

CHILD ECONOMIC EXPLOITATION

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I. INTRODUCTION

Children, in both developing states and undeveloped societies, are amongst the most vulnerable and powerless members. Regrettably, their inherent vulnerability and immaturity partially contribute to their subordinate societal status, rendering them susceptible to various forms of exploitation. Due to a child's silent suffering, however, the exploitation endured extends far beyond the mere violation of one right. Rather, the exploitation is characterized by cumulative breaches of several fundamental rights, including the right to education, health and leisure, all of which are essential for a child's survival and development.¹ Economic exploitation² is a case in point.

In recognition of the gravity and severity of child economic exploitation, the international community has, dating as far back as 1919,³ attempted to address and respond to the problem. In particular, the

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¹ GERALDINE VAN BUEREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* 262 (1995).

² "Child economic exploitation" refers generally to work situations that are "likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc A/44/736 (1989), art. 32, par. (1) [hereinafter CRC]. See Part IV (A), below, for further discussion of what might properly be referred to as economic exploitation.

³ See e.g., *Minimum Age (Industry) Convention (No. 5)*, ILO, 28 November 1919, 38 U.N.T.S. 81 [hereinafter ILO 5] and *Night Work of Young Persons (Industry) Convention (No. 6)*, ILO, 28 November 1919, 38 U.N.T.S. 93 [hereinafter ILO 6].

response has involved negotiating and adopting numerous international instruments that speak of the fundamental rights of the child and attempt to set standards vis-à-vis the regulation and, in some instances, outright prohibition of child labor. Despite states' ratification of these instruments, and the corresponding enactment of national legislation in compliance with international obligations, the spread of child labor continues to be persistent.

This inevitably raises serious doubt as to the efficacy of these international standards.⁴ First, it raises questions as to their applicability. Are international standards able to universally address the conditions, not easily identified or understood, which underpin the persistence of child economic exploitation? In assessing this matter, it is important to recall that the problem of child labor involves the combination of complex economic, political and social considerations that vary between countries and regions around the world. Second, it begs the analysis of the degree to which a country is considered to be in compliance with international standards. That is, does mere formal enactment of national legislation that mirrors international standards constitute compliance where such legislative action does not affect the situation of child labor?

This paper is an attempt to shed light on the difficulty of setting universally applicable standards with respect to the problem of child labor. Where international norms embodied in multilateral agreements are drastically incongruent with national practices, serious consideration must be given to the efficacy of international law at establishing legal normativity. Even where international standards and a state's sociologically binding norms are consistent, this paper suggests that compliance therewith should not merely be understood through the enactment of implementing legislation.⁵ Rather, compliance should be appreciated in light of the state's ability to establish a full-blown domestic regime, one that seeks to effectuate change within the domestic milieu.⁶

⁴ Breen Creighton, *Combating Child Labour: The Role of International Labour Standards*, 18 COMP. LAB. L.J. 362, 367 (1997).

⁵ For the purpose of this paper, the mere enactment of implementing legislation will be referred to as "formal" compliance.

⁶ For the purpose of this paper, the establishment of a full-blown domestic regime that seeks to

The acute problem of child labor in the Philippines will provide the case study for the purpose of this paper. It will be argued that although the Philippines has, in many instances, achieved formal compliance with international obligations, substantial compliance is yet to be achieved due to several factors: (1) the inherent ambiguity and indeterminacy of treaty and convention language rendering both formal and substantial compliance confusingly difficult; (2) the temporal dimension to the social, economic and political changes contemplated by regulatory agreements which render substantial compliance slow to establish itself; and (3) a limited structural and infrastructural capacity on the part of the country to eradicate the problem of child labor. Part II will provide a brief overview of the social, cultural and economic problem of child labor. Part III will provide the notion of compliance as it is understood in this paper. Part IV will outline the legal protection afforded to child workers drawing on international standards. A comparison of the degree to which these standards are at variance with Philippine national legislation will be provided. Finally, Part V will speak of the enforcement of international standards within the domestic milieu.

II. CHILD ECONOMIC EXPLOITATION

In order to set the context for the legal analysis that follows, a brief overview of the social, cultural and economic problem of child labor will be offered.

A. Child Labor:

The nature and extent of the problem

While it is recognized that the problem of child labor exists worldwide in astronomical figures,⁷ a dearth of reliable data impedes a precise determination of its nature and scope. Discrepancies in

effectuate change within the domestic milieu will be understood as "substantial" compliance.

⁷ ATENEO HUMAN RIGHTS CENTER-ADHIKAIN PARA SA KARAPATANG PAMBATA, OPENING DOORS: A PRESENTATION OF LAWS PROTECTING FILIPINO CHILD WORKERS 5 (1996) [hereinafter OPENING DOORS].

calculating the exact number of child laborers is partially due to inadequate systems for obtaining accurate data,⁸ conflicting definitions of the concept of work and employment,⁹ and a wide array of methodologies for tabulating the number of working children.¹⁰ Additionally, child workers are frequently employed in the informal sector, under illegal circumstances, rendering information difficult to collect.¹¹ Although child labor is present in almost all countries around the world, it is reportedly more prevalent in developing countries, particularly in the Asian Region.¹²

The Philippines "epitomizes all of the hopes, and most of the fears, of developing countries . . . struggling to ensure that the future of their children [is] not squandered through a childhood spent at work."¹³ In a 1995 survey commissioned by the International Labor Organization (ILO), the Philippine National Statistics Office (NSO) revealed that approximately 3.7 out of a possible 22.4 million children¹⁴ between the ages of five to seventeen¹⁵ work in the Philippines. These figures, however, stand in contrast to the reported acknowledgement of the Department of Labor and Employment (DOLE), which coincides with UNICEF¹⁶ and ILO¹⁷ estimates that at least five million children are working in the commercial and industrial sectors in the Philippines.¹⁸

⁸ See generally 1 BUREAU OF INTERNATIONAL LABOR AFFAIRS, U.S. DEPARTMENT OF LABOR, BY THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN U.S. MANUFACTURED AND MINED IMPORTS 2 (1994) [hereinafter SWEAT AND TOIL].

⁹ See Part IV (A), below, for a discussion of the varying definitions of child work and employment.

¹⁰ VAN BUEREN, *supra* note 1, at 263; See Hope E. Tura, *Child No More*, 4 INTERSECT 12 (1997) [hereinafter INTERSECT].

¹¹ VAN BUEREN, *supra* note 1, at 263.

¹² ILO, Report on the Committee on Employment and Social Policy, Governing Body, 258th Sess., ILO Doc. GB.258/7/22 (November 1993) at 3.

¹³ ILO, *Attacking Child Labour in the Philippines: An Indicative Framework for Philippine - ILO Action* (Geneva: ILO, 1994) at 1 [hereinafter Indicative Framework].

¹⁴ Rep. Act No. 7610 (1992), An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for Its Violation and For Other Purposes, art. 1, sec. 3, par. (a), defines children as persons below the age of 18 years.

¹⁵ National Statistics Office, as quoted in Datasets on Child Labour in the Philippines, ILO-IPEC, 1995 [hereinafter NSO Survey 1995].

¹⁶ Eileen Guerro, *Children Victims and Result of Poverty in Philippines*, ASSOCIATED PRESS, 30 June 1993.

¹⁷ Victoria Rialp, ILO, *Children and Hazardous Work in the Philippines* (Geneva: ILO-Child Labour Collection, 1993) at 1.

¹⁸ Nestor Arellana, *SM Children Working in Sweatshops*, TODAY (PHILIPPINES), 4 April 1994.

Children within the Philippines engage in a variety of work, laboring in diverse sectors¹⁹ and under widely diverging conditions.²⁰ While not all work may properly be regarded as exploitative and may, in certain circumstances, be characterized as beneficial,²¹ it is clear that much child labor may be characterized as palpably destructive. This is particularly evident in numerous cases where children work in occupations and industries that are plainly dangerous and hazardous. For instance, the NSO Survey 1995 revealed that sixty percent of the 3.7 million working children within the Philippines are exposed to hazardous environments,²² often exacerbated by the presence of chemical hazards.²³ Such abhorrent conditions take their toll on child workers, evidenced by 2.3 million who reported exhaustion as a result of doing physical and stressful work, and an additional thirty thousand children who suffered from work-related injuries.

The detrimental effects of child labor extend beyond the physical repercussions of laboring in a strenuous and toxic working environment. Psychosocial effects include the distortion of values, loss of dignity and self-confidence, and anti-social behavior.²⁴ In the end result, child workers in the Philippines are effectively deprived of their youth evidenced by forty-

¹⁹ NSO Survey 1995, *supra* note 15. Of the country's working children, 2.4 and 1.2 million are employed in the rural and urban areas, respectively. Sixty-seven percent are employed in agricultural, fishing and forestry sectors, twenty percent are employed in services while seven percent are working in industry. Noteworthy is the fact that the Philippine government employed the services of approximately 35,000 children in 1995.

²⁰ United Nations Child's Fund (UNICEF), *The State of the World's Children 1997* (Oxford: Oxford University Press, 1997) at 24 [hereinafter UNICEF 1997].

²¹ *Id.*

²² NSO Survey 1995, *supra* note 15. For the purposes of the survey, a hazardous environment referred to a lack of clean water, unsanitary surroundings and flooding in the work area. See generally Ronald Subida, *Defining Hazardous Undertakings for Young Workers Below 18 Years of Age: A Review of Government Rules and Guidelines for Enforcement*, Draft Copy (Prepared for: Bureau of Women and Young Workers, ILO - IPEC, 1997) [unpublished] [hereinafter *Defining Hazardous Undertakings*].

²³ NSO Survey 1995, *supra* note 15. For the purposes of the survey, dust, silica, gasoline, mercury, paint fumes and pesticides exposing them to viruses, bacteria, parasites and other biological hazards were considered to be chemical hazards.

²⁴ OPENING DOORS, *supra* note 7, at 7.

two percent who indicated that they labor between five to seven days a week for a period that extends beyond ten hours per day.²⁵ The large number of hours spent laboring has the disastrous effect of denying children their right to education, thus drastically affecting their life chances.²⁶

B. Why child labor in the Philippines?

While poverty is most often cited as the underlying condition prompting children in underdeveloped nations to labor,²⁷ there are numerous macro- and microeconomic factors that contribute to the rudimentary supply and demand for child workers.²⁸

1. Macroeconomic context

In its quest to become Asia's "newest tiger economy,"²⁹ the Philippine Government has implemented a far-reaching economic reform initiative to achieve the status of a "Newly Industrialized Country" by the year 2000. Converting its agrarian-based economy into one that is industrial, market-driven and attractive to foreign investment, "Philippines 2000" has opened the door to widespread liberalization of investment, trade, and foreign exchange regimes.³⁰ Economic liberalization, which intensifies the exploitation of

²⁵ NSO Survey 1995, *supra* note 15.

²⁶ *Id.* Although 97.2 percent of the total number of children working completed at least grade one, only 9.2 percent finished grade five while only 17.7 percent graduated from elementary school.

²⁷ Institute of Labour Studies (ILS), *Comprehensive Study on Child Labour in the Philippines*, Monograph Series No. 1 (Manila: ILS - DOLE, November 1994) at 7 [hereinafter *Comprehensive Study*].

²⁸ Claudia R. Brewster, *Restoring Childhood: Saving the World's Children from Toiling in Textile Sweatshops*, 16 J.L. & COM. 191 (1997).

²⁹ Salinlahi Foundation, Inc. and the Kamalayan Development Foundation (KDF), *Child Labour: A Consolidation of Materials on Child Labour 1* (1997) [unpublished] [hereinafter *Consolidation of Materials*].

³⁰ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *The Philippines Country report on Human Rights Practices for 1997*, (visited 7 February 1998) <http://www.state.gov/www/global/human_rights/1997_hrp_report/philippi.html>. This economic turnaround has seen the expansion of exports and foreign investment, with merchandise exports rising by 17.7 percent in 1996 and a 6.8 percent growth of real Gross National Product (GNP). See generally

national differentials in wages, prices and operating costs, carries with it the commodification of labor.³¹ Market-oriented hiring schemes serve to reduce wages, job security, and consequently increase the internationalization of production creating new markets for unskilled, cheap labor.³²

The tendency towards the informalization of production methods, with formal enterprises either breaking up into smaller units or subcontracting to households or informal enterprises, readily lends itself to child labor.³³ In this intensive milieu, employers' perpetual search for a flexible workforce finds children as ideal employees; children remain the cheapest, most docile and vulnerable group.³⁴ The appeal of children as laborers is intensified in that they are less aware of their rights, are willing to take orders, do monotonous work and have lower absentee rates.³⁵ That children are highly represented as workers in the least visible sector of the labor force renders them susceptible to severe economic exploitation.

2. Microeconomic context

Despite accelerated market reforms, poverty and inequitable income distribution remain sad but realistic features of Filipino society.³⁶ In recognition of dismal economic conditions, seventy percent of the country's working children expressed, as their motivation for working, the desire to augment their family's income and compensate for the economic burden they represent.³⁷ Sharing in the maintenance of family survival is

The World Bank Group (visited 13 March 1998) <<http://worldbank.org/html/extd7/offrep/cap/ph.htm>>.

³¹ See generally CURRENT ISSUES IN ECONOMIC DEVELOPMENT: AN ASIAN PERSPECTIVE (M.G. Quibria et al. eds., 1996).

³² Rachel Marcus & Caroline Harper, *Small Hands: Children in the Working World*, Working paper No. 16 (London: Save the Children, 1996) at 17 [hereinafter *Small Hands*].

³³ Christiaan Grootaert & Ravi Kanbur, *Child Labour: An Economic Perspective*, 134:2 INT'L LABOUR REV. 187, 195 (1995).

³⁴ Consolidation of Materials, *supra* note 29, at 1.

³⁵ ILO, *Child Labour: Targeting the Intolerable*, IL Conf., 85th Sess., Report VI (1) (1996) at 20 [hereinafter *Targeting the Intolerable*].

³⁶ *A Survey of the Philippines*, THE ECONOMIST, 11 May 1996, at 5. Thirty-nine percent of a population of seventy million Filipinos live in poverty while most live just above or below the poverty line.

³⁷ OPENING DOORS, *supra* note 7, at 9.

reflective of the intense dependency relations among Filipino family members.³⁸ In recent years, however, it has been suggested that increasing patterns of family breakdown, the weakening of extended family systems and support groups, and changing family values and lifestyles are contributing factors.³⁹

Other societal conditions that compel Filipino children to labor include the perception, reaffirmed by household and community members, that work contributes to children's developmental experiences.⁴⁰ This commonly held belief is reinforced given the availability of community opportunities to do so.⁴¹ Finally, it has been suggested that the country's educational system is indirectly responsible for contributing to the problem of child labor. This is based, in large part, on the inaccessibility of educational facilities in the more remote regions of the country, and the belief that the education provided, at times, lacks relevance.⁴²

III. NOTION OF COMPLIANCE WITH INTERNATIONAL LAW

Prior to embarking on an analysis of the legal protection afforded by both national legislation and international instruments, it is essential to provide a general framework for understanding the notion of compliance as utilized in this paper. Much of this analysis will be borrowed from Chayes & Chayes, who, in their recent work entitled *The New Sovereignty: Compliance with International Regulatory Agreements*, provide for a comprehensive theory of compliance.⁴³

³⁸ Comprehensive Study, *supra* note 27, at 5.

³⁹ Ana Maria R. Dionela & Patrizia Di Giovanni, UNICEF, The Community Action on Child Labour Program: An Orientation Guide at 6 (June 1997) [unpublished] [hereinafter UNICEF Community Action].

⁴⁰ Indicative Framework, *supra* note 13, at 2.

⁴¹ Comprehensive Study, *supra* note 27, at 13.

⁴² INTERSECT, *supra* note 10, at 24.

⁴³ ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENT* (1995) [hereinafter CHAYES & CHAYES].

A. Compliance with international law

International law seeks to govern relations between independent states. This is achieved through the formulation and conclusion of international agreements to which states are bound based on their own free will. International agreements seek to establish an international order to regulate the relations between coexisting independent communities for the achievement of common aspirations.⁴⁴

The object of an international agreement is to affect state behavior; international conventions are formed among states and the obligations are cast as those belonging to states. In that a convention is a consensual instrument, formal assent represents the expression of a state's intention to be bound. Assuming the parties' interests are served by willfully entering into an agreement in the first place, the organizational presumption is state compliance.⁴⁵ This presumption is further compounded by the meticulous attention state parties give to fashioning treaty provisions in addition to the fundamental norm of international law, *pacta sunt servanda* — treaties are to be obeyed.⁴⁶

The intention to be bound is an awkward notion because not only is it difficult to identify, it "imbues those who conclude agreements with a psychological state they may never really have had."⁴⁷ There are instances where treaties⁴⁸ are ratified by states which have little or no intention of complying with their international obligations. A state may, on occasion,

⁴⁴ The *Steamship Lotus* (1927), P.C.I.J. (ser. C) No. 10, at 18.

⁴⁵ CHAYES & CHAYES, *supra* note 43, at 4.

⁴⁶ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention]. Article 26: "Every treaty in force is binding upon the parties to it and must be performed in good faith." The Philippines ratified the Convention on Treaties, 15 November 1972 with the deposit of its instrument of ratification with the Secretary-General of the United Nations; date of entry into force 27 January 1980. United Nations, Multilateral Treaties Deposited with the Secretary-General; Status as at 21 December 1996 (New York, 1997) (UN Doc. ST/LEG/Ser.E/15) (visited 24 March 1998) <<http://www.un.org/Depts/Treaty>>.

⁴⁷ JAN KLABBERS, *THE CONCEPT OF TREATY IN INTERNATIONAL LAW* 65 (1996).

⁴⁸ Although the Vienna Convention, art. 2, par. (1)(a), uses the generic term "treaty" to describe an international agreement, both the terms "convention" and "agreement" will, throughout this paper, be used synonymously.

enter into a treaty merely to appease a domestic or international constituency.⁴⁹ The plethora of conventions containing environmental and human rights standards, “many of which are breached on a daily basis, is a sad testimony to this truth.”⁵⁰ However, as Chayes & Chayes state, such cases are the exception and not the rule.

B. Compliance with international regulatory agreements

The increasing complexity and interdependence of the international community has shifted the primary focus of treaty practice to the negotiation, adoption and implementation of multilateral regulatory agreements. Whereas, in earlier times, the principal focus of treaties was to record regional and bilateral settlements and arrangements, recent decades have witnessed the emergence of agreements requiring the cooperative action of states over time.⁵¹ Although these cooperative efforts take place within a complex web of norms, rules and practices, there is, at the center, almost always a formal treaty.⁵²

The problem of non-compliance or incomplete compliance is particularly acute in the case of contemporary regulatory conventions. This is the case because the object of a regulatory agreement is not to affect state behavior per se. Rather, its object is to regulate the activities of private individuals and entities. The state may be said to be in compliance when it has formerly enacted implementing legislation. However, the ultimate impact on private behavior will depend upon a complex series of further steps requiring detailed administrative regulations and vigorous enforcement mechanisms.⁵³ In essence, Chayes & Chayes maintain that

⁴⁹ CHAYES & CHAYES, *supra* note 43, at 9.

⁵⁰ Jutta Brunnée & Stephen Toope, *Environmental Security and Freshwater Resources: Ecosystem Regime Building*, 91 AM. J. INT'L L. 26, 31 (1997) [hereinafter Brunnée & Toope].

⁵¹ CHAYES & CHAYES, *supra* note 43, at 1. Areas of concern which necessitate such cooperative action include trade, resource management, environmental degradation and human rights.

⁵² *Id.*

⁵³ *Id.* at 14.

the state will have to establish a "full blown domestic regime" designed to serve the purpose and object of the treaty.⁵⁴

However, due to the temporal dimension of the social, economic and political changes contemplated by regulatory treaties, such instruments take time to establish themselves. Therefore, in contrast to a state whose failure to comply may be intentional, the compliance of a well-intentioned state party attempting to effectuate significant change might, at any instance, be misconstrued as incomplete vis-à-vis international standards. This is particularly the case with respect to human rights norms which are slow to establish themselves in places where they may clash with local customs, culture and systems of government. Finally, confusion as to standards of compliance may arise in light of possible ambiguity and indeterminacy of treaty language. This can have the effect of creating uncertainty among states parties as to the manner in which substantive compliance may be achieved.

Therefore, in assessing the degree to which states parties have complied with their international obligations, it is this notion of compliance, as provided by Chayes & Chayes, through which the problem of child labor will be appreciated. While "formal" compliance with multilateral regulatory agreements will be understood as the mere enactment of implementing legislation, substantive compliance will refer to the states' ability to establish a full-blown domestic regime designed to serve the purpose and object of the agreement. This will be assessed in terms of the states' efforts to effectuate change within the domestic milieu.

It is likely the case that a greater proportion of states parties to multilateral regulatory agreements would find themselves in breach of international standards in virtue of this effect-based appreciation of compliance. However, it is believed that the varying factors, which impede the attainment of "substantial" compliance, more accurately reveal themselves as the source or root of the problem that prompted international legal intervention and regulation.

⁵⁴ Vienna Convention, art. 18.

IV. LEGAL PROTECTION OF CHILD WORKERS

This portion of the paper will provide an overview of international instruments ratified by the Philippines, which seek to safeguard the rights of children. This will be followed by an analysis of the Philippines' formal compliance with its international obligations through the enactment of national legislation. Finally, the applicability of international standards vis-à-vis the Filipino experience of child labor will be explored.

A. General policy position

1. International standards

As the clear manifestation of an international conscience that recognizes the vulnerability and special protective needs of children,⁵⁵ the international community has adopted various international treaties. The U.N. Convention on the Rights of the Child (hereinafter CRC), as the most comprehensive, is a multi-faceted international treaty which sets forth all of the rights of the child — civil, political, economic, social and cultural.

The CRC is the culmination of prior international instruments attempting to address child exploitation. The concern with child labor may be traced back to the Declaration on the Rights of the Child (1924),⁵⁶ which speaks of mankind's obligation towards children: mankind "owes to the child the best it has to give." Also included, among others, is the principle that "the child must be protected against every form of exploitation."⁵⁷ Subsequent to the 1924 Declaration, another Declaration on the Rights of the Child⁵⁸ was adopted in 1959, reiterating the former, in part,

⁵⁵ CRC, preamble.

⁵⁶ Records of the Fifth Assembly. LEAGUE OF NATIONS O.J. Supp. 23 (1924) [hereinafter Declaration 1924]. See ILO 5 for the first international instrument protecting children.

⁵⁷ Declaration 1924, principle 4.

⁵⁸ G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, at 19, U.N. Doc. A/4354 (1959).

by stating that "the child shall be protected against all forms of . . . exploitation. He shall not be the subject of traffic in any form."⁵⁹

Embodying and idealizing the struggle of providing adequate protection to the rights of children,⁶⁰ the CRC makes explicit in article 32 that children have the right to be protected from economic exploitation. Additionally, they have the right to be protected from any kind of work that is likely to be hazardous or to interfere with their education, or to be harmful to their health, physical, mental, spiritual, moral or social development.⁶¹ Further, states parties to the treaty are called upon to undertake all appropriate measures, whether legislative, administrative or otherwise, to safeguard these rights.⁶²

Despite this call for the protection of children from economic exploitation, definitional difficulties arise in qualifying the precise meaning of this term of art. It is important to recognize that the CRC leaves open the interpretation that not all child labor may be expressly equated with economic exploitation. This is evident within section 32, paragraph (1), which provides that the child enjoys the right to be protected from economic exploitation and from performing any work likely to be hazardous. Reference to the word "*and*" makes clear this suggestion. Additionally, the reference to "*any work*" is not suggestive of the automatic exclusion of all work.⁶³ This is similarly stated in the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁶⁴ which merely incorporates a general prohibition on the

⁵⁹ *Id.* XIV.

⁶⁰ ATENEO HUMAN RIGHTS CENTER-ADHIKAIN PARA SA KARAPATANG PAMBATA, CONVENTION ON THE RIGHTS OF THE CHILD AND THE PHILIPPINE LEGAL SYSTEM 16 (1997) [unpublished].

⁶¹ CRC, art. 32, par. (1). Several other U.N. Convention articles explicitly address child exploitation. Article 34 calls on the State to protect children from sexual exploitation, articles 35 and 36 offer protection against "the abduction . . . sale of or traffic in children," and against "other forms of exploitation to any aspect of the child's welfare," and, finally, article 39 calls on State Parties to "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse . . ."

⁶² *Id.* art. 4.

⁶³ VAN BUEREN, *supra* note 1, at 269.

⁶⁴ Opened for signature 16 December 1966, 993 U.N.T.S. 3 (entered into force 3 January 1976) [hereinafter ICESCR].

employment of children in work constituting a threat to their health or morals, including the employment of children under a certain age.⁶⁵ Therefore, although a precise definition of child labor is yet to be unearthed, the aim behind international law in the matter of economic exploitation is to prevent children in specific circumstances from working, i.e., those circumstances that may be harmful, and to protect those who are eligible to do so.⁶⁶

2. Philippine standards

The principles echoed in the CRC underpin the policy position of the Philippines with respect to child labor. In adhering to the definition as provided by the International Labour Organisation - International Programme for the Elimination of Child,⁶⁷ which does not explicitly preclude children from engaging in work, child labor within the Philippines refers to:

[S]ituations where children are compelled to work on a regular basis to earn a living for themselves and their families and, as a result, are disadvantaged educationally and socially; where children work in conditions that are exploitative and damaging to their health and to their physical and mental development; where children are separated from their families, often deprived of educational and training opportunities; where children are forced to lead prematurely adult lives.⁶⁸

Legislative recognition and response to the perennial child labor problem within the Philippines dates back to the 1920s, at which time the Philippine government issued its first prohibition against child labor.⁶⁹

⁶⁵ ICESCR, art. 10, par. (3). See VAN BUREN, *supra* note 1, at 264.

⁶⁶ VAN BUREN, *supra* note 1, at 263.

⁶⁷ Hereinafter ILO-IPEC.

⁶⁸ OPENING DOORS, *supra* note 7, at 2.

⁶⁹ Rep. Act No. 3071 (1923), An Act to Regulate the Employment of Women and Children in Shops, Factories, Industrial, Agricultural and Mercantile Establishments, and Other Place of Labor in the Philippine

Despite this, and subsequent legislative efforts,⁷⁰ the problem of child labor today remains at the forefront of policy and legislative debates.

The policy position of the Philippines with respect to children is enshrined in its Constitution. Therein, the State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral spiritual, intellectual, and social well-being.⁷¹ Consistent with the broad ambit of protection offered by the ICESCR,⁷² the Constitution declares that the State shall defend the right of the child to assistance, including proper care and nutrition, and will provide special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development.⁷³ The Constitution finds its statutory translation in Presidential Decree No. 603,⁷⁴ which serves as the government's framework for the promotion of child welfare. Until 1990, Presidential Decree No. 603 provided the sole legislative foundation for upholding children's rights within the Philippines.

In 1990, the Philippines ratified the CRC and willfully took on the internationally binding obligation to comply with its object and purpose.⁷⁵ In compliance with the obligation to adjust national laws to ensure

Islands, to Provide Penalties for Violations Hereof and for Other Purposes. This Act prohibits the employment of persons under certain ages, depending upon the type of work or establishment, and prescribed conditions of work applicable to children.

⁷⁰ Subsequent efforts included mandating the enforcement of Republic Act No. 3071 to the Woman and Child Labor Section of the Inspection Division of the Bureau of Labor. Additionally, the Revised Penal Code (RPC), enacted into law in 1932, contains several provisions prohibiting certain forms of child labor including "Exploitation of Child Labor" (art. 273) and "Exploitation of Minors" (art. 278).

⁷¹ CONST. art II, sec. 13.

⁷² ICESCR, art. 10, par. (3) states that "children and young persons should be protected from economic and social exploitation." The Philippines ratified the Economic, Social and Cultural Rights Covenant on 7 June 1974 with the deposit of its instrument of ratification with the Secretary-General of the United Nations; date of entry into force 3 January 1976. See United Nations, Multilateral Treaties Deposited with the Secretary-General; Status as of 21 December 1996 (New York, 1997) (UN Doc. ST/LEG/Ser.E/15) (visited 24 March 1998) <<http://www.un.org/Depts/Treaty>> [hereinafter Multilateral Treaties].

⁷³ CONST. art XV, sec. 3.

⁷⁴ Pres. Decree No. 603 (1974), The Philippine Child and Youth Welfare Code.

⁷⁵ The Philippines ratified the U.N. Convention on 21 August 1990 with the deposit of its instrument of ratification with the Secretary-General of the United Nations; date of entry into force 2 September 1990. See Multilateral Treaties.

conformity with international standards,⁷⁶ the Philippines promptly established a new legislative framework for the protection of children. Less than two years after the CRC's entry into force, the Philippines enacted Republic Act No. 7610,⁷⁷ as amended by Republic Act No. 7658,⁷⁸ understood to be the country's most comprehensive child protection law to date. Provided therein are conditions and regulations for the employment of children. The Labor Code⁷⁹ and Presidential Decree No. 603 provide additional child protection against exploitation, improper influences, hazards and other conditions or circumstances prejudicial to their physical, mental, emotional, social and moral development.

3. Most recent international standards

The CRC is not the sole international instrument seeking to protect children from economic exploitation. Rather, the ILO, considered to be a premier international organization dealing with workers rights and related human rights issues, includes amongst its activities setting and enforcing international labor standards through the passage of conventions and recommendations.⁸⁰

While the Philippines has, in the past, ratified a number of ILO Conventions relating to the rights of child workers,⁸¹ October 1997 marked the timely ratification of ILO Minimum Age Convention No. 138 (ILO 138),⁸² the most recent international instrument seeking to regulate

⁷⁶ CRC, art. 4.

⁷⁷ Rep. Act No. 7610 (1992).

⁷⁸ Rep. Act. No. 7658 (1993), An Act Prohibiting the Employment of Children Below 15 Years of Age in Public and Private Undertakings, Amending for this Purpose Section 12, Article VIII of Republic Act No. 7610.

⁷⁹ Pres. Decree No. 442 (1974)[hereinafter Labor Code].

⁸⁰ Daniel S. Ehrenberg, *The Labor Link: Applying the International Trading System to Enforce Violations of Forced and Child Labor*, 20 YALE J. INT'L L. 361, 381-82 (1995) [hereinafter Labor Link].

⁸¹ The Philippines has been a Member State of ILO since 1948 and has ratified a number of ILO Conventions. (visited 6 March 1998) < <http://iloex.ilo.ch:1567/public/english/50normes/iloeng/mstatese.htm#msp> >.

⁸² ILO Convention (No. 138) Concerning Minimum Age for Admission to Employment, 26 June 1973, 1015 U.N.T.S. 297 [hereinafter ILO 138]. Although President Ramos signed Senate Resolution

the admission of children into situations of employment. Just as countries around the world were assembling for the International Conference on Child Labor in Oslo, Norway, news of the recent ratification received a headliner in a Manila newspaper. The Philippines had "earned another first in the international community, that of being the first country in Asia-Pacific to have ratified the Convention."⁸³ In prescribing the minimum age for child employment in any, and purportedly all, economic sectors, ILO 138 supersedes prior instruments as the definitive standard-setter.⁸⁴ Equally important is article 1 which obliges Member States to pursue a national policy designed to ensure the effective abolition of child labor.⁸⁵

The focus of actions that deal with the child labor problem in the Philippines have, to date, been concentrated on the elimination of risk to children rather than eliminating their participation in all forms of work.⁸⁶ The basis for the former approach is two-fold. First, it is premised on the assumption that not all child labor is harmful.⁸⁷ Certain forms of work

104, the Philippines has yet to complete the procedure for ratification of ILO 138 and was listed, at the current meeting of the ILO Governing Body, in the '*Table of Ratification and Information Concerning the ILO's Fundamental Conventions of 12 February 1998 - Formal Ratification Process Already Initiated or Shortly to be Initiated, or Communication to the Director-General of an Incomplete Instrument of Ratification or none at all (concerns chiefly Convention No. 138) or non-original copy.*' ILO, Governing Body, 271st Sess., ILO Doc. GB.271/LILS/6 (March 1998); and March 25, 1988, Tom Woxland, Labor Law Department, ILO (infleg@ilo.org). "Child Labour: Philippines." E-mail to Vanessa Silver (silver_v@lsa.lan.mcgill.ca).

⁸³ *FVR signs two new laws to ensure brighter future for Filipino children*, PHILIPPINES NEWS AGENCY, 28 October 1997 (visited 15 March 1998) <<http://home.ease1soft.com/scrts/wa.exe?A2ind9710E&Lbalita-1&P=R5552>>.

⁸⁴ ILO 138, revised ten earlier conventions on admission to employment, four involving maritime work and six in other sectors.

⁸⁵ Article 1 reads: Each member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

⁸⁶ OPENING DOORS, *supra* note 7, at 13.

⁸⁷ Interview with Attorney Jose Maria Ochave, Balane Tamase Alampay Law Office, Makati, Philippines (July 1997) [hereinafter Interview: Attorney Ochave]. While interviewing Attorney Ochave, it was emphasized that I should carefully look upon the Filipino child labor problem, to which I referred as "pervasive," with non-western eyes. It was suggested that my western gaze and "pervasive" qualification implied that I understood the matter as a bigger problem than does the average Filipino.

can be “beneficial, promoting or enhancing a child’s physical, mental, spiritual, moral or social development.”⁸⁸

Second, it is widely recognized within the Philippines that many children have limited options and therefore resort to work to ensure both their and their family’s survival.⁸⁹ In many instances, the complete eradication of child labor is understood as an undesirable scenario given the current state of the country’s economy.⁹⁰ Given the country’s limited resources, the government cannot simply remove all illegally employed children from their current employment or work situation without a ready alternative for their economic survival.⁹¹ Rather, child labor is considered to be a significant aspect of Filipino culture and, with no adequate support system to redirect kids elsewhere and allow them to earn their livelihood, this continues to be accepted as State practice.⁹²

For these reasons, the ratification of ILO 138 is suggestive of a policy shift within the Philippines. It is an attempt to combat much more than exploitative labor, given that this regulatory Convention is premised on the notion that child labor should be entirely eliminated. Not only does ILO 138 purport to apply to all sectors of the economy, its use of the words “employment or work” in article 1 makes explicit the inclusion of all forms of labor by young persons, whether or not they are performed under a contract of employment.⁹³

B. Implementation of international standards

The CRC does not provide a specific age limit for the employment of children. Rather, it is left to the ratifying countries to set their own

⁸⁸ UNICEF 1997, *supra* note 20, at 24.

⁸⁹ Small Hands, *supra* note 32, at 5.

⁹⁰ Interview with Reydeluz D. Conferido, Executive Director, Institute for Labor Studies, DOLE, Manila, Philippines (July 1997) [hereinafter Interview: R. D. Conferido].

⁹¹ OPENING DOORS, *supra* note 7, at 12.

⁹² Miles Balmes, Institute for Labor Studies, DOLE Official (ilsdole@mnl.sequel.net) “Re: Child Labor Query.” E-mail to Vanessa K. Silver (silver_v@lsa.lan.mcgill.ca) (16 March 1998).

⁹³ ILO, Minimum Age: General Survey by the Committee of Experts on the Application of Conventions and Recommendations, IL Conf., 67th Sess., Rep. III, Part 4B (1981) at pars. 35, 61-70, 90 [hereinafter General Survey].

policies on the matter. States parties do, however, have the positive obligation of providing a minimum age for the admission to employment and to take measures to ensure compliance with the protection afforded under article 32, paragraph (2).

Unlike the CRC, there has been no shortage of ILO standard-setting instruments relating to child labor.⁹⁴ The first session of the International Labour Conference (ILC) saw the adoption of two conventions related to the issue: Minimum Age (Industry) Convention 1919 (No. 5)⁹⁵ and Night Work of Young Persons (Industry) Convention 1919 (No. 6).⁹⁶ Thereafter, nine additional conventions relating to minimum age were adopted by the ILC.⁹⁷ Finally, the ILC adopted ILO 138 in 1973, understood to be the definitive standard-setting instrument with respect to the minimum age requirement. In prescribing the minimum employable age standards for all economic sectors, the ratification of ILO 138 supersedes ILO 59⁹⁸ which, prior thereto, provided the sole guidance and inspiration to Philippine national legislation in this regard.

As indicated above, it is only as recently as October 1997 that the Philippines ratified ILO 138. While formal ratification of this instrument has been communicated to the Director-General of the ILO for registration, the formalities have yet to be completed. Nevertheless, this portion of the paper will seek to provide an analysis of international child

⁹⁴ For an overview of these standards, see H.T. Dao, *ILO Standards for the Protection of Children*, 58 NORDIC J. INT'L L. 54 (1989).

⁹⁵ ILO 5.

⁹⁶ ILO 6.

⁹⁷ See Minimum Age (Sea) Convention 1920 (No. 7), 9 July 1920, 38 U.N.T.S. 109; Minimum Age (Agriculture) Convention 1921 (No. 10), 16 November 1921, 38 U.N.T.S. 143; Minimum Age (Trimmers and Stokers) Convention 1921 (No. 15), 11 November 1921, 38 U.N.T.S. 203; Minimum Age (Non-Industrial Employment) Convention 1932 (No. 33), 30 April 1932, 39 U.N.T.S. 133; Minimum Age (Sea) Convention (Revised) 1936 (No. 58), 24 October 1936, 40 U.N.T.S. 205; Minimum Age (Industry) Convention (Revised) 1937 (No. 59), 22 June 1937, 40 U.N.T.S. 217 [hereinafter ILO 59]; Minimum Age (Non-Industrial Employment) Convention (Revised) 1937 (No. 60), 22 June 1937, 78 U.N.T.S. 181; Minimum Age (Fisherman) Convention 1959 (No. 112), 19 June 1959, 413 U.N.T.S. 148; Minimum Age (Underground Work) Convention 1965 (No. 123), 10 November 1965, 610 U.N.T.S. 80.

⁹⁸ ILO 138.

labor standards and the degree to which the current state of Philippine law is at variance with their international obligations. This paper will also explore what practical effect or greater protection might be afforded to child laborers by virtue of this recent ratification, framing the discussion in anticipation of the State's formal compliance. The main standards to be analyzed include the minimum age of employment, its application to all economic sectors, and situations of light work and apprenticeships.

1. Minimum age

Since 1974, the Labor Code has provided that fifteen years shall be the minimum age for the admission to non-hazardous employment.⁹⁹ Consistent with the obligation to comply with the standards set out in ILO 59,¹⁰⁰ the Labor Code allows for an exception thereto where the work undertaken is under the direct and sole responsibility of the parent or guardian. In addition, the Labor Code provides that such exceptions are permissible only where the work does not interfere with the child's education.¹⁰¹

Legislative inconsistencies arose with the subsequent enactment of Presidential Decree No. 603 for, in contrast to the Labor Code, it permitted the employment of children below sixteen years of age with respect to light work which is neither harmful to their safety, health or normal development, nor prejudicial to their studies.¹⁰² Furthermore, Republic Act No. 7610, enacted in compliance with the ratification of the CRC, was greeted with wide criticism for its provisions on working children. Therein, article VII, section 12, radically altered the entire Philippine policy on child labor, for it legalized the employment of all children below the age of fifteen provided only that the employer obtain a

⁹⁹ LABOR CODE, art. 139. Article 139 reads: (b) Any person between fifteen (15) and eighteen (18) years of age may be employed for such number of hours and such periods of the day as determined by the Secretary of Labor in appropriate regulations; (c) The foregoing provisions shall in no case allow the employment of a person below eighteen (18) years in age in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labor.

¹⁰⁰ ILO 59, *supra* note 97, art. 2.

¹⁰¹ OPENING DOORS, *supra* note 7, at 23.

¹⁰² Pres. Decree No. 603 (1974), art. 107.

work permit and ensure the protection of the child. Under public pressure and upon the realization of the flagrant violation of ILO 59, the government rectified such legislative anomalies by enacting Republic Act No. 7658.

Thus, Republic Act No. 7658, which sets out the current state of Philippine law, provides fifteen years as the minimum employable age. Exceptions thereto are permissible where (1a) the child works directly under the sole responsibility of a parent and (1b) where only family members of the employer's family are employed, and (2) where the child's employment in public entertainment or information is essential.¹⁰³ However, in neither situation can the work endanger the child's life. The minimum age to engage in hazardous employment is restricted to a person of eighteen years.¹⁰⁴

Consistent with Philippine national legislation, ILO 138 sets the minimum age for the admission to employment at no less than that which will allow for the completion of compulsory schooling and, in no event, less than age fifteen.¹⁰⁵ It further prescribes that the minimum age should be progressively raised to a level which provides for the fullest physical and mental development of young persons. For countries whose economy and educational facilities are insufficiently developed, the age may initially be set at fourteen years.

ILO 138 makes express the important correlation between fixing a minimum age for the admission to employment and a child's education. In making this correlation explicit, the international standard presupposes the existence and adequacy of an educational infrastructure. This presupposition is remedied, however, by the Committee of Experts¹⁰⁶ who provide that the mere existence and enforcement of a system of

¹⁰³ Rep. Act No. 7658 (1993), sec. 1, pars. (1) & (2).

¹⁰⁴ LABOR CODE, art. 139.

¹⁰⁵ ILO 138, art. 2.

¹⁰⁶ General Survey, *supra* note 93. The principal task of the Committee of Experts is to examine periodic reports on ratified Conventions submitted in accordance with article 22 of the ILO Constitution. See: ILO, Constitution of the International Labour Organisation and Standing Orders of the International Labour Conference, art. 3 P1 (1989) [hereinafter ILO Constitution].

compulsory schooling is not, by itself, sufficient to demonstrate compliance with article 2, paragraph (1). Rather, substantive compliance involves encouraging and facilitating a child's education until the age of fifteen years.

Although Philippine legislation fails to make this correlation explicit, the minimum age standard is premised on the fact that children fifteen years of age are expected to be out of high school.¹⁰⁷ However, while public elementary and secondary school education within the Philippines are free, there is no guarantee that children will attend until they graduate from high school. The determination of a child's attendance at an educational institution until the age of fifteen is based primarily on its accessibility.¹⁰⁸ Poor families experience great difficulty in sending their children to school due to the high costs of school supplies, books or transportation and the proximity between homes and schools.¹⁰⁹ As well, the perception of benefit derived from the acquisition of an education greatly influences a family's decision concerning whether their children will work or study.¹¹⁰

The correlation between the minimum age requirement and level of education in ILO 138 has the effect of rendering a child, for whom school is prohibitively expensive or inaccessible, ineligible from engaging in employment. Were the Philippines to expressly provide for this correlation, this would suggest a mandatory period of idleness whereby children would be legally prevented from gaining employment in circumstances where they were not studying.

This correlation raises the corollary issue of the permissibility of engaging in part-time work during a child's education. The Committee of Experts expressly rejects the argument that young persons should be permitted to work outside school hours and during school holidays, due to the possibility of abuse inherent in this approach.¹¹¹ This perspective,

¹⁰⁷ Interview: Attorney Ochave, *supra* note 87.

¹⁰⁸ VAN BUEREN, *supra* note 1, at 266.

¹⁰⁹ INTERSECT, *supra* note 10, at 24.

¹¹⁰ VAN BUEREN, *supra* note 1, at 266.

¹¹¹ General Survey, *supra* note 93, at pars. 133, 165-67.

however, is inconsistent with the widely held view in the Philippines that non-hazardous work can contribute to children's physical and mental development by familiarizing them with the realities of working life. In addition, reflective of the economic milieu in which many Filipino children live, working part-time is often symptomatic of the practical reality of working to pay for school. This is evidenced by the number of children working which rises from 3.7 to 5.1 million during the summer months during which time children leave school for holidays. Additionally, 6.8 percent of children surveyed in 1995 indicated that they work specifically to pay for their schooling.¹¹²

Therefore, ILO 138 fails to take into account the reasons for which many Filipino children engage in employment, whether on a part- or full-time basis. Within the Philippines, engaging in part-time work per se is not understood to be the problem of child labor. Rather, greater concern lies with working children who experience delays of one to two years in their education as a result of working requirements and, more importantly, those who are forced to completely stop formal education in order to work.¹¹³ In response to this reality, national legislation, despite international standards to the contrary, permits part-time work as long as it falls within the exceptions provided by Republic Act No. 7658.

In order to account for these staggering economic realities, ILO 138 does provide allowances for a child's need/desire to gain working experience through the provision of light work in article 7, which will be discussed in Part IV.¹¹⁴ However, as a general rule, part-time work is impermissible unless it falls within a prescriptive exception.

¹¹² NSO Survey 1995, *supra* note 15.

¹¹³ *Id.* Dropping out of school tends to be more common after elementary school with a reported seventy percent of working children completing either grade one to five (39.2 percent) or first to third year of high school (31.7 percent). More child workers tend to concentrate on working than studying from age twelve thenceforth.

¹¹⁴ See Part IV (B) (3), below, for a discussion of this issue.

2. Scope of application: Economic sectors

The Philippines achieved formal compliance with ILO 59, the standard-setting predecessor to ILO 138. In contrast to ILO 138, ILO 59 required simply that states enact legislation fixing the minimum age for admission of children in industrial employment. ILO 138 is broader in scope and, in principle, applies equally to all economic sectors and all employment or work whether or not such are performed under a contract of employment. In attempting to provide flexibility to the formulation of national laws, ILO 138 provides exceptions thereto in articles 4 and 5. National circumstances and existing child labor standards within the domestic milieu condition such exceptions.

a. Excluded categories of employment or work

Article 4, paragraph (1), ILO 138 allows limited categories of employment or work where special and substantial problems in application arise. Categories in contention for exclusion are deliberately omitted, thus leaving this determination to the competent authorities, following consultation with the organizations of employers and workers concerned. This provides for a measure of discretion to adapt the application of ILO 138 to the social, political and economic situation of State Parties.¹¹⁵ The exclusions, however, are limited to situations of employment or work which do not jeopardize the health, safety or morals of child workers. Additionally, countries are under a duty to justify the exclusion on the basis of several conditions. Permissible exclusions must: (1) be necessary; (2) limited; (3) relate to special and substantial problems of application; (4) be adopted only after consultation with the relevant organizations of employers and workers; and (5) be listed in the first article 22 report following ratification.

¹¹⁵ General Survey, *supra* note 93, at par. 71.

It is not coincidental that the two most common exclusions include family undertakings¹¹⁶ and domestic services in private households.¹¹⁷ While there may be justifiable reasons for these exclusions, they represent two primary areas in which a great majority of children are employed and are potentially subject to economic exploitation.¹¹⁸

The general understanding that family members of all ages customarily contribute to the communal pot justifies the exclusion of child work in family undertakings.¹¹⁹ This permissible exclusion is supported by the assumption that the family unit tends to the best interests of the child. This understanding is apparent in Republic Act No. 7658, where children under the minimum employable age of fifteen years are permitted to work directly under the sole responsibility of parents. However, where the family unit itself is subject to exploitation, a child working therein may be afforded little by way of protection.¹²⁰

The potential for serious abuse may also be seen in the case of domestic workers employed in private households. While not all domestic work occurs within the family,¹²¹ the pretext for its prevalence within the Philippines is the assurance provided by the employer that the child worker will receive an education. Regrettably, this is not common practice, neither is the assurance that employers will pay for the social security benefits of child laborers.¹²² Given that domestic work is conducted within the private sphere of society and is effectively hidden, it

¹¹⁶ ILO, IL Conf., 67th Sess., Report 111 (Part IV B) (1981) at 26.

¹¹⁷ *Id.* at 28. See General Survey, *supra* note 93, at par. 71 which speaks to additional exclusions that arose during the preparatory work. These included, but were not limited to, other types of work carried out without the employer's supervision, for example, homework.

¹¹⁸ NSO Survey 1995, *supra* note 15. The percentage of children work as unpaid family workers is 55.7. See Save the Children, An Overview of Child Rights in the Philippines 19 (1997) [unpublished] [hereinafter Overview of Child Rights]. As of December 1996, there was an estimated 409,849 child domestic workers in the Philippines.

¹¹⁹ Comprehensive Study, *supra* note 27, at 5.

¹²⁰ VAN BUEREN, *supra* note 1, at 266.

¹²¹ Overview of Child Rights, *supra* note 118, at 19. Out of a possible 409,849 child domestic workers as of December 1996, sixty-five percent work away from their homes and thirty percent work in business firms.

¹²² Interview: R. D. Conferido, *supra* note 90.

remains largely unregulated, rendering child workers in this milieu susceptible to both economic and sexual exploitation.¹²³

According to article 4, paragraph (1) of ILO 138, States Parties are permitted to limit its application to categories of employment or work similar to that which is permissible within Philippine national legislation. Therefore, on its face, formal compliance is achieved. Despite this, child laborers, most of whom are found working in the agricultural, domestic service and informal sector, sectors where child labor law enforcement is virtually absent, continue to be victims of economic exploitation. This begs the inquiry as to what greater protection might be afforded to child laborers through ILO 138 above and beyond that which is provided in the existing national legislation.

b. Limitation of application

Article 5, paragraph (1), permits ratifying States, whose economy and administrative facilities are insufficiently developed, to initially limit the scope of application to specified sectors of the economy. In this manner, the Convention tempers non-compliance by allowing for a graduated approach to achieve substantial compliance in the elimination of child labor. As a minimum, however, the Convention includes a comprehensive list of branches of economic activity or types of undertakings that may not be excluded.¹²⁴

Noteworthy is the fact that, until now, no ratifying country has exercised its limitation option under this provision.¹²⁵ This is somewhat

¹²³ Overview of Child Rights, *supra* note 118, at 19. Out of a possible 409,849 child domestic workers as of December 1996, forty-two percent reported working more than ten hours per day, eleven percent worked between nine to ten hours per day, and twenty-five percent work between five to eight hours per day.

¹²⁴ ILO 138, art. 5, par. (3), states that the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.

¹²⁵ Combating Child Labour, *supra* note 4, at 376.

surprising and perhaps suggestive of the confusion as to what precise branch of economic activity or type of undertaking constitutes a permissible exclusion.¹²⁶

The Philippines might likely encounter difficulty in achieving substantial compliance with respect to the mandatory inclusion of agricultural undertakings mainly producing for commercial purposes. This is so in light of the permissible exclusion of family and small-scale holdings producing for local consumption and not regularly employing hired workers.¹²⁷

More than two-thirds of working children in the Philippines are employed in the agricultural sector.¹²⁸ The demand for child labor is most often sourced from the informal sector, which either constitutes or supports the commodity production system characterizing the community — that is, local economies are organized according to the production or processing of specific commodities by which the place is known.¹²⁹ The determination of whether or not this may properly be said to constitute “production for local consumption” would likely fall on the degree to which local bananas and abaca fiber are produced and distributed en masse. Additionally, it is clear that the informal arrangements through which child laborers are engaged in the agricultural sector would not properly be considered to “regularly employ hired workers.” Rather, these communities typically hire seasonal workers in the form of “job-out” work, sub-contracting, contract-growing, and the like. All of these are immediate arrangements to pool together cheap, abundant labor into unregulated and usually unmonitored work arrangements.¹³⁰

¹²⁶ *Id.*

¹²⁷ ILO 138, art. 5, par. (3).

¹²⁸ NSO Survey 1995, *supra* note 15. Sixty-seven percent of working children are employed in the agriculture, fishing and forestry sector.

¹²⁹ The Child Labor Program, Office of Research Coordination, Breaking Ground for Community Action on Child Labor 54 (February 1993) (University of the Philippines System, Diliman, Quezon City) [unpublished] [hereinafter *Breaking Ground*]. Commodities typically include: growing bananas, collecting loose palm fruits, growing mild-temperate vegetables, stripping/drying/weaving abaca fiber, copra making, and so on.

¹³⁰ *Id.* at 54-55.

In light of the possible exceptions and limitations to the scope of ILO 138, the majority of child workers within the Philippines would likely remain unprotected even if legislation were enacted in formal compliance thereof.

3. Light work

ILO 138 is premised upon the notion that employment or work under the age of fifteen is generally impermissible. However, article 7, paragraph (1), provides for children below the age of fifteen years to partake in light work. It permits children at age thirteen, in normal circumstances, and those aged twelve, where the economy and educational facilities are insufficiently developed, to engage in light work where the employment or work is neither harmful to their health or development, nor prejudicial to their attendance in school.¹³¹

The Convention does not explicitly define the concept of light work. Rather, it is left to the competent authorities in each country to determine the permissible employment or work activities. Competent authorities are additionally charged with the responsibility of providing legal provisions prescribing the conditions and number of hours during which such employment or work may be undertaken.¹³² Light work, however, is generally divided into two categories: (1) the assistance of children in the family economy; and (2) the engagement of children outside of school hours in order for them to earn extra money or to gain experience.¹³³ This understanding of light work stands in contrast to the Committee of Experts who expressly reject the notion that young persons should be permitted to work outside school hours and during school holidays due to the possibility of abuse.¹³⁴ This approach, once again, fails

¹³¹ ILO 138, arts. 4 & 7, par. (1).

¹³² ILO 138, art. 7, par. (3).

¹³³ VAN BUEREN, *supra* note 1, at 267.

¹³⁴ General Survey, *supra* note 93, at pars. 133, 165-67.

to appreciate the economic realities of working children in the Philippines.¹³⁵

Whereas the great majority of countries that have ratified the Convention have failed to adopt provisions to permit and regulate the work of young persons below the minimum age for admission to regular employment,¹³⁶ the Philippines has undertaken such regulation.

The position within the Philippines with respect to children engaging in light work is quite complex. As mentioned above, Presidential Decree No. 603 allows for children under the age of sixteen to engage in light work which is neither harmful to their development, nor prejudicial to their studies. This stands in contrast to Republic Act No. 7658 which sets the minimum employable age at fifteen years and makes no allowances for light work thereunder. Although it remains to be settled by the competent authorities, it is believed that Presidential Decree No. 603 and Republic Act No. 7658 will be read together, the effect of which will repeal Presidential Decree No. 603 to the extent of the inconsistency.¹³⁷ This will render permissible light work for children below the age of fifteen only to the extent that it complies with the permissible exceptions as provided by Republic Act No. 7658, section 1, paragraphs (1) and (2). Additionally, the part-time work may not endanger the life, safety, health and morals of the child, or impair his or her normal development.¹³⁸

While ILO does make express mention of necessarily safeguarding the health and education of a child engaging in light work, it is silent as to occupations in which children may engage in this form of labor. A clearer definition thereof would lessen the opportunity for potential abuses of children engaged in this form of employment.

¹³⁵ See Part IV (B) (1), above, for a discussion of this issue.

¹³⁶ General Survey, *supra* note 93, at par. 390. Whereas most countries permit some work by children below the minimum age for admission to employment, they have made little attempt to regulate the amount of such work or the conditions under which it is performed. See generally Combating Child Labour, *supra* note 4.

¹³⁷ Interview: Attorney Ochave, *supra* note 87; and OPENING DOORS, *supra* note 7, at 50, 61.

¹³⁸ LABOR CODE, art. 139.

4. Apprenticeship

Article 6 provides that the Convention does not apply to children of all ages working in schools for general vocational or technical education or in other training institutions. It is also inapplicable to work performed in undertakings by young persons of fourteen or more as part of an apprenticeship or similar arrangement. However, ILO 138 does seek to regulate apprenticeships in order to take into account this possibility that such training relationships are used as “a subterfuge to enable an employer to demand heavy and continuous work from children before the legal minimum age for employment, and benefit from lower labor costs.”¹³⁹ With respect to the possible risks of engaging in this type of work, the Committee of Experts maintain that work in these institutions is generally entirely for training purposes, with only a very small risk that young persons will be exposed to the detrimental effects normally associated with their being employed.¹⁴⁰ For this reason, the training program must form an integral part of:

- (a) A course of education or training for which a school or training institution is primarily responsible;
- (b) A program of training mainly or entirely in an undertaking, which program has been approved by the competent authority; or
- (c) A program of guidance or orientation designed to facilitat[e] the choice of one occupation or of a line of training.¹⁴¹

This article is consistent with Philippine legislation. Article 59 of the Labor Code allows minors of at least fourteen years of age to partake in an apprenticeship program. However, the Omnibus Rules Implementing the Labor Code,¹⁴² prescribe fifteen years as the minimum age requirement to work as an apprentice. While the issue remains to be

¹³⁹ General Survey, *supra* note 93, at par. 398.

¹⁴⁰ *Id.* at par. 257.

¹⁴¹ ILO 138, art. 6.

¹⁴² Book II, *National Manpower Development Program*, Rule VI, *Apprenticeship and Employment of Special Workers*, sec. 11, par. (a).

settled by competent authorities, the laws taken together could be construed to suggest that the minimum age for engaging in an apprenticeship is actually fifteen years.¹⁴³ This is because both article 59 of the Labor Code and Republic Act No. 7658 prescribe a minimum employable age of fifteen years without including apprentices among the permissible exceptions.

5. Conditions of work

Given that children tend to be highly concentrated in types of employment characterized by low wages, there is a disproportionately high number who are victims of work related accidents. This is a result of the propensity for abuse and the difficulty of gauging children's working capacities.¹⁴⁴ In response to the danger of being seriously injured, ILO has adopted a range of treaties designed to protect working children from conditions harmful to their development. These treaties may be divided into three categories: those prohibiting children from specific dangerous occupations, those prohibiting employment of children in certain occupations at night and those requiring regular medical examinations.¹⁴⁵

Consistent with article 139 of the Labor Code, ILO 138 requires that there be a minimum age of eighteen years for admission to any type of employment or work which, by its nature or the circumstances in which it is carried out, likely to jeopardize the health, safety or morals of young persons.¹⁴⁶ However, ILO 138 fails to define "hazardous,"¹⁴⁷ placing the duty on States Parties to determine, after consultation with organizations of employers and workers, which types of work fall within the definition.¹⁴⁸

¹⁴³ OPENING DOORS, *supra* note 7, at 59.

¹⁴⁴ VAN BUREN, *supra* note 1, at 269.

¹⁴⁵ *Id.* at 270.

¹⁴⁶ ILO 138, art. 3, par. (1).

¹⁴⁷ A reading of ILO 138, art. 3, par. (1), permits one to define "hazardous" as employment or work which is likely to jeopardize the health, safety and morals of a child.

¹⁴⁸ ILO 138, art. 3, par. (2).

The Philippines has complied with these standards in so far as Occupational Safety and Health Standards¹⁴⁹ and DOLE department orders¹⁵⁰ have explicitly defined a hazardous workplace and occupation. However, variances between international and national standards arise in that ILO 138 focuses on specific hazardous activities as opposed to categorizing entire occupations as such.¹⁵¹ According to international standards, this determination is much more precise because

[the] Committee considers that a general prohibition on dangerous work, without additional measures is unlikely to have much practical effect. If the types of employment or work which are too dangerous for young persons to perform are not designed specifically, there is usually no way for a young person to be prohibited from performing a particular dangerous job.¹⁵²

In contrast to the blanket prohibition as provided by Philippine legislation, ILO 138 renders permissible the employment of children over the age of sixteen in hazardous circumstances. Children may be employed in such circumstances where prior consultation with relevant organizations of employers and workers has been obtained, where the health, safety and morals of young persons concerned are fully protected and where young persons have received adequate specific instruction or vocational training in the relevant branch of activity.¹⁵³

While it is the case that the Philippines sets more stringent standards vis-à-vis the regulation of hazardous labor, the Philippine Implementing Rules and Regulations have long been criticized as over-

¹⁴⁹ Occupational Safety and Health Standards (OSHS), Rule 1013 "Hazardous Workplaces." See OPENING DOORS, *supra* note 7, at 57.

¹⁵⁰ Department of Labor and Employment, Department Order No.4 "Hazardous Occupations to Young Workers." See OPENING DOORS, *supra* note 7, at 55.

¹⁵¹ VAN BUEREN, *supra* note 1, at 270. The original questionnaire sent to governments referred, *inter alia*, to any "occupation" but was greeted unfavorably for it was widely held that an entire occupation is not necessarily hazardous though certain activities within it may be characterized as such.

¹⁵² General Survey, *supra* note 93, at pars. 225, 230.

¹⁵³ ILO 138, art. 3, par. (3).

broad, non-specific, outdated and impractical in achieving the Labor Code's objectives with respect to hazardous labor.¹⁵⁴

ILO 138 has been equally criticized for its failure to provide more than a few requirements regarding the conditions under which children should be allowed to work once eligible to do so.¹⁵⁵ The Governing Body of the ILO has decided to address the most intolerable forms of child labor at the 1998 session of the International Labor Conference.¹⁵⁶ In the interim, however, other international instruments attempt to address the required terms and conditions of child employment.

a. Night work

While the Philippines ratified the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)¹⁵⁷ in 1953, which is limited in virtue of its restricted application to industrial undertakings, the Labor Code contains no such provision. Additionally, a Policy Directive (No. 23) issued in 1997¹⁵⁸ raises issues of compliance for its provisions are not in conformity with those contained in the Convention.¹⁵⁹

b. Occupational safety and health

Designed to reduce or eliminate hazards in the workplace, the Secretary of Labor and Employment, under the Philippine Labor Code and by appropriate orders, sets and enforces mandatory occupational safety and health standards.¹⁶⁰

¹⁵⁴ Defining Hazardous Undertakings, *supra* note 22, at 2.

¹⁵⁵ VAN BUEREN, *supra* note 1, at 270.

¹⁵⁶ PETER FALLON & ZAFIRIS TZANNATOS, CHILD LABOR: ISSUES AND DIRECTIONS FOR THE WORLD BANK, THE INTERNATIONAL BANK FOR RECONSTRUCTION (The World Bank) 6 (1998).

¹⁵⁷ 10 July 1948, 91 U.N.T.S. 3 [hereinafter ILO 90].

¹⁵⁸ Policy Directive (No. 23) 1997 prohibits night work for persons under the age of sixteen years in the interval between 10 p.m. and 6 a.m. of the following day.

¹⁵⁹ ILO 90. The Convention prohibits night work for persons under eighteen years of age in all industrial settings while the term "night" signifies a period of at least twelve hours.

¹⁶⁰ Comprehensive Study, *supra* note 27, at 67; and LABOR CODE, art. 162. These standards define

In order to ensure the health and physical well being of young workers, the Philippines ratified Convention No. 77 on Medical Examination for Fitness for Employment in Industry of Children and Young Persons.¹⁶¹ The Convention provides that children and young persons under 18 years shall not be admitted to employment unless they have been found fit to perform the work for which they are to be employed after a thorough medical examination.¹⁶² In compliance with these standards, the Labor Code requires that a physician, engaged by an employer, perform pre-employment medical examinations for the proper selection and placement of workers at no charge to the children.¹⁶³ However, the protection afforded by the Labor Code is limited to establishments with not less than 200 workers and does not explicitly prohibit the employment of children who do not pass the medical examination.¹⁶⁴

V. ENFORCEMENT OF RIGHTS

The obligations of States Parties do not end where the enactment of implementing legislation begins. Rather, the notion of substantial compliance involves the ability of a state party to establish a full-blown domestic regime. Were it otherwise, "the transformation into law of substantive demands for the promotion of children's welfare and autonomy" would allow Governments to "couch their responses to the Convention in formalistic terms, void of any substantive improvement in children's lives."¹⁶⁵ Therefore, attention must be directed toward the concept of compliance as it relates to the enforcement of international standards, that is, the ability to effectuate change within the domestic milieu.

hazardous and non-hazardous establishments, provide standards of the safe handling and/or operation of machines, materials and chemicals, and set guidelines for the establishment of first aid treatment, use of protective devices, fire protection and the provision of occupational health services.

¹⁶¹ 19 September 1946, 78 U.N.T.S. 197.

¹⁶² Comprehensive Study, *supra* note 27, at 67.

¹⁶³ Rule I, Implementing Regulations of Book IV. See Comprehensive Study, *supra* note 27, at 67.

¹⁶⁴ Comprehensive Study, *supra* note 27, at 67.

¹⁶⁵ M. King, *Children's Rights as Communication: Reflections on Autopoietic Theory and the United Nations Convention*, 57 MOD. L. REV. 385, 396 (1994).

Philippine laws have not been remiss in addressing the issue of child labor.¹⁶⁶ To its credit, the Philippines has enacted some of the strictest laws on the matter and has been forthright in acknowledging both the problem and the need for action.¹⁶⁷ In spite of this recognition, child labor continues to be at the forefront of the struggle for human rights within the Philippines. The final portion of this paper seeks to canvass the reasons for which it may be said that the Philippines has failed to substantially comply with international standards on the matter of child labor. This analysis will be evaluated based on the framework for compliance as outlined in Part III of this paper. This paper will first look at the ambiguity and indeterminacy of Convention language, followed by an analysis of the temporal dimension of the social, economic and political changes as contemplated by ILO 138. Finally, this paper will attempt to provide an assessment of the Philippines' capacity to carry out its undertakings.

A. Convention Language

Like other formal statements of legal rules, treaties,

[F]requently do not provide determinate answers to specific disputed questions. Language is unable to capture meaning with precision. Drafters do not foresee many of the possible applications, let alone their contextual settings. Issues actually foreseen often cannot be resolved at the time of treaty negotiation and are swept under the rug with a formula that can mean what each party wants it to . . . All of these inescapable incidents of the effort to formulate rules to govern future conduct can produce a zone of ambiguity within which it is difficult to say with precision what is permitted and what is forbidden.¹⁶⁸

In the case of the Philippines, this "zone of ambiguity" is exacerbated in light of the country's ratification of the two most

¹⁶⁶ Comprehensive Study, *supra* note 27, at 74.

¹⁶⁷ Indicative Framework, *supra* note 13, at 1.

¹⁶⁸ CHAYES & CHAYES, *supra* note 43, at 10.

significant instruments addressing the problem of child economic exploitation. On the basis of various interpretations, the CRC and ILO 138 vary both in content and form. Therefore, the difficult determination, which befalls the Philippines, is to decipher that which is required so that they may fully comply with their international obligations.

Although the country's ratification of the CRC occurred five years prior to that of ILO 138, the Philippines is bound equally by both instruments. As previously stated, however, a reading of their provisions offers the suggestion that both Conventions approach the problem of child labor from differing points of reference.¹⁶⁹ The CRC does not expressly equate child labor with child exploitation. This has the effect of rendering permissible work that is neither exploitative nor hazardous. ILO 138, in contrast, is premised on the notion that all child labor should be eliminated. With some exceptions and limitations offered to temper its application to all economic sectors and to all forms of work and employment, it effectively seeks the total abolition of child labor.¹⁷⁰

In deciphering the rules to govern its conduct, the Philippines remains somewhat unaided by the degree to which both Conventions vary in form. Whereas ILO 138 has taken a highly prescriptive approach to setting out international standards, the CRC has been dubbed vague in light of its loose drafting.¹⁷¹ Despite its rigorous approach to precise drafting, ILO 138 has, at the same time, suffered criticism for that which it fails to expressly state: it fails to articulate the objectives to be promoted; it does not provide guidance as to what ought to be the form or content of any policy directed to the attainment of the Convention's objectives; and it fails to set priorities for national action.¹⁷²

¹⁶⁹ See Part IV (A), above, for a discussion of this issue.

¹⁷⁰ ILO 138, preamble.

¹⁷¹ Stephen J. Toope, *The Convention on the Rights of the Child: Implications for Canada*, in MICHAEL FREEMAN, *CHILDREN'S RIGHTS: A COMPARATIVE PERSPECTIVE* 43 (1996) [hereinafter *CHILDREN'S RIGHTS: A COMPARATIVE PERSPECTIVE*].

¹⁷² Combating Child Labour, *supra* note 4, at 371, 390.

This variance in content and form serves to undermine the strength and ideals of international law. For instance, in seeking to comply with the standards contained in ILO 138, the preparatory work indicates that article 1 does not impose an obligation to take any specific measures beyond those described in the subsequent provisions.¹⁷³ This interpretation suggests that "compliance can be demonstrated simply by adhering to the substantive requirements of the Convention, even though such adherence would not necessarily secure the effective abolition of child labor as envisaged by article 1."¹⁷⁴ Such a formulation may allow a State Party to effectively sidestep substantial compliance because the Convention, on its face, requires no more than formal compliance.

The ambiguity and indeterminacy of treaty language in both the CRC and ILO 138 make it difficult to appreciate that which is required by international law to achieve substantial compliance. Thus, the inability to do so should not be understood as a failure merely on the part of the State. Rather, it should be interpreted as due to a multitude of difficulties a State might encounter in its attempt to substantially comply with its international obligations.

B. Temporal dimension: Normativity

Multilateral regulatory agreements are legal instruments of a regime for managing major international problems. While it is a state that enters into a multilateral regulatory agreement, its object is to regulate the activities of private individuals and entities. Regulatory agreements are "designed to initiate a process that over time, perhaps a long time, would bring behaviour into greater congruence with those ideals."¹⁷⁵ This is so in recognition of the varying constraints — economic, social and political —

¹⁷³ ILO, Minimum Age of Admission to Employment, IL Conf., 58th Sess., Rep. IV(2) (1973) at 7.

¹⁷⁴ Combating Child Labour, *supra* note 4, at 372.

¹⁷⁵ CHAYES & CHAYES, *supra* note 43, at 17.

which may impede a state party's substantial compliance with standards contained therein.¹⁷⁶

A convention embodies the ideals and aspirations of the international community. Its text provides the authorized version of the relevant norms¹⁷⁷ which detail the required or prohibited conduct.¹⁷⁸ The norms established by treaties are legal norms in that they embody the rules acknowledged, in principle, to be legally binding on the states that ratify them.¹⁷⁹ Where states parties undertake the obligation to comply with international agreements, the legally binding norms contained therein are presumptively accepted as a guide to conduct. This guide to conduct may play itself out in the enactment of implementing legislation, as has been seen in the case of managing the problem of child labor within the Philippines.

The potential for failing to substantially comply with an international convention is particularly acute in cases where a state binds itself to legal norms that are not duly sensitive to its domestic reality. Where legal norms are significantly inconsistent with the norms according to which private individuals and entities organize their lives, legal normativity may be slow to effectuate change from the ground up. This has, in large part, been the experience of the Philippines, most evidenced by the stark contrast between the goals enunciated within ILO 138 and the general acceptance and desirability of non-hazardous child labor.

ILO 138 purports to be a general instrument in its preamble, likely making reference to its general application to all economic sectors. However, its ability to account generally for conditions of child labor in varying countries leaves much to be desired. For instance, article 7, which provides for the engagement in light work, proceeds upon the assumption

¹⁷⁶See Part V (C), below, for a discussion of the constraints on capacity.

¹⁷⁷ Brunnée & Toope, *supra* note 50, at 30, have offered the understanding of a norm as "a mere sociological description of collective expectations about proper behaviour in a specific situation with given actors."

¹⁷⁸ *Id.* at 112.

¹⁷⁹ *Id.* at 116.

that all employment and work under the age of thirteen is, in all circumstances, impermissible. This, however, fails to account for children in developed countries who might be inclined to have a paper route or children in developing countries who might work part-time to supplement their financial resources while continuing their enrollment in full-time education.¹⁸⁰ Where ILO 138 has attempted a measured approach to attaining its objectives, its flexibility is limited. In the final analysis, strict adherence to the highly prescriptive substantive requirements of the Convention is required.¹⁸¹

In recognition of the difficulty of transposing international ideals and norms into the domestic milieu, both the CRC and ILO 138 attempt to account for the temporal dimension of achieving substantive compliance. For instance, a distinction is drawn, and an allowance is made, for ILO 138 Member States to initially elect fourteen as the minimum employable age where their economies and educational facilities are insufficiently developed.¹⁸² The adoption of a management approach may also be seen in the CRC whereby substantial compliance is tempered by rendering certain protective provisions conditional upon national circumstances.¹⁸³

The temporal latitude afforded to States Parties appears to restrict the analysis to mere economic circumstances that might necessitate varying rates of implementation. An emphasis must additionally, perhaps more importantly, be placed upon the discontinuity between legal norms at the level of politics and the sociological norms around which Filipinos orient their lives. The failure to do so negates the social milieu in which the problem of child labor exists and the veritable reasons for which it persists. The Philippines experienced this failure at the level of enacting

¹⁸⁰ Combating Child Labour, *supra* note 4, at 386, 387.

¹⁸¹ *Id.* at 388.

¹⁸² ILO 138, art. 2, par. (4).

¹⁸³ See generally Children's Rights: A Comparative Perspective, *supra* note 171, at 36. U.N. Convention articles dealing with social and economic rights allow State Parties to "strive to ensure basic health" (art. 24, par. [2]), to provide "security in accordance with their national law" (art. 26, par. [1]), and to achieve the right to education "progressively" (art. 28, par. [1]). Additionally, economic, social and cultural rights are further tempered by an escape clause, in article 4, which permits states to "undertake such measures to the maximum extent of their available resources. . . ."

implementing legislation upon ratification of the CRC. While the enactment of Republic Act No. 7610 was applauded and praised as embodying, in some cases mirroring, many of the ideals and principles of the CRC, it was at the same time criticized for failing to account for the Philippine reality. According to many, the law was neither realistic nor enforceable.¹⁸⁴

Where legal norms and local custom and culture are substantially inconsistent, ideals of international law are not likely to reveal themselves in the minds and hearts of Filipino citizens. Looking upon the enactment of Republic Act No. 7610 as evidence of compliance with the CRC serves to undermine and render inutile the ideals and objectives of international law, for such compliance effectuates minimal change upon the people. Rather, a high degree of synergy must be cultivated between state politics and popular belief. Only in this manner will the country advance in the fight against child economic exploitation and in the achievement of substantial compliance with the ideals of international law.

C. Capacity limitations: Causes of “substantial” non-compliance

In order to achieve substantial compliance with the international instruments ratified by the Philippines, the government has, in past years, undertaken to formulate a framework to support the infusion of international ideals within the domestic milieu.¹⁸⁵ In doing so, however, a

¹⁸⁴ Interview with Attorney Jona Martinez, Institute for Labor Studies, DOLE, Manila, Philippines (July 1997) [hereinafter Interview: Attorney Martinez]; and Interview: Attorney Ochave, *supra* note 87. Both Attorney Martinez and Attorney Ochave indicated that current legislative talks proposing to amend Republic Act 7610 are underway.

¹⁸⁵ In 1989, the government launched the project, “Breaking Ground for Community Action in Child Labor” under the auspices of UNICEF with a goal to providing livelihood and entrepreneurial skills to children’s parents and to convince parents and employers to remove children from heavy or dangerous work. This project was, in 1991, expanded to involve fourteen GOs and NGOs in the creation of the National Child Labor Program Committee. In 1989, the government promulgated the Philippine Plan of Action for Children (PPAC), “The Filipino Children: 2000 and Beyond,” which set as its goal the banning of children from hazardous occupations/situations by 80 percent in the year 2000. See generally UNICEF Community Action, *supra* note 39; Indicative Framework, *supra* note 13; Comprehensive Study, *supra* note 27; and Breaking Ground, *supra* note 129.

range of obstacles — social, economic, and political—have surfaced which render this task difficult.

Prior to the ratification of ILO 138, the focus within the country clearly targeted the elimination of risk to working children rather than ending their participation in all forms of labor. This was believed to be the appropriate approach given the need to accommodate poverty and allow families the flexibility of maintaining their essential survival needs while, at the same time, protecting the children involved.¹⁸⁶ In all likelihood, new initiatives to eradicate all child labor will emerge in light of the ratification of ILO 138. However, strategies to date have included efforts in the area of legislation and law enforcement, direct action with respect to the protection, removal and rehabilitation of children working in the most exploitative forms of child labor, hazardous working conditions and bonded labor and, finally, awareness-raising.¹⁸⁷

While strides have been made with respect to the enactment of legislation, their enforcement, while charged to specific agencies, has suffered from mediocre implementation due in large part to the “lack of effective monitoring mechanisms and the dearth of enforcement personnel and resources.”¹⁸⁸ This characterization typifies the experience of DOLE, the government agency responsible for the administration and enforcement of occupational safety and health laws, regulations and standards in all establishments and workplaces.¹⁸⁹

It is only recently that labor inspectors have begun including child labor in their reporting systems. The failure to do so in the past relates to several interconnected factors. Child labor is often regarded as a normal

¹⁸⁶ J. Boyden & W. Myers, *Exploring Alternative Approaches to Child Labour: Case Studies from Developing Countries*, Innocenti Occasional Papers, Child Rights Series No. 8, (UNICEF, International Child Development Center, Florence, 1995) at 18.

¹⁸⁷ In 1994, the Philippine government requested technical assistance from ILO-IPEC after which time an agenda of action for attacking child labor in the Philippines was formulated. See generally ILO, International Labour Standards and Technical Cooperation, Governing Body, 252d Sess., ILO Doc. GB.252/15/1 (1992); and ILO, *International Programme on the Elimination of Child Labour, Reflections on the Past - Pointers to the Future* (Geneva: ILO, 1994).

¹⁸⁸ Comprehensive Study, *supra* note 27, at 2.

¹⁸⁹ LABOR CODE, art. 165.

element of Philippine culture. As a result, government units are often unaware and unsensitized to the issue.¹⁹⁰ A corollary to this lack of awareness is the general perception by law enforcement agencies that the employment of children is a matter of necessity and survival, interference with which could be disastrous to the child's economic condition.¹⁹¹ Therefore, law enforcement agencies are more inclined to tolerate the employment of children in carnivals, street trades, docks and piers, factories and fishing boats rather than deprive them of their livelihood and a means of sustaining themselves.¹⁹²

While child labor was dubbed a priority for inspection in 1995, DOLE's ability to make use of its visitorial and inspection powers to confirm reports of violations are restricted to the investigation of formal work establishments.¹⁹³ This has the effect of leaving unprotected the vast majority of children in agriculture, small industries and domestic work settings.¹⁹⁴ This is further compounded by the majority of Labor Code provisions limited to minimizing the incidences of children working in industrial settings or formal working environments.¹⁹⁵

To further compound the problem of detecting and reporting incidences of exploitative child labor, governmental departments monitoring and supervising employment activities suffer from severe lack of adequate personnel and funding. This is particularly the case with respect to the monitoring and supervision of the terms and conditions of employment, non-payment of the minimum wage, unfair labor practices, matters of safety and health, and exploitation of children. In light of personnel and budgetary constraints, there is a tendency for the DOLE officials to rely and act on a filed complaint rather than actively seek out violations.¹⁹⁶ As such, the barangay council¹⁹⁷ and the participation of

¹⁹⁰ Defining Hazardous Undertakings, *supra* note 22, at 13.

¹⁹¹ Comprehensive Study, *supra* note 27, at 76.

¹⁹² *Id.*

¹⁹³ Adm. Order No. 100, s. 1995. In order to "further improve the effectiveness and efficiency of the labor standards enforcement machinery of the DOLE" child labor was included as a priority for inspection.

¹⁹⁴ Comprehensive Study, *supra* note 27, at 75.

¹⁹⁵ See e.g., *supra* note 163.

¹⁹⁶ Comprehensive Study, *supra* note 27, at 77.

community members are heavily relied upon. Concerned citizens and NGOs conduct their own investigations and undercover operations to detect and monitor the presence of child workers.¹⁹⁷ Such efforts often take the form of raid operations¹⁹⁹ that have as their object the rescue of child workers, the arrest of violators and the seizure of documents to be used as evidence in a future prosecution.²⁰⁰

While it is true that community participation is a necessary and useful complement to eradicating exploitative child labor, particularly in that such practices are often hidden and undetectable, rescue operations are fraught with glitches. Blunders are frequent due to lack of cooperation and trust between community members and government officials,²⁰¹ raids are conducted without first obtaining proper warrants,²⁰² and corruption at the level of the government is often responsible for leaks to employers warning them of an impending operation.²⁰³ Additionally, there is, at

¹⁹⁷ A barangay is the smallest political unit within the Philippines. Pres. Decree No. 603, art. 87 reads: "Every barangay council shall encourage the organization of a local Council for the Protection of Children and shall coordinate with the Council for the Welfare of Children and Youth in drawing and implementing plans for the promotion of child and youth welfare."

¹⁹⁸ OPENING DOORS, *supra* note 7, at 189.

¹⁹⁹ In order to facilitate implementation of the UNICEF-assisted project "Breaking Ground for Community Action on Child Labor," DOLE, through Adm. Order No. 2 Series of 1992, launched a Child Labor Project Management Team. The Team's mandate includes the responsibility for planning, implementing, monitoring and evaluating all child labor program activities within the responsibility of the Department. One such activity includes SAGIP BATANG MANGGAGAWA - Inter-Agency Quick Action Team (QAT) on the Handling of Exploitative/Hazardous Child Labor Cases. The QAT team is charged with detecting, monitoring and responding to the most hazardous form of child labor in the form of rescue operations.

²⁰⁰ OPENING DOORS, *supra* note 7, at 218.

²⁰¹ Interview with Alex Apit, Executive Director, Kamalayan Development Foundation (KDF), Manila, Philippines (June 1997) [hereinafter Interview: Kamalayan]. KDF, an NGO based out of Manila, has had a working relationship with DOLE's QAT since 1993 and has participated in numerous raids.

²⁰² Before the actual rescue operation may be undertaken, a search warrant and/or warrants of arrest must first be secured from the courts in compliance with the legal processes. CONST. art. III, sec. 2, dictates that only judges may issue warrants of arrest and search. Interviews with R.D. Conferido, *supra* note 90 and Attorney Ochave, *supra* note 87 revealed that it is quite common for DOLE officials to proceed without a warrant due to a general lack of organization and awareness of the relevant procedures.

²⁰³ Interview: Kamalayan, *supra* note 201. Information concerning a raid is highly confidential; team members gather one hour before the scheduled rescue operation without knowing the destination.

times, apprehension on the part of DOLE personnel and members of the community to properly conduct a raid due to the general disbelief that certain employers, regarded as valuable members of society, could be implicated or responsible for such heinous activities.²⁰⁴

Where children are successfully rescued pursuant to a raid operation,²⁰⁵ problems arise regarding their protective custody and rehabilitation, largely affecting the ability to later file administrative sanctions and criminal actions against employers. First, long court delays render children, who work primarily to support their families, unproductive.²⁰⁶ As such, many children successfully attempt to escape from protective facilities.²⁰⁷ This renders it difficult to enforce their violated rights and redress their grievances. Second, disbelieving parents, or those willing to disregard the welfare of their children for financial gain, often take the side of employers and file petitions for habeas corpus. In such cases, children will often return to work due to a settlement reached between the parents and the employer.²⁰⁸ Though the ends of justice might not necessarily be achieved, settlement orders often meet the economic needs of the parties involved. In fact, where substantial evidence is lacking they may be encouraged.²⁰⁹ Otherwise, children working in the formal

In the raid of DOLUX laundry bleach factory in Marilao, Bulacan, a DOLE official was spotted arriving at the factory before the rescue operation was scheduled, in an attempt to blunder the raid. Interview with Arn Sisson, Coordinator with the DOLE Child Labor Project Management Team, Manila, Philippines (July 1997) [hereinafter Interview: A. Sisson] revealed that leaks among DOLE officials are rampant. Their low salaries weigh in favor of accepting subsidies, often in the form of bribes, to leak information or misplace incriminating documentation.

²⁰⁴ Interview: R.D. Conferido, *supra* note 90.

²⁰⁵ Sagip Batang Manggagawa, Summary of Accomplishments (1997), DOLE, Child Labor Project Management Team, Manila Philippines, [unpublished]. Fifty-nine raids were conducted between 1996 to June of 1997 rescuing 148 children working in factories, domestic households, construction, quarries and those working as guest relations officers (GROs).

²⁰⁶ However, President Ramos, on October 1997, signed Rep. Act No. 8369 which calls for the establishment of special courts to handle exclusively criminal and civil cases involving child and family relations. President Ramos stated, "this law has been enacted to ensure that speedy justice is given to Filipino children whenever conditions of neglect, abuse, exploitation or others prejudicial to their development exist." Editorial, *Ramos Signs Family Courts Law*, The Journal Group of Publications; Soaring High Towards Philippines 2000 (visited 20 March 1998) < <http://pji.journal.skynet.net/10.29/courts.htm> >.

²⁰⁷ Interview with Ms. Sally Dagulo, Department of Social Welfare and Development (DSWD) Official, Manila, Philippines (July 1997).

²⁰⁸ Interview: R.D. Conferido, *supra* note 90; and Interview: Attorney Ochave, *supra* note 87.

²⁰⁹ Interview: R.D. Conferido, *supra* note 90, revealed that as long as a working child could receive

sector may additionally file actions against their employers for the recovery of wages and other monetary benefits.²¹⁰

With respect to penalizing employers, administrative proceedings have been fairly effective at imposing sanctions through the suspension of work operations and the cancellation of recruitment agency licenses.²¹¹ While there have been successful administrative actions, there has yet to be a successful criminal prosecution. Problems often arise in cases where parents settle or align themselves with employers, motions for desistance are filed,²¹² evidence disappears due to corruption²¹³ and a lack of knowledge exists among the judiciary with respect to the state of the law.²¹⁴

VI. CONCLUSION

While the Philippines has enacted implementing legislation inspired by the standards and ideals of the CRC and ILO 138, its grave condition of child economic exploitation continues to persist. Construing its multiplicity of laws as compliance with international obligations would serve to undermine the purpose and effectiveness of international law, rendering inutile international standards at effectuating change within the domestic milieu. As a result, this paper has sought to provide an analysis of compliance informed by the state's ability to establish a full-blown domestic regime.

However, the inability to provide for a functional and effective domestic regime should not, in all instances, be understood as the outright

approximately half of the money the employer would be obligated to pay as a penalty imposed by the court, an amicable settlement or compromise agreement, as understood in arts. 221 and 227 of the LABOR CODE, is encouraged.

²¹⁰ LABOR CODE, art. 291.

²¹¹ Interview: Attorney Ochave, *supra* note 87; and Interview: R.D. Conferido, *supra* note 90.

²¹² Interview: Attorney Ochave, *supra* note 87.

²¹³ Interview: A. Sisson, *supra* note 203.

²¹⁴ Department of Justice (DOJ) Special Task Force on Child Protection conduct regular Training Sessions Concerning Republic Act No. 7610 for members of the judiciary throughout the various regions in the country. DOJ Fiscals express much frustration in continually confronting judges who register for the conference yet fail to attend or participate. Interview with Attorney Nini Alejo, Department of Justice (DOJ) Fiscal, Manila, Philippines (July 1997).

failure to substantially comply with international standards. Rather, a cursory diagnosis of the problem of child labor within the Philippines readily reveals that which lies at the heart of non-compliance. The task of eradicating child labor is made arduous in light of its limited structural and infrastructural capacity and the temporal dimensions of the social, economic and political changes contemplated by the CRC and ILO 138.

While it is commendable that the international community has expressed its intention to remedy the problem of child economic exploitation, careful attention must be paid to that which is achieved through the adoption of international standards which champion the rights of children. Recall that international conventions on child labor, resulting from the upsurge of international concern for children's welfare, do not merely exist to ease our collective conscience through their adoption. Rather, the children of the world are the designated beneficiaries. International standards must be drafted in both a realistic and enforceable fashion to account for the myriad circumstances of children engaged in exploitative labor. In the end result, international concern must make manifest a significant amelioration in the lives of child laborers.