the UNCRC were used to interpret the scope of Article 19.⁴²⁵ This is consistent with Article 29 of the American Convention, which states that no provision in the American Convention shall be interpreted as "excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."⁴²⁶

Thus, in a child labor case, the prohibition against forced and compulsory labor in Article 6(2) and the right to physical integrity in Article 5 may be relevant. The Commission has recognized these rights as applying to incidences of forced overtime in the *maquilas*.⁴²⁷

422. See American Convention, *supra* note 4, art. 26.

423. *Id.*

424. *Id.* art. 19.

425. See Case 11.383, Inter-Am. C.H.R. (1997) (Los Bosques de San Nicolas). This case is now before the Court. See Gilman Interview, *supra* note 420.

426. American Convention, *supra* note 4, art. 29.

427. The Commission has pointed out that forced overtime in the *maquila* industry violates Article 6. See *Fourth Report*, *supra* note 144, at 90. In its Country Report on Chile, the Inter-American Commission further noted that "Article 5 should be read together with Article 6 of the American Convention, in order to correctly delimit the content of the right being examined: accordingly, forced labour

Likewise, the right to life in Article 4 and the right to physical, mental, and moral integrity in Article 5 applies where children are working in inherently dangerous occupations, particularly where children are more likely to suffer injury or death due to their physical or mental immaturity.⁴²⁸ Freedom of association in Article 16 may also be relevant. Anyone old enough to work legally in Guatemala has the right to join a trade union. In reality, the exercise of this right is severely restricted. The rule also disenfranchises thousands of underage workers who cannot join unions. Finally, Article 25 of the American Convention guarantees judicial protection of an individual's rights.⁴²⁹ The court system in Guatemala, as noted above, is unable or unwilling to enforce the rights of individuals, including child laborers.

The scope of Guatemala's obligation to protect children in Article 19 can be further clarified by examining its commitments to children under other international instruments. Guatemala is a party to the Economic Covenant that provides the right to just and favorable conditions of work including fair wages and the right to education.⁴³⁰ Article 10(3) provides that:

Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.⁴³¹

Guatemala has also ratified ILO Convention No. 138 on a minimum age for employment. This Convention prohibits countries from allowing children under the age of completion of primary schooling to work and, in developing countries, children younger than fourteen years of age cannot work. Finally, Guatemala ratified the UNCRC, which provides for the right of children to be protected from economic exploitation and from performing any work that is likely to be hazardous, interfere with the child's education, or be harmful to the

may also be considered injurious to person integrity." 5 HUMAN RIGHTS: THE INTER-AMERICAN SYSTEM 59 (Thomas Buergenthal & Robert E. Norris, eds., 1986).

428. See American Convention, *supra* note 4, art. 5.

429. See *id.* art. 25.

430. See Economic Covenant, *supra* note 319, arts. 7 & 13.

431. American Convention, *supra* note 4, art. 10(3).

child's health or physical, mental, spiritual, moral, or social development.⁴³² This provision goes further than the Economic Covenant since it requires states' parties to ensure the implementation of this right, including, providing a minimum age of admission to employment, providing appropriate regulation of hours and conditions of work, and providing appropriate penalties or other sanctions.

Article 19 of the American Convention should also be interpreted bearing in mind the provisions of the American Declaration. Article XI of the American Declaration provides every person with the right to the preservation of health through sanitary and social measures. Article XII states that every person has the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.⁴³³ Finally, Article XIV provides that every person has the right to work, under proper conditions, and that every working person has the right to receive remuneration in proportion to his capacity and skill in order to assure a standard of living suitable for himself and for his family.⁴³⁴

Relevant economic and social rights are laid out in detail in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador").⁴³⁵ This instrument, however, has not yet come into force.⁴³⁶ Nonetheless, Guatemala is a signatory, thereby indicating its willingness to abide by its objects and purposes.⁴³⁷ The Additional Protocol contains detailed provisions on the right to work,⁴³⁸ the right to just, equitable, and satisfactory conditions of work,⁴³⁹ and

432. See UNCRC, *supra* note 16, art. 32.

433. See American Declaration, *supra* note 5, art. XII.

434. See *id.* art. XIV.

435. O.A.S.T.S., No. 69, signed Nov. 17, 1988, *reprinted in* BASIC DOCUMENTS, *supra* note 4, at 677 [hereinafter PROTOCOL OF SAN SALVADOR].

436. It currently has 10 of the necessary 11 ratifications.

437. Article 18 of the Vienna Convention on the Law of Treaties provides that a state is obliged to refrain from acts that would defeat the object and purpose of a treaty when the state has expressed consent to be bound by the treaty, pending the treaty's entry into force, provided that such entry into force is not unduly delayed. See Vienna Convention on the Law of Treaties, May 23, 1969, art. 18, 1155 U.N.T.S. 331.

438. See PROTOCOL OF SAN SALVADOR, *supra* note 435, art. 6.

439. See *id.* art. 7.

trade union rights.⁴⁴⁰ In particular, Article 7(f) of the Protocol provides that states' parties must guarantee in their legislation:

The prohibition of night work or unhealthy or dangerous working conditions and, in general, of all work which jeopardizes health, safety, or morals, for persons under 18 years of age. As regards minors under the age of 16, the work day shall be subordinated to the provisions regarding compulsory education and in no case shall work constitute an impediment to school attendance or a limitation on benefiting from education received.⁴⁴¹

The obligation to protect children under the American Convention and the American Declaration "have not been subject to particularly close scrutiny or analysis by the Commission or Court."⁴⁴² In fact, like most other rights, neither the Inter-American Commission nor the Inter-American Court has ever addressed the issues of children's rights and labor rights outside the context of individual cases of violence. Any petition on child labor, therefore, must present a strong case to compensate for the novelty of the claim.

The best route is likely in the form of a small class action, whereby an NGO brings forward several egregious examples of child labor engaging several of the specific articles of the American Convention mentioned above, as well as Article 19. For example, the class might include a child worker injured in an agricultural accident, an under-age *maquila* worker who was locked in the factory overnight on several occasions, and children working in inherently dangerous occupations such as mining and prostitution. The petition should present cases of the youngest children working full-time in each sector since child labor at a very young age is in itself considered to be a particularly egregious form of child labor.

The procedure for such a petition is straightforward. The petition must first meet certain technical requirements, including the identity of the petitioner(s), the facts of the complaint, evidence of exhaustion

440. *See id.* art. 8.

441. *Id.* art. 7(f).

442. SCOTT DAVIDSON, THE INTER-AMERICAN HUMAN RIGHTS SYSTEM 329 (1997). *But see* Case 11.383, Inter-Amer. C.H.R. (1997) (Los Bosques de San Nicolas) (indicating that this standard may be changing).

of domestic remedies, and an assurance that the incident is not before any other international body.⁴⁴³

In order to satisfy the exhaustion of domestic remedies prerequisite, these cases must first be taken before a Guatemalan tribunal. The exhaustion threshold, however, has not been held to be an onerous burden. In the *Velasquez Rodriguez* case, the Court held that only those domestic remedies that are "adequate" and capable of producing the desired result need be exhausted.⁴⁴⁴ In an advisory opinion, the Inter-American Court also held that the exhaustion threshold may be met where the victim is too poor to obtain a lawyer and the state does not provide legal aid, or where the victim cannot obtain legal representation because of a general fear of violent reprisals for taking the case.⁴⁴⁵ The failure of the Guatemalan courts to effectively deal with the complaints would also raise concerns under Article 25 of the American Convention as a ground for the complaint.⁴⁴⁶

When a petition is deemed admissible, the Commission sends the relevant information to the government involved. Under Article 48(1)(a), the government must provide information on the allegations within a reasonable period.⁴⁴⁷ In the Regulations of the Commission, the government must supply the requested information within ninety days, but a state may request an extension of thirty days for justifiable cause as long as the time does not extend beyond one hundred eighty days in total.⁴⁴⁸ If there is no response, or the response is inadequate, the Commission may deem the allegations in the petition to be true.⁴⁴⁹

443. See American Convention, *supra* note 4, art. 46(1) (establishing the Commission requirement for submitting petitions or communications).

444. See *Velasquez Rodriguez Case*, Judgment of June 26, 1987, Inter-Am. Ct. H.R., app. IV-A, OEA/ser. L./V./III.17, doc.13 (Ser. C) No. 1 (1988), reprinted in 28 I.L.M. 321.

445. Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) & 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90 of Aug. 10, 1990, Inter-Am. Ct. H.R. (ser. A) No. 11, para. 2 (1990), reprinted in 12 HUM. RTS. L.J. 20 (1991).

446. See American Convention, *supra* note 4, art. 25(1)(2) (providing the right to competent judicial protection for violations of fundamental rights).

447. See American Convention, *supra* note 4, art. 48(1)(a).

448. See Regulations of the Inter-American Commission of Human Rights, arts. 34(5) & (6) (amended Mar. 7, 1985, June 29, 1987, Sept. 21, 1995, and April 29-May 3, 1996).

449. See *id.* art. 42.

If the Commission decides to proceed, it may hold a full hearing or request the parties to provide additional written information.⁴⁵⁰ The Commission may also carry out an on-site visit to investigate the case.⁴⁵¹ Under the American Convention, the Commission must also “place itself at the disposal of the parties concerned with a view to reaching a friendly settlement.”⁴⁵² If a friendly settlement is not reached, the Commission draws up a report that is sent to the state party in confidentiality.⁴⁵³

Within three months of submitting this report, the affair may be settled or the Commission may decide to send the case to the Court for a binding judgment. If neither of these occur, the Commission writes a second report containing the facts, its conclusions and recommendations, and a time limit for implementation. If the government involved does not implement the recommendations within the time frame determined by the Commission, the report may be published in the Commission’s Annual Report.⁴⁵⁴

The recommendations of the Commission do not have the force of binding judgments. Their biggest impact lies in the threat of publicity. Additionally, the Annual Report of the Commission is addressed by the OAS General Assembly, raising the theoretical possibility of political pressure on non-complying states. It is the discretion of the Commission, however, to refer cases to the Court for a binding judgment that offers the real incentive for states to comply with the Commission’s recommendations.

The Commission is supposed to send controversial cases or cases on matters of importance to the hemisphere to the Court.⁴⁵⁵ It is questionable whether a child labor petition would meet these criteria. The Court examines the case *de novo* and makes a judgment that is final and binding. Under Article 63 of the American Convention, the

450. See American Convention, *supra* note 4, art. 48(1)(e).

451. See *id.* arts. 48(d) & (e).

452. *Id.* art. 48(f).

453. See *id.* art. 50.

454. See *id.* art. 51.

455. See Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (art. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of 13 Nov. 1985, Inter-Am. Ct. H.R., ser. A: Judgments and Opinions, No. 5, para. 26, OEA/Ser.J/V/III.12/doc.13 (1985) 19 at 42, 25 I.L.M. 123 (1986).

Court is authorized to award remedies.⁴⁵⁶ The scope of the right to a remedy is of considerable importance in the case of child labor and will be discussed further in Part VI.

VI. LIMITATIONS OF INTERNATIONAL LITIGATION

A. LIMITATIONS OF THE INTER-AMERICAN SYSTEM

As noted above, the structure of the Commission and the Court have improved upon the models in the United Nations and in Europe in several ways. Using the Inter-American system to pursue human rights, however, is not a flawless method. Considerable obstacles to the effective protection of human rights in the Inter-American system remain.

Commentators have criticized the legal reasoning and the irregularity of the procedural rules applied by the Commission.⁴⁵⁷ They have also reproached the lack of publicity surrounding activities of the Commission and the Court.⁴⁵⁸ Publicity is, of course, one of the major reasons for taking a child labor petition forward in the first place. Other criticism has focused on political problems, which always arise in a system designed as part of a political organization. One observer commented that political considerations may be more difficult to escape in the Inter-American Court with its seven judges than in the European Court, which has thirty-two judges.⁴⁵⁹ Financial difficulties also limit the effectiveness of both the Commission and the Court.⁴⁶⁰ The Commission sits for only two sessions a year and receives only 2% of the budget of the OAS.

Having a two-tiered system also creates lengthy delays. In the *Velasquez Rodriguez* case, it took four and a half years from the petition until the case was referred to the court⁴⁶¹ and another four years until the judgment was rendered.⁴⁶² Cases cannot be taken to the

456. See American Convention, *supra* note 4, art. 63.

457. See Shelton, *supra* note 374, at 328, 332.

458. See *id.* at 334; Wash, *supra* note 411, at 562.

459. See Jo M. Pasqualucci, *The Inter-American Human Rights System: Establishing Precedents and Procedure in Human Rights Law*, 26 U. MIAMI INTER-AM. L. REV. 297, 360 (1994).

460. See *id.* at 358.

461. See *id.*

462. See *id.*

court without first going through the Commission. Judge Rodolfo Piza Escalante commented in his concurrence in the case *In re Viviana Gallardo*: "they hobbled [the court] by interposing the impediment of the Commission, by establishing a veritable obstacle course that is almost insurmountable, on the long and arduous road that the basic rights of the individual are forced to travel."⁴⁶³

A central problem is that, unlike the Commission, individuals and NGOs do not have standing to bring contentious cases before the Court.⁴⁶⁴ Cases must arise between states, or the Commission must send cases to the Court.⁴⁶⁵ Although some have advocated for a change in this regard, resource restrictions, as well as the lesser degree of acceptance of the Court's jurisdiction compared to the European Court,⁴⁶⁶ make this change unlikely in the near future.⁴⁶⁷ This means that the Commission has unlimited discretion to decide what cases to refer to the Court. Due to the progressive nature of obligations to ensure economic rights and the arguably less serious nature of child labor compared to political killings, the Commission may not see the referral of a child labor petition as appropriate or necessary.

B. HURDLES TO USING INTERNATIONAL LITIGATION

While choosing to litigate child labor in an international forum may be more effective than leaving the issue to diplomatic questioning under a United Nations treaty body, international litigation presents more general difficulties. These difficulties include the need to prove state responsibility; the reticence of international law to hold states accountable for economic, social, and cultural rights, and the question of flexibility of remedies.

463. *In re Viviana Gallardo, et al.*, Costa Rica, Advisory Opinion No. G.101/81 (Nov. 13, 1981), Inter-Am. H.R. (ser. A/B), OEA/ser./L/III.5, doc.13, reprinted in 20 I.L.M. 1424, 1434 (Piza Escalante, J., concurring).

464. See American Convention, *supra* note 4, art. 61.

465. See *id.* arts. 48, 50.

466. Most notably, the failure of the United States to ratify the American Convention has deprived the system of a significant degree of legitimacy needed to increase the authority of the Court.

467. All of the states in the European Union have ratified the European Convention and accepted the compulsory jurisdiction of the European Court.

1. State Responsibility

International law governs the behavior of states, not private individuals. The responsibility of the state must be addressed before Guatemala can be held accountable for violations of the American Convention or other international obligations relating to child labor. In most cases, however, children who are exploited work for private employers or even their own families.⁴⁶⁸

The *Velasquez Rodriguez* case, decided by the Inter-American Court in 1988, held that states can be held responsible for the actions of private individuals in some cases.⁴⁶⁹ The *Velasquez* case involved the responsibility of the state for the disappearance of Rodriguez at the hands of one of the notorious Latin American death squads.⁴⁷⁰ The Court found that, even if the state was not directly involved in the rights violation, responsibility could still arise from the state's response or lack of response to a consistent pattern of gross human rights violations.⁴⁷¹ The Court, in that case, was interpreting Article 1(1) of the American Convention, a key provision which puts a positive obligation on the state to respect and ensure the rights contained in the Convention.⁴⁷² The Court held that Article 1(1) encompassed three distinct obligations for the state: the obligation to refrain from violating rights, the obligation to prevent the violation of rights, and the obligation to investigate and punish violations which have occurred.⁴⁷³ Although the *Velasquez* case arose in the context of a disappearance at the hands of a Latin American death squad—a terrible and frequent occurrence in Latin American countries during the 1970s—there is no principled reason why this interpretation of Article 1(1) should not apply to all cases where human rights violations occur consistently.

Thus, even if a state has not been guilty of directly using child labor, it can still be held responsible for failing to prevent it and for

468. See *supra* parts II.B.4, II.B.6.

469. See *Velasquez Rodriguez Case*, Judgment of June 26, 1987, Inter-Am. Ct. H.R., app. IV-A, OEA/ser. L./V./III.17, doc.13 (Ser. C), No. 1, para. 164 (1988), reprinted in 28 I.L.M. 321.

470. See *id.* para. 3.

471. See *id.* para. 172.

472. See *id.* paras. 165-69.

473. See *id.* paras. 166-176.

failing to investigate and punish those who are responsible. The lack of response by the Guatemalan court system to labor rights and children's rights, as noted by the Commission in its *Fourth Report*, as well as the ineffectiveness of the labor inspectorate, make a failure to investigate and punish fairly clear. The state's responsibility to prevent child labor is less clear given the fact that several administrative programs aimed at child labor have been adopted by the state. A finding of responsibility for the failure to prevent child labor would require the Commission to take a broad view of the causes. The state should be held accountable for its unwillingness to seriously address the socio-economic status of its peoples and the failure to enforce both an adequate minimum wage as well as an effective education system.

2. *Litigating Economic and Social Rights*

Until now, the Inter-American system has focused almost exclusively on the egregious violations of civil and political rights committed under authoritarian regimes in Latin America. The Commission and the Court have examined the right to life and the right to physical integrity.⁴⁷⁴ The European Court of Human Rights and the Human Rights Committee similarly have rarely delved into economic rights. The exclusion of economic rights is partly a reflection of the fact that civil and political rights have been separated from economic and social rights under international law.⁴⁷⁵ This division is evident in the existence of two International Covenants, one for civil and political rights and another for economic, social, and cultural rights.⁴⁷⁶ It is also noticeable in the lack of explicit attention directed to economic and social rights in the American Convention. According to Chinkin and Wright, "One unfortunate consequence of the perceived division of human rights law into these two areas has been a priority accorded to civil and political rights to the detriment of economic and social rights."⁴⁷⁷

474. See Christine Chinkin & Shelley Wright, *The Hunger Trap: Women, Food, and Self-Determination*, 14 MICH. J. INT'L L. 262, 295 (1993).

475. See *id.*

476. See *id.*

477. *Id.*

The reason these two areas were initially separated was the lesser degree of consensus on economic and social rights at the time. When the International Covenants were being considered in 1950, Canada expressed the common Western view that economic rights were social aims or advantages rather than human rights in the narrow sense.⁴⁷⁸ That opinion is still common today. Economic, social, and cultural rights are more frequently seen to be in the realm of exclusive domestic jurisdiction rather than civil and political rights. Developing states, in particular, charge that economic rights obligations would interfere with their right to develop their economies.⁴⁷⁹

The Inter-American Commission has noted that economic policy is "closely related to national sovereignty,"⁴⁸⁰ and has argued that states must be given the right to choose how to allocate scarce resources.⁴⁸¹ In addition, the Commission has observed the difficulty of establishing criteria to measure states' fulfillment of their obligations in this area.⁴⁸²

Monitoring the fulfillment of these obligations is difficult because economic and social rights are usually stated as obligations of a progressive nature. For example, Article 1 of the Protocol of San Salvador requires states to undertake to adopt measures "to the extent allowed by their available resources, and taking into account their degree of development, for the purposes of achieving progressively [the rights set out in the Protocol]."⁴⁸³ Human rights systems are also better designed for monitoring norms that require the state to refrain from violating the rights of individuals. Economic and social rights,

478. See U.N. Doc. A/C.3/SR.297 (1950), quoted in Craig Scott, *The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights*, 27 OSGOODE HALL L. J. 769, 798 n.100 (1989).

479. See Chinkin & Wright, *supra* note 474, at 295-99 (describing the different perspectives of Western States as opposed to the former Soviet Union in regard to economic rights).

480. Annual Report 1979-1980, OEA/Ser.L/V/II.50, Doc.13, Rev.1 (Oct 2, 1980), in 5 HUMAN RIGHTS: THE INTER-AMERICAN SYSTEM, vol. 24, at 30 (May 1983) (Thomas Buergenthal & Robert E. Norris, eds. 1993) [hereinafter Annual Report for 1979-1980].

481. See *id.*

482. See *id.*

483. PROTOCOL OF SAN SALVADOR, *supra* note 435, art. 1.

however, often create positive obligations on the state to ensure collective rights.

In recent years, however, an increasing amount of attention has been paid to the importance of economic and social rights, including child labor. This reflects the popular modern view that the achievement of civil and political rights is, in fact, closely tied to respect for economic and social rights.⁴⁸⁴ As Chinkin and Wright explain: "It is not clear that freedom of any kind can exist where the basic necessities of life enslave human beings to a subsistence level of existence or to ill-health and death through malnutrition."⁴⁸⁵

The Commission has stated the importance of economic and social rights to the maintenance of peace and stability on a number of occasions.⁴⁸⁶ For example, in its *Annual Report for 1979-1980* the Commission noted that "neglect of economic and social rights, especially when political participation has been suppressed, produces the kind of social polarization that then leads to acts of terrorism by and against the government"⁴⁸⁷ In its *Fourth Report*, the Commission noted:

In such circumstances [of poverty and poor income distribution], exercise of freedom of association for economic and labour purposes is crucial. Obstacles to the exercise of that right are not only a violation of it, but also invariably lead to violent social friction and violations of the rights to life and to humane treatment The necessity to reform and reinforce the action of the labor sector of the Judiciary is indispensable to avoid the possibility that labor tensions explode into conflicts beyond the judicial process. Neither peace, nor productive investment and growth, nor social development are possible without them.⁴⁸⁸

The increasing concern about economic and social rights is reflected at many levels. Within the United Nations, the Committee on Economic, Social, and Cultural Rights is now considering the adoption of an Optional Protocol to give individuals a right of petition

484. See Chinkin & Wright, *supra* note 474, at 295 (noting that "[i]t may just as well be argued that political freedom is a luxury that can only be afforded by those who are not fully occupied with attempting to ensure that they and their children will eat today and tomorrow").

485. *Id.*

486. See *id.*

487. *Annual Report for 1979-80*, *supra* note 480, at 30.

488. *Fourth Report*, *supra* note 144, at 88, 91.

similar to that which exists under the Civil and Political Covenant. Although an attempt to have labor rights linked to a multilateral trading system have been unsuccessful so far, the ILO is now exploring the link between trade and labor rights.⁴⁸⁹

Within the Inter-American system, the Additional Protocol on Economic, Social, and Cultural Rights will likely enter into force shortly because it needs only one more ratification. Consequently, both the Commission and the Court will soon be forced to consider economic and social rights in the context of individual cases. The American Declaration and, to a more limited extent, the American Convention already contain rights that can be interpreted to be of an economic, social, or cultural nature.⁴⁹⁰ This interpretation is supported by one of the clauses of the preamble to the American Convention that reads: "Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights . . ." The *Los Bosques* case⁴⁹¹ on Guatemalan street children, which directly addresses Article 19 of the American Convention, may be an indication that the Inter-American system is already beginning to address the overlap between civil and political rights, and economic and social rights in individual cases.

The comments of the European Court in the *Airey* case are also relevant.⁴⁹² While it must be recognized that the realization of economic and social rights largely depends on a state's situation—particularly a state's financial situation—the rights enumerated in international human rights treaties must be interpreted so they are more effective. Thus, an interpretation that "might extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation."⁴⁹³ The stage is thus set for the Inter-American Commission and Court to directly consider economic and

489. See International Labour Organization, *The Social Dimension of the Liberalization of International Trade* (visited Jan. 25, 1998) <<http://www.ilo.org/public/english/60empfor/cdart/prog3.htm>>.

490. See American Convention, *supra* note 4, at preamble.

491. Case 11.383, Inter-Am. C.H.R. (1997) (*Los Bosques de San Nicolas*).

492. See *Airey v. Ireland*, 32 Eur. Ct. H.R. (ser. A), at para. 5 (1979).

493. *Id.*

social rights, such as child labor. The key to the system's effectiveness in this area will lie in its approach to remedies.

3. Remedies

"It is a principle of international law, which jurisprudence has considered 'even a general concept of law,' that every violation of an international obligation that results in harm creates a duty to make adequate reparation."⁴⁹⁴ In the American Convention, this principle is codified in Article 63 (1), which states:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.⁴⁹⁵

Broadening the scope of the Inter-American system to deal with economic, social, and cultural rights such as child labor will require an expanded view on how this right to a remedy should be interpreted.

All of the cases before the court thus far have involved actual or presumed loss of life for which reparation must be in the form of monetary compensation.⁴⁹⁶ In the *Velasquez Rodriguez* case, the wife sought, in addition to pecuniary compensation, several other remedies.⁴⁹⁷ These additional measures included: an end to the forced disappearances, an investigation into other similar cases, a complete and truthful public report on what happened, a public act to honour the disappeared, and guarantees to respect the work of humanitarian and family organizations.⁴⁹⁸

The Court stated that the right to a remedy in international law was based on the principle of *restitutio in integrum*, which requires restoration of the prior situation, reparation of the consequences of the

494. *Velasquez Rodriguez Case*, Compensatory Damages (art. 63(1) American Convention on Human Rights), Inter-Am. Ct. H.R., ser. C: no. 7, para. 25 (1989).

495. American Convention, *supra* note 4, art. 63(1).

496. See Dinah Shelton, *The Jurisprudence of the Inter-American Court of Human Rights*, 10 AM. U. J. INT'L L. & POL'Y 333, 363 (1994).

497. See *Velasquez Rodriguez* para.7.

498. See *Mendez & Vivanco*, *supra* note 383, at 363.

breach, and indemnification for damages, including emotional harm.⁴⁹⁹ While this sounds like a far-reaching holding, in fact, the Court agreed only on the award of compensatory damages to the direct relatives of the victim.⁵⁰⁰ The Court noted that the requirements to investigate the crime and punish the perpetrators were already Honduras's obligations under the Court's judgment on the merits.⁵⁰¹ As for the other requests, the Court noted only that the judgment on the merits was itself a type of reparation or moral satisfaction for the victims.

This narrow interpretation of Article 63 appears to restrict the Inter-American Court to ordering only monetary compensation. If a child labor petition is to be effective, however, more broad-based, non-individual remedies are needed. As the discussion in Part I demonstrated, the problem of child labor is not a question of individual rights but a systemic problem with many causes that require many different solutions. Thus, awarding "compensation" to a victim is unlikely to be effective or even possible. Paying child victims nominal damages for their physical injuries would be pointless because the vast majority of harm caused by child labor is not directly visible. In fact, many of the petitioners in a child labor case may have no obvious physical injuries from working. Apart from direct physical harm, however, the "injury" experienced by a working child is impossible to calculate. How can the opportunity cost of foregone education be calculated? What price can be put on the consequences of low education for the entire population? Even if the injury could be calculated, how much of this cost should be attributed to the state given that cultural factors, personal preferences, and the position of developing states in the international economy are also responsible for child labor?

Merely requiring the government to enforce legislation on child labor cannot solve the problem either. In fact, it may make a bad situation worse since children would be forced to find work in the informal economy to survive. As noted above, by making their eco-

499. See Shelton, *supra* note 496, at 362-63.

500. See Velasquez Rodriguez Case, Compensatory Damages (art. 63(1) American Convention on Human Rights), Judgment of July 21, 1989, Inter-Am. Ct. H.R., ser. C: no. 7, para. 192.

501. See *id.* para. 188.

conomic role illegal, children become even more difficult to protect from exploitation. Moreover, addressing child labor concerns on an individual basis would reach only the few complainants whose stories are brought forward. Even if the victims could be adequately compensated, the restitution would do nothing to change the underlying problems that contribute to child labor for thousands of others. Such a conclusion would be contrary to the point of bringing such a petition forward in the first place.

Even if broad remedies were available, it would be difficult to determine an appropriate remedy in a child labor petition because it goes to the heart of the disagreement over what causes child labor and how it can be best eliminated. An appropriate remedy, however, would necessarily require a whole range of approaches. For example, the Court should order the government to improve its enforcement of domestic labor laws and its health and safety regulations. It should also order the government to allow underage workers to join unions if they desire. More importantly, the government should be required to increase the proportion of its budget spent on education and other social programs to at least the median of other countries in the region. A reasonable timetable for the increase of the adult minimum wage to a level consistent with the amount required to meet basic needs, as well as other plans for addressing the inequitable distribution of wealth and the extreme poverty faced by the country, should be required. A flexible remedy certainly would need to combine both orders and prescriptions for progressive change to reflect the nature of the rights at issue. Thus, freedom from violence and the right to organize should be recognized as core rights that cannot be derogated from, while other remedies, such as poverty alleviation, must leave the state with some margin to implement remedies as it chooses.

Despite the decision in *Velasquez* to limit reparations to monetary compensation, the right to such a broad remedy is not inconsistent with the American Convention. Note that Article 63 provides that the Court, on finding a violation "shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated [and shall rule] if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied"⁵⁰² Thus, the Court could use such broad remedies if

502. American Convention, *supra* note 4, art. 63.

it determined that they were necessary to ensure the enjoyment of the right by the injured party or as a way of remedying the consequences of the situation that caused the breach.

In fact, in a later decision, the Court showed some willingness to expand the concept of remedies. In the *Aloeboetoe case*, the remedy awarded included an amount to enable the minor children of the victims to continue their education.⁵⁰³ Because the victims were from a small native village, the effective enjoyment of this remedy required the Court to order the government to reopen the village school and staff it. The Court also ordered the reopening of the medical dispensary in the village.⁵⁰⁴ "These are clearly far-reaching orders made by the Court and seem to confirm the opinion that it is competent to require not only rectification of the circumstances which gave rise to any breach but also to order specific performance of non-pecuniary forms of satisfaction."⁵⁰⁵

This judgment, however, still required that the damages not be too remote. Furthermore, the Court rejected the Commission's argument that compensation go to the tribe as a whole rather than to just the close relatives of the victims. Both of these requirements could prove problematic in a child labor case. Thus, while there appears to be some movement by the Court to recognize broader, non-compensatory forms of reparation, it is far from certain whether this trend would continue in a child labor petition. Certainly, the ability of the Inter-American Court to order such remedies is pivotal to the usefulness of the system as a tool to fight child labor.

VII. CONCLUSION

Although relatively little research has been done to document the problem, child labor is present in virtually all areas of the Guatemalan economy. Moreover, despite domestic legislation prohibiting child labor and several programs announced by the state to help eliminate it, the number of underage child workers in Guatemala continues to grow. Although child labor is clearly not an easy problem to solve, at least part of the problem can be attributed to the fail-

503. See *Aloeboetoe, et al. Case, Reparations* (art. 63(1) American Convention on Human Rights), Inter-Am. Ct. H.R., ser. C., No. 15 (1993).

504. See Shelton, *supra* note 496, at 370.

505. DAVIDSON, *supra* note 442, at 225.

ure of the Guatemalan state to adequately protect children as it is obliged to do under its international commitments. Such obligations include protection from economic exploitation and provision of adequate educational opportunities.

Pressuring the Guatemalan state to adequately address the problem of child labor is best done by taking the issue to an international forum. Specifically, the most effective route for gaining publicity for the child labor issue and pressuring the state to respond is by taking a petition on child labor to the Inter-American Commission. Although child labor is a novel complaint for the Inter-American system—indeed economic rights in general are novel issues for international litigation—the American Convention and Guatemala's other international obligations contain the provisions necessary to hold Guatemala responsible for failing to protect its children from exploitative labor conditions.

Furthermore, there is a possibility that any such child labor petition could be referred to the Inter-American Court. A referral would provide an excellent opportunity for an international tribunal to make an in-depth consideration of economic rights in general and child labor in particular. A child labor petition would also provide an opportunity for the Court to expand its concept of remedies under Article 63 of the American Convention to allow broad-based, non-individualized, and flexible remedies. An expanded concept of remedies is necessary for the Inter-American system or other international tribunals to be able to effectively deal with economic and social rights.

Despite the problems inherent in the Inter-American system, its potential for promoting human rights is significant. More importantly, this potential is only beginning to be realized. A greater demand for hearings at the Commission and a rising caseload at the Court reflect the increasing sophistication of the system's users, the greater openness of member states with the return of democracy to Latin America, the increasing number of parties to the American Convention, and the increasing number of these parties which have accepted the compulsory jurisdiction of the Court.⁵⁰⁶

506. See Padilla, *supra* note 393, at 101.

The importance of economic rights has already been recognized by the Commission in several of its reports and will undoubtedly become more central once the Additional Protocol on Economic, Social, and Cultural Rights comes into force. The issue of child labor presents the perfect opportunity for the Commission, and possibly the Court, to begin to consider the scope of these rights. Consideration of child labor by the Inter-American system would also open up international litigation as a another potential weapon available to fight the complex problem of child labor.