

Article

Litigating the Rights of Street Children in Regional or International Fora: Trends, Options, Barriers and Breakthroughs

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This article focuses on the fate of street children and interactions between street children and international law and international institutions. The landmark November 1999 decision of the Inter-American Court of Human Rights, Villagrán Morales v. Guatemala, provides the basis for this article. Villagrán Morales was the very first case in the history of the Inter-American Court where the victims of human rights violations were children, and the first case ever involving street children before an international adjudicatory body. This article examines the significance of this decision for street children.

A world which abandons its children in the streets has no future; it no longer renders it possible to create and develop a project of life. . . . A world which tries to ignore the precariousness of the human condition inspires no confidence. . . . It is a world wherein

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This paper is envisioned as the first in a series of articles that will focus on street children, international law and international institutions. Subsequent articles will examine the effectiveness of decisions of international human rights bodies in terms of the record of their enforcement and the obstacles to effective protection of street children.

This paper is dedicated to the millions of children who live, work, and die on the streets of our postmodern world and to the brave individuals who work to improve the condition of their lives.

each one survives amongst a complete spiritual disintegration. It is a world that has become simply dehumanized, and which today needs urgently to awake to the true values.¹

- Judge A.A. Cançado Trindade, The Inter-American Court of Human Rights

INTRODUCTION

On November 19, 1999, the Inter-American Court of Human Rights, in *Villagrán Morales v. Guatemala*,² rendered a landmark decision in which the Court found the Republic of Guatemala in violation of several provisions of the Inter-American Convention on Human Rights ("IACHR")³ on account of the 1990 abduction, detention, and/or murder of five street youths (three of whom were minors). On May 26, 2001, the Court awarded damages totaling \$508,865.91 against Guatemala in favor of the surviving relatives of the murdered children.⁴ The *Villagrán Morales* case was significant for two reasons. It was the first case involving street children ever to come before an international adjudicatory body.⁵ It was also the first case in the history of the Inter-American Court in which the victims of human rights violations were children.⁶

Focusing on the *Villagrán Morales* decision and drawing on subsequent discussion with the National Director of Casa Alianza Guatemala (one of the organizations that filed the petition in the *Villagrán Morales* case), this Article examines the effectiveness of litigation before international human rights tribunals as a strategy for protecting the rights of street children across the globe.⁷ This inquiry is relevant because more than six years after

1. *Villagrán Morales v. Guatemala* (The "Street Children" Case), 2001 Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 21 (May 26, 2001) (Separate Opinion of Judge A.A. Cançado Trindade), available at <http://www.umn.edu/humanrts/iachr/C/77-ing.html> [hereinafter *Separate Opinion of Trindade*].

2. *Villagrán Morales v. Guatemala* 1999 Inter-Am. Ct. H.R. (ser. C) No. 63 (Nov. 19, 1999) [hereinafter *Villagrán Morales – Case 63*].

3. Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992) [hereinafter *IACHR*].

4. See *Villagrán Morales Case*, 2001 Inter-Am. Ct. H.R. (ser. C) No. 77 (May 26, 2001), available at <http://www.umn.edu/humanrts/iachr/C/77-ing.html> [hereinafter *Villagrán Morales – Case 77*].

5. See Casa Alianza, *Inter-American Court of Human Rights Makes Historic Awards to Families of Murdered Guatemalan Street Children*, June 13, 2001, available at <http://www.essex.ac.uk/armedcon/Countries/Americas/Future/Text/Guatemala006.htm> (last visited Apr. 8, 2006).

6. According to Bruce Harris, former Regional Director of Casa Alianza, it was "the first ever case in the 20-year history of the Court where the victims of a resolved case were children." *Id.* See also Ismene Zarifis, *Guatemala: Children's Rights Case Wins Judgment at Inter-American Court of Human Rights*, 9 HUM. RTS. BRIEF 20, 20 (2001).

7. Numerous books and articles have been written about the condition of street children

this landmark decision, the plight of street children in Guatemala, other Latin America countries, and other parts of the developing world remains bleak.⁸ However, international human rights litigation frequently involves difficult choices and trade-offs, and the rewards for the actual victims of abuse often come at a cost. In the context of limited resources, advocates must evaluate the wisdom of pursuing litigation before a regional or international human rights tribunal at the expense of diverting resources from alternative advocacy strategies and important social welfare programs for street children.

In this Article, I argue that international human rights litigation can be a powerful means of political expression and community mobilization for abused and victimized children in developing countries and can result in precedent-setting interpretations of core treaties affecting the rights of children. However, the potential for such litigation to bring about tangible changes in the living conditions of street children is limited by a number of factors, particularly weaknesses in international human rights laws and processes. Moreover, international human rights litigation hardly addresses the core factors that contribute to the street children problem and that frequently shape the experiences of street children, such as underdevelopment, systemic poverty, economic disparities, armed conflict, inequitable socio-economic structures, and discriminatory attitudes—especially discrimination on the basis of race and ethnicity.

The *Villagrán Morales* case signals a welcome turning point in the

in different parts of the globe. See generally SUSANNA AGNELLI, *STREET CHILDREN: A GROWING URBAN TRAGEDY* (1986); ROBIN KIRK, *GENERATION UNDER FIRE: CHILDREN AND VIOLENCE IN COLOMBIA* (Human Rights Watch 1994); BEN PENGLASE, *FINAL JUSTICE: POLICE AND DEATH SQUAD HOMICIDES OF ADOLESCENTS IN BRAZIL* (Human Rights Watch 1994); LEE TUCKER, *GUATEMALA'S FORGOTTEN CHILDREN* (Human Rights Watch 1997); 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 (1995); Tamara Rice Lave, *Breaking the Cycle of Despair: Street Children in Guatemala City*, 27 *COLUM. HUM. RTS. L. REV.* 57 (1995); Marc D. Seitles, *Effect of the Convention on the Rights of the Child Upon Street Children in Latin America: A Study of Brazil, Columbia, and Guatemala*, 16 *IN PUB. INTEREST* 159 (1997-1998); Timothy Treanor, *Relief for Mandela's Children: Street Children and the Law in the New South Africa*, 63 *FORDHAM L. REV.* 883, 887 (1994).

8. For example, in September 2004, between fifteen and thirty street children were killed in Mbuji Mayi, the capital of the Democratic Republic of Congo. According to media accounts, the children were killed by local diamond miners after the children allegedly stole some of their equipment; some children were burnt alive, beaten or stoned to death. *DR Congo Street Kids Burnt Alive*, BBC News UK Edition, Sept. 28, 2004, <http://news.bbc.co.uk/1/hi/world/africa/3696982.stm> (last visited July 5, 2005).

In February 2003, Human Rights Watch released a shocking report documenting the plight of street children in Egypt. According to the report, street children as young as seven are frequently arrested and detained by the police. During arrests police routinely beat children with fists and batons, and while in detention these children face physical as well as sexual abuse. HUMAN RIGHTS WATCH, *CHARGED WITH BEING CHILDREN: EGYPTIAN POLICE ABUSE OF CHILDREN IN NEED OF PROTECTION* (2003).

history of international law's engagement with poor children,⁹ suggesting a new willingness on the part of international human rights bodies to subject states' observance of their international legal obligations to heightened scrutiny whenever the interests of children are implicated. However, in the short term, the effectiveness of international litigation as a strategy for improving the lives of street children may be minimal.

The *Villagrán Morales* case could potentially influence national courts, other regional human rights institutions, and the United Nations' human rights bodies.¹⁰ It is, however, unlikely that regional and international human rights bodies will experience a flood of petitions on behalf of street children. There will probably not be a wave of decisions by human rights bodies holding states or individuals in violation of international human rights law as a result of their treatment of street children. This is unlikely for three reasons. First is the continued exclusion of non-state actors from the domain of international human rights law. Thus, when the aggressor is a non-state actor, it is extremely difficult to utilize the regional and international human rights complaints mechanisms to hold that actor responsible. Second, in contrast to civil and political rights, economic and social rights remain neglected and under-theorized in international human rights law. Thus, because most of the deprivations that street children experience are economic and social in nature, the *Villagrán Morales* case may have a limited impact on the actual living conditions of street children. Third, there are a limited number of fora (regional or international) where these children's human rights claims may be brought. Currently, there are only three major regional courts that hear cases concerning human rights violations.¹¹

9. See Ariel E. Dulitzky & Luguely Cunillera Tapia, *A Non-Governmental Perspective Regarding the International Protection of Children in the Inter-American System of Human Rights*, 8 J. TRANSNAT'L L. & POL'Y 265, 266-67 (1999) (noting that despite the existence of instruments designed to protect children, including their rights supposedly guaranteed under American Convention on Human Rights, in Latin America rulings by these bodies are "not respected or promoted" but rather "habitually ignored").

10. Ismene Zarifis, *Guatemala: Children's Rights Case Wins Judgment at Inter-American Court of Human Rights*, 9 HUM. RTS. BRIEF 20, 22-23 (2001) (observing that the case establishes an important precedent in the Inter-American legal system for children's rights jurisprudence and "sends a warning to all Member States that they may be held responsible for similar crimes perpetrated against children within their borders").

11. There are currently three major regional human rights systems: (i) the Inter-American system, (ii) the European system, and (iii) the African system. The major problem with existing regional arrangements is the fact that regional courts do not enjoy jurisdiction over violation occurring in territories outside their regions. Thus, for human rights violations occurring in Asia and the Middle East, there is no regional adjudicatory body that can hear complaints from victims of human rights violations. See HENRY STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* 779 (2d ed. 2000) (observing that there is a largely dormant Arab system and a proposal for the creation of an Asian regional system). See also Cynthia R. L. Fairweather, *Obstacles to Enforcing International Human Rights Law in Domestic Courts*, U.C. DAVIS J. INT'L L. & POL'Y 120, 121 (1998) (observing that the European Court of Human Rights and the Inter-American Court of Human Rights are limited in the territory and subject matter within their jurisdiction).

This paper is comprised of five sections. In Section I, I offer a brief overview of the street children phenomenon. In Section II, I introduce the *Villagrán Morales* case. This Section provides a useful background to the street children problem in Guatemala and highlights the core holdings of the Court. In Section III, I analyze the *Villagrán Morales* case with a view toward highlighting its significance in the growing international children's rights law jurisprudence. In Section IV, I examine the limitations of international human rights litigation as a strategy for safeguarding the rights of street children and improving the conditions of their lives today. I offer my conclusions in Section V.

I. STREET CHILDREN - GLOBAL PERSPECTIVE

The phenomenon of street children is a worldwide problem involving both sexes, and is in no way limited to poor countries.¹² In Europe, though some countries deny it, the problem of street children is immediate.¹³ In a study of thirty-one countries in Europe conducted by the Council of Europe Study Group on Street Children,¹⁴ only three countries—Cyprus, Liechtenstein, and San Marino—reported a total lack of street children.¹⁵ The Study Group on Street Children predicts that in Europe the problem

For literature on the African system see Makau wa Mutua, *The African Human Rights System in Comparative Perspective*, 3 REV. AFR. COMM. HUM. & PEOPLES' RTS. 5 (1991); Makau wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 VA. J. INT'L L. 339 (1995).

12. See JO BOYDEN, CHILDREN OF THE CITIES 59 (1991) (noting that "homelessness among young people is very much an urban phenomenon" and by no means restricted to poor countries). See also Timothy Treanor, *supra* note 7, at 887 (noting that street children constitute a widespread and critical problem in most of the world's developing countries). World Health Org., *A One-Way Street? Report on Phase I of the Street Children Project* (Part 3), available at http://pangaea.org/street_children/world/who3.htm (observing that youth homelessness and street children are phenomena not only of developing countries but experienced worldwide) (last visited Mar. 24, 2006) [hereinafter *World Health Org.*].

For literature on street children in the United States today, see generally JEFFREY ARTENSTEIN, RUNAWAYS IN THEIR OWN WORDS (1990); KEVIN CASEY, CHILDREN OF EVE (1991); KAREN J. HEUSEL, HOMELESS CHILDREN: THEIR PERSPECTIVES (1995); HOMELESS CHILDREN AND YOUTHS: A NEW AMERICAN DILEMMA (Jule H. Kryder-Coe et al. eds., 1991); HOMELESS CHILDREN: THE WATCHERS AND THE WAITERS (Nancy A. Boxill ed., 1990).

For literature on street children in Europe, see generally MICHELLE BEAUCHAMP, ON THE STREETS: A JOURNEY THROUGH LONDON WITH THE YOUNG HOMELESS (1989); PAT CARLEN, JIGSAW: A POLITICAL CRIMINOLOGY OF YOUTH HOMELESSNESS (1996); ANNA DAVIN, GROWING UP POOR: HOME, SCHOOL AND STREET IN LONDON 1870-1974 (1996).

13. COUNCIL OF EUROPE, STUDY GROUP ON STREET CHILDREN, STREET CHILDREN: CO-ORDINATED RESEARCH PROGRAMME IN THE SOCIAL FIELD (1992-93) 29 (1994) [hereinafter STUDY GROUP ON STREET CHILDREN] ("There is little official recognition of the phenomenon, or understanding of the scale and nature of street children. In many countries, the existence of street children seems to be denied.").

14. For the official website of the Council of Europe, see <http://www.coe.int/defaultEN.asp>.

15. STUDY GROUP ON STREET CHILDREN, *supra* note 13, at 29.

"is likely to become more and more visible" and that "the situation of street children will deteriorate" in the coming years.¹⁶ Street children are also a feature of urban life in Latin America, where they are regarded with a mix of fear and pity and have increasingly become victims of violence and murder.¹⁷

Former socialist countries are also seeing rising numbers of street children, some for the first time. In Poland and Hungary, for example, an increase in the number of children living in desolated buildings, cellars and railway stations has been reported.¹⁸ Street children are emerging in Mongolia as well—a fall-out from the economic crisis precipitated by the collapse of the Soviet Union.¹⁹ Systemic poverty, civil strife, and the HIV/AIDS epidemic have led to a surge in the number of street children in Africa.²⁰

Who are street children? How many street children are there in the world today? Although the street children phenomenon is a global problem of growing magnitude, there is still little official recognition of this phenomenon and reliable statistics are lacking; in Europe, the Study Group on Street Children notes that "precise knowledge about the phenomenon of street children . . . is in general limited."²¹

A. The Problem of Definition: Who is a Street Child?

There is no commonly accepted definition of street children, although numerous attempts to establish one have been made.²² Underlying these

16. *Id.*

17. See Nancy Scheper-Hughes & Daniel Hoffman, *Brazil: Moving Targets*, 106 NAT. HIST. 34, 35 (1997) (noting that "street urchins have long been a feature of urban life . . . in Latin America, where children are simultaneously drawn to, and in flight from, different kinds of labor"). See generally Jill Swart, *Street Children in Latin America, with Special Reference to Guatemala*, 6 UNISA LATIN AMERICAN REPORT 28-41 (1990); LEWIS APTEKAR, STREET CHILDREN OF CALI (1988); Lewis Aptekar, *Characteristics of the Street Children in Colombia*, 13 INT'L J. CHILD ABUSE & NEGLECT 427-437 (1989); Lewis Aptekar, *Colombian Street Children: Gamines and Chupagruesos*, 24 ADOLESCENCE 784 (1989); Hartmut Gunther, *Interviewing Street Children in a Brazilian City*, 132 J. SOC. PSYCHOL. 359 (1992).

18. STUDY GROUP ON STREET CHILDREN, *supra* note 13, at 24.

19. Sheryl Briller, *Mongolia: Out in the Cold*, 106 NAT. HIST. 24, 26 (1997). Mongolia became a socialist country in 1924. Communism brought with it an elaborate system of social services for children and their families that were heavily subsidized by the Soviet Union. Mongolia lost much of its economic base when the economy and political structure of the USSR began to collapse in 1987.

20. See generally HUMAN RIGHTS WATCH/AFRICA & HUMAN RIGHTS WATCH CHILDREN'S RIGHTS PROJECT, CHILDREN OF SUDAN: SLAVES, STREET CHILDREN AND CHILD SOLDIERS (1995); M.F.C. Bourdillon, *Street Children in Harare*, 64 AFR. 516 (1994); David Donald & Jill Swart-Kruger, *The South African Street Child: Developmental Implications*, 24 S. AFR. J. PSYCHOL. 169, 169-174 (1994); Paul Hunt, *Children's Rights in West Africa: The Case of the Gambia's Almudros*, 15 HUM. RTS. Q. 499 (1993).

21. STUDY GROUP ON STREET CHILDREN, *supra* note 13, at 26.

22. STUDY GROUP ON STREET CHILDREN, *supra* note 13, at 23 (noting that there is no universally agreed-upon definition of a street child). Lewis Aptekar & Bahilu Abebe,

attempts are fundamental disagreements about the relevant criteria for determining who is a street child.²³ The problem of definition is compounded by the fact that the street has different meanings and connotations in different contexts.²⁴

Because children craft different relationships with the street, no one definition can capture the totality of the experiences of street children worldwide. A street child may be “of the street” or “on the street.” A child “of the street” has no home but the street;²⁵ such a child may have abandoned or been abandoned by his family, or he may have no surviving family member—a situation increasingly common with the AIDS epidemic. A child “on the street” is one who has not severed all family ties; such a child spends a considerable amount of time on the street but returns home either every night or periodically.²⁶ Children who are part of street families (in the sense that they live on the sidewalks or city squares with the rest of their families) do not generally fall under the heading of “street children” for research and advocacy purposes.²⁷ They are differentiable both in the sense that they definitively lack any alternative and in the sense that they stay with their families. Their concerns are more likely to be dealt with under the heading of homelessness and poverty in general. This should not

Conflict in the Neighborhood: Street and Working Children in the Public Space, 4 CHILDHOOD 477, 478 (1997) (noting that “[t]here is not, and perhaps cannot be, a clear definition of street children”).

23. Definitions vary depending on a variety of factors, including the background of the person seeking to define street children, the way societal problems are perceived and constructed, and differing understandings of what constitutes an appropriate, natural relationship between a child and the street. For example, while governments try to minimize the problem and present low numbers, non-governmental organizations and the media often exaggerate the problem or overestimate the number of street children. *Id.* at 478 (observing that definitions often have political purposes and when international organizations cite large numbers of street children, they are, even if inadvertently, also making a claim to a larger financial allotment).

24. See Judith Ennew, *Some Reflection on Street Children in Africa*, 26 AFR. INSIGHT 206 (1996). Ennew writes:

In the same city [the street] can have many meanings. These might include being: a major site of socialization, social and commercial life in marginalized districts; places dedicated to the circulation of traffic; and spaces dedicated to the circulation of consumers and/or business employees. Streets can be paved, cobbled, grass or dust. At night they can be lit with neon lights and full of movement or pitch dark and silent.

25. Lave, *supra* note 7, at 58 (“Children of the streets . . . are those who live and work on the streets while maintaining some bonds with their families but who essentially live self-sufficiently”). ChildHope, *Who are the World’s Street Children?*, www.childhopeusa.com/kids/index.html (last visited Apr. 4, 2006) (noting that “children of the street” refers to the 25% of street children who work, sleep and live on Third World streets).

26. Lave, *supra* note 7, at 58 (“[C]hildren who work during the day and return to their parents at night” are “children on the streets.”). ChildHope, *supra* note 25 (noting that about 75% of the world’s street children are working street children, meaning that they work on the streets during the day, but return home at night).

27. STUDY GROUP ON STREET CHILDREN, *supra* note 13, at 25.

be taken to mean that homelessness among young people is not a problem: in Belgium, for instance, the number of children registered each year in homeless shelters (along with their parents) accounts for twenty percent of the total.²⁸

B. The Problem of Numbers: How Many Street Children Are There?

There are few accurate statistics on the number of street children in the world today. This problem is not limited to developing countries. In Europe, the Study Group on Street Children found that precise knowledge about the phenomenon of street children in Europe was limited²⁹ and that “[t]here [were] no reliable statistics, although estimates of the number of street children are available in some countries.”³⁰

In the mid 1990s, the World Health Organization (WHO) and the United Nations Children’s Fund (UNICEF) estimated the number of street children to be about 100 million worldwide.³¹ No more recent statistics on the number of street children worldwide exist, which in itself indicates how national, regional and international policy makers have neglected the issue.³² No new statistics on the number of street children were offered at a September 2005 hearing on the growing problem of street children held by Representative Christopher Smith (R-NJ), Chairman of the Subcommittee on Africa, Global Human Rights, and International Operations.³³ Estimates of the number of street children worldwide depend on a variety of factors including the identity of the person counting,³⁴ whether the study is

28. *Id.*

29. *Id.* at 26.

30. *Id.*

31. See *Streetkids.net*, Street Children Statistics, <http://www.streetkids.net/info/> (last visited Apr. 4, 2006) (citing UNICEF for the proposition that “[a]t least 100 million street children worldwide are believed to live at least part of the time on the streets.”); see also World Health Org., *supra* note 12 (observing that depending on the definition used, estimates of the numbers of street children range from 10 to 100 million, the majority being located in major urban areas of developing countries.); ChildHope, *supra* note 25 (noting that “[a]n estimated 100 million children live and/or work on city streets in the developing world”); Dulitzky and Tapia, *supra* note 9, at 266 (citing a UNICEF estimate that puts the number of street children at 100 million).

32. Casa Alianza, *Exploitation of Children – A Worldwide Outrage*, www.hiltonfoundation.org/press/16-pdf3.pdf (citing the 1990s estimate by the World Health Organization and UNICEF). The Chairman of the United States House of Representatives Subcommittee on Africa, Global Human Rights, and International Operations also accepts the 100 million figure offered by the WHO. See <http://www.usinfo.state.gov>, U.S. Congress Cites Growing World Problem of “Street Children,” Sept. 15, 2005, <http://usinfo.state.gov/gi/Archive/2005/Sep/16-723661.html> (last visited Feb. 25, 2006).

33. News from Congressman Chris Smith, *Smith Hearing Aims to Protect Street Children*, (last visited Feb. 26, 2006) (noting that street children number into the hundreds of millions).

34. Elena Volpi, *Street Children: Promising Practices and Approaches* (World Bank Institute Working Paper, No. 26388, 2000), available at <http://www.siteresources.worldbank.org/WBI/Resources/wbi37196.pdf> (noting the diversity of people who count street children).

conducted by a government or a non-governmental agency,³⁵ the definition of street children adopted by those doing the counting,³⁶ and the time of the day or season of the year during which such surveys are conducted.³⁷

II. THE VILLAGRÁN MORALES CASE

A. Background on Street Children in Guatemala

Street children have long been a problem in Guatemala. The problem persists although Guatemala has ratified the United Nations Convention on the Rights of the Child ("CRC")³⁸ and despite the requirement of article 51 of the Guatemalan Constitution that the State protect the physical, mental, and moral health of minors and guarantee their rights to food, health, education, security, and social welfare.³⁹

An estimated five thousand children live on the streets of Guatemala.⁴⁰ There do not appear to be any official statistics on the number of street children in Guatemala, but in its 2000 report to the United Nations Committee on the Rights of the Child, the Government of Guatemala noted

35. *Id.* at 4 ("For any given country, figures on street children may oscillate with the source of information (the government, NGOs, research institutions) and whether the issue is a development priority.").

36. Because the difference between "homeless child" and "homeless youth" is at best tenuous, the tendency will be to count those who approximate our profile of a child. Older looking, perhaps more hardened individuals may, therefore, be left out in such a survey unless pains are taken to ask personal questions of the persons confronted on the streets. Overall, Elena Volpi is right in her conclusion that "figures depend on definitions. If one distinguishes between children *in* the street (working or socializing in the street, but going home at night) and those *of* the street (having little or not [sic] contact with family, permanently living on the street), the second group is . . . fairly small worldwide, but the figures increase when the first is included." *Id.* at 5.

37. *Id.* More children are on the street during the warm weather. Conversely, fewer children can be seen on the street during the cold and rainy season. While some children return to their families during the cold and rainy season, others simply hide out in abandoned buildings, tunnels, and other temporary forms of shelter that may be available. The time of the day when a count is done is also important because the lives of street children are guided by certain schedules. For example, in many cities street children tend to work at night and tend to spend their mornings at drop-in centers run by non-governmental organizations and hence are less visible on the street during these hours. For anyone contemplating taking a count of street children, the important thing is to study and understand the culture and lifestyle of the street children in the particular city where the count is to be conducted.

38. Office of the United Nations High Commissioner for Human Rights, Countries Ratifying the Convention on the Rights of the Child New York, 20 November 1989, available at <http://www.ohchr.org/english/countries/ratification/11.htm> (last visited Apr. 3, 2006). Guatemala signed the CRC on January 26, 1990 and ratified the treaty on June 6, 1990.

39. Report submitted by Guatemala, *Second Periodic Reports of States Parties Due in 1997: Guatemala*, CRC/C/65/Add.10, (March 29, 2000) para. 23; available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/cac661f8a53dcce5c1256960004ad4ae?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/cac661f8a53dcce5c1256960004ad4ae?OpenDocument) (last visited Feb. 25, 2006) [hereinafter *Guatemala – Second Periodic Report*.].

40. Lave, *supra* note 7, at 59.

that “[a]ccording to various organizations, there are between 3,500 and 5,000 street children” in the country.⁴¹ In this report, the government admitted that “[t]he number of street children has increased in recent years.”⁴² According to Human Rights Watch, “[s]ixty-five percent of Guatemala City’s street children and youth are between the ages of ten and seventeen. Most of the rest are eighteen or older, with only about 3 percent younger than ten.”⁴³ A majority of the street children in the country live in the downtown area of Guatemala City and approximately ten to fifteen percent are immigrants from neighboring Central American countries, especially Honduras and El Salvador. Life on the street is grim for Guatemalan street children. In general, “[s]treet children have little or no education and their health is poor; they suffer from conditions such as malnutrition, anaemia, chronic and acute respiratory infections, gastro-intestinal diseases, dental caries, and sexually transmitted diseases. Many of them take drugs, sniff glue or solvents, drink alcohol, and smoke.”⁴⁴

Street children in Guatemala face routine beatings, thefts, and sexual assaults at the hands of policemen and private security guards.⁴⁵ In the late 1980s and early 1990s, the murder and torture of street children was not uncommon, and these practices continue to some extent today.⁴⁶ According to Human Rights Watch, during a 1996 investigation nearly every child the organization spoke with reported experiencing habitual assaults and thefts by the police. “These assaults occurred on busy city streets in broad daylight, on quiet streets in the middle of the night, in alleys and deserted areas, and in police stations. Often, they were witnessed by passersby or other police officers.”⁴⁷

The experiences of street children in Guatemala are not unique. Across the globe street children experience the worst forms of exploitation, abuse and neglect.⁴⁸ Frequently charged with offenses such as loitering or vagrancy, street children are prime candidates for police round-ups.⁴⁹

41. *Guatemala – Second Periodic Report*, *supra* note 39, para. 274.

42. *Id.*

43. Human Rights Watch, *Guatemala’s Forgotten Children*, <http://www.hrw.org/reports/1997/guat1/> (last visited Feb. 25, 2006) [hereinafter *Guatemala’s Forgotten Children*].

44. *Guatemala – Second Periodic Report*, *supra* note 39, para. 275.

45. *Guatemala’s Forgotten Children*, *supra* note 43.

46. *Id.*

47. Human Rights Watch, *Police Violence Against Street Children*, available at <http://www.hrw.org/reports/2001/children/5.htm> (last visited Feb. 25, 2006).

48. See Dulitzky & Tapia, *supra* note 9, at 266 (noting that street children are often victims of police brutality; also noting that cases involving the arbitrary detention, killing and trafficking of children have become increasingly common); see also Seitles, *supra* note 7, at 162 (observing that street children in Latin America live daily with the threat of murder, disease, physical and sexual abuse, prostitution, and exploitation); see also ChildHope, *supra* note 25; HUMAN RIGHTS WATCH, POLICE ABUSE AND KILLINGS OF STREET CHILDREN IN INDIA (1996).

49. According to Human Rights Watch:

Police round-ups are carried out ostensibly because the police believe the children are “in need of protection.”⁵⁰ However, more often than not, police round-ups and accompanying forced institutionalization are attempts to hide the problem instead of addressing it. In Latin America, death squads and police officers routinely comb the streets of cities to carry out “social cleansing.”⁵¹ In Egypt, mass arrests of street children are very common; beatings and sexual abuse while in police custody have also been widely reported.⁵² As the September 2005 hearing on street children by the Subcommittee on Africa, Global Human Rights, and International Operations reveals, “[s]ome children are murdered by vigilantes, used by criminal gangs or become child soldiers. Others are trafficked and exploited sexually and for forced labor. Those left are often incarcerated in adult prisons, where they are victimized even further.”⁵³

Street children throughout the world are subjected to physical abuse by police or have been murdered outright, as governments treat them as a blight to be eradicated rather than as children to be nurtured and protected. They are frequently detained arbitrarily by police simply because they are homeless, or criminally charged with vague offenses such as loitering, vagrancy, or petty theft. They are tortured or beaten by police and often held for long periods in poor conditions. Girls are sometimes sexually abused, coerced into sexual acts, or raped by police. Street children also make up a large proportion of the children who enter criminal justice systems and are committed finally to correctional institutions (prisons) that are euphemistically called schools, often without due process. Few advocates speak up for these children, and few street children have family members or concerned individuals willing and able to intervene on their behalf.

See Human Rights Watch, *Children's Rights: Street Children*, <http://www.hrw.org/children/street.htm> (last visited Oct. 4, 2004); see also HUMAN RIGHTS WATCH, CHILDREN'S RIGHTS PROJECT, JUVENILE INJUSTICE: POLICE ABUSE AND DETENTION OF STREET CHILDREN IN KENYA (1997), available at <http://www.hrw.org/reports/1997/kenya/> [hereinafter JUVENILE INJUSTICE] (“In addition to the hazards of living on the street, these children face harassment and abuse from the police and within the juvenile justice system for no reason other than the fact that they are street children.”).

50. *Id.* (quoting Children and Young Persons Act, art. 21, Chap. 141, The Laws of Kenya).

51. See Claudio Csillag, *Policeman Found Guilty in First Trial of Murder of Brazilian Street Children*, 347 LANCET 1325 (1996). See also Bob Levin, *The Crime of Making Children Disappear*, 107 (49) MACLEAN'S 74 (1994); *When Death Squads Meet Street Children*, THE ECONOMIST, July 31, 1993, at 39.

52. In a shocking report released in February 2003, Human Rights Watch detailed accounts of street children who have been victims of government-sponsored mass arrests campaigns of poor and homeless children. Brigadier Yasir Abu Shahdi, director of a juvenile detention center in Cairo, told Human Rights Watch, “[w]e arrest kids in parks who look like they are homeless. We arrest kids selling tissues in the street. [Sometimes] we arrest kids walking down the street during school hours with their school books, but I don't have enough officers to make as many of these arrests as I would like.” See HUMAN RIGHTS WATCH *supra* note 8, at 41 (second alteration in the original). See also Press Release, Human Rights Watch, Mass Arrests of Street Children in Europe (Feb. 19, 2003), available at <http://www.hrw.org/press/2003/02/egypt021903.htm> (last visited Oct. 5, 2004) [hereinafter *Mass Arrest of Street Children in Europe*].

53. News from Congressman Chris Smith, *Smith Hearing Aims to Protect Street Children*,

B. Genesis of the *Villagrán Morales* Case

On June 15, 1990, four street youths⁵⁴—Henry Giovanni Contreras (age 18), Federico Clemente Figueroa Túnchez (20), Julio Roberto Caal Sanoval (15), and Jovito Josué Juárez Cifuentes (17)—were abducted and driven away in a pick-up truck manned by heavily armed men, two of whom were later identified as officers of the National Police Force (NPF) of Guatemala. The bodies of the four youths were later discovered in San Nicolás Wood on June 16, 1990. In all four cases, the official cause of death was identified as injuries produced by gunshots to the head.⁵⁵ Ten days later, on June 25, another street child, Anstraum Aman Villagrán Morales (17), was killed by a gunshot in the “Las Casetas” sector of Guatemala City by people identified as members of the state security force.

Although criminal charges were filed in Guatemala against the two policemen implicated in the kidnapping and murder of the youths, the men were eventually acquitted after considerable delays.⁵⁶ On September 15, 1994, Casa Alianza⁵⁷ and the Center for Justice and international Law (CEJIL)⁵⁸ filed a petition with the Inter-American Commission on Human Rights,⁵⁹ alleging that Guatemala had violated several provisions of the IACHR. On October 16, 1996, the Commission found Guatemala in violation of the relevant provisions of the IACHR.⁶⁰ The Commission

available at http://www.house.gov/apps/list/press/nj04_smith/PRStreetChildren.html (last visited Apr. 4, 2006).

54. The Court accepted as proven the fact that the four boys were “street children” and lived on 18th Street between 4th and 5th Avenues in Zone 1 of Guatemala City. *Villagrán Morales – Case 63*, *supra* note 2, at para. 77.

55. *Id.* ¶¶ 80-81.

56. *Id.* ¶¶ 84-121. Appeals to the Fourth Chamber of the Guatemalan Court of Appeal and subsequently to the Criminal Chambers of the Supreme Court of Justice of Guatemala were unsuccessful.

57. Established in 1981, Casa Alianza Guatemala is an affiliate of Covenant House and is dedicating to caring for abused, exploited, and abandoned children in Guatemala. Casa Alianza, *Welcome to Covenant House*, http://www.covenanthouse.org/about_loc_guatemala.html (last visited Apr. 4, 2006).

58. Founded in 1991, CEJIL is a non-profit, non-governmental organization with consultative status before the U.N. ECOSOC Committee and the African Commission on Human and Peoples’ Rights. According to the organization’s website, CEJIL’s principal objective is “to achieve the full implementation of international human rights norms in the member States of the Organization of American States (OAS) through the use of the Inter-American System for the Protection of Human Rights and other international protection mechanisms.” See generally <http://www.cejil.org/main.cfm?switch=i> (last visited Feb. 27, 2006).

59. See *Villagrán Morales – Case 63*, *supra* note 2, quoting Petition No. 11,383 filed Sept. 15, 1994, with the Inter-American Commission on Human Rights. Guatemala is a State Party to the American Convention (ratified May 25, 1978) and has also accepted the jurisdiction of the Court since March 9, 1987. The text of the American Convention is available at <http://www.oas.org/juridico/english/Treaties/b-32.htm>.

60. *Villagrán Morales – Case 63*, *supra* note 2, ¶ 29. See *id.* ¶¶ 5-34 for a summary of the proceedings before the Commission. The Commission held two hearings, the first during its 8th session, between September 19 and 30, 1994, and the second during its 91st session,

allotted a two-month period for Guatemala to implement the recommendations. On January 30, 1997, upon the expiration of the two-month period, the Commission submitted an application against Guatemala to the Inter-American Court.

C. The *Villagrán Morales* Case

The question before the Court in *Villagrán Morales* was whether the Guatemalan government had violated Articles 4, 5, 7, 19, 8 and 25 of the IACHR.

1. Violation of Article 7 (Right to Personal Liberty): Did the abduction and arbitrary detention of the five youths amount to a violation of Article 7 in relation to Article 1.1?⁶¹

Article 7 guarantees to every person "the right to personal liberty and security"⁶² and provides in the relevant part that no one "shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto."⁶³ This provision also expressly prohibits arbitrary arrest or imprisonment.⁶⁴ Guatemala did not offer any defense with regards to allegations of Article 7 violations.⁶⁵ The Court accepted as proven the fact that former officers of the National Police Force, Nestor Lopez and Samuel Valdez, had abducted four of the youths.⁶⁶

Finding Guatemala in violation, the Court noted that there was both a

on February 22, 1996. Guatemala rejected the Commission's offer to make itself available to the parties to conduct negotiations for a friendly settlement.

61. Article 1.1 of the IACHR provides:

The States Parties to this Convention undertake to *respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.*

IACHR, *supra* note 3, art. 1.1 (emphasis added).

The Commission contended that there was a violation because the two officers implicated in the abduction did not make any report of the detention, did not present the youths before the competent judicial authorities, and consequently deprived them of the opportunity to file an application for habeas corpus. See *Villagrán Morales – Case 63, supra* note 2, at ¶¶ 122-125.

62. IACHR, *supra* note 3, art. 7(1).

63. *Id.* art. 7(2).

64. *Id.* art. 7(3).

65. See *Villagrán Morales – Case 63, supra* note 2, ¶ 123.

66. *Id.* ¶¶ 128-130. The Court noted that "there [was] abundant concurring evidence that the abduction of the four youths was perpetrated by State agents and, more specifically, by members of the National Police Force." *Id.* ¶ 128.

material and a formal aspect to Article 7 guarantees.⁶⁷ Emphasizing the particular importance of Article 7,⁶⁸ the Court held that neither aspect of the legal rules pertaining to detention was observed in the detention of the four youths. The Court observed that the murdered youths were not arrested pursuant to “an order issued according to law by a competent judicial authority,” that the boys were not “caught *infraganti* while committing a crime or offence,” and that they were not promptly “brought before [a] competent judicial authority.”⁶⁹

2. Article 4 (Right to Life): Did Guatemala violate Article 4 in relation to Article 1.1 of the Convention?⁷⁰

Article 4 of the IACHR guarantees to “[e]very person,” “the right to have his life respected.”⁷¹ In finding Guatemala in violation,⁷² the Court emphasized the fundamental nature of the right to life⁷³ and the fact that

67. The material aspect (“no one shall be deprived of his physical liberty, except for the reasons, cases or circumstances specifically established by law”) required that all arrests and detentions be according to law. The formal aspect required that any deprivation of physical liberty must be “under strict conditions established beforehand by law” and under standards of reasonableness and proportionality. *Id.* ¶ 131.

68. Article 7 guarantees were particularly important, the Court noted, because “[p]rompt judicial intervention allows the detection and prevention of threats against life or serious ill-treatment that violate fundamental guarantees.” The Court noted further that “[t]he protection of both the physical liberty of the individual and his personal safety are in play,” especially “in a context where the absence of guarantees may result in the subversion of the rule of law and deprive those arrested of minimum legal protection.” *Id.* ¶ 135.

69. *Id.* ¶¶ 132-133.

70. In its application, the Commission contended that Article 4 had been violated especially in light of “the *ius cogens* nature of the right to life and the fact that it is the essential basis for the exercise of the other rights.” *Id.* at ¶ 139. The Commission argued that Article 4 in relation to Article 1.1 presumes both a negative obligation (no one “shall be deprived of his life arbitrarily”) and a positive obligation (states must “take all necessary measures to protect and preserve the right to life”). The Commission essentially argued that Guatemala’s inaction violated two aspects of the right to life of the five victims. In the first instance, Guatemala failed to respond to the widespread persecution of street children. Second, Guatemala failed to investigate and convict State agents responsible for the systematic persecution of street children. These acts of omission, the Commission argued, “gave rise to the *de facto* impunity that allowed, and even encouraged the continuation of these violations against the street children.”

71. IACHR, *supra* note 3, art. 4(1). Article 4 states emphatically that “[n]o one shall be arbitrarily deprived of his life.”

72. *Villagrán Morales – Case 63, supra* note 2, ¶¶ 142-143. The Court concluded that there was “extensive concurring evidence that it was State agents and, more specifically, members of the [NPF] who murdered” the four youths and that the acts of the State agents were attributable to Guatemala. The Court noted the brazen nature of the abduction of the boys; the fact that it was carried out in plain view and the fact that the abductors did not hide their faces but acted within sight of numerous persons. The Court was also moved by the detailed physical description of numerous witnesses that indicated that members of the NPF perpetrated the crime. *Id.*

73. *Id.* ¶ 144. (“The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning.”).

some of the victims were minors.⁷⁴ Adopting a broad interpretation of the right to life, the Court read Article 4 to implicate both a negative and a positive obligation on States Parties. In the opinion of the Court, States Parties have an “obligation to guarantee the creation of conditions required in order that violations [of the right to life] do not occur and, in particular, a duty to prevent its agents from violating” this right.⁷⁵ The Court stressed the “particular gravity” of the case due to the age of the victims and the fact that “the conduct of the State not only violated the express provisions of Article 4 . . . , but also numerous international instruments, that devolve to the State the obligation to adopt special measures of protection and assistance for the children within its jurisdiction.”⁷⁶

3. Article 5 (Right to Humane Treatment): Did Guatemala violate Article 5 in relation to Article 1.1?⁷⁷

Article 5.1 provides that “[e]very person has the right to have his physical, mental, and moral integrity respected.” Article 5.2 goes on to provide that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment,” and that “[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

The Court determined that there are two aspects to the Article 5 guarantee: the victim’s perspective and the victim’s family’s perspective; the Court held that Guatemala had violated Article 5 on both levels. From the victim’s perspective, the Court found, based on circumstantial evidence, that Guatemala had violated the right of the children to have their physical, mental, and moral integrity respected and also their right not to be subjected to torture or cruel, inhuman, or degrading treatment.⁷⁸

As for the victims’ families’ perspective, the question was whether the circumstances of the youths’ deaths caused their next of kin anxiety and fear amounting to a violation of Article 5.⁷⁹ There was evidence that the

74. *Id.* ¶ 146.

75. *Id.* ¶ 144.

76. *Id.* ¶ 146.

77. The Commission contended that because it was state agents who abducted the four youths, Guatemala was automatically responsible for their physical integrity while in the custody of the State. *Villagrán Morales – Case 63, supra* note 2, ¶ 148. In addition, the Commission argued that the very fact that the youths were held incommunicado clearly resulted in “great anxiety and suffering” for them. Guatemala did not offer any defense regarding violation of Article 5. *Id.* ¶ 151.

78. The Court drew this inference from the fact that the “bodies of the youths were found with signs of serious physical violence that the State [was] unable to explain” the youths “were retained clandestinely by their captors for between 10 and 21 hours,” and “while they were retained, the youths were isolated from the external world and certainly aware that their lives were in danger.” *Id.* ¶¶ 158, 162, 163.

79. See *id.* ¶ 171 for the Commission’s contention.

next of kin were never formally notified of the victims' deaths and that when the families inquired about their loved ones, state officials tried to intimidate them.⁸⁰ One woman learned of the death of her son from a local newspaper and another heard about her son's death only eight days later from another street child.⁸¹ There was also ample evidence that national authorities did not take adequate measures to establish the identity of the victims; some of the victims remained registered as "XX" until their relatives came to identify them.⁸² The Court concluded that there were acts of omission and commission that, taken together, amounted to a violation of Article 5 with respect to the families of the victims.⁸³

4. Article 19 (Rights of the Child): Did Guatemala violate Article 19 of the IACHR by not taking adequate preventative and protective measures on behalf of the three victims who were minors?

Article 19 provides that "[e]very minor child has the right to the *measures of protection* required by his condition as a minor on the part of his *family, society, and the state.*"⁸⁴ The skeletal nature of Article 19 posed a potential problem for the Court. The IACHR does not define the term "child" nor does it define the nature of protection that is owed to minors.⁸⁵ The Court bypassed these lacunae and found Guatemala in violation of this article. Adopting an "evolutive" theory of treaty interpretation,⁸⁶ the Court imported into the IACHR key provisions of other human rights instruments, including the American Declaration of the Rights and Duties of Man and the United Nations Convention on the Rights of the Child ("CRC").⁸⁷ Regarding the meaning of the term "minor," the Court referred to Article 1 of the CRC, which defines a child as a "human being below the age of eighteen years."⁸⁸

80. *Id.* ¶ 172.

81. *Id.*

82. *Id.* ¶ 173.

83. *Id.* ¶ 174. Acts of commission included the ill treatment of the victims' bodies after their death. The victims "were not only victims of extreme violence . . . , but also, their bodies were abandoned in an uninhabited spot, they were exposed to the inclemency of the weather and the actions of animals, and they could have remained thus during several days, if they had not been found by chance," the Court noted. Taken together, the Court concluded that "the treatment given to the remains of the victims, which were sacred to their families, particularly their mothers, constituted cruel and inhuman treatment for them."

84. IACHR, *supra* note 3 (emphasis added).

85. *Villagrán Morales – Case 63, supra* note 2, ¶ 188.

86. *Id.* ¶¶ 192-193 ("human rights treaties are living instruments, the interpretation of which must evolve over time in view of existing circumstances").

87. *See* Convention on the Rights of the Child, G.A. Res. 44/25, Annex, 44 U.N. GAOR Supp. No. 49, U.N. Doc. A/44/49 (1989) (entered into force Sept. 2 1990).

88. *Id.* art. 1, *quoted in Villagrán Morales – Case 63, supra* note 2, ¶ 188. The Court also looked at several other provisions of the CRC including: Article 2 (non-discrimination), Article 3 (best interest), Article 6 (right to life, survival and development), Article 20 (right to alternative family environment) and Article 27 (right to adequate standard of living).

5. Article 62 and 63 (Reparations):⁸⁹ Did the Court discharge its responsibility regarding reparations?

The Court awarded pecuniary and non-pecuniary damages. In pecuniary damages, the Court awarded varying sums totaling \$153,214 (USD) to the families of the murdered children based primarily on expected loss of earnings. In non-pecuniary damages, the Court unanimously ruled that Guatemala must pay compensation of \$26,000 (USD) to each of the victim's next of kin (six in all) and pay compensation of \$3,000 (USD) to siblings of the victims (eight in all).⁹⁰

The Court also ordered Guatemala to: (i) "adopt changes in its domestic legislation, the legislative, administrative and any other measures that are necessary in order to adapt Guatemalan legislation to Article 19 of the Convention;"⁹¹ (ii) provide resources and adopt measures needed to transport the mortal remains of one of the victims, Henry Contreras, and for their subsequent burial in a place chosen by his next of kin;⁹² (iii) "designate an educational center with a name allusive to the young victims;"⁹³ (iv) place in this center, a plaque with the names of all of the dead children;⁹⁴ and (v) "investigate the facts of this case, identify and punish those responsible and adopt, in its domestic law, the provisions needed to ensure compliance with this obligation."⁹⁵ Guatemala was also required to pay court costs in the sum of \$38,651.91 (USD) to representatives of the victim's next of kin, that is, Casa Alianza and CEJIL.⁹⁶ Guatemala was given six months to comply with the reparation orders.

III. SIGNIFICANCE OF THE VILLAGRÁN MORALES CASE

Villagrán Morales potentially opens wide the door of international human rights tribunals to street children worldwide who are routinely subjected to harassment, physical and sexual abuse, torture, and murder.

89. Under Article 63(1) of the Convention, the court has competence to decide on reparations and expenses:

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.

IACHR, *supra* note 3, art. 63(1).

90. *Villagrán Morales – Case 77*, *supra* note 4, ¶ 123.

91. *Id.*

92. *Id.* ¶ 123(6).

93. *Id.* ¶ 123(7).

94. *Id.*

95. *Id.* ¶ 123(8).

96. *Id.* ¶ 123(9).

For a long time, violence against street children in the developing world went unchecked because of widespread impunity and the slowness of law enforcement authorities to investigate, prosecute, and punish cases of abuse against street children. The *Villagrán Morales* case suggests that by utilizing the individual complaint mechanisms enshrined in human rights treaties, street children can obtain redress even in the face of hostility from national institutions.

Six aspects of the case are particularly important: (1) the Court's evolving theory of treaty interpretation; (2) the Court's broad rulings on admissibility of evidence; (3) the broad construction of the right to life; (4) the use of the victims' families' perspective in the determination of violations; (5) the Court's decision on reparations; and (6) the Court's statements on the supervisory role of international human rights tribunals vis-à-vis national judicial bodies.

A. The Evolutive Theory of Treaty Interpretation

The evolutive theory of treaty interpretation holds that "when interpreting a treaty, not only the agreements and instruments formally related to it should be taken into consideration, but also the system within which it is [inscribed]."⁹⁷ For the purpose of interpreting Article 19 of the IACHR, the Court concluded:

Both the American Convention and the Convention on the Rights of the Child form part of a very comprehensive international *corpus juris* for the protection of the child that should help this Court establish the content and scope of the general provision established in Article 19 of the American Convention.⁹⁸

The Court's bold interpretation of Article 19 of the IACHR would undoubtedly come as a relief to human rights activists in Latin America who have long lamented its elusive character.⁹⁹ Until *Villagrán Morales*, Article 19 was underdeveloped within the Inter-American system.¹⁰⁰

The evolutive theory is significant in three respects: first, it prevents states from hiding behind vague treaty provisions; second, in its most expansive form, the evolutive theory of treaty interpretation would allow a human rights tribunal to impose on a state obligations enshrined in a treaty it had not ratified, through the tribunal's interpretation of a treaty the state had ratified; and third, it saves human rights treaties from becoming

97. *Villagrán Morales – Case 63, supra* note 2, ¶ 192, quoting *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*, Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16., ¶ 113 (citations omitted).

98. *Villagrán Morales – Case 63, supra* note 2, ¶ 194.

99. Dulitzky & Tapia, *supra* note 9, at 289-90.

100. *Id.* at 283.

obsolete by transforming them into living instruments, "the interpretation of which must evolve over time in view of existing circumstances."¹⁰¹

The evolutive theory raises the question of whether a treaty-based human rights body can use sources of law outside the treaty that created it in order to interpret the rules the treaty embodies.¹⁰² The Court's approach to treaty interpretation is arguably in accord with the Vienna Convention on the Law of Treaties.¹⁰³ Article 31 of the Vienna Convention provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."¹⁰⁴ Together with the context, the Court can consider "[a]ny subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions,"¹⁰⁵ "[a]ny subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation,"¹⁰⁶ and "[a]ny relevant rules of international law applicable in the relations between the parties."¹⁰⁷

Guatemala is a party to the CRC.¹⁰⁸ By ratifying the CRC, Guatemala arguably consented to a reinterpretation of Article 19 of IACHR in light of the CRC.¹⁰⁹ Moreover, considering the large number of States that have ratified the CRC,¹¹⁰ it can be argued that there now exists a norm of

101. *Villagrán Morales – Case 63*, *supra* note 2, ¶ 193.

102. Gabriel Wilner, *Reflections on Regional Human Rights Law*, 25 GA. J. INT'L & COMP. L. 407, 412 (1996) (observing that "as a matter of practice, regional human rights commissions and courts on occasion refer to regional declarations, to the United Nations Covenants on Human Rights" and to certain universal multilateral treaties on particular aspects of human rights).

103. Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969 1155 U.N.T.S. 331 (*entered into force* January 27, 1980). The *United Nations Conference on the Law of Treaties*. See *United Nations Conference on the Law of Treaties*, Official Records, Mar. 26-May 24, 1968 U.N. Doc A/CONF.39/11/1969 and *United Nations Conference on the Law of Treaties*, Official Records, Apr. 9-May 22, 1969, U.N. Doc. A/CONF. 39/11/Add.1 (1970).

104. *Id.* art. 31(1). For the purpose of the interpretation of a treaty, the context includes, "[a]ny agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;" and "any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty." *Id.* art. 31(2).

105. *Id.* art. 31(3)(a).

106. *Id.* art. 31(3)(b).

107. *Id.* art. 31(3)(c).

108. *Convention on the Rights of the Child*, *supra* note 87. Guatemala signed the CRC on January 26, 1990 and ratified it on June 9, 1990.

109. *J. v. Pinkerton v. United States*, Case 9647, Inter-Am. C.H.R. 925, at 60 (1987), the Inter-American Commission concluded that in the light of the number of states that were ratifying the American Convention on Human Rights and the United Nations Covenant on Civil and Political Rights, there "now exist[ed] a norm of customary international law establishing 18 to be the minimum age for imposition of the death penalty."

110. To date, the CRC has been ratified by 192 countries. See Office of the United Nations High Commissioner for Human Rights, *Ratifications and Reservations*, <http://www.ohchr.org/english/countries/ratification/11.htm> (last visited Apr. 4, 2006). The only two

customary international law establishing that a minor is anyone below the age of eighteen.

B. Liberal Rules for Admitting Evidence and Determining Violations

Violations of the rights of street children do not often occur in full public view. Oftentimes abuses occur while the children are in police custody and under circumstances where no independent eyewitnesses are present. Even when violations occur in public, fear of intimidation often prevents eyewitnesses from stepping forward to testify against the perpetrators. The liberal rules on the use of circumstantial evidence adopted by the Court undoubtedly come as a relief to street children and their advocates. The rules make it possible for violence against street children to be punished even where eyewitness testimony is limited or non-existent or when potential witnesses are intimidated and prevented from coming forward.¹¹¹

The Court held, for example, that there was a presumption that incommunicado detention amounted to inhumane and degrading treatment¹¹² and that creating a threatening situation or threatening an individual with torture may, in some circumstances, constitute inhumane treatment.¹¹³ Regarding testimonial evidence, the Court reiterated its earlier position that “the criteria for evaluating evidence in an international human rights tribunal are endowed with special characteristics, so that the investigation into a State’s international responsibility for human rights violations bestows on the Court a greater latitude to use logic and experience in evaluating the oral testimony that it hears on the pertinent facts.”¹¹⁴

countries that have not ratified the convention are United States and Somalia. See UNICEF, *Path to the Convention on the Rights of the Child*, http://www.unicef.org/crc/index_30197.html (last visited Sept. 1, 2005).

111. *Villagrán Morales – Case 63*, *supra* note 2, ¶ 170 (placing the burden on the state to prove that the accused agents are not guilty).

112. *Id.* ¶¶ 163-164. Incommunicado detentions would in many cases give rise to an automatic inference of inhuman and degrading treatment. As the Court noted:

[O]ne of the reasons that incommunicado detention is considered to be an exceptional instrument is the grave effect it has on the detained person. Indeed isolation from the outside world produces a moral and psychological suffering in any person, places him in a particularly vulnerable position, and increases the risk of aggression and arbitrary acts in prison.

Id. (quoting Suárez Rosero Case, 1998 Inter-Am. Ct. H.R. (ser. C) No. 35, ¶ 90 (November 12, 1997)).

113. *Villagrán Morales – Case 63*, *supra* note 2, ¶ 165 (citing the decisions of the European Court of Human Rights in holding that the mere threat of torture might, in some circumstances, constitute inhuman treatment).

114. *Villagrán Morales – Case 63*, *supra* note 2, ¶ 72 (citing Castillo Páez Case, 1998 Inter-Am. Ct. H.R. (ser. C) No. 34, ¶ 39 (November 3, 1997) and Loayza Tamayo Case, 1998 Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 62 (September, 17, 1997)).

C. Broad Construction of Right to Life

The Court construed the right to life to include both a negative aspect (right of every human being not to be deprived of his life arbitrarily) and a positive aspect (right to the conditions that guarantee a dignified existence, and an obligation on the state to take all necessary measures to protect and preserve life). State-sanctioned aggression against street children strikes at their basic right to survive. Frequently, poor children are in the public space out of economic necessity. A good number of street children are not delinquents or drug abusers but are on the street in an effort to eke out a living;¹¹⁵ most "have found adequate coping techniques including finding a niche in the economic market which gives them sufficient income to eat and clothe themselves."¹¹⁶ The Court's broad construction of the right to life is very significant and could be useful in mobilizing support for street children in the future and redirecting child welfare policies in developing countries to address both the positive and negative aspects of the right to life.

Regarding negative aspects of the right to life, several observations can be made. With emphasis on dignified existence, the state arguably has an obligation to take all necessary measures to protect street children from harm. Thus, even when state agents are not directly involved in murdering a street child, a state may nonetheless be found to have violated the child's right to life if the state has sanctioned or condoned a systematic practice of aggression against street children.¹¹⁷ Furthermore, the state has an obligation to permit street children access to the conditions that guarantee a dignified existence; this may require policies prohibiting the harassment of those street children working hard to survive. Although to the middle class, living on the street does not portend a dignified existence, for many street children, street life means having food, clothing, and other basic necessities.¹¹⁸ For children fleeing an abusive home environment, the street may mean the difference between life and death.

Regarding positive aspects of the right to life, governments have an obligation to reexamine the relationship between state institutions and the poor. What is the impact on poor children of the abrupt collapse of state institutions? What barriers do poor children confront when trying to

115. Apteekar & Abebe, *supra* note 22, at 479 (noting that the vast majority of working children are not psychopathological).

116. *Id.* at 479-480.

117. In the instant case, the Court was quick to note the notorious and public fact that at the time of the abduction and murder of the youths, "[t]here was a systematic practice of aggression against 'street children' in Guatemala carried out by members of State security forces," and the court was of the opinion that the killing of the five youths was directly linked to this prevailing pattern of violence against street children. *Villagrán Morales – Case 63*, *supra* note 2, ¶¶ 189-190.

118. HUMAN RIGHTS WATCH, *supra* note 8 (observing that a vast majority of children living on the streets of Cairo were there because they had no other option).

access government services? Are formal institutions relevant to the lives of poor children and their families? How does official corruption affect poor children?

Was the Court suggesting that children should be free to roam the streets? Not necessarily.¹¹⁹ However, the Court acknowledged the sad reality of life in the slums of the developing world – the fact that in the face of intense globalization, deregulation, privatization, and uncontrollable debt burden, many poor parents in the developing world are unable to feed their children and are forced by circumstances to allow them to live on the street.

Governments have a duty to amend laws that empower the police to arrest children whose only “crime” is being poor.¹²⁰ Until governments are willing and able to accord to all children the care and protection they need, they must bring to an end the policies of arresting children who lack these basic necessities. When arrest is necessary, governments must routinely monitor the conditions of arrest and detention for children.¹²¹ Furthermore, governments have a duty to investigate promptly and thoroughly any cases of arbitrary arrests or abuse of street children in police custody¹²² and to discipline state officials found to be responsible for any abuse of street children while in state custody.

D. Concept of Indirect Victims of Human Rights Abuse

Street children are frequently thought to be alone and alienated from their families. However, this is not always so. To understand how a child with strong family attachments may nonetheless choose to live on the street, one must understand the coping strategies of poor families in developing countries in times of stress. Poor children oftentimes leave home as part of an overall family strategy for survival in times of economic stress.¹²³ For many children, the decision to live on the street is a rational one; they are not disconnected from their families but are on the street in

119. The Court ruled that states have duties under international law to: prevent children from “living in misery,” assure to children within their jurisdiction “minimum conditions for a dignified life,” afford to all children opportunities for the “full and harmonious development of their personality,” and to protect them from acts of violence. *Villagrán Morales – Case 63*, *supra* note 2, ¶ 191.

120. Mass arrests of street children are carried out ostensibly because these children are in need of protection. The presumption is that the state will accord them the protection they need. Unfortunately, in many countries in the developing world, street children who are arrested do not receive the “promised” protection. On the contrary, they are routinely subjected to physical and sexual abuse while in police custody. Non-governmental organizations working with children believe that mass arrests of street children deemed “in need of protection” are used by the police as a pretext to clear the street of children, extort money or information, and forcibly move poor children to other neighborhoods less frequented by the middle class. See HUMAN RIGHTS WATCH, *supra* note 8.

121. See HUMAN RIGHTS WATCH, *supra* note 8, at 59.

122. *Id.* at 58-61.

123. Aptekar & Abebe, *supra* note 22, at 479.

an effort to augment the family income.¹²⁴ This is borne out in the testimonies of the mothers and grandmothers of the five slain children.¹²⁵

In recognizing the concept of indirect victims of human rights abuse, the Court acknowledged the stark realities of growing up poor in the slums of Latin America. The Court held that apart from the rights of the five victims, the rights of their family members had been violated based on the mental agony and psychological pain they endured and the inhumane way the corpses of the five youths were treated.¹²⁶ Guatemala had urged the Court to accept as proven the fact that the victims and their families did not have a close emotional relationship.¹²⁷

Taking into account the victims' families' perspective sends a strong message that street children are not readily disposable and deserve to have their rights to privacy and family life respected. Moreover, street children deserve respect even in death; when public authorities fail fully to investigate and punish violent crimes against street children, the next of kin are left feeling insecure and impotent.¹²⁸ The holding in *Villagrán Morales* could help dispel the dominant perception of street children as disposable non-persons.

E. Reparations

The Court's remedial order is also revolutionary on a number of grounds. The presumption that a person's death causes non-pecuniary damage to his or her surviving relatives¹²⁹ and the rule that the right to compensation for the harms a victim suffered prior to death is transmitted to the next of kin¹³⁰ are not in and of themselves profound. However, it is significant that these rules were extended to street children who are viewed as economically useless by mainstream society.

Guatemala vigorously argued that the murdered youths did not hold

124. This is not to suggest that all street children are child workers or that all child workers live on the street. Among the street child population there are many that do not work; some beg and others engage in criminal activities.

125. See generally *Villagrán Morales-Case 63*, *supra* note 2.

126. See *infra* text accompanying notes 80-84. Whether the acts of a State would amount to the violation of the Article 5 rights of the relatives of a dead man will depend on the cultural values prevailing in a given society, however. *Villagrán Morales-Case 63*, *supra* note 2 ¶ 175.

127. *Id.*

128. *Villagrán Morales – Case 63*, *supra* note 2, ¶ 173. See also *Separate Opinion of Trindade*, *supra* note 1, at ¶¶ 8-9 (noting the fact that the murder of the children caused the intense suffering of the mothers of the murdered youngsters, and the grandmothers of one of them; also noting that in approaching the case, the Court should be guided by the imperative to redress victimization and human suffering, as well as to further rehabilitation of the surviving victim).

129. *Villagrán Morale – Case 77*, *supra* note 4, ¶¶ 66, 68.

130. *Id.* ¶ 67.

stable, permanent, or continuous employment.¹³¹ The Court rejected this argument, preferring to see the children as resourceful micro-entrepreneurs attempting to survive on the margins of an adult world.¹³² The lack of precise information on the real earnings of the murdered children was not a problem.¹³³

In observing that children often work and make significant contributions to the family income, the Court indirectly acknowledged the existence of wide cultural variations in child-rearing practices.¹³⁴ Street children are often on the street out of necessity: They should not be punished for being resilient and self-reliant, or for devising mechanisms to help them adapt to the difficult conditions of poverty and homelessness.

Street children challenge the dominant perception of children as weak, immature, and vulnerable and pay a huge price as a result.¹³⁵ Among the poor in the developing world, the contributions of a child's income can move a family from hunger to sufficiency.¹³⁶ The *Villagrán Morales* holding challenges popular perceptions of street children as social misfits and candidates for elimination.

Villagrán Morales also forces us to rethink our definition of work and our valuation of the informal sector.¹³⁷ Work is not limited to productive activities for which the worker receives cash remuneration from an employer, but encompasses activities carried out by way of self-employment as well.¹³⁸ Thus, whether they are picking waste in India,

131. *Id.* ¶ 77(b).

132. *Id.*

133. The Court calculated the potential earnings of the street children based on the minimum wage for non-agricultural activities in Guatemala. *Id.* ¶ 79.

134. Aptekar & Abebe, *supra* note 22, at 487 (observing that poor working children "put to test the question of cultural relativism in child rearing").

135. *Id.*

136. Church World Service, *Caution: Children at Work*, available at <http://www.churchworldservice.org/FactsHaveFaces/childwrk.html>.

137. Common denominators of the informal sector in much of the developing world include: official non-status, incomplete or non-existent institutional coverage, regulation and control, and total lack of state support. See A.T.M. NURUL AMIN, *THE INFORMAL SECTOR IN ASIA FROM THE DECENT WORK PERSPECTIVE* ix (2003).

Most governments have ignored their responsibility to develop meaningful policy intervention, in part, because of the controversy surrounding the role of the informal sector in the developmental process. The optimists view the informal sector as a reservoir of indigenous entrepreneurs, technology, and skill and generally believe that the informal sector plays a significant role in the generation of employment and the expansion of non-agricultural employment. Others view the informal sector negatively, arguing that it is overly dependent on the formal sector, cannot serve as a basis for employment growth, development, or capital accumulation. See *id.*

For literature on the informal sector, see ESCAP, *ROLE OF INFORMAL SERVICE SECTOR IN URBAN POVERTY ALLEVIATION* (1996); INTERNATIONAL LABOUR ORGANIZATION, *THE DILEMMA OF THE INFORMAL SECTOR* (1991); MILTON SANTOS, *THE SHARED SPACE: THE TWO CIRCUITS OF THE URBAN ECONOMY IN UNDERDEVELOPED COUNTRIES* (1979); Keith Hart, *Informal Income Opportunities and Urban Employment in Ghana*, 11 J. MODERN AFR. STUDIES, 61 (1971).

138. UNITED NATIONS, *THE WORLD'S WOMEN 2000: TRENDS AND STATISTICS* 109 (2000).

shining shoes in Kenya, working occasionally as an apprentice in a repair service shop in Nigeria, or hawking candies in Guatemala, a good number of street children work and are not the pests that mainstream society considers them to be.¹³⁹

There is an obvious need to protect children who work informally from abuse and from the worst forms of child labor.¹⁴⁰ There is an added need to train and educate working children in order to provide them with education while they work and facilitate occupational and upward mobility. Overall, because street children often face the stark choice of sliding into a world of crime if they do not work or subjecting themselves to extreme exploitation if they do work, there remains an urgent need to examine the twin principles of 'right to work' and 'rights at work' with respect to poor children in the Third World. Although in the long term it may be desirable to 'rescue' children from informal sector work,¹⁴¹ in the short term, working children need protection from occupational hazards and exploitation while at work.

If street children are people with recognized earning potential, it is the duty of the state to impart the skills, knowledge, and values that would enable them live normal, independent lives and empower them to survive and avoid exploitation.¹⁴² Governments in partnership with non-governmental organizations must work towards empowering street children with the skills and knowledge they need to protect their rights and become self-sufficient.¹⁴³ The government is also responsible for

139. Some of the activities street children engage in for money include: begging, car washing and watching, scavenging, running errands, drug trafficking and dealing, juggling, performing music, vending, shoe shining, selling blood, and sex work. See generally Asian Development Bank, *Working With Street Children: Exploring Ways for ADB Assistance* (2003), http://www.adb.org/Documents/Books/Street_Children/Working_Streetchildren/ (last visited Mar. 24, 2006).

140. See generally Hridaya R. Bajracharya, *Child Labour in Informal Sector*, in STATUS OF INFORMAL SECTOR WORKERS: THE OTHER SIDE OF ECONOMY IN NEPAL (Hari Barish Jha ed., 1999); Caroline Hunt, *Child Waste Pickers in India: The Occupation and its Health Risks*, 8 ENV'T & URBANIZATION 111, 111-18 (1996); Int'l Labour Org., *Worst Forms of Child Labour Convention*, Convention No. 182, Nov. 19, 1999.

The problems of informal sector work are well-documented. They generally include: poor working conditions, lack of fair wages, harassment by the police and local government officials, "crude forms of labor exploitation", physical abuse, and sexual abuse. See AMIN, *supra* note 137, at xvi (calling for a decent work approach to policy intervention and public action toward the informal sector).

141. See, e.g., AMIN, *supra* note 137, at xiii.

142. Non-governmental organizations working with street children have long recognized that effective rehabilitation of street children requires education and skills training. See Latin American Mission, *Empowering At-Risk Children*, *Latin American Evangelist*, available at <http://www.lam.org/lae/9904/empowering.html> (last visited Oct. 5, 2004); Latin American Mission, *Peruvian Street Boys Work Through Micro-Enterprise Programs*, *Latin American Evangelist* (April-June 1999), available at <http://www.lam.org/lae/9904/streetboys.html> (last visited May 19, 2004).

143. AMIN, *supra* note 137, at xiii.

protecting street and working children from all forms of exploitation and ensuring government and public accountability for the welfare of the children.

Governments must learn to listen to the voices of children, particularly children who work. At a national gathering of about 1,000 child workers in Peru, the children identified four main areas of concern: exploitation, organization, education and health.¹⁴⁴ The children opposed exploitative, dangerous, and degrading jobs; called on the Peruvian government to uphold existing laws protecting children from exploitation; demanded flexibility in school schedules and free education; and called on the government to meet their health care needs as already guaranteed by law.¹⁴⁵ Governments in close association with non-governmental organizations can develop innovative programs that combine educational opportunities, recreation, skills training, and employment initiatives for children and parents.

F. Conclusion

The decision of the Inter-American Court in the first case involving street children before an international human rights body is significant. The decision is an eloquent testimony to the impressive development of international human rights law in the twenty-first century.¹⁴⁶ *Villagrán Morales* suggests that even the most vulnerable groups can have access to international human rights tribunals. The case reaffirms the right of street children to personhood by addressing the dominant perception of street children as non-persons and irritants and confirming their status as citizens, persons, and individuals who are capable of making a productive economic contribution.¹⁴⁷ Not only are they full citizens; street children also have a right to the basic dignity to which all human beings are entitled.

IV. THE EFFECTIVENESS OF INTERNATIONAL HUMAN RIGHTS LITIGATION AS A

144. Church World Service, *supra* note 136, at 2.

145. *Id.*

146. At the beginning of the 20th century, it was unthinkable that a State could be dragged before an international human rights body to defend its actions towards children. For literature detailing the development of human rights in the twentieth century, see 1 *THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS* (Karel Vasak & Philip Alston eds., 1982); *INTERNATIONAL ENFORCEMENT OF HUMAN RIGHTS: REPORTS SUBMITTED TO THE COLLOQUIUM OF THE INTERNATIONAL ASSOCIATION OF LEGAL SCIENCE HEIDELBERG, 28-30 AUGUST 1985* (Rudolf Bernhardt & J.A. Jolowicz eds.); *THEODOR MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS: A CRITIQUE OF INSTRUMENTS AND PROCESS* (1986); *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* (Philip Alston ed., 1992).

See *Separate Opinion of Trindade*, *supra* note 1, ¶ 16 (observing that "the great juridical revolution of the XXth century has been the one consolidated by the International Law of Human Rights, in erecting the human being as subject of International Law, endowed, as true *complaining party* against the State, with full juridico-procedural capacity at international levels.").

147. Aptekar & Abebe, *supra* note 22, at 487.

STRATEGY FOR PROTECTING THE RIGHTS OF STREET CHILDREN WORLDWIDE

In the context of limited human, financial, and technical resources, children's rights advocates are frequently forced to allocate resources only to programs and strategies that have the most potential to improve the lives of the children they serve. This is particularly true in developing countries where poverty is widespread, unemployment is high, and public expenditure on education, health, and important social programs is low.¹⁴⁸ In their effort to serve the multiple needs of street children, non-governmental organizations ("NGOs") provide a broad range of necessary services.¹⁴⁹ For example, in addition to other services it provides to street children, Casa Alianza Guatemala, the co-petitioner in *Villagrán Morales*, "is also a leading advocate before State and Federal governments for issues relating to the wellbeing of children and young adults" and is helping to raise the consciousness of the Guatemalan society about the plight and needs of street children.¹⁵⁰ Given the many other roles non-governmental organizations serving the needs of street children already shoulder, is international human rights litigation a worthwhile strategy in which to invest?

This Section evaluates the relative strengths and weakness of international human rights litigation. It focuses particularly on the potential for such litigation to affect the actual living conditions of street children. In terms of bringing about immediate changes in the living conditions of street children, international human rights litigation is unlikely to yield tangible results in the short-term. International human rights litigation cannot and should not supplant the core services that NGOs provide to street children;¹⁵¹ given the lack of social support in many developing countries, providing educational, social, healthcare, and other basic services to at-risk children should remain an important component of the work of organizations dedicated to serving street children. In addition, international human rights litigation should not displace domestic litigation for issues relating to the well-being of street children.¹⁵²

148. In its 2000 report to the United Nations Committee on the Rights of the Child, the Guatemalan Government reported that "88.9 per cent of the population aged between 0 and 14 liv[ed] in a state of poverty and that 70.6 per cent of this group [were] destitute." See *Guatemala – Second Periodic Report*, *supra* note 39, ¶ 198.

149. Covenant House, Thank You for Your Interest in Covenant House, <http://www.covenanthouse.org/about.html> (last visited Feb. 26, 2006).

150. Casa Alianza Guatemala, Our Organization, http://www.covenanthouse.org/about_org_chair.html (last visited Feb. 26, 2006).

151. *Id.* (stating that the organization's advocacy efforts will never supplant the agency's core services to homeless young people).

152. Casa Alianza Guatemala engages in advocacy efforts on behalf of street children. In the past, the organization "made a report to the District Attorney's Office concerning the commercial sexual exploitation of girls and teenagers throughout the country" and "signed an agreement with Guatemala's Human Rights Office to undertake a coordinated effort to compile information on the violent deaths of young people under the age of 23 years old."

In the long term, however, international human rights litigation can help raise awareness about the plight of street children, challenge the prevailing culture of legal and social immunity for the exploiters and abusers of street children, and contribute to the overall development of a culture of respect for the rights of all children. Organizations contemplating international human rights litigation must appreciate the existing inherent limitations in human rights laws and processes. In particular, they must understand that international human rights litigation cannot address all the different types of abuses that street children experience, that the effectiveness of litigation ultimately depends on the willingness of affected States Parties to comply with the decisions of human rights tribunals, and that international human rights law is not presently structured to address the core factors that contribute to the street children problem.

A. Benefits of International Human Rights Litigation

In *Villagrán Morales*, the Court was able to achieve three things: first, it provided a remedy to street children whose rights had been violated; second, it offered a ruling which has the potential to bring about legal and practical changes in Guatemala; and third, it elaborated a jurisprudence on the rights of children that could serve as a guide to other States Parties to the IACHR in interpreting the meaning of the Convention's guarantees.¹⁵³

1. Remedies for Street Children

The existence of effective remedies "is an essential component of international human rights law."¹⁵⁴ International human rights litigation is one avenue through which victims of human rights abuse can obtain remedies against states because human rights treaties increasingly guarantee a right to a remedy.¹⁵⁵ While there is no consistent practice relating to remedies, non-monetary orders may be issued, and attorney fees, court costs and damages may be awarded.

In *Villagrán Morales*, the Court ordered the Guatemalan government to

See, Caza Alianza Guatemala, Our Advocacy Efforts, http://www.covenanthouse.org/about_adv_2004.html (last visited Feb. 26, 2006).

153. See Andrew Byrnes, *An Effective Complaints Procedure in the Context of International Human Rights Law*, in THE UN HUMAN RIGHTS SYSTEM IN THE 21ST CENTURY 139, 142 (Anne F. Bayefsky, ed., 2000) (noting that in general, individual complaints procedure under international human rights treaties should potentially serve these three functions).

154. DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 37 (1999).

155. *Id.* at 1, (observing that although international human rights law "has yet to develop a coherent or consistent practice of remedies for victims of human rights violations," international human rights law affords individuals whose claims are successfully adjudicated the opportunity to obtain remedies against states).

pay damages to the murdered children and their families and to pay court costs to the organizations representing the victims' families.¹⁵⁶ According to the National Director of Casa Alianza Guatemala, Arturo Echeverría, the Guatemalan government has paid out all the funds.¹⁵⁷ The Court had also ordered the government to "designate an educational center with a name allusive to the young victims;"¹⁵⁸ and to place in this center a plaque with the names of the five murdered children. According to Echeverría, an elementary school in Guatemala City was named "Niños de la Esperanza," and individual names of each of the five victims are incorporated in the school.

Remedies were possible in the *Villagrán Morales* case because the Inter-American Convention on Human Rights contains provisions requiring legal remedies for violations of human rights. It is then left to the Court to interpret and apply the remedy in specific cases before it. Organizations contemplating international litigation must of necessity evaluate whether applicable treaties guarantee a right to a remedy and the progressiveness of the implementing bodies in interpreting and applying the guaranteed rights.

2. Changes in Domestic Law

International human rights litigation can also lead to positive changes in domestic laws and policies relating to street children. In *Villagrán Morales*, the Court ordered Guatemala to "adopt changes in its domestic legislation, the legislative, administrative and any other measures that are necessary in order to adapt Guatemalan legislation to Article 19 of the Convention;"¹⁵⁹ According to Echeverría, there have been a number of changes in the law. The most notable change was the "Ley de Protección Integral de la Niñez y Adolescencia" (Law of Complete Protection of Children and Adolescents), passed by the Guatemalan Congress in 2003.¹⁶⁰ Also on the positive side, in association with the Attorney General for Human Rights, Casa Alianza and ten governmental organizations have coordinated efforts and designed a training program for police focusing on children's human rights. This program is currently implemented by Casa Alianza and UNICEF. Finally, "there is a new judicial procedure law which provides that: (1) the Ministerio Público is in charge of criminal investigations, whereas before the judges were in charge; (2) the trial court judge panel was increased from one to three [judges] for evidentiary trials;

156. *Villagrán Morales – Case 77, supra* note 4, ¶ 123.

157. E-mail from Arturo Echeverría, National Director, Casa Alianza Guatemala, to Uché U. Ewelukwa, Associate Professor of Law, University of Arkansas School of Law (Oct. 18, 2005, 12:53 PM) (on file with author) [hereinafter *E-mail from Arturo Echeverría*].

158. *Villagrán Morales – Case 77, supra* note 4, ¶ 123(7).

159. *Id.* ¶ 123(5).

160. E-mail from Arturo Echeverría, *supra* note 157.

and (3) trials in the lower courts are now open to the public, whereas before, the public, including the press, was prohibited from attending."¹⁶¹ In addition, "new laws were passed that increased an individual's right to appeal decisions of lower courts in criminal cases."¹⁶²

Despite the new changes, a number of problems remain. Echeverría believes that the judgment of the Court has improved safety for street children in Guatemala to some extent. However, according to him, the rights of street children are still being violated. There have been more recent incidents of police abusing street children and domestic courts affording them the same impunity that they bestowed to the aggressors in the *Villagrán Morales* case.¹⁶³ Casa Alianza is aware of at least thirty-seven incidences of crimes against street children in 2004, including thirteen murders.

3. The Development of Human Rights Jurisprudence

International and regional human rights tribunals contribute to the development of international law by elaborating human rights law. As was evident in *Villagrán Morales*, the international litigation of human rights claims provides opportunities for human rights bodies to interpret treaties progressively and in ways that respond to the challenges of modern times. Decisions of human rights courts can be useful to activists, academics, judges, and policy-makers at the national level. Such decisions can serve to educate the general public and can inform and stimulate debate on human rights issues. Although I have not conducted a wide survey to determine the extent to which the *Villagrán Morales* decision has been drawn on by activists, judges, and policy-makers, Echeverría notes that as a result of the case "there is more public awareness of the plight of street children and the need to guarantee them their rights."¹⁶⁴ This is reflected in the "increased coverage of the problems of street children in the news media."¹⁶⁵

B. Limitations of International Human Rights Litigation

As already noted, street children are victims of systemic poverty and routinely experience violations of their social and economic rights as well as their civil and political rights. Moreover, street children experience human rights violations at the hands of state and non-state actors.

161. *Id.*

162. *Id.*

163. *Id.* (Echeverría referenced a 2001 case in which two female street children were raped and molested by police. The case was marked with a lack of will to prosecute the police officers on the part of the courts, prosecutors, and other agents of the Guatemalan state.)

164. *Id.*

165. *Id.*

Unfortunately, litigation before a regional or international human rights body is not designed to address the different deprivations and abuses street children experience nor is it designed to address the leading causes of the street children phenomenon. Thus, international human rights litigation has the greatest chance of success in cases involving grave human rights violations such as murder or torture¹⁶⁶ that are somehow attributable to a state.¹⁶⁷

A second problem concerns the availability and effective implementation of remedies. International human rights litigation presupposes the availability of a forum where such claims may be brought and with jurisdiction to hear such a case. Unfortunately, at present, only the European human rights system and the Inter-American human rights system afford meaningful opportunities for litigating the claims of street children before a human rights court at the regional level.¹⁶⁸ A final problem also related to enforcement is the challenge of ensuring compliance with decided cases. The long-term effectiveness of international human rights litigation depends on the ability of international tribunals to enforce compliance with adverse decisions against state actors.

1. Emphasis on Civil and Political Rights

The involvement of fundamental inalienable rights was critical to the outcome of the *Villagrán Morales*. Although the IACHR allows states to derogate from some obligations under certain circumstances, they cannot derogate from their obligation to respect core human rights.¹⁶⁹

In addition to arbitrary detention, torture, and murder, street children are also vulnerable to myriad other perils. For street children, the biggest

166. The *ius cogens* nature of the right to life was critical to the outcome of the case. See *Villagrán Morales – Case 63*, *supra* note 2, ¶¶ 139, 144.

167. See *id.* at ¶ 128 (noting that there was “abundant concurring evidence that the abduction of the four youths was perpetrated by State agents and, more specifically, by members of the National Police Force.”).

168. The African system of human rights commenced with the entry into force of the African [Banjul] Charter on Human and People’s Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986) [hereinafter African Charter]. The Charter provides for the establishment and functioning of the African Commission on Human and People’s rights. The Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights, June 10, 1988, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III) (entered into force Jan. 25, 2004) provides for the creation and functioning of the African Court on Human and People’s Rights. Essentially, the African Court complements the role of the African Commission on Human and People’s Rights. Its jurisdiction extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter. While the establishment of the African Court marks an historical step in the fight against impunity in Africa, the Court is still in its infancy, and it is too early to predict its future effectiveness.

169. IACHR, *supra* note 3, art. 27(1).

enemy is poverty;¹⁷⁰ most street children lack basic food, shelter, clothing, and access to health care and education.¹⁷¹ Street children experience severe health problems including malnutrition, psychiatric disorders, and infectious diseases such as HIV, cholera, and tuberculosis.¹⁷² Additionally, during extreme weather, exposure to the elements can pose a serious threat.¹⁷³ Further, to feed themselves and their families, most street children engage in dangerous and hazardous work.¹⁷⁴ The major problem most street children therefore face is systemic poverty, which has the effect of destroying family lives and rendering millions homeless in the third world.¹⁷⁵

Economic and social rights (the so-called positive rights)¹⁷⁶ are very important to street children because children are more vulnerable than adults and have traditionally been subject to discrimination.¹⁷⁷ Children frequently require special protection of their rights through the adoption of affirmative protective measures. However, when the economic and social rights of street children are at issue, litigating in domestic and international fora may yield few results and could be a frustrating endeavor. When economic and social rights are implicated, street children and their advocates encounter two major obstacles: the entrenched bias against economic and social rights in human rights theory and practice and the absence of a forum in which economic and social rights violations ground a cognizable legal claim.

170. *Separate Opinion of Trindade*, *supra* note 1, ¶ 22.

171. *World Health Org.*, *supra* note 12.

172. *Id.* (listing "[t]he particular health problems which have been identified among street children").

173. United Nations Children's Fund, *Poverty and Exclusion Among Urban Children* 10 INNOCENTI DIGEST 15 (2002) [hereinafter UNICEF] (noting that in Moscow, many "homeless children sleep on air vents for the metro system to escape the freezing temperatures [and others] risk disease in the city's sewers in order to find relative warmth."), www.unicef-icdc.org/publications/pdf/digest10e.pdf.

174. *Id.* See also *World Health Org.*, *supra* note 12.

175. *Separate Opinion of Trindade*, *supra* note 1, ¶ 33 (noting that the five dead youths, before being cruelly deprived of their lives, "were already deprived of creating and developing a project of life (and seeking a meaning for their existence). They used to stay in the streets in a situation of high risk, vulnerability and defenselessness, amidst the humiliation of misery and a state of suffering amounting to spiritual death . . .").

176. Positive rights generally impose a duty upon the state to provide certain goods and services while negative rights usually require states to refrain from violating individual autonomy. See Tamar Ezer, *A Positive Right to Protection for Children* 7 YALE HUM. RTS. & DEV. L.J. 1, 4 (discussing the distinction between positive and negative rights).

177. Asbjørn Eide, *Economic, Social and Cultural Rights as Human Right*, in *ECONOMIC, SOCIAL AND CULTURAL RIGHTS* 9, 19 (Asbjørn Eide et. al. eds., 2d rev. ed. 2001). See Ezer, *supra* note 176 (arguing generally for a positive right to protection for children that is rooted in dignity).

a. *The Marginalization of ESC Rights in Human Rights Theory and Practice*

Despite numerous international resolutions, declarations, and treaties guaranteeing economic and social rights and affirming the principle of the indivisibility, universality and interrelatedness of all human rights,¹⁷⁸ the exact status of economic and social rights remains controversial.¹⁷⁹ Scholars and policy makers—particularly in the West¹⁸⁰—still draw a distinction between civil and political rights on the one hand, and economic, social, and cultural rights, on the other.¹⁸¹ While civil and political rights have received much attention in human rights theory and practice, economic and social rights have been neglected.¹⁸² Moreover, while civil and political rights are routinely incorporated into national constitutions, the idea of incorporating social and economic rights into national constitutions generates stiff opposition.¹⁸³

178. The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child all embrace the idea of universality and indivisibility of rights.

179. See Asbjørn Eide & Allan Rosas, *Economic, Social and Cultural Rights: A Universal Challenge*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS 3, 3-7 (Asbjørn Eide et. al. eds., 2d rev. ed. 2001). See JEFFREY L. DUNOFF, ET. AL., INTERNATIONAL LAW: NORMS, ACTORS, PROCESS 441 (2002) (observing that "the relationship and relative status of the two sets of rights has long been controversial").

180. The United States has been at the forefront in this debate. In this respect, Philip Alston has noted "the absence of clear agreement on values between the United States and the International Community when it comes to the concept of economic, social and cultural rights." According to Alston,

The lack of the necessary community of value is most clearly attested to by the fact that the United States Government, for almost a decade, has categorically denied that there is any such thing as an economic, social and cultural rights. This denial has given rise to the placement of the word "rights" in quotation marks every time it follows the phrase "economic, social and cultural rights" and to the equally pointed rebuff of inserting "so-called" in front of the full phrase whenever it cannot be avoided.

Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT'L L. 365, 367 (1990). See also Ezer, *supra* note 176, at 4, 6-9 (discussing American treatment of positive rights).

181. Eide, *supra* note 177, at 10.

182. *Id.* at 9. See also Ezer, *supra* note 176, at 4 (noting that the classical Western notion of rights is negative and that since the rights system is rooted in Western political traditions and philosophy, this has led the human rights movement to historically place a greater emphasis on negative rights); DUNOFF, *supra* note 179, at 447 (noting that the U.S. "has expressed considerable skepticism regarding the status of economic, social and cultural rights" and that in general the U.S. position regarding the status of economic, social and cultural rights has varied from administration to administration).

183. See e.g., Randal S. Jeffery, *Social and Economic Rights in the South African Constitution: Legal Consequences and Practical Considerations*, 27 COLUM. J.L. & SOC. PROBS. 1, 14 (1993). See generally Susan Bandes, *The Negative Constitution: A Critique*, 88 MICH. L. REV. 2271 (1990); Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 HARV. L. REV. 1132 (1999).

The neglect of economic, social, and cultural rights is apparent in the notion of "generations" of rights. This conception assumes that international human rights norms fall into three broad categories in accordance with their historical manifestation.¹⁸⁴ Civil and political rights, appearing in the eighteenth century, are referred to as "first generation" rights; economic and social rights, appearing in the late nineteenth century and early twentieth centuries, are referred to as "second generation" rights, while the label "third generation" is reserved for group rights, which emerged in the later part of the twentieth century.¹⁸⁵

b. Cultural and Ideological Resistance

Cultural and ideological resistance to the idea of the indivisibility and universality of rights is widespread, particularly in the Western tradition, which is based on "a strong faith in full economic liberalism and a severely constrained role for the state in matters of welfare."¹⁸⁶ In its extreme form, this ideological opposition frames civil and political rights as the only "real" rights, while economic and social rights are thought to be not rights at all but merely aspirations. A milder strand of this tradition view economic, social, and cultural rights as a different species of rights that should therefore receive different treatment.

Three major arguments are frequently advanced to support the view that economic and social rights are sharply distinguishable from civil and political rights. First, it is argued that civil and political rights are negative rights and therefore "free" in the sense that they do not cost much; "the best way to ensure the enjoyment of such rights is to require the governments to refrain from interfering with the life and freedoms of individuals."¹⁸⁷ Economic and social rights, on the other hand, are positive and costly rights requiring significant resource commitments by the state and in effect require the state to provide material entitlements to individuals.¹⁸⁸ Second, civil and political rights are seen to be absolute and immediately applicable, whereas economic and social rights are seen to be programmatic rights to be realized gradually.¹⁸⁹ Third, civil and political rights are seen as enforceable or justiciable, in the sense that if and when "such rights are violated . . . the victims may bring the matter to an appropriate authority . . . for immediate and effective relief and redress."¹⁹⁰

184. Eide & Rosas, *supra* note 179.

185. Yozo Yokota, *Reflections on the Future of Economic, Social, and Cultural Rights*, in *THE FUTURE OF INTERNATIONAL HUMAN RIGHTS* 201 (Burns H. Weston & Stephen P. Marks eds., 1999).

186. Eide, *supra* note 177, at 11 (noting, however, that the cultural and ideological resistance has not prevented the ratification of the United Nations Covenant on Economic, Social and Cultural Rights by the vast majority of Western states).

187. Yokota, *supra* note 185, at 201.

188. Eide, *supra* note 177, at 10.

189. *Id.*

190. Yokota, *supra* note 185, at 201.

By contrast, social and economic rights are seen as non-justiciable.¹⁹¹ This divide has meant that economic and social rights are frequently treated as the poor cousins of civil and political rights.

c. Reclaiming Economic and Social Rights

Rejecting the idea that economic and social rights are either not human rights at all or are different, a growing number of human rights scholars and activists reaffirm the principle of the indivisibility of rights¹⁹² and call for greater legalization of economic and social rights at the domestic and international level.¹⁹³ From this perspective, the international human rights system is about safeguarding three aspects of human existence: human integrity, freedom, and equality.¹⁹⁴ These goals can only be achieved through the recognition of the interrelatedness of all rights and the adoption of a rights-centered approach to economic, social, and cultural rights.¹⁹⁵ Although these scholars admit that determining the appropriate yardsticks for adjudicating violations of economic and social rights may not always be easy,¹⁹⁶ they nevertheless believe that it is "fully possible to give concrete legal relevance to economic, social and cultural rights."¹⁹⁷

It is one thing to affirm the principle of the indivisibility of rights and another to determine how economic and social rights are to be realized in specific cases. A major challenge to litigating economic and social rights lies "in clarifying the content of these rights and determining their corresponding obligations."¹⁹⁸ Although scholarly and institutional energy has increasingly gone into clarifying the nature of economic and social rights, demonstrating that economic and social rights are not radically different from civil and political rights, and defining the duties and obligations of the state under contemporary international law, there is still

191. *Id.* at 202; see also Eide, *supra* note 177, at 10.

192. Eide, *supra* note 177, at 23 (noting that "[a] widely spread misunderstanding has been that all economic, social and cultural rights must be provided by the state, and that they are costly and lead to an overgrown state apparatus. This view results from a very narrow understanding of the nature of these rights and of the corresponding state obligations.").

193. See, e.g., Etienne Mureinik, *Beyond a Charter of Luxuries: Economic Rights in the Constitution*, 8 S. AFR. J. HUM. RTS. 464 (1992) (defending the idea of inserting economic and social rights in the South African Constitution).

194. Eide, *supra* note 177, at 12.

195. For example, Asbjørn Eide has argued that economic, social, and cultural rights "constitute three interrelated components of a more comprehensive package," and that "[t]he different components also have links to civil and political rights." In the final analysis, this group asserts that theories about the non-justiciability and non-self-executing nature of economic, social, and cultural rights have been overstated. *Id.* at 17.

196. Eide & Rosas, *supra* note 179, at 5 (noting that there are "some significant differences of emphasis between the typical civil rights on the one hand and some economic, social and cultural rights on the other").

197. *Id.*

198. Eide, *supra* note 177, at 9.

much work to be done.

In general, it is now argued that the individual and not the state "is the active subject of all economic and social development."¹⁹⁹ Consequently, it is expected that the individual "whenever possible through his or her own efforts and by use of [his or her] own resources [will] find ways to ensure the satisfaction of his or her own needs."²⁰⁰ Viewing individuals as the active subjects of economic and social development radically changes our understanding of the role and obligation of the state. Rather than perceiving the state as the perpetual provider, "human rights imposes three types or levels of obligation on [the state in relation to economic, social and cultural rights]: the obligation to *respect*, to *protect*, and to *fulfill*."²⁰¹ At the most basic level, states are obliged to respect "the resources owned by the individual . . . and the freedom to take the necessary actions and use the necessary resources . . . to satisfy his or her own needs."²⁰² At the secondary level, states have an obligation to protect individuals and their resources from encroachment by others.²⁰³ This is regarded as "the most important aspect of state obligations" and is very "similar to the role of the state as protector of civil and political rights."²⁰⁴ At the tertiary level, states have an obligation to fulfill the economic and social rights of individuals "by way of facilitation or direct provision."²⁰⁵

For children's rights advocates, the battle has been half won because the Convention on the Rights of the Child abandons the negative/positive dichotomy and guarantees civil and political rights as well as economic, social, and cultural rights.²⁰⁶ However, there is still a need to break down the obligation of states towards children into more specific components.

199. *Id.* at 23.

200. *Id.*

201. *Id.*

202. *Id.*

203. Eide, *supra* note 177, at 24 (noting that states have an obligation to protect individuals from "more assertive or aggressive subjects—more powerful economic interests, protection against fraud, against unethical behaviors in trade and contractual relations, against the marketing and dumping of hazardous or dangerous products").

204. *Id.*

205. *Id.*

206. Social rights affirmed in the CRC and relevant to street children include: the right to an adequate standard of living (Article 27); the right to education (Article 28); the right to health (Article 24); the right to rest and leisure (Article 31); and the right to survival and development (Article 6). To support the social rights, the CRC also accords to the children economic rights such as the right to social security (Article 26) and the right to be protected from economic exploitation (Article 32). Convention on the Rights of the Child, *supra* note 87. See also Eide, *supra* note 177, at 18 (Noting that the "economic rights have a dual function." In the first instance, they "serve[s] as a basis for entitlements which can ensure an adequate standard of living." Second, they are the "basis of independence and freedom."); Ezer, *supra* note 176, at 23.

2. Immunity for Non-State Actors

The uncontroverted evidence that members of the Guatemalan police force were implicated in the victims' abduction and murder was also critical to the outcome of the *Villagrán Morales* case. Based on eyewitness accounts and the internal investigations of the National Police Force following the murders, the Court concluded that there was "abundant concurring evidence that the abduction of the four youths was perpetrated by State agents and, more specifically, by members of the National Police Force."²⁰⁷

Law enforcement officers are not the only enemy street children have. Street children are also "easy and silent targets for abuse by . . . society at large."²⁰⁸ In many parts of the world, private security forces prey on defenseless street children. Foreign pedophiles also prey mercilessly on street children in poor countries.²⁰⁹ In addition, frequently local hoodlums, adults, and older street boys prey on younger children and coerce them into having "survival sex"²¹⁰ in return for protection, food, shelter, and drugs.²¹¹ In addition to the trauma of physical and sexual abuse, street children today live in fear of HIV/AIDS. In Swaziland, a study found that old men routinely sodomize boys as young as nine and infect many of them with sexually transmitted diseases.²¹²

Sadly, when the aggressor is a non-state actor, justice for street children may be elusive because regional and international human rights tribunals lack jurisdiction over the perpetrators.²¹³ For much of its history,

207. *Villagrán Morales* – Case 63, *supra* note 2, ¶ 128.

208. JUVENILE INJUSTICE, *supra* note 49, at 1.

209. In Bali, child sex tourism is reported to be on the rise. An investigation by NGO Child Wise revealed that pedophiles tended to target vulnerable children, families, and communities. BBC NEWS, *Bali Alert Over Paedophiles*, <http://news.bbc.co.uk/1/hi/world/asia-pacific/3474903.stm> (last visited Oct. 1, 2004). In India, two British men, Allan John Waters and Duncan Grant, "have been on Bombay police's wanted list since 2001 for alleged pedophilia at the Anchorage Shelter orphanage in South Bombay." BBC NEWS, Paedophile Case Briton Remanded, http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/south_asia/3. (last visited Oct. 7, 2004).

210. *Id.* (discussing a study that examined high-risk sexual behavior among street children and concluded that "[s]exual coercion on the street is an exercise of power, a way to maintain status and subdue a subordinate"). See Jill Swart-Kruger & Linda M. Richter, *AIDS-related Knowledge, Attitudes and Behaviour Among South African Street Youth: Reflections on Power, Sexuality and the Autonomous Self*, 45 SOC. SCI. & MED. 957 (1997).

211. WORLD HEALTH ORG., WORKING WITH STREET CHILDREN, MODULE 1: A PROFILE OF STREET CHILDREN 12 (2001), http://www.who.int/substance_abuse/publications/vulnerable_pop/en/. See also Jayashree Ramakrishna et al., *Experiences of Sexual Coercion Among Street Boys in Bangalore, India*, TOWARDS ADULTHOOD: EXPLORING THE SEXUAL AND REPRODUCTIVE HEALTH OF ADOLESCENTS IN SOUTH ASIA 97 (2003), www.who.int/reproductive-health/publications/towards_adulthood/14.pdf (last visited Oct. 6, 2004).

212. Vuyisile Hlatshwayo, *Swaziland's Street Urchins*, MAIL & GLOBE, Aug. 21, 1997, available at http://pangaea.org/street_children/africa/swazi.htm (last visited Oct. 1, 2004).

213. See Sukanya Pillay, *AND JUSTICE FOR ALL? Globalization, Multinational*

international human rights law has been a law by and about states.²¹⁴ States have enjoyed a predominant role in international law for centuries.²¹⁵ Today, sovereignty is the passport to the international legal arena.²¹⁶ International law is primarily based on the consent of states.²¹⁷ Individuals cannot conclude international agreements (treaties) nor can they participate in the formation of customary international law.²¹⁸ Symmetrically, non-state actors are not generally bound by international human rights law.²¹⁹

Although states must increasingly share power with non-state entities,²²⁰ states are still at the center of international human rights law. Curbing abuses of state power was the primary concern of the drafters of the international bill of rights.²²¹ Not surprisingly, virtually all human rights treaties impose obligations only on states,²²² although it is increasingly recognized that non-state actors "have directly applicable rights and duties under international law."²²³ Under limited circumstances, international human rights law can be enforced against individuals or other non-state actors.²²⁴

When individuals abuse the rights of street children, what options are there for the victims? The answer depends on whether the individual acted

Corporations, and the Need for Legally Enforceable Human Rights Protection, 81 U. DET. MERCY L. REV. 489, 490 (2004).

214. *Id.* at 502 (observing that "international law was crafted to bind states in their human rights obligation to individuals.").

215. DUNOFF ET AL., *supra* note 179, at 105 ("States have been the dominant units in international relations since at least the Peace of Westphalia in 1648, and much legal regulation of international relations still centers on the resolution of claims by states.").

216. STEVEN D. KRASNER, SOVEREIGNTY: ORGANIZED HYPOCRISY 31 (1999) (quoting MICHAEL ROSS FOWLER & JULIE MARIE BUNCH, LAW, POWER AND THE SOVEREIGN STATE: THE EVOLUTION AND APPLICATION OF THE CONCEPT OF SOVEREIGNTY 12 (1995)).

217. *Id.*

218. Eric Engle, *Corporate Social Responsibility (CSR): Market-Based Remedies for International Human Rights Violations?*, 40 WILLIAMETTE L. REV. 103, 109 (noting that non-state actors do not have constitutive power in the formation of international law).

219. Pillay, *supra* note 213, at 502.

220. Today, states must share power with a growing number of non-state actors including individuals, corporations, sub-state entities, and international organizations. See Jessica Mathews, *Power Shift*, 76 FOREIGN AFF. 50, 50-51 (Jan./Feb. 1997). As Sukanay Pillay rightly observed, "globalization has thrust a powerful new non-State actor onto the international stage, the multinational corporation ("MNC")," and "[t]he reach of the MNC is felt today by every individual who participates in the global economy as a consumer or producer of goods and services." Pillay, *supra* note 213.

221. Richard B. Bilder & Henry J. Steiner, Book Review, 89 AM. J. INT'L. L. 844, 844 (1995) ("The human rights movement was intended to curb state abuses and protect individuals.").

222. See, e.g., International Covenant on Civil and Political Rights, Dec. 16, 1966; 999 U.N.T.S. 171, available at <http://www.ohchr.org/english/law/ccpr.htm> (last visited Sept. 5, 2005); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, available at <http://www.ohchr.org/english/law/cescr.htm> (last visited Sept. 5, 2005).

223. Engle, *supra* note 218, at 107.

224. *Id.* at 108 (observing that international law can be enforced against corporations).

in his individual capacity or as an agent of the state. Where the individual acted as an agent of the state or acted under the color of official authority, the best strategy may be to pursue action against the state for the acts of the individual in an international or domestic forum.

When the primary perpetrator of a human rights violation is a private individual or entity, children's rights advocates immediately encounter a problem because litigation before existing international human rights institutions is precluded.²²⁵ This is due to the lack of provisions in existing human rights treaties holding non-state actors directly responsible for failing to respect the rights of others;²²⁶ the relevant duties under most international human rights treaties are duty of the state, not of the individual.²²⁷ When a perpetrator is acting in his individual capacity, children's rights advocates may only pursue claims against the state for failure to police private individuals, that is, for failure to use due diligence in enforcing its criminal law.²²⁸ For example, in the landmark case of *Velásquez-Rodríguez* decided in 1988, the Inter-American Court of Human Rights imposed liability on Honduras for its failure to use due diligence to prevent unexplained "disappearances," regardless of whether the state or private actors were responsible.²²⁹

In "the absence of effective international mechanisms" for holding non-state actors accountable for human rights violations, street children who are victims of human rights abuse must turn to domestic courts for answers.²³⁰ In this respect, victims of human rights abuses have two options: they can either bring a lawsuit in the territory where the violation occurred or initiate a case in a foreign territory if subject matter and personal jurisdiction can be established. The first option is fraught with problems because of barriers to justice in developing countries.²³¹ The

225. Bilder & Steiner, *supra* note 221, at 847 ("It is undeniable that human rights treaties are increasingly relevant to relations among non-state actors. But that is not to say, except in a special sense, that international law duties have thereby been broadly privatized—or at least privatized by the international organs.").

226. *Id.* at 846.

227. *Id.*

228. *Id.* at 844.

229. *Velásquez-Rodríguez Case*, Inter-Am. Ct. H.R., 1988, (ser. C) No. 4, (July 29, 1988), reprinted in 9 HUM. RTS. J. L. 212 (1988); Bilder & Steiner, *supra* note 221, at 846 (noting that though the Inter-American Court imposed liability on Honduras for acts of private actors, the relevant duty under the Convention that was breached continued to be the state's).

230. Beth Stephens, *Translating Filártiga: A Comparative and International Law Analysis of Domestic Remedies for International Human Rights Violations*, 27 YALE J. INT'L L. 1, 2 (2002).

231. Apart from problems associated with judicial corruption and the cost of initiating and pursuing cases in many developing countries, children's rights advocates seeking justice for street children in domestic courts also face intimidation and death. On September 2, 2005, at approximately 9:30 a.m., an unidentified man shot and killed lawyer Harold Rafael Perez Gallardo. Prior to his death, Mr. Gallardo was serving as the Adviser to the Legal Program of Casa Alianza Guatemala and was advising the organization on several pending cases regarding irregular adoptions, murders, sexual exploitation, and trafficking, and other instances of human rights violations against children. Casa Alianza, *Urgent Appeal*:

second is equally difficult because of the doctrine of *forum non conveniens* and other problems associated with launching a lawsuit in a foreign country.

3. The Challenge of Enforcement

The *Villagrán Morales* case was possible because Guatemala is a state, had ratified the IACHR²³² and, pursuant to Article 42, had declared that it recognized as binding, ipso facto, the jurisdiction of the Court on all matters relating to the Convention's interpretation or application.²³³ The case raises important questions about the promise of regional human rights systems in the realization of human rights. One such question is whether regional human rights systems can offer credible solutions to the basic challenges facing the human rights revolution that began more than half a century ago: implementation and enforcement.²³⁴

This question is pertinent because at the global level there is currently no permanent human rights court where individuals can lodge complaints against governments for violations of human rights.²³⁵ Only four of the United Nations human rights treaty organizations may, in certain circumstances, consider individual complaints or communications from individuals.²³⁶ However, whether these bodies can adequately protect

Legal Program Advisor to Casa Alianza Murdered (Sept. 7, 2005), <http://www.casa-alianza.co.uk/urgaction.htm>. See also, Deepa Narayan et al., VOICES OF THE POOR CRYING OUT FOR CHANGE 163 (2000) (observing that the poor have little access to the judiciary and that they fear, rather than expect protection from, the police).

232. The obligations set forth in the ACHR are binding only on State Parties to the Convention. Article 1(1) states:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

233. IACHR, *supra* note 3, art. 62(1) ("A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention").

234. George William Mugwanya, *Realizing Universal Human Rights Norms Through Regional Human Rights Mechanisms: Reinvigorating the African System*, 10 IND. INT'L & COMP. L. REV. 35, 39 (1999). See also United Nations High Commissioner for Human Rights, U.N. ESCOR. 52d Sess., at 9, U.N. Doc E/CN.4/1996/50/Add. 1 (1995).

235. *Cf. id.* (arguing that regional human rights systems, particularly those established in Europe and the Americas, have served to fill gaps in the global human rights mechanism and have served as both institutional and normative building blocks for the realization of human rights at the grassroots).

236. United Nations High Commissioner for Human Rights, Human Rights Bodies - Complaint Procedures, <http://www.ohchr.org/english/bodies/petitions/index.htm> (2/28/06). The four human rights bodies with jurisdiction to consider individual complaints are the Human Rights Committee (HRC), the Committee Against Torture (CAT), the Committee on the Elimination of Discrimination Against Women (CEDAW) and the Committee on the Elimination of Racial Discrimination (CERD).

rights through deterrence and whether they can realistically serve the basic dispute-resolution function that informs adjudication by courts in many national systems is open to debate.²³⁷

The promotion and enforcement of human rights at the regional level is based on adjudicatory institutions that administer treaty-based rights.²³⁸ The obligation to respect the rights enshrined in the respective regional treaties is binding only on states that have ratified the treaties. Moreover, states that have ratified the treaties are only obliged to secure guaranteed rights to persons within their jurisdiction. Whether the rights guaranteed in human rights treaties apply extraterritorially is a highly controversial issue. The European Court of Human Rights recently held that the jurisdiction of the European Convention on Human Rights does not extend extraterritorially to areas not under the "effective overall control" of States parties to the treaty.²³⁹ In regions that lack a human rights treaty or a strong adjudicatory body, realizing the internationally guaranteed rights of street children may remain a distant dream. To date, the principal regional systems for the protection of human rights are the European system and the Inter-American system.

The challenge to the legitimacy of human rights enforcement poses another challenge to international human rights litigation. Despite the progressive development of international human rights law in the

237. For a critical evaluation of the effectiveness of the United Nations Human Rights Committee, see generally, Makau wa Mutua, *Looking Past the Human Rights Committee: An Argument for De-marginalizing Enforcement*, 4 BUFF. HUM. RTS. L. REV. 211 (1998) (arguing that many international human rights bodies such as the United Nations Human Rights Committee are weak and ineffectual.). See also THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING (Philip Alston & James Crawford eds., 2000).

238. Wilner, *supra* note 102, at 408 (noting that human rights conventions in Europe and the Americas create institutions and give them a juridical nature and role in interpreting the terms of treaties).

239. In *Bankovic and Others v. Certain NATO Member States*, the European Court of Human Rights (ECHR) took the view that the obligations imposed by the European Convention on Human Rights did not apply extraterritorially but were regionally bounded. In the *Bankovic* case, the question was whether the alleged NATO bombing of the Belgrade radio and TV station constituted a violation of the European Convention. The Court noted that "the Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States." According to the Court, "the Convention is a multi-lateral treaty operating . . . in an essentially regional context and notably in the legal space (*espace juridique*) of the Contracting States." *Bankovic and Others v. Certain NATO Member States*, Grand Chamber Decision as to the Admissibility of Application no. 52207/99, Dec. 12, 2001. The decision of the European Court of Human Rights is at odds with the decisions of both the Inter-American Commission on Human Rights and the United Nations Human Rights Committee on the subject. For instance, in *Alejandre et al. v. Cuba*, the Inter-American Commission on Human Rights recognized jurisdiction over Cuba's extraterritorial use of disproportionate force and violation of the right to life. *Alejandre et al. v. Cuba*, Case 11.589, Inter-Am. C.H.R., Report No. 86/99, OEA/Ser.L/V/II.106 Doc. 3 rev. ¶ 586 (1999). In *Saldías de López v. Argentina*, the United Nations Human Rights Committee recognized extraterritorial jurisdiction over detention and torture in Argentina. *Saldías de López v. Argentina*, Comm. No. 52/1979, U.N. Doc. CCPR/C/OP/1 (1985) (views adopted July 29, 1981).

twentieth century, the concept of international enforcement remains controversial and is fiercely resisted by a significant number of states.²⁴⁰ Thus, even if a case is successfully adjudicated, securing compliance could prove impossible.

V. CONCLUSION

The Convention on the Rights of the Child and the Optional Protocols thereto provide a rights-based framework for the protection of children, including abused, neglected, and exploited children. Fundamental principles of the best interest of the child, non-discrimination, protection, participation, survival, and development enshrined in the CRC are particularly relevant to street children and organizations working on their behalf. International human rights litigation falls within the right-based framework of the CRC, together with other approaches to working with street children such as the human development approach²⁴¹ and the service provision approach.²⁴²

When the rights of street children are violated, advocates contemplating litigation have three options. One option is to institute lawsuits in the home country of the street children. The problem with this is that victims of human rights abuses are often unable to obtain redress in their home countries.²⁴³ A second possibility is bringing human rights litigation in a foreign court. However, litigation in foreign courts is also fraught with problems. Apart from the possibility that the case may be dismissed on *forum non conveniens* grounds, there is the added problem that judgments are difficult to enforce.²⁴⁴ Advocates may also have the option of filing a petition with a regional or international human rights tribunal with jurisdiction to hear such matters.

240. Steiner & Alston, *supra* note 11, at 592.

241. Asian Development Bank, *supra* note 139, at 6 ("The human development approach takes a long-term perspective and concentrates on equipping street children with the skills and confidence required to reintegrate into society, fulfilling their human rights to self-realization and independence.").

242. *Id.* The service provision approach aims at meeting the immediate needs of children such as provision of food, shelter, health services, and counseling opportunities.

243. Curtis A. Bradley, *The Costs of International Human Rights Litigation*, 2 CHI. J. INT'L L. 457, at 458 (2001); Beth Stephens, *supra* note 230, at 48-52.

244. Bradley, *supra* note 243, at 458-59.

Courts are not likely to grant injunctive relief concerning foreign government activities; nor would they be able to enforce such relief if they did grant it. As for damage awards, individual foreign officials rarely have significant assets, and what assets they do have generally are not located in the United States. As a result, even though US courts have issued a number of large damage awards in these cases, essentially none of these awards has been collected.

See also Stephens, *supra* note 230, at 48 (admitting that few money judgments have yet been collected).

*Villagrán Morales*²⁴⁵ offers a different approach to advocacy for at-risk children. Beyond the provision of basic services to street children, non-governmental organizations can also seek justice through the judicial system. *Villagrán Morales* teaches us that the doors of international human rights tribunals are open even to the most vulnerable and disenfranchised populations in the world. Litigation can be a valuable tool for successful social movements and has the potential to trigger broad-based structural reform.²⁴⁶ Litigation is also important because it provides the opportunity to discover information, to win media publicity, and to determine rights and judicial remedies.

Although litigation can offer street children a forum for publicizing their stories,²⁴⁷ litigation by a non-domestic tribunal may not necessarily result in the internationalization of norms or changes in the surrounding society's behavior.²⁴⁸ Litigation is but one strategy in the overall effort to protect the world's children.²⁴⁹ Ideally, litigation should be seen as an instrument of last resort, in part because litigation frequently leads to polarization and alienation that may ultimately harm the cause. Unsuccessful litigation may reinforce street children's experience of powerlessness,²⁵⁰ and even successful litigation "may falsely raise in the community the expectation that appeal to 'the law' can somehow give it power" and cause the community to neglect other promising strategies.²⁵¹ Lucie White suggests that instead of pushing a community into a lawsuit, "the lawyer should help his clients understand the limits of litigation and challenge them to develop creative, rather than reactive, litigation strategies."²⁵² For organizations with limited resources, international human rights litigation will involve difficult choices and trade-offs. Anyone considering international human rights litigation must also take into account the often considerable time it takes for a case to reach its conclusion.²⁵³

245. *Villagrán Morales – Case 63, supra note 2.*

246. Kevin Johnson, *Lawyering for Social Change: What's a Lawyer to do?* 5 MICH. J. RACE & L. 201, 207 (1999).

247. See Bradley, *supra* note 243 (noting that the publicity that human rights litigation frequently generates may increase the pressure on abusive governments to reform their practices).

248. *Id.* at 469 (arguing that the adjudication of foreign human rights abuses by a United States court may disconnect these events from the society most affected by the abuses and would not likely result in the same sort of internalization of norms and responsibility that would be associated with a local resolution, whether it be a local adjudication, a truth commission, or even an agreed-upon amnesty).

249. See Johnson, *supra* note 246, at 209 (suggesting that "a successful change program should ideally employ a mix of political strategies and traditional legal remedies . . .").

250. Richard L. Abel, *Lawyers and the Power to Change*, 7 LAW & POL'Y 5, 9 (1985).

251. Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 742.

252. *Id.* at 742.

253. Francisco Martin, *The International Human Rights and Ethical Aspects of the Forum Non Conveniente Doctrine*, 35 U. MIAMI INTER-AM. L. REV. 101, 105 (2003-2004) (suggesting

In the final analysis, poverty poses a real challenge to efforts at addressing the problem of street children. Poverty is the leading cause of homelessness among children. It also constitutes one of the greatest obstacles to achieving the objectives of the CRC.²⁵⁴ *A World Fit for Children*, the outcome document of the 2002 United Nations Special Session on Children, emphasizes the importance of this factor:

Chronic poverty remains the single biggest obstacle to meeting the needs, protecting and promoting the rights of children. It must be tackled on all fronts, from the provision of basic social services to the creation of employment opportunities, from the availability of microcredit to investment in infrastructure, and from debt relief to fair trade practices. Children are hardest hit by poverty because it strikes at the very roots of their potential for development— their growing bodies and minds.²⁵⁵

At the domestic level, policies must be constantly evaluated for their effect on children, particularly poor and marginalized children. Child-centered statistics are required. Currently, “[c]hildren tend to be discriminated against in the statistical record because the unit of observation tends to be adult-focused (such as households) or service-focused (such as clinics and schools).”²⁵⁶ A child-focused budget, for example, can offer valuable insight into the impact of government spending on the realization of children’s rights. Additionally, governments should prioritize programs with potential to address the core factors that contribute to the street children problem including early childhood development, urban and rural infrastructure, education, and social protection for vulnerable groups.²⁵⁷

At the global level, development and trade policies must be rethought. Trade liberalization, deregulation, and privatization result in the disappearance of basic services such as housing and medical care, thus creating new kinds of economic, social, and psychological stress for poor

that in the European system, a case can last anywhere from two to ten years, depending on the case’s complexity, and indicating that in the Inter-American system, cases may take longer, in part because of the lack of financial and staff resources).

254. See *World Declaration on the Survival, Protection and Development of Children*, <http://www.unicef.org/wsc/declare.htm> (last visited Mar. 25, 2006), ¶ 16.

255. The May 8-10, 2002 United Nations Special Session on Children culminated in the official adoption by about 180 nations of an outcome document titled *A World Fit for Children*. The document’s Declaration commits world leaders to completing the unfinished agenda of the 1990 World Summit for Children, and to achieving the goals and objectives of the UN Millennium Declaration. See UNICEF, *A World Fit for Children: Outcome Document of the Special Session*, A/RES/S-27/2, ¶ 18, <http://www.unicef.org/specialsession/wffc/> (last visited Mar. 25, 2006) [hereinafter UNICEF, *A World Fit for Children*].

256. Asian Development Bank, *supra* note 139, at 19 (also noting that while children in general are discriminated in statistics, street children are altogether excluded).

257. *Id.* at 20.

children and their families.²⁵⁸ In addition to litigation, there is an urgent need for studies on the effects of globalization, particularly trade liberalization, on the lives of children in developing countries.²⁵⁹ Globalization is not working for everyone, particularly people in poor countries. It is difficult to protect children from lower income households and in poor countries in the face of declining terms of trade,²⁶⁰ a steady decline in the price of agricultural products in the world's market,²⁶¹ and uncontrolled debt burden. As UNICEF rightly notes:

The very poor economic performance of the world's low-income nations and the economic deterioration in many middle-income nations are responsible for much of the deprivation children experience. These problems also underpin the very large debt burdens that so many nations face. A globalizing world economy creates winners and losers, and growing inequality between nations presents particular challenges for children.²⁶²

Continuing international cooperation in efforts to eradicate poverty is important. In the United Nations Millennium Declaration adopted in 2002, world leaders pledged to "spare no effort to free [their] fellow men, women and children from the abject and dehumanizing conditions of extreme

258. U.N. Econ. & Soc. Council [ECOSOC], *Globalization and its Impact on the Full Enjoyment of Human Rights: Report of the High Commissioner for Human Rights Submitted in Accordance with Commission on Human Rights Resolution 2001/32*, ¶ 11, U.N. Doc., E/CN.4/2002/54, (January 15, 2002), (Observing that the WTO rules on agriculture have the potential to affect the enjoyment of human rights, particularly, the right to food, the right to development, the right to health, the right to social security, as well as the right of particular groups) [hereinafter *Globalization and Human Rights*].

259. See generally WORLD BANK, *GLOBALIZATION, GROWTH AND POVERTY: BUILDING AN INCLUSIVE WORLD ECONOMY 1-2* (2001) ("Globalization also produces winners and losers, both between countries and within them. Between countries, globalization is now mostly reducing inequality However, many poor countries – with about 2 billion people – have been left out of the process of globalization. Many are becoming marginal to the world economy, often with declining incomes and rising poverty. Clearly, for this massive group of people, globalization is not working."); See Ambassador Celso L.N. Amorim, *The WTO From the Perspective of a Developing Country*, 24 *FORDHAM INT'L L.J.* 95, 98; Vandana Shiva, *Globalization and Poverty*, 202 *RESURGENCE* (September/October 2000), <http://www.resurgence.org/resurgence/issues/shiva202.htm>; OXFAM, *RIGGED RULES AND DOUBLE STANDARDS: TRADE, GLOBALISATION AND THE FIGHT AGAINST POVERTY*, prepared by Kevin Watkins and Penny Fowler 5 (2003), http://www.maketrade.com/assets/english/report_english.pdf.

260. Watkins & Fowler, *supra* note 259, at 6.

261. *Id.* at 13 (observing that the international community has failed to address the problem of low and unstable commodity prices, which consign millions of people to poverty.) "Coffee has been one of the commodities worst affected. Prices have fallen by 70 per cent since 1997, costing developing country exporters some \$8bn in lost foreign-exchange earnings. For some countries, these losses have outweighed the benefits of aid and debt relief." *Id.*

262. UNICEF, *supra* note 173, at 7.

poverty, to which more than a billion of them are currently subjected.”²⁶³ In 2001, world leaders reiterated the importance of international cooperation in the realization of the rights of the child even while stressing that the primary responsibility for children rests with their families, communities, and states.²⁶⁴ World leaders noted that the implementation of the Plan of Action adopted at the conclusion of the 2002 Special Session on children²⁶⁵ would require “the allocation of significant additional human, financial, and material resources, nationally and internationally, *within the framework of an enabling international environment and enhanced international cooperation, including North-South and South-South cooperation*, to contribute to economic and social development.”²⁶⁶ Given the importance of the link between trade and development, world leaders also agreed to “increase and improve access of products and services of developing countries to international markets through, *inter alia*, the negotiated reduction of tariff barriers and the elimination of non-tariff barriers, which unjustifiably hinder the trade of developing countries, according to the multilateral trading system.”²⁶⁷ Sadly, translating promises into action remains a challenge.

In the final analysis, the National Director of Casa Alianza Guatemala, Arturo Echeverría, believes that the *Villagrán Morales* case was a victory for street children. According to Mr. Echeverría, “although much still needs to be accomplished in the enforcement of children’s human rights, and in the punishment of policemen who violate those rights,” and although “[t]he Guatemalan public prosecutors and judges, who are charged with these enforcement and punishment responsibilities, have largely failed to fulfill their duties,” there have been noticeable changes in the law relating to street children.²⁶⁸

Litigation of street children’s claims in regional or international human rights fora has the potential to yield tangible benefits. In the short-term, such litigation could result in real remedies for the victims of human rights abuses and the reform of domestic law relating to children. In the long-term, litigation and the resulting jurisprudence from major international and regional human rights bodies can help create an international climate in which the abuse and exploitation of children is less likely to be tolerated – that is, a culture of respect for the rights of children worldwide. However, international human rights law and the litigation it inspires cannot by themselves prevent or remedy all human rights abuses. This is because “[m]any violations are linked to long-standing political, economic,

263. United Nations Millennium Declaration, G.A. Res. 55/2, ¶ 11, U.N. Doc. A/55/L.2, (Sept. 8, 2000).

264. UNICEF, *A World Fit for Children*, *supra* note 173, ¶ 49.

265. The Plan of Action is part of the outcome document, *A World Fit for Children*. It sets out three necessary outcomes: the best possible start in life for children, access to a quality basic education, including free and compulsory primary education, and ample opportunity for children and adolescents to develop their individual capacities. *Id.*

266. *Id.* ¶ 51 (emphasis added).

267. *Id.* ¶ 52(d).

268. E-mail from Arturo Echeverría, *supra* note 157.

and social problems that require more than law alone can repair.”²⁶⁹ Serious efforts at the national, regional, and global level are required to combat one of the main reasons children end up on the street: poverty. We must also continue to work to reform international human rights laws and processes. In the coming years, we will face many challenges: in order to protect the world’s children from the horrors of poverty and the dangers of life on the streets, we must address the marginalization of economic and social rights in theory and practice, the immunity afforded non-state actors under most human rights treaties, and the skepticism toward the legitimacy of enforcing human rights norms.

269. *Id.*