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EFFECT OF THE CONVENTION ON THE RIGHTS OF THE CHILD UPON STREET CHILDREN IN LATIN AMERICA: A STUDY OF BRAZIL, COLOMBIA, AND GUATEMALA

Marc D. Seitles*

INTRODUCTION

Worldwide concern for the well-being of street children continues to be a significant issue for the international community, yet such concerns have not materialized into meaningful changes for the plight of these children. Today, nearly 100 million abandoned street children exist in the world; in fact, there are 40 million street children in Latin America alone.¹ Ominously, this number is predicted to grow by the tens of millions as poverty in third world Latin American countries becomes increasingly urban-based.² Consequently, these children are condemned to survive in the place where their name originated, the street, where violence and poverty prosper.

* The author is a 1999 J.D. candidate at Nova Southeastern University Law School, Shepard Broad Law Center. The author would like to dedicate this article to the numerous street children he encountered while traveling in Latin America. The author would like to thank Professor Douglas Donoho for his insightful critiques, and Professor James D. Wilets for his unwavering support and friendship. This article is in memory of Luis Orlando Guzman.

¹ Bruce Harris (Executive Director, Casa Alianza/Covenant House Latin America) Presentation to the Inter-American Commission of Human Rights on "The Situation of Street Children in Latin America" (Oct. 10, 1997) [hereinafter Casa Alianza Presentation].

² Susan O'Rourke von Struensee, *Violence, Exploitation, and Children: Highlights of the United Nations Children's Convention and International Response to Children's Human Rights*, 18 SUFFOLK TRANSNAT'L L. REV. 616, 617-18 (1995). See also Eugenia Maria Zamora Chavarria, *The Precarious Situation of Latin America's Children*, NACLA REPORT ON THE AMERICAS, May/June 1994 (street children remind us that while poverty remains acute in rural areas, the rapid urbanization of Latin America has made poverty—most visibly—an urban phenomenon).

This paper will examine the many problems associated with street children in Latin America, and discuss international and local governmental responses to this growing social reality. In particular, this paper will focus on three Latin American countries that are signatories to the Convention on the Rights of the Child and well-known as egregious offenders of street children's rights: Brazil, Colombia, and Guatemala.³ The first section will illustrate the common problems of street children in Latin America and examine the routine abuses of their human rights. The second section will analyze one of the international community's most significant responses to the issue of street children—the Convention on the Rights of the Child. This will include a discussion of the historical context of the Convention on the Rights of the Child, the principles it sets forth, and the criticisms of the Convention in relation to its structure and ability to protect these youth. The next section will critique the successes and failures of the Convention in regards to its actual effect upon Latin American street children. A thorough analysis of the specific problems of street children will be presented along with an assessment of the extent to which the governments of Brazil, Colombia, and Guatemala have complied with the Convention's provisions. The following section will illustrate various progressive legislative responses and demonstrate how these governmental measures are essentially symbolic and not effectively implemented. The final section will discuss recommendations for reform on the domestic and international front and assess the realistic possibilities of eradicating the abuse, neglect, and murder of street

³ Brazil, Colombia, and Guatemala are not the only Latin American countries that have violated the human rights of street children, nor are they the sole countries in violation of the Convention on the Rights of the Child. Nevertheless, these nations have been chosen because of the harsh realities that street children face in these respective countries: murder, consistent abuse, and inhumane treatment. By analyzing only the countries that are the most serious offenders of street children's rights, this study will assess how the international and domestic communities have responded to the most flagrant abuses committed against street children.

children in Latin America.

I. THE STREET CHILDREN OF LATIN AMERICA

A. Who are the Street Children?

In order to examine the plight of "street children" in Latin America, it is important to have a common definition for this widely utilized term.⁴ Street children are those children who work and live on the streets, and who essentially live self-sufficiently.⁵ In effect the street, rather than their family, has become their "real home," a grave situation "in which there is no protection, supervision, or direction from responsible adults."⁶ Most of the children under the scope of this definition sleep on the street, find shelter in parks, or sleep under stairways or doorways. A smaller number stay in cheap flop-houses that they may rent for the night with a group of other children.⁷ These children's home becomes "the street" for various economic and social reasons including poverty, high birth rates, government repression, urbanization, lack of education, lack of economic opportunity and dysfunctional families.⁸ Coming from poor families, these children enter the street in order to survive, frequently contributing substantially to sustaining their families and themselves.⁹

Estimates of the number of street children vary considerably

⁴ In the past, scholars lumped all children together who spent any extended time on the street without any distinction between children who only worked on the street and children who slept on the street. See Tamara Lave, *Breaking the Cycle of Despair: Street Children in Guatemala City*, 27 COLUM. HUM. RTS. L. REV. 57, 58-59 (1995).

⁵ *Id.* at 58.

⁶ LEE TUCKER, GUATEMALA'S FORGOTTEN CHILDREN 11 (Human Rights Watch, 1997).

⁷ *Id.* at 12.

⁸ *Id.* at 67-77.

⁹ See Theresa Penna Firme, *Meeting at Risk Children Where They Get Together: An Alternative Concept of Community*, in JUSTICE FOR CHILDREN 91, 93-94 (Stewart Asquith & Malcolm Hill eds., 1994).

because of the difficulty in assessing the actual number of children who consistently live on the street. However, it is estimated that in the cities of Rio de Janeiro, Brazil and Bogota, Colombia over 4,000 children reside on the street each night.¹⁰ These children vary between ten and seventeen years of age, with the average child's age being around twelve years old.¹¹ Due to the large numbers of street children and the conditions that have brought them there, a social stigma has been inflicted upon them. They are frequently seen as nuisances, criminals and general threats to society.¹² As a result, street children are likely to be met with repression rather than help, because their presence in the streets is perceived as being harmful to public safety.¹³

B. The Rights of Street Children: Poverty and Death

Unfortunately, the perception of Latin American street children is not the worst concern that these young people must face. To be a poor child who lives with little or no family guidance or support is to live daily with the threat of murder,¹⁴ disease, malnutrition, physical and sexual abuse, prostitution, drug abuse, and exploitation.¹⁵ For example, in Colombia, over 2,190 street children were murdered in 1994, an average of six children per day.¹⁶ A significant number of child murders are the direct responsibility of the State, thus it is not

¹⁰ Elizabeth F. Schwartz, *Getting Away With Murder: Social Cleansing in Colombia and the Role of the United States*, 27 U. MIAMI INTER-AM. L. REV. 388 (1996); BEN PENGLASE, FINAL JUSTICE: POLICE AND DEATH SQUAD HOMICIDES IN BRAZIL 8 (Human Rights Watch, 1994).

¹¹ Most street children are quite young. According to the American based Childhope Foundation the average of street children is 11.6 years old. The average age of boys is 12.3 years old and the average age of girls is 10.3 years old. Lave, *supra* note 4, at 59–60.

¹² See PENGLASE, *supra* note 10, at 11.

¹³ See Firme, *supra* note 9, at 93.

¹⁴ See ROBIN KIRK, GENERATION UNDER FIRE: CHILDREN AND VIOLENCE IN COLOMBIA ix (Human Rights Watch, 1994).

¹⁵ See Firme, *supra* note 9, at 93.

¹⁶ *Id.*

surprising that only twelve of these killings have come to trial.¹⁷ Ironically, law enforcement officials are the greatest threat to these children, particularly in Colombia, Guatemala, and Brazil.¹⁸ In fact, the government-supported policy of "social cleansing"¹⁹ is often carried out in Colombia by military officials and police officers who eliminate groups identified as worthless or dangerous to society, including, but not limited to, street children.²⁰ In Brazil, police death squads, typically consisting of current, off-duty, or former policemen, have systematically killed street children without cause or justification.²¹ Meanwhile, in Guatemala, thousands of children living on city streets routinely face beatings, thefts, and sexual assaults at the hands of the National Police and private security guards working under the jurisdiction of the Interior Ministry.²² In 1996, numerous murders of children took place on the streets of Guatemala, including the horrific rape of a sixteen year old girl by two National Police officers in Guatemala City, as a third officer watched.²³

Finally, it must be noted that homicides, while constituting a violation of the most basic human right—the right to life—are day-to-

¹⁷ Tim Ross, *Colombia Assailed Over Street Kids' Plight*, MIAMI HERALD, Dec. 5, 1994, at A10.

¹⁸ In the past seven years, Casa Alianza, a non-governmental organization that seeks to protect the rights of street children in Latin America, has presented more than 540 criminal complaints against hundreds of police officers, private police, military, and others. Of all these cases, less than 15 have reached the stage of conviction, thereby maintaining the impunity of the officers. *See Casa Alianza Presentation, supra* note 1.

¹⁹ "Social Cleansing" is understood as the serial killing of members of a social group in order to "clean out" or "impose order" on a criminal or unsightly populace. Those who organize and carry out these killings have included local residents, merchants, and police. KIRK, *supra* note 14, at 3.

²⁰ *Id.*

²¹ In the infamous Candelaria killings, two cars drove up to a group of street children and teenagers who were sleeping on the streets of downtown Rio de Janeiro and opened fire, killing eight children. PENGLASE, *supra* note 10, at viii.

²² TUCKER, *supra* note 6, at 1.

²³ *Id.*

day realities that affect street children. Other types of violations of the rights of street children include police beatings, unsanitary living and health conditions, child prostitution, and drug abuse.²⁴ Children typically suffer from a variety of health problems, including skin problems, respiratory disease, dental problems, and gastro-intestinal problems. Most of these young people have cuts and scars, and improperly healed prior injuries.²⁵ The rampant problems of sexually transmitted diseases (STDs) pose a serious health problem for these children. In a study of 143 street children in Guatemala, 93% of those studied reported having STD's, and none of the children reported using condoms.²⁶ Of equal concern is the rampant drug use of street children, 90% of whom in Guatemala are dependent on glue, paint thinner, or other more powerful drugs.²⁷ In fact, glue and paint thinner are more physically addictive than cocaine or alcohol because they become part of the blood tissue. Not only does such an addiction make it more difficult to leave the street, but glue has "serious health consequences" and has been linked to irreversible brain and kidney damage, lung damage, malnourishment, and a general decline in health.²⁸

²⁴ Lave, *supra* note 4, at 59-67.

²⁵ *Id.* at 61.

²⁶ The study was jointly conducted by the Center for Orientation, Diagnosis, and Treatment of Sexually Transmitted Diseases and Casa Alianza. The study found that 78.3% reported having genital herpes, 69.9% scabies, 46.64% gonorrhea, 27.3% papillomatosis, and 13.29% vaginal trichomoniasis. *Id.*

²⁷ The majority of street children inhale shoe glue, which they pour into plastic bags. Others breathe it directly from the bottle. Most are ashamed of their drug addiction and some talk of their plans to quit. The problems of drug abuse are so severe that Casa Alianza will not admit children into their crisis centers as long as they are under the influence of drugs or glue. *Id.* at 64, 94. However, rehabilitation programs exist through Casa Alianza for the most seriously addicted children. *Id.* at 95.

²⁸ *Id.* at 65.

II. THE CONVENTION ON THE RIGHTS OF THE CHILD

A. Background and History of International Children's Rights

The current exploitation of street children has not been without international reaction; however, international response has been historically devoid of any realistic mechanisms for change. The birth of the children's rights movement occurred in the early 1920s. Events of this period included the effects of industrialization and a world war that exposed the appalling "illness, exploitation, and abuses" that children in the world face each day.²⁹ These revelations led to an international movement to establish a separate human rights treaty governing the rights of children, reinforced after the inhumane killing of children during the Second World War.³⁰ As a result, a non-binding instrument, known as the Declaration of the Rights of the Child,³¹ was passed by the United Nations General Assembly in 1959. The Declaration urged, but did not obligate, nations to protect their children.³² Many children's rights advocates were dissatisfied with the Declaration and pushed for more global protection for children.³³ But it was not until 1979, in recognition of the International Year of the Child, that Poland proposed to United Nations member countries a binding treaty for the protection of children, which incorporated the principles set out in the previous Declaration and other human rights treaties.³⁴ Subsequently, in direct response to the concerns for children around the world, a working group established by the U.N.

²⁹ Susan Brice, *Convention on the Rights of the Child: Using a Human Rights Instrument to Protect Against Environmental Threats*, 7 GEO. INT'L ENVTL. L. REV. 587, 592 (1995).

³⁰ *Id.*

³¹ Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16), at 19, U.N. Doc A/4354 (1959).

³² Brice, *supra* note 29, at 592.

³³ *Id.*

³⁴ See Paul Goetz, *Is Brazil Complying with the U.N. Convention on the Rights of the Child?*, 10 TEMP. INT'L & COMP. L.J. 147, 152 (1996).

Commission on Human Rights, ending a lengthy drafting process that lasted ten years,³⁵ completed the Convention on the Rights of the Child³⁶ in 1989.

B. Convention on the Rights of the Child

On November 20, 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child. By the end of 1996, 176 countries had accepted this Convention,³⁷ a rate of ratification greater than any other human rights treaty.³⁸ Thus, the United Nations finally recognized the need to institutionalize the concept of children's rights in international law and its decision has been emphatically accepted by the international community.³⁹ The Convention's uniqueness stems from the fact that it is the first legally binding instrument that incorporates the full range of human rights for children—their civil and political rights as well as their economic and cultural rights—"thus giving all rights equal emphasis."⁴⁰

The singular quality of the children's rights espoused through the Convention on the Rights of the Child may be seen by comparing the Convention with the standards set forth in the two most important prior international human rights covenants.⁴¹ For example, the International Covenant on Economic, Social, and Cultural Rights defined children's rights as the rights to care and protection, requiring

³⁵ *Id.*

³⁶ G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49), at 167, U.N. Doc A/44/49 (1989).

³⁷ Bruce Hafen & Jonathan Hafen, *Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child*, 37 HARV. INT'L L.J. 449 (1996).

³⁸ Thomas Hammarberg, *Justice For Children Through the UN Convention*, in JUSTICE FOR CHILDREN, *supra* note 9, at 62.

³⁹ O'Rourke von Struensee, *supra* note 2, at 589-90).

⁴⁰ UNICEF, *About the Convention*, <http://www.unicef.org/crc/conven.htm>.

⁴¹ Cynthia Price Cohen, *The Developing Jurisprudence of the Rights of the Child*, 6 ST. THOMAS L. REV 1, 8 (1993).

governments to create such benefits as education and social security.⁴² In contrast, the International Covenant on Civil and Political Rights emphasized the individual rights of children, rather than focusing on providing services.⁴³ The Convention on the Rights of the Child encompasses both the protective care rights and the civil-political rights of these two Covenants, recognizing the survival, development, protection, and right to political participation of all children.⁴⁴

The Convention on the Rights of the Child offers a comprehensive program for the protection of children's rights⁴⁵ by setting forth three basis principles: first, that all children are entitled to enjoy their rights without discrimination or distinction of any kind; second, that the child's best interests must be a primary consideration in all action concerning children whether or not that action is public or private; and third, if a child may formulate his or her own opinions, due weight must be given to them.⁴⁶ These considerations are "without historical parallel," and offer the formal rights that presently are "enshrined [in] international law and bestowed upon every child."⁴⁷

The substantive articles of the Convention recognize civil rights and freedoms for children, such as the right to a name, a nationality, freedom of expression, privacy and a right to life.⁴⁸ Developmental rights include assurances of an adequate standard of living, access to

⁴² International Covenant on Economic, Social, and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 49, U.N. Doc. A/6316 (1966), 933 U.N.T.S. 3, *enter into force* Jan. 3, 1976, arts. 9, 13.

⁴³ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. (No. 16), at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

⁴⁴ Convention on the Rights of the Child, *supra* note 36.

⁴⁵ The Convention on the Rights of the Child defines a child as anyone under eighteen years of age. *Id.*, art. 1.

⁴⁶ Michael Jupp, *The United Nations Convention of the Rights of the Child: An Opportunity for Advocates*, 34 HOW. L.J. 22, (1991).

⁴⁷ Roger Levesque, *Future Visions of Juvenile Justice: Lessons From International and Comparative Law*, 29 CREIGHTON L. REV. 1563, 1567 (1996).

⁴⁸ *About the Convention*, *supra* note 40.

health services, rights to education, standards of parental responsibility, State assistance for children deprived of a family environment, and the right to be free from all forms of abuse and neglect.⁴⁹ Protective rights in the Convention guard children against economic and sexual exploitation, cruel and tortuous treatment, arbitrary separation from their families, and abuses in the criminal justice system.⁵⁰ Finally, the Convention offers special protection to certain classes of children such as refugees, disabled children, minority and indigenous groups, and orphans. Specific articles offer unique protective measures for children in these varying special circumstances.

With regard to implementation and enforcement mechanisms, the Convention on the Rights of the Child is premised on the presumption that ratifying States will incorporate its provisions into their respective national laws. More realistically, particularly with the overwhelming international reception to the Convention, the goal is for the Convention to at least become a guide for interpreting law, even in those countries that have not ratified the document.⁵¹

In terms of general implementation, the Convention itself provides a permanent international forum that will force important and continuous discussion of children's rights issues.⁵² Articles 43 and 44 address the procedures for more specific implementation of the Convention on the Rights of the Child. These provisions establish a Committee on the Rights of the Child, a monitoring system that consists of an elected committee of ten experts who will review the obligatory progress reports from ratifying nations on their compliance with the Convention.⁵³ The Committee is empowered to request

⁴⁹ O'Rourke von Struensee, *supra* note 2, at 594.

⁵⁰ *Id.*

⁵¹ Jupp, *supra* note 46, at 22.

⁵² *Id.*

⁵³ States parties are required to report on the measures of progress which give effect to the rights recognized in the Convention, and on the progress made towards the enjoyment of those rights. This must be made within two years of acceptance of a country to the Convention and thereafter every five years. *See* Convention on

additional information from reporting nations, and is required to submit its own findings to the General Assembly every two years. In addition, every participating State must make periodic reports widely available in their respective countries.⁵⁴ The aim of this reporting procedure is to assist countries with compliance, rather than penalize or pressure those nations that fail to comply.⁵⁵

While the Committee will follow straightforward standard reporting mechanisms, its distinction lies in the ability of the Committee to seek the opinions of specialized organizations and the ability of States Parties to request technical assistance which may be provided by UNICEF, other United Nations agencies, and non-governmental organizations (NGOs).⁵⁶ The Committee on the Rights of the Child, compared to other U.N. based agreements (with similar investigatory committees), has greater independence based upon its structure. Unlike the Torture Convention, which provides for the Monitoring Committee to be funded solely by States Parties, the General Assembly funds the Committee on the Convention on the

the Rights of the Child, *supra* note 36, art. 44.

⁵⁴ See Daniel L. Skoler, *Throughout the World, Children Cry . . . We Want Rights, Too*, 17 HUM. RTS. 31, 34-35 (1990).

⁵⁵ Cynthia Price Cohen, *United Nations: Convention on the Rights of the Child*, 28 I.L.M. 1448, 1452 (1989).

⁵⁶ *Id.* One of the Committee members, Thomas Hammarberg of Sweden, explained the role of the Committee and its relationship with participating countries:

We try to assess whether political will is evident, whether budgets reflect commitment to children's needs, whether statements from a government and its leader give the Convention priority and whether administrative structures have been formed to benefit children. . . . [I]t is not useful for governments to hide facts. With the contacts we have with the United Nations agencies and the NGO (non-governmental organization) community, we will know what the situation is. It is much better to put everything on the table and discuss remedies from the beginning.

See O'Rourke von Struensee, *supra* note 2, at 626-27.

Rights of the Child from the United Nations budget.⁵⁷ Another structural innovation, as noted earlier, is the use of NGOs as warranted by the Committee. The importance of NGOs during the drafting process of the Convention may not be overstated, and its role in disseminating information and taking measures towards effective implementation is a critical structural element towards State compliance.⁵⁸

Finally, the Convention on the Rights of the Child is a "vehicle for mobilization."⁵⁹ The Convention serves as a teaching tool as well as a platform for mobilization. The role of the teaching component is to explain to children their rights and the rights of other young people around the world. The mobilization element, on the other hand, emphasizes the importance of building grassroots support to demand justice for children.⁶⁰

C. Criticisms of the Convention on the Rights of the Child

Without a doubt, there has been enthusiastic world support for the Convention on the Rights of the Child, but the heralded human rights treaty for children has received sharp criticism. The most common objection has been that a human rights document for children was unnecessary because children were already covered by

⁵⁷ See Cohen, *supra* note 55, at 1451-52.

⁵⁸ *Id.* at 1452. It is important to note that this is the first time that non-governmental organizations are mentioned in the texts of a human rights instrument. Moreover, it is clear that the competence of NGOs in the fields covered by the Convention represent a valuable element in monitoring the Convention. For example, NGOs might be invited by the Committee to provide expert advice on implementation techniques and/or receive requests from States Parties through the Committee for specific recommendations and assistance on procedures for implementation. See Per Miljeteig-Olssen, *Advocacy of Children's Rights—The Convention as More than a Legal Document*, 12 HUM. RTS. Q. 148, 151 (1990).

⁵⁹ Jupp, *supra* note 46, at 22.

⁶⁰ *Id.*

the other relevant U.N. covenants.⁶¹ Moreover, it has been argued that such repetition is not only unnecessary, but unenforceable under the current international system. Opponents claim that the Convention on the Rights of the Child cannot provide any meaningful protection for street children since the governing United Nations Charter does not permit the U.N. to intervene into matters which are essentially domestic.⁶² Thus, they maintain, since the Convention fails to provide a provision where State parties agree to cede jurisdictional authority to a greater governing body, sovereign subjects will retain their entire authority and severely curtail enforcement options.⁶³

One contention is that such a document disadvantages children, since rights not specifically delineated in the Convention may be abridged or interpreted by future tribunals as inapplicable as "intentionally omitted standards."⁶⁴ This may provide countries with an opportunity to exploit the broader provisions of the articles and discriminate against the very group the Convention seeks to protect. However, it must be noted that Article 41 of the Convention has a savings clause to limit this danger by supporting the enforcement of any domestic or international provisions that are more conducive to the rights of the child.⁶⁵

Critics also doubt whether the idea of self-reporting can actually work. Such a system is essentially based upon the assumption that a State's "sense of moral obligation" will stimulate it to report its own

⁶¹ See Universal Declaration of Human Rights, G.A. res 217A (III), U.N. Doc. A/810, at 71 (1948); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. (No. 16), at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.; Convention Against Torture, G.A. Res 39/46, 39 GAOR, Supp (No. 51), U.N. Doc. A/RES/39/46 (1984).

⁶² Brice, *supra* note 29, at 593-594.

⁶³ *Id.* at 594.

⁶⁴ David Balton, *The Convention on the Rights of the Child: Prospects for International Enforcement*, 12 HUM. RTS Q. 120 (1990).

⁶⁵ *Id.* at 123.

abuses as well as deter it from allowing human rights violations.⁶⁶ As a result, this system may invite misrepresentation and speculation that countries will “overshadow their problems with exaggerated successes.”⁶⁷ Yet, the unique inclusion of NGOs in the reporting process may in the future enhance the reliability of these reports and the proliferation of much needed domestic legislation.

Although a committee of experts has the power to review country reports and make recommendations, the Convention does not establish a concrete means of enforcement at the international level.⁶⁸ Other than these periodic reports, no enforcement mechanisms exist to secure the rights guaranteed by the Convention or the “progress made on the enjoyment of these rights.”⁶⁹ The Committee also lacks the authority to receive any petitions alleging a violation of the Convention, either from States Parties or from individuals.⁷⁰ Consequently, the Committee plays a minor role in resolving disputes arising under the Convention and has no means of implementing the policies they recommend. Thus, specific enforcement is gravely lacking, representing a hollow formalism from a comprehensive legal document purporting to safeguard children, but that is essentially void of substance.

Another significant problem lies in the economic conditions of poorer nations, namely their lack of resources. Since the Convention requires only that the State undertake appropriate measures “in accordance with their available resources,” it may result in an unfortunate escape clause for the same countries where implementation is most necessary.⁷¹ However, the Convention, unlike any other international human rights instrument, provides a “clear linkage” between reports on violations and aid. A State Party who is

⁶⁶ Brice, *supra* note 29, at 594.

⁶⁷ *Id.*

⁶⁸ Balton, *supra* note 64, at 128.

⁶⁹ Skoler, *supra* note 54, at 35.

⁷⁰ Balton, *supra* note 64, at 128

⁷¹ Thomas Hammarberg, *The UN Convention on the Rights of the Child—and How to Make it Work*, 12 HUM. RTS Q. 97, 102 (1990).

in violation of the specified provisions in the Convention will receive guidance and support from competent U.N. bodies and other institutions, including the assistance of NGOs.⁷² These organizations may provide expert advice or technical assistance to help implement policy to effectuate change in the lives of street children. Although this unique structure avoids the obvious pitfalls of a nation's lack of resources, successful implementation is impossible without the support of the governments, and other national institutions, of violating countries.

III. ADDRESSING THE RIGHTS OF STREET CHILDREN THROUGH THE CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child protects a broad range of children's rights, and although not without criticism, the potential of the Convention is unparalleled, at least to the degree it recognizes the basic needs of children as having fundamental human rights which must be protected under international law.⁷³ The Convention creates both guidelines and directives for action, and is a tool for promoting knowledge and understanding of children's issues. Yet the Convention's foremost objective is to change and improve the lives of children. Therefore, its success in this regard must be gauged by its ability to enforce and improve the lives of those children most disadvantaged—street children. Several substantive articles of the Convention are particularly relevant to the plight of street children in Latin America, addressing issues that these children are faced with each day.⁷⁴ These relevant articles include: *best interests of the child* (Article 3); *right to life* (Article 6);

⁷² *Id.*

⁷³ NIGEL CANTWELL, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE "TRAVAUX PREPARATOIRES" 19, 29 (1992).

⁷⁴ The majority of the articles of Convention on the Rights of the Child are pertinent to the plight of street children in Latin America. However, for purposes of clarity, this article will describe and discuss only the most relevant provisions.

adequate standard of living (Article 27); *recovery of abused children* (Article 39); *illicit use of narcotic and psychotropic drugs* (Article 33); and *torture and inhumane punishment* (Article 37).⁷⁵ The following procedural articles, as discussed earlier, assist in carrying out the substantive articles that impact street children, including: application without discrimination (Article 2); implementation (Article 4); establishment of the Committee on the Rights of the Child (Article 43); reports (Article 44); and participation by specialized Agencies of the U.N. (Article 45). The following section discusses the responses of Brazil, Colombia, and Guatemala to these critical provisions of the Convention. The responses of these countries will be scrutinized in detail because of the countries' notoriously poor treatment of street children.

A. Best Interests of the Child

Article 3 provides that the best interests of the child will be the primary consideration in all circumstances and requires members of the Convention to provide adequate care when parents or others fail to do so.⁷⁶ This standard places an affirmative duty upon each State party to take appropriate legislative and administrative measures as necessary, to provide protection and care for a child's welfare. Consequently, the Convention makes numerous references to these governmental duties, implying that the best interests of the child is the standard by which to measure a particular nation's compliance with all of the Convention's articles.⁷⁷ Although this article is fundamental to the whole Convention, it has a special importance for solving the problematic conditions of street children because the

⁷⁵ Goetz, *supra* note 34, at 154.

⁷⁶ Article 3, section 1 states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration." Convention on the Rights of the Child, *supra* note 36, art. 6.

⁷⁷ Cohen, *supra* note 41, at 19.

child's best interests, "must be a primary consideration."⁷⁸ In fact, even under difficult economic conditions or situations of political strife, States Parties must consider the child's best interests of great importance when decisions affecting children are made. Therefore, each article in the Convention must be measured by the best interest of the child standard, particularly when determining solutions for the those children whose lives weigh in the balance of meaningful governmental action.

An examination of the ensuing articles will demonstrate that the best interests of the child standard has not been taken into consideration by Brazil, Colombia, and Guatemala. This standard has at best been misunderstood, and at worst, deliberately ignored. The following sub-sections will depict the harsh realities for street children in Latin America and reinforce the importance of the existence of such a standard and the international community's obligation to make sure it is enforced.

B. The Right to Life

One of the most important articles of the Convention on the Rights of the Child is Article 6, the right to life.⁷⁹ The right to life is not a preventive measure alone, but ensures that State signatories take steps to prolong the life of the child; thus it encompasses both the survival and development of street children. Implicit in this requirement are the issues of safety, health, and welfare of the child. These are areas that clearly affect street children and must be addressed in order to satisfy the goal of lengthening the life span of all young people, particularly those in poverty. In fact, States Parties are under the "highest obligation" to take affirmative action to guarantee each child an opportunity to develop his or her personality,

⁷⁸ CANTWELL, *supra* note 73, at 28.

⁷⁹ State parties shall ensure to the maximum extent possible the survival and development of the child. Convention on the Rights of the Child, *supra* note 36, art. 6.

a far greater objective than mere survival.⁸⁰

Unfortunately, the provision declaring a right to life for all children has fallen upon deaf ears in numerous Latin American countries. In Colombia, the policy of "social cleansing" has resulted in the murder of one street child every four hours.⁸¹ Meanwhile, in Brazil, an estimated four street children per day are murdered, most the result of "death squad homicides."⁸² Guatemala has been the subject of international scrutiny, as National Police Officers and other government security force members have been implicated in dozens of assaults against street children, including fourteen murders in a single eighteen month period.⁸³ Although it is difficult to deem such killings the policy of their respective governments, there is convincing evidence that the killings transpire with the participation or approval of some local authorities, including police and military commanders.⁸⁴

A 1991 report in Brazil by the special commission formed by the Rio de Janeiro state legislature, found "many irregularities that look like complicity on the part of the judiciary" in death squad killings. State party involvement in the murder of street children was also acknowledged by the Committee on the Rights of the Child in its report about Colombia.⁸⁵ The Committee acknowledged the "discriminatory and adverse social attitudes, particularly among law

⁸⁰ Goetz, *supra* note 34, at 155.

⁸¹ Leslie Wirpsa, "Children Risk Violent Death in Colombia," NAT'L CATH. REP., Jan. 13, 1994, at 6.

⁸² Death squads are usually formed by local businessmen who hire private security forces to protect their businesses. Many studies have proven that these groups, like those involved in the social cleansing policy of Colombia, are off-duty policemen who operate with the acquiescence, if not active support, of local police officials. See PENGLASE, *supra* note 10, at 82-83.

⁸³ TUCKER, *supra* note 6, at 16.

⁸⁴ KIRK, *supra* note 14, at 2.

⁸⁵ *Concluding Observations of the Committee on the Rights of the Child: Columbia*, U.N. Convention on the Rights of the Child, 8th Sess. Agenda Item C at 12, U.N. Doc CRC/C/15/Add.30 (1995) [hereinafter Committee on the Rights of the Child].

enforcement officials, towards vulnerable groups of children.”⁸⁶ Furthermore, the Committee expressed its “grave concern” over life-threatening situations faced by street children, many of whom are victims of social cleansing campaigns.⁸⁷ Since many of the murders of street children in Latin America are carried out by agents of the State, they are rarely investigated or properly prosecuted. Although there have recently been a number of high profile convictions of police officers for the murders of Latin American street children,⁸⁸ few investigations result in more than dismissal for implicated officers.⁸⁹ Without a doubt, the State parties of Brazil, Colombia, and Guatemala are not providing street children the right to survival and development as mandated by Article 6 of the Convention.⁹⁰ Although the Committee on the Rights of the Child has investigated these abuses and provided public recommendations to expose this grave situation to the international community, the Committee has been unsuccessful in reducing these abuses because of local government inaction and the Committee’s lack of enforcement authority, which as with so many other treaties, is devoid of any mechanism to compel state compliance. Thus, the inherent inadequacies of the Committee, coupled with the complete apathy of these Latin signatories, has led

⁸⁶ *Id.* at para. 12.

⁸⁷ *Id.*

⁸⁸ Another former police officer confessed to shooting to death a group of Brazilian street children as they slept. The first policeman to go on trial confessed, and was given a 309 year sentence. However, under Brazilian law, the officer may serve no more than 30 years of that term. The conviction was the first time a Brazilian police officer was sentenced for the murder of a street child. See *Third Ex-Policeman Confesses to Murder of Street Children*, May 4, 1996, [http:// www.CNN.com/world/9605/04/NewsBriefs/index.html#10](http://www.CNN.com/world/9605/04/NewsBriefs/index.html#10). Two former police officers in Guatemala City were sentenced to 30 years in prison for the murder of two street children. The two private policeman came up to the children and shot opened fire with a shotgun and forty-five gauge pistol. See Bruce Harris, *Guatemalan Police Convicted of Murder of Street Children*, June 13, 1996, [http://www. OneWorld.org/News/Partner_News/June96_children.html](http://www.OneWorld.org/News/Partner_News/June96_children.html).

⁸⁹ KIRK, *supra* note 14, at xi.

⁹⁰ Convention on the Rights of the Child, *supra* note 36, art. 6.

to a violation of one of the most fundamental principles of the Convention—the right to life of its children.

C. Adequate Standard of Living

Assuring an adequate standard of living for all children is particularly relevant for street children. Article 27 of the Convention on the Rights of the Child addresses this issue and obliges States Parties to ensure that children are provided with food, clothing, and housing according to the financial resources available and the norms of the particular culture.⁹¹ However, unlike other treaties, the Convention links the child's standard of living to aspects of a child's moral and social development. Thus, the right to an adequate standard of living extends beyond the basic physical provisions fundamental to the child's survival. This article exemplifies the necessity of state assistance in the areas that will improve the living conditions and maintenance of the child, including social security, free education, and accessible health care, each outlined in more specific articles in the Convention.⁹² Although not a novel concept, this article provides another step in the progression toward requiring nations, at least to

⁹¹ *Id.*, art. 27.

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Id.

⁹² GERALDINE VAN BUREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* 318 (1995).

the extent of their economic means, to assure that impoverished children obtain the necessities to survive and develop both physically and emotionally.⁹³

The objective of providing adequate standards of living for children has failed miserably throughout parts of Latin America. In Brazil, children are often forced onto the streets, either to work or to live, because of Brazil's extreme poverty. Ironically, despite having a relatively high per capita income compared to other developing nations, Brazil has one of the highest poverty rates in Latin America.⁹⁴ Thus, it is not surprising that the statistics relating to children's health, education, and housing are abysmal. For example, even of those children who reside at home, 55% live in houses without adequate sanitation and water supplies.⁹⁵ Only 20% of the children who enter primary education finish the mandatory eight years of schooling.⁹⁶

Recognizing that a nation's living standards are commensurate with their cultural norms and economic situations, Guatemala has still failed to ensure its most vulnerable children a modicum of the "basics" necessary for human survival. For example, more than 37% of the children between the ages of five and nine suffer from malnutrition; more than 50% of the families share one small room for the entire family; and over half the population lives in dirt houses without floors, latrines, or adequate water supplies.⁹⁷

Equally inadequate standards of living for children exist in Colombia, and have been addressed by the Committee on the Rights of the Child.⁹⁸ The Committee expressed its grave concern over the large proportion of Colombian street children who live in extreme

⁹³ James Weill, *Assuring An Adequate Standard of Living for the Child*, in CHILDREN'S RIGHTS IN AMERICA 197, 214 (Cynthia Price Cohen & Howard A. Davidson eds., 1990).

⁹⁴ PENGLASE, *supra* note 10, at 9.

⁹⁵ *Id.* at 10.

⁹⁶ *Id.*

⁹⁷ Lave, *supra* note 4, at 68.

⁹⁸ Committee on the Rights of the Child, *supra* note 85, arts. 12, 17.

poverty. These children have been “economically and socially marginalized and have limited or no access to adequate education or health care.”⁹⁹ Consequently, poverty and inadequate living conditions force many children into the streets.

Even considering the poor economic situations in these countries, or at least the vast differences in the wealth of its population, it is still clearly unacceptable and in direct contravention of international norms that great numbers of children have ended up living on city streets. Neither the countries themselves nor the Committee on the Rights of the Child have responded adequately. Under the overstated guise of insufficient resources, these Latin American nations have failed to effectively implement even minimal measures to improve the standard of care for impoverished children, clear violations of Article 27 of the Convention. Thus, it is critical to begin to re-emphasize the importance of international and local coordination with appropriate non-governmental organizations that could provide expertise, immediate assistance, and effective long-term care to those children most in need.

D. Recovery of Abused Children

Article 39 of the Convention on the Rights of the Child concerns the recovery of abused children, and specifically relates to the creation of solutions for displaced children who live without their families.¹⁰⁰ The word “promote” was used by the drafters of the Convention to characterize State Party obligations to provide abused,

⁹⁹ *Id.*

¹⁰⁰ The general provision of Article 39 protects children from all forms of abuses, including prostitution. Article 34 addresses the issue of protecting children from sexual exploitation. Article 39 provides in part that: “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of . . . neglect, exploitation, or abuse . . . ; Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.” Convention on the Rights of the Child, *supra* note 36, art. 39.

exploited, and neglected street children with programs that address both physical and psychological mistreatment.¹⁰¹ Therefore, affirmative domestic legislative or administrative action is necessary to provide street children with secure places to live, appropriate counseling where necessary, and effective support that will enable these young people to successfully reintegrate back into society. This is particularly necessary in countries like Brazil, Colombia, and Guatemala, where these problems are unquestionably grave, and governmental social programs for abused children are scarce.¹⁰²

The abuse and exploitation of street children in Latin America is a disturbing, but nevertheless growing, phenomenon. As in many other nations, abusive family situations drive many of these children to the street. Guatemalan aid workers report that children with stepparents have particular difficulties. With no blood ties to their fathers, many of these youngsters are seen as burdensome, and are "frequently beaten by their new fathers and are driven to the street."¹⁰³ Furthermore, governmental social programs, children's shelters, and group homes to aid these children in reintegrating back into society, are non-existent.¹⁰⁴ Once on the street, these children are further exploited by being forced to resort to hazardous work, illegal drug trafficking, and prostitution. Consequently, the Committee on the Rights of the Child expressed its deep concern about Guatemala's insufficient efforts to collect data and information on the situation of those street children who are the victims of such "abuse, neglect,

¹⁰¹ Goetz, *supra* note 34, at 163. Article 39 of the Convention on the Rights of the Child encompasses protections for children from all forms of abuse and exploitation; in particular some of the most serious problems for street children include: narcotics abuse, such as glue sniffing, prostitution, deficient health, and police abuse. See VAN BUREN, *supra* note 92, at 284-85.

¹⁰² *Id.*

¹⁰³ Laura Bobak, *The Deadly Streets of Guatemala*, OTTAWA SUN, Oct. 21, 1996, at Pt. II.

¹⁰⁴ *Id.*

[and] ill-treatment.”¹⁰⁵

In Brazil, over 500,000 prostitutes under the age of seventeen work the streets,¹⁰⁶ while over 70% of the street girls in Guatemala are prostitutes.¹⁰⁷ Since street girls usually are uneducated and unskilled, prostitution is one of the only livelihoods available to them.¹⁰⁸ It is also common for both boys and girls who live on the street to be faced with sexual abuse and rape.¹⁰⁹ As a result of child prostitution and sexual abuse, five percent of the child population served by the street children’s advocates of Casa Alianza are infected with HIV, and none have access to state health services.¹¹⁰

While these governments are aware of this cruel reality, apparently neither they, nor the international community, prioritize the issue. The inaction of the governments is consistent with the economic benefit of child prostitution, which generates significant revenue from sex tourism.¹¹¹ In fact, this is a growing phenomenon in Latin America, and unfortunately the victims are impoverished young girls who fall victim to these foreign predators.¹¹² In violation of Article 39, these countries are not taking steps to control and monitor such abuses, nor creating programs of recovery for these children that will enable them to reintegrate back into society.

E. Illicit Use of Narcotic and Psychotropic Drugs

Article 33 of Convention on the Rights of the Child contains a

¹⁰⁵ Committee on the Rights of the Child, Comments on Guatemala, U.N. Doc CRC/C/15/Add.58 (1995).

¹⁰⁶ PENGLASE, *supra* note 10, at 10–11.

¹⁰⁷ Bobak, *supra* note 103.

¹⁰⁸ Lave, *supra* note 4, at 62.

¹⁰⁹ *Id.* See also Goetz, *supra* note 34, at 148.

¹¹⁰ See Casa Alianza Presentation, *supra* note 1.

¹¹¹ Margaret A. Healy, *Prosecuting Child Sex Tourists At Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?*, 18 FORDHAM INT’L L.J. 1852, 1871 (1995).

¹¹² *Id.* at 1861.

specific reference to the illicit use of narcotic drugs and psychotropic substances, particularly because of their prevalent use among children.¹¹³ Unquestionably, street children are the group of children most seriously affected and exploited by this problem. Unfortunately, the majority of such street children frequently reject traditional institutions of recovery. One suggestion is to develop more informal communities which are able to meet the "child's health, social and psychological needs and are able to listen actively to children."¹¹⁴ Another recommendation involves the prohibition on the sale of glue and solvents to children.¹¹⁵ As with all other child victims of abuse and exploitation, States Parties should take measures to promote the recovery and reintegration of children who have abused narcotics or substances.¹¹⁶

As suggested in Part I, the problem of substance abuse by street children in Latin America may be categorized as overwhelming and provides a significant challenge towards realistically improving the lives of street children. The vicious cycle of poverty and abuse instigates the use of drugs, including glue-sniffing, and makes it more difficult for these children to leave the streets. In Guatemala, governmental response to this severe problem has been non-existent. In fact, there are no government programs dealing with childhood drug addiction, and only the NGO Casa Alianza offers a drug rehabilitation program for those street children most seriously

¹¹³ Article 33 provides:

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Convention on the Rights of the Child, *supra* note 36, art. 33.

¹¹⁴ VAN BUREN, *supra* note 92, at 284.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

addicted to narcotics.¹¹⁷

The recommendation to stop the sale of glue to children had received little reaction in Latin America until a recent lawsuit was filed by the parents of a Guatemalan teenager who died from the effects of sniffing glue.¹¹⁸ Along with the assistance of Casa Alianza, the parents fought back against their government's inaction. They launched a civil action in a United States federal court against H.B. Fuller, an industrial products manufacturer who produces the glue to which thousands of street children are addicted.¹¹⁹ The corporation was accused of being responsible for the street child's death because the product's fumes were addictive and deadly in nature. The case was thrown out of court, but after five years of substantial protests from street children's advocates, H.B. Fuller finally agreed to no longer sell its glue over the counter.¹²⁰ In addition, in the midst of world attention, another international glue manufacturer has also changed its formula to make its product less attractive to children.¹²¹

Poverty and mistreatment lead children into the streets, and drugs are merely a means of survival once they have arrived. As a result, responsible government action to the other provisions of the Convention will not only affect the overall number of street children, but the amount of young people who become addicts. Nevertheless, the inaction of Brazil, Colombia, and Guatemala to establish proper educational, social and legislative measures, is a clear violation of Article 33 of the Convention on the Rights of the Child. Although the Committee has recognized the problems of drug abuse among street children, international pressure on glue producers to eliminate the addictive elements of these substances is equally as important. Yet as long as the problems that first bring children to the street exist, the lack of governmental and international response will manifest into a

¹¹⁷ Lave, *supra* note 4, at 95-96.

¹¹⁸ Bobak, *supra* note 103, at Pt. II

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

frightening number of drug addicted children living in the streets of Latin America.

F. Torture and Inhumane Punishment

Article 37 of the Convention on the Rights of the Child prohibits the subjection of children to torture or other inhumane treatment. This includes a prohibition against capital punishment and life imprisonment for those under the age of eighteen.¹²² To the extent that some of the language is a repetition of standards in other documents,¹²³ it may yet benefit street children since it is the first time such an express prohibition of torture and inhumane punishment has been made on the behalf of children.¹²⁴ Moreover, the greater the repetition of standards, the more easily it may be argued that the standards themselves reflect customary international law. Consequently, by accepting such standards, States Parties may be likely to incorporate them into their domestic law, increasing the likelihood that the flagrant mistreatment towards street children will be enforced in their respective countries.¹²⁵

Nevertheless, such abusive mistreatment of street children

¹²² Article 37 states: "(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age." Convention on the Rights of the Child, *supra* note 36, art. 37.

¹²³ The language related to torture or other cruel punishment is not unique and is within Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and clearly specified in the Convention Against Torture. *See* Universal Declaration of Human Rights, G.A. res 217A (III), U.N. Doc. A/810, at 71 (1948); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. (No. 16), at 52, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.; Convention Against Torture, G.A. Res 39/46, 39 GAOR, Supp (No. 51), U.N. Doc. A/RES/39/46 (1984)..

¹²⁴ Balton, *supra* note 64, at 122.

¹²⁵ *Id.* at 123.

continues to occur without government condemnation. The torture of street children detained by the police and military continues to be the norm in Colombia. In a 1994 report by Human Rights Watch, there was substantial evidence of "beatings, rape, electrical shocks, near-drownings in filthy water, and near-suffocation."¹²⁶ Torture remains an ugly and daily reality for street children in detention in Colombia.¹²⁷ For example, Frankie, who has lived on the streets of Colombia since age eight, has been tortured by police officers on numerous occasions.¹²⁸ In one such encounter, he was kept naked in a cold basement cell, beaten with a water-soaked stick, punched in the stomach after having a plastic bag put over his head, and forced to have electric cable wires attached to his testicles.¹²⁹

In Guatemala, such torture and abuse have made street children's lives even shorter due to "the sadistic tendencies of members of the Guatemala's National Police and the country's thousands of private security guards."¹³⁰ A legal aid clinic for street children has documented hundreds of incidents of abuse, torture, sexual abuse and illegal detention of street children. In one case, a group of female street children was arrested while watching an Easter parade because they did not have identification papers. The girls were taken to an isolated soccer field, where they were gang raped by the officers. The policemen then gave the girls change for the bus.¹³¹ The girls filed a complaint, but later refused to testify because they feared police retaliation.¹³²

Illegal arrests, beatings, and torture are also common problems for the impoverished children living on the streets in Brazil. In fact, four-fifths of the prison population in the city of San Paolo, are made

¹²⁶ KIRK, *supra* note 14, at x.

¹²⁷ *Id.*

¹²⁸ *Id.* at 6.

¹²⁹ *Id.*

¹³⁰ Bobak, *supra* note 103, at Pt. II.

¹³¹ *Id.* at Pt. II.

¹³² *Id.*

up of those once categorized as street children.¹³³ The prisons and juvenile detention centers are in horrendous conditions with reports of severe overcrowding and poor sanitation,¹³⁴ while the abusive treatment of children detained in these facilities is almost routine.¹³⁵

Although inhumane treatment and torture is generally accepted throughout the world as intolerable, street children continue to survive under an umbrella tarnished with abuse. Without more pressure from the international community to curb such government supported action, the reality for street children will grow far worse, increasing the alarming number of street children who are subjected to such degrading mistreatment.¹³⁶ Therefore, it is indisputable that Brazil, Colombia and Guatemala are in violation of the obligations imposed upon them by Article 37 of the Convention on the Rights of the Child.

IV. DOMESTIC RESPONSES TO THE PLIGHT OF STREET CHILDREN

While the preceding sections of the Article have addressed shortcomings, Brazil, Colombia, and Guatemala have made important strides with their progressive legislative initiatives. Recent progressive children's legislation has been adopted in Brazil, Colombia, and Guatemala to provide a legal framework to prevent inhumane treatment towards street children. For example, Article 227 of the Brazilian Constitution¹³⁷ adopted the principles of the Convention on the Rights of the Child. In addition, the passage of the Estatuto da Criança e do Adolescente (ECA) in 1990, an important step towards dealing with violence against children, sought to provide assistance and support for Brazil's youth.¹³⁸ This comprehensive

¹³³ O'Rourke von Struensee, *supra* note 2, at 617.

¹³⁴ PENGLASE, *supra* note 10, at 22.

¹³⁵ TUCKER, *supra* note 6, at 75.

¹³⁶ Goetz, *supra* note 34, at 165.

¹³⁷ CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL.

¹³⁸ See PENGLASE, *supra* note 10, at 13-14.

children's legislation consists of civil, social, and economic rights and is based on the concept of "integral protection."¹³⁹ This concept ensures the protection of children and adolescents from the moment of conception and combines their rights and duties into an "inclusive whole."¹⁴⁰

This ECA also guarantees fair and humane treatment towards juvenile offenders, and specifies the organizations responsible for developing child welfare policy. In fact, its provisions mandate that children not be arrested and detained at all, and specifies the conditions for the arrest and detention of adolescents.¹⁴¹ Even more encouraging, there are actual sections which outline the standard punishments for officials who are involved in torture, prolonged detention, and acts that subject a child to "a minor constraint or annoyance."¹⁴² Sentences for such offenses range between six months and thirty years, depending upon the severity of the abuse to the child. Finally, this legislation created two committees that were established at the national and state level, whose purpose is to oversee the progress of the legislative initiatives.¹⁴³

The 1996 passage of the Minor's Code in Guatemala was specifically intended to comply with the Convention on the Rights of the Child.¹⁴⁴ More precisely, the legislation's purpose was to provide children with State protection regardless of their economic or social status.¹⁴⁵ The Code forbids the imprisonment of children for merely living on the streets or running away from home, guarantees the due process rights of children who are detained or imprisoned, and provides all children accused of crimes with free legal services.¹⁴⁶ Moreover, these measures strengthen the penalties for crimes

¹³⁹ *Id.* at 14.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 17.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ TUCKER, *supra* note 6, at 48.

¹⁴⁵ *Id.* at 47.

¹⁴⁶ *Id.* at 3.

committed against children by government and private security force members.¹⁴⁷ Finally, this legislation must be applied “in harmony with” all applicable international standards.¹⁴⁸

In 1990 a similar code for minors was established in Colombia. Under the provisions of the Code, children may not be incarcerated under any circumstances, and delinquent children are instead eligible for treatment and social services.¹⁴⁹ Juvenile offenders who are twelve years and older must be transferred to special holding facilities and, if retained, kept in a rehabilitative center for a maximum of three years.¹⁵⁰ Finally, both the Colombian Institute for Family Welfare and the juvenile justice system are in charge of investigating reports of abuse and neglect and aim to protect the general safety of children living in precarious conditions.¹⁵¹

Although Brazil, Colombia, and Guatemala have enacted comprehensive legislation to protect street children, each country’s demonstrated blatant disregard of these laws has weakened such potentially meaningful government initiatives. The failure of this legal symbolism may only be measured by the number of street children who continue to live in abusive and impoverished environments. Therefore, the question remains whether these governments truly hold the rights of street children to be a national priority. It appears that the answer to this question is a resounding no; inadequate responses, failed policy, and a lack of initiative to effect change has continued the perpetual growth of children who live subject to inhumane abuse on the streets, a problem sure to multiply into far graver proportions absent effective local and international action.

¹⁴⁷ *Id.* at 49.

¹⁴⁸ *Id.* at 47.

¹⁴⁹ KIRK, *supra* note 14, at 50.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 51.

V. IMPLEMENTING NECESSARY REFORMS

The existence of international agreements such as the Convention on the Rights of the Child, and the numerous domestic initiatives discussed above, are critical instruments towards eradicating the abuse, neglect, and murder of street children in Latin America. However, effective and realistic enforcement strategies must be developed to reduce the superficiality of these symbolic documents, and increase the likelihood of concrete improvements in the lives of street children.

The murder of street children has become “epidemic,” and must be condemned by the international community. The efforts of the Committee on the Rights of the Child and other United Nations organizations are essential to containing this crisis.¹⁵² Statements made by the Committee and the General Assembly which regularly condemn these acts will create international political pressure on the governments of Brazil, Colombia, and Guatemala. The establishment of a special *rapporteur* from the Committee on the Rights of the Child to investigate both the abuses of street children in Latin America and individual State responses may finally force these governments to respond accordingly.¹⁵³ The more limited responsibility of the special *rapporteur* would increase the timeliness of State reports and recommendations necessary for compliance and effective oversight. Furthermore, with the assistance of international financial institutions and NGOs these States Parties could be assisted in improving these nation’s judicial systems, prison conditions, and the violent realities that exist for street children in their respective countries.¹⁵⁴

On a domestic level, the governments of Brazil, Colombia, and Guatemala must begin to comply with the standards set forth in their own domestic legislation. For example, establishing Independent

¹⁵² Tucker, *supra* note 6, at 64.

¹⁵³ See Casa Alianza Presentation, *supra* note 1.

¹⁵⁴ PENGLASE, *supra* note 10, at 134.

Committees, comprised of representatives from the military, civil police, and public prosecutors office to investigate the homicides of street children may reduce the local inaction and unresponsiveness typically associated with these murders.¹⁵⁵ The strength of these independent committees once again depends upon international pressure, demanding that those in the top levels of their respective governments respond with creating active and effective committees. Other mechanisms for compliance should include: prosecuting those who murder street children, dismissing abusive officers, protecting witnesses who testify in child murder cases, creating citizen-boards to work with local police and oversee their conduct, disseminating information to the local and international media regarding the officers who are responsible for the recurrent abuses of street children, and discouraging the use of "private justice" as a way to solve social ills.¹⁵⁶ As far as dealing with youthful offenders, these Latin American nations must equally live up to the standards they themselves agreed upon. Their actions should include separating youthful offenders from adult offenders, improving the conditions and quality of juvenile detention centers, creating alternative sentencing, and developing rehabilitative centers and drug treatment programs.¹⁵⁷

The financial and political support of local agencies that work with street children are key ingredients for effective change in the lives of street children. As discussed earlier, groups such as Casa Alianza in Guatemala help remove children from the street into safer environments. Other successful programs include the Center for the Defense of the Child,¹⁵⁸ located in Belem, Brazil, which offers

¹⁵⁵ *Id.* at 135.

¹⁵⁶ *Id.* at 135-40

¹⁵⁷ *Id.*

¹⁵⁸ This program was developed to improve the self-esteem of children who typically see themselves as worthless. Psychological counseling serves to build the positive growth and change necessary for street children to have the confidence to move beyond the confines of their environment into more productive and healthier settings. Lave, *supra* note 4, at 103-04.

children social and psychological support; and Bosconia/La Florida,¹⁵⁹ in Bogota, Colombia, which provides educational opportunities and vocational skills for street children. The success of these organizations cannot be underscored, yet neither should their financial constraints. The survival and development of great numbers of street children rest upon creating a comprehensive strategy that includes local cooperation between advocates, coordination with larger NGOs, and consistent international pressure and economic aid to force the governments of Brazil, Colombia, and Guatemala to reprioritize their lackluster policy towards street children.

VI. CONCLUSION

The killing and mistreatment of street children is intolerable. The international community is responsible for assisting countries that violate these children's rights in implementing effective change. There is also little dispute over the international significance of the Convention on the Rights of the Child, the first legal document of its kind to bind nations for the purpose of improving the plight of the world's poorest children. At the very least, the Convention is a step toward urging governments to improve the welfare of its most exploited children, those who live and survive on the street. But the real issue must be the prospects for international enforcement of the

¹⁵⁹ The success of this program has been remarkable. See *Development: What Works: Hearing Before the International Task Forces of the House Select Committee on Hunger*, 101st Cong., 1st Sess. 101-04 (1989) (statement of Deborah Szekely, President, Inter-American Foundation). The program allows children to care for other children, improving self-confidence and providing opportunities to be responsible. Once recruited, children move at their own pace, from first seeking a hot meal to actual full-time residency at the facilities of Bosconia/La Florida. The children receive basic education and within a month begin more advanced programming including practical skills courses that provide children with the opportunity to learn about construction, welding and automobile repair. Children are paid for their services rendered in a special currency that they may exchange for real money when they leave the center. Lave, *supra* note 4, 105-06.

Convention on the Rights of the Child, to implement, or at least stimulate, the changes provided for in the Convention. Unfortunately, a sober assessment of the reality of street children in parts of Latin America has revealed the failure of countries like Brazil, Colombia, and Guatemala to comply with the standards established by the Convention.

A cynic may now find the Convention, after eight years of existence, to be an agreement devoid of substance because the document lacks sufficient enforcement mechanisms. In fact, the Convention has been compared to a "domestic society" that has no police or judicial authority, but which nevertheless "requires each member of the society to report periodically on the measures [they have taken] to comply with society's rules."¹⁶⁰ However, the Convention is still in its youth and remains the only widely recognized international agreement that actually addresses the rights and needs of street children. Therefore, considering the importance of the Convention, and its lofty objectives, it is time to focus on strengthening the existing international mechanisms, condemning those nations that consistently violate these provisions, and working to improve the lives of street children in Latin America.

¹⁶⁰ Balton, *supra* note 64, at 129.

