

# Child Labor: The Pakistani Effort to End a Scourge upon Humanity— Is it Enough?\*

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## I. INTRODUCTION

Shoes, soccer balls, furniture, bricks, rugs, toys, and clothes<sup>1</sup>—what do all of these items have in common? Each item could most likely be purchased at a local Wal-Mart or Target. In fact, many of these items can be found in the average American household. What similarities prompt closer circumspection? A child, most likely under the age of fourteen, worked under abhorrent conditions and for a mere pittance to produce each item. Unfortunately, the tags on child-produced products fail to state: “Product of Child Labor.”

For the masters, bonded children are a commodity. My master bought, sold and traded us like livestock, and sometimes he shipped us great distances. The boys were beaten frequently to make them work long hours. The girls were often violated. My best friend got ill after she was raped, and when she couldn't work, the master sold her to a friend of his in a village a thousand kilometers away. Her family was never told where she was sent, and they never saw her again.<sup>2</sup>

This heart-wrenching statement resembles the typical story of a child laborer at the turn of the twentieth century. Sadly, the use of child labor in impoverished countries continues in the twenty-first century, despite national and international laws forbidding such labor. In the past ten years, a grass roots movement has burgeoned. This movement, along with various international human rights agencies, works tirelessly to enforce government adherence to international law.

Some countries are notorious for their use of child labor, namely, India, Brazil, China, and Mexico. Other countries, such as Pakistan, disregard international law just as blatantly as the above-mentioned countries by allowing child labor to proceed in its borders unchecked,

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1. DAVID PARKER, *STOLEN DREAMS: PORTRAITS OF WORKING CHILDREN* 31 (1998). Some children are kidnapped by employers to work for a mere pittance. “Zulfikar,” a seven-year-old, was kidnapped and brought to a carpet-weaving center. He was playing in the street near his home when someone threw him in the back of a van. His abductors sold him to a contractor who told the boy he has a certain debt to pay before he can be freed. Farhad Karim, *Contemporary Forms of Slavery in Pakistan: Human Rights Watch* 22, 56 (1995), available at <http://www.hrw.org/reports/1995/Pakistan.htm>.

2. Jonathan Silvers, *Child Labor in Pakistan*, ATLANTIC MONTHLY, Feb. 1996, at 79, 82.

but have managed to avoid any sanctions. In 1995, the story of a young boy named Iqbal Masih exposed the rampant use of child labor in Pakistan's carpet weaving industry.<sup>3</sup> This boy's voice, along with the Global March Against Child Labor,<sup>4</sup> reverberated throughout the international community, prompting demands to abolish child labor.<sup>5</sup> Pakistan vowed to do everything in its power to eradicate abusive child labor.

Since Iqbal's crusade, Federal and Provincial governments instituted measures to eliminate child labor. Despite such efforts, child labor continues. Child labor is not a problem that can be solved by the magic stroke of a wand, or even the legislative pen for that matter; rather, long term planning is vital to promulgate the slow process of eradicating all abusive forms of child labor.

This article will encompass the issues necessary to create such a report card. In the process of assessing Pakistan's efforts, this article will demonstrate that the measures taken in Pakistan are not sufficient to end bonded child labor. In addition, this comment proposes that the international community must expend more financial and legal resources to tackle the problem of child labor. Part II focuses on Pakistan's use of child labor.

3. *Id.* at 88. Since age four, Iqbal had been bonded for six years to a village carpet maker. Chained to a loom, he labored over fourteen hours a day, six days a week. Iqbal's master doled out many beatings and gave little food because Iqbal defied this man incessantly. Sometimes Iqbal would refuse to work; other times he would attempt an escape. At age ten, Iqbal successfully escaped his imprisonment and sought help from the Bonded Labor Liberation Front (BLLF). The BLLF freed Iqbal and placed him in an educational program. With the aid of BLLF, Iqbal liberated 3,000 children from bondage at textile and brick factories, tanneries, and steelworks. The International Labor Organization, Reebok, and ABC news honored Iqbal; Reebok presented him with its prestigious Human Rights Youth in Action Award, and ABC News featured him as the person of the week. On April 16, 1995, Iqbal was murdered while visiting relatives in a rural village. BLLF claims the carpet mafia killed Iqbal. Ehsan Ulla Khan, head of the BLLF, said: "I emphatically say that the carpet mafia is responsible for this brutal killing . . . Iqbal has become a symbol of our struggle against slavery and was not afraid to expose the inhuman practices prevailing in the carpet industry. I have no doubt that the police are also a part of the conspiracy. I do not rely upon evidence. I have my instinct. How else do you explain how, in a village where no murder has occurred for a decade, the one child who poses a threat to the carpet owners is gunned down? Coincidence is never so cruel." To this day, Iqbal's murder remains unsolved. *Id.* at 88-90.

4. Global March is a non-governmental organization (NGO) founded in 1997. Its sole purpose is to lead the crusade to eradicate all forms of child labor. In 1998, Global March led a march to garner support for the Convention on the Worst Forms of Child Labor. This effort aided in the Convention's adoption. Today, over 150 countries contribute money and/or volunteers. For more information, see <http://www.globalmarch.org>.

5. Silvers, *supra* note 2, at 90-91.

This includes a discussion of the history of child labor, the international rights being abrogated by child labor, the efforts implemented to combat child labor, and an evaluation of Pakistani children's status today. Part III argues that the only way to truly abolish this practice is to make child labor a *jus cogens* by raising it to the same level as torture and slavery.<sup>6</sup>

## II. PAKISTAN AND THE BONDED CHILD LABORER

### A. History of Child Labor in Pakistan

The Human Rights Commission of Pakistan (HRCP) conjectures that the number of child laborers is between eleven and twelve million, with at least half under the age of ten.<sup>7</sup> The brick kiln, carpet weaving, and soccer ball industries utilize the largest number of child laborers.<sup>8</sup> Commentators have suggested that child labor is so prevalent in Pakistan because "the child labor pool is all but inexhaustible, owing in part to a birth rate that is among the world's highest and to an education system that can accommodate only about a third of the country's school age children."<sup>9</sup>

Parents are often forced to sell their children to local factories, a practice commonly referred to as bonded labor.<sup>10</sup> One Pakistani mother said: "When my children were three, I told them they must be prepared to work for the good of the family. I told them again and again that they would be bonded at five. And when the time came for them to go, they were prepared and went without complaint."<sup>11</sup> Despite the problem of bonded labor, the Pakistani government employs no programs to aid the impoverished and banks are unwilling to loan money to people without collateral.<sup>12</sup> Thus, when a family is in dire need of money, the head of the household is forced to borrow from a local *thekadar* (employer who owns a nearby factory).<sup>13</sup> In return for the *peshgi* (loan), the loanee must

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6. *Jus cogens* are rules of customary international law. Because these rules are fundamental, any conduct contrary to the rule of *jus cogens* will usually be regarded as "illegal." The following are examples of *jus cogens*: prohibition of the use of armed force in international relations, the sovereign equality of states, freedom of the high seas, the right of self-determination, and the prohibition of genocide, slavery and torture. MARTIN DIXON, INTERNATIONAL LAW 37-38 (1996).

7. Lora A. Green, *The Global Fight for the Elimination of Child Labor in Pakistan*, 20 WIS. INT'L L.J. 177, 184 (2001).

8. PARKER, *supra* note 1, at 2.

9. Silvers, *supra* note 2, at 81.

10. SUSAN KUKLIN, IQBAL MASIH AND THE CRUSADERS AGAINST CHILD SLAVERY 13-14 (1998).

11. *Id.* at 15.

12. *Id.* at 13.

13. *Id.*

give something of value as collateral.<sup>14</sup> The collateral, often times, is a child. The child then works for the *thekadar* until the entire loan, including interest and expenses, is paid back.<sup>15</sup>

Even more deplorable than the treatment of children as chattel is the means *thekadars* use to gain more child laborers. Some factories hire recruiting agents who use watching agents to determine which local families are barely surviving monetarily.<sup>16</sup> The watching agent introduces the recruiting agent to the head of the household.<sup>17</sup> The recruiter acts sympathetic, flying in like a superhero, promising to end the family's financial woes and "[to] place" the child "in a company where he will learn a trade."<sup>18</sup> Generally, parents allow their children to work in a factory only as a means of survival.

Why do factory owners employ children who lack experience, trade knowledge, and maturity? Employers have been asked that very question and have expounded upon the many virtues of the child worker. Children are "cheaper, more motivated, more efficient, obedient, don't form labor unions, and don't strike,"<sup>19</sup> unlike adult laborers. In Pakistan's shoe factories, children earn ten cents a day for manufacturing a shoe that the employer can export to another country for one-hundred twenty U.S. dollars.<sup>20</sup> Sensing the widespread disgruntlement, some employers take a more philanthropic stance to justify their use of child labor. These

14. *Id.* at 13–14.

15. *Id.* at 14.

Since it is illegal to sell a child in Pakistan, there was no written agreement between the *thekadar* and [the parent]. Only the *thekadar* would keep a record of the expenses that would be added to the *peshgi*. If the *thekadar* chose to pad the bill, there was no way to challenge him. There were no witnesses. No contract. Just a simple handshake and [the child] belonged to the carpet master.

*Id.* at 15.

Rashid was born into bondage and worked for most of his life at a brick-kiln. Although the work was hard he believed that he could soon repay the debt and work as a free laborer. He was unable to reduce his debt and work as a free laborer. He was unable to reduce his debt in spite of his many years of work. In fact, the debt actually increased.

Karim, *supra* note 1, at 34.

16. KUKLIN, *supra* note 10, at 15–16.

17. *Id.* at 16.

18. *Id.*

19. See Green, *supra* note 7, at 178.

20. Neil Kearney, *Eliminating Child Slavery and the Brutality that Accompanies It*, Int'l Conf. on Child Labor (1996), reprinted in U.S. Dep't of Labor, 1 Pub. Hearings on Int'l Child Labor 1 (1998).

employers say: “[C]hildren would starve if they couldn’t go to work . . . the only alternative would be worse forms of employment or prostitution.”<sup>21</sup> Still other employers maintain nationalist reasons for maintaining a child labor force. Shabbir Jamal, an adviser to the Ministry of Labor, stated to an interviewer: “Westerners conveniently forget their own shameful histories when they come here . . . Europeans addressed slavery and child labor only after they became prosperous. Pakistan has only now entered an era of economic stability that will allow us to expand our horizons and address social concerns.”<sup>22</sup>

In fact, many employers do not embrace the abolition of child labor with open arms. Imram Malik, a wealthy industrialist, maintained:

There is room for improvement in any society. . . . But we feel that the present situation is acceptable the way it is. The National Assembly must not rush through reforms without first evaluating their impact on productivity and sales. Our position is that the government must avoid so-called humanitarian measures that harm our competitive advantages.<sup>23</sup>

Because the wages of an adult worker are three times the wages of a child worker, its not at all surprising that employers go to great lengths to justify enslaving children.<sup>24</sup>

### *B. International Law regarding Children and Child Labor*

Pakistan law and international law both prohibit the use of bonded child labor. Under its own law and as a signatory of numerous international instruments, Pakistan is required to prohibit all forms of slavery, including debt bondage, child servitude, and forced labor, as well as to protect children from exploitation and hazardous work.

With an industrialist sector resistant to workplace reform, the task of abolishing child labor falls to the human rights community. Groups such as the Bonded Labor Liberation Front (BLLF) and Human Rights Watch (HRW) lead the fight against bonded child labor. Waging covert operations on several fronts, these groups work to inform the international

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21. *Greed and Complacency: The Root Causes of Child Labour*, INT’L TEXTILE, GARMENT & LEATHER WORKERS FED’N NEWSL., Is. 4, 1997, at 1, reprinted in U.S. Dep’t of Labor, *supra* note 20, at 1.

22. Silvers, *supra* note 2, at 85.

23. *Id.* To further illustrate this point, when the legislature approved a small tax on bricks, brick kiln owners organized a ten-day nationwide protest and threatened to halt all production of bricks. This suspension in turn would have had a devastating impact on construction. Thus, the Pakistani government repealed the tax. *Id.*

24. Claudia R. Brewster, *Restoring Childhood: Saving the World’s Children from Toiling in Textile Sweatshops*, 16 J.L. & COM. 191, 198 (1997). Despite efforts by international organizations and the global consensus to end child labor, the economic exploitation of children remains throughout the world, with approximately 95% occurring in developing countries. *Id.* at 192.

community that Pakistan is in direct derogation of international law.

### 1. *The Nature of International Law*

Before Pakistan's international law violations, a summary of the types and nature of international law is necessary. International law falls into two categories: that which has evolved as custom and that which is consented to by international agreement.<sup>25</sup> Rules (or norms) of customary international law are promulgated by "consulting juridical writings on public law, considering the general practice of nations, and referring to judicial decisions recognizing and enforcing international law."<sup>26</sup> *Jus cogens*, also referred to as peremptory norms, proscribe a set of activities so universally condemned by the international community that they can never be permitted.<sup>27</sup>

A rule of international law contained either in an international agreement or recognized as customary international law is "one that has been accepted as such by the international community of states, in the form of customary law, by international agreement, or by derivation from general principles common to the major legal systems of the world."<sup>28</sup> International agreements and customary international law are the two most significant types of international law.<sup>29</sup> Normally, international agreements are only binding upon the signatories and their nationals.<sup>30</sup> If, however, the provisions of a treaty are considered customary international law, then the principles may be binding upon all nations, whether the country specifically signed the treaty or not.<sup>31</sup> Treaty law is consensual; customary international law is universally obligatory.<sup>32</sup>

Pakistan is signatory to the following treaties: The Convention on the Worst Forms of Child Labor and The Convention on the Rights of the Child;<sup>33</sup> however, Pakistan is not just bound by the above treaties.

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25. JORDAN J. PAUST, ET AL., *INTERNATIONAL LAW AND LITIGATION IN THE U.S.* 47 (2000).

26. *Doe v. Unocal Corp.*, 963 F. Supp. 880, 890 (C.D. Cal. 1997).

27. *Id.* at 890 n.7. See also IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 5 (6th ed., Oxford University Press 2003).

28. RESTATEMENT (THIRD) FOREIGN RELATIONS LAW OF THE U.S. § 102(1) (1987) [hereinafter *RESTATEMENT*].

29. See Paust, *supra* note 25, at 35.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*, June 17, 1999, 38 I.L.M. 1207, arts.

Arguably, the treaties that Pakistan failed to sign are still binding, and failure to comply with their principles is a violation of international law,<sup>34</sup> since international agreements “may lead to the creation of customary international law when such agreements are intended for adherence by states generally and are in fact widely accepted.”<sup>35</sup>

## *2. Treaties to which Pakistan is a Signatory*

### *a. The Convention on the Worst Forms of Child Labor*

In 2001, Pakistan ratified the International Labor Organization Convention on the Worst Forms of Child Labor (ILO Convention No. 182).<sup>36</sup> The drafters hoped to protect children from any hazardous activity or occupation that leads to adverse effects on the child’s safety, health, and moral development.<sup>37</sup> This convention prohibits, for all persons under eighteen:

- a. All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; and
- b. Work, which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.<sup>38</sup>

The ILO Convention No. 182 also forbids hazardous work for any child below the age of 18.<sup>39</sup> In an effort to define hazardous labor, the International Labor Organization (ILO) issued Recommendation No. 190, stating that the following work constitutes hazardous labor:

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3(a), (d) (entered into force November 19, 2000) [hereinafter ILO C.182], available at <http://www.ilo.org/ilolex/english/convdisp1.htm>; *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th sess., Supp. No. 49, U.N. Doc. A/RES/44/25 (1989), reprinted in 28 I.L.M. 1448 (1989).

34. A detailed discussion regarding the treaties Pakistan has signed and failed to sign is discussed in subsections 2 and 3.

35. RESTATEMENT, *supra* note 28, § 102(3).

36. Karim, *supra* note 1, at 8. The ILO, created in 1919, “has 175 members and has adopted over 176 labor standards conventions,” of which twenty-five relate to child labor. Anjali Garg, *A Child Labor Social Clause: Analysis and Proposal for Action*, 31 N.Y.U.J. INT’L L. & POL. 473, 495—96 (1999). ILO created IPEC, the International Program on the Elimination of Child Labor, in 1992. IPEC constitutes the operational arm in the ILO’s efforts to eradicate the most abusive and exploitative types of child labor like debt bondage and trafficking. See generally *Abolition of Forced Labour Convention*, 320 U.N.T.S. 291 (entered into force June 25, 1957).

37. ILO C.182, *supra* note 33.

38. *Id.*

39. *Id.*



- a. work which exposes children to physical, psychological, or sexual abuse;
- b. work underground, under water, at dangerous heights, or in confined spaces;
- c. work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- d. work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; and
- e. work under particularly difficult conditions, such as work for long hours or during the night, or work where the child is unreasonably confined to the premises of the employer.<sup>40</sup>

The ILO Convention No. 182 requires ratifying members to institute immediate measures to prohibit and eradicate the worst forms of child labor.<sup>41</sup> Such measures include: creating and implementing programs for monitoring, enforcement, sanctions, prevention, child removal, and rehabilitation.<sup>42</sup> In June 1999, all ILO member-countries adopted the ILO Convention No. 182.<sup>43</sup>

Importantly, this convention also declares that the worst forms of child labor are prohibited by other international instruments, such as the Forced Labor Convention of 1930, the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.<sup>44</sup> The incorporation of these treaties into the ILO C.182 and the ILO C.182's subsequent ratification by all nations, including Pakistan, further bolsters the crusade against child labor.

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40. Recommendation No. 190 to the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 1, 1999, xx I.L.M. xx, ¶ 3.

41. See ILO C.182, *supra* note 33.

42. *Id.* at arts. 1, 5, 7.

43. Int'l Labor Org., Database of Int'l Labor Standards at <http://www.ilo.org/ilolex/english/convdisp1.htm>. All members of the ILO have adopted this instrument. This convention is among the ILO's core conventions. Thus, countries that have not yet ratified it must still send annual reports to the ILO regarding their related laws and practices. See also *Bangladesh Ratifies a New Convention: Eradicating the Worst Forms of Child Exploitation*, INDEPENDENT, Nov. 22, 2000, at 1.

44. ILO C.182, *supra* note 33, at pmb1.

*b. ILO Forced Labor Convention No. 29*

The International Labor Organization Forced Labor Convention (ILO No. 29) mandates that signatories suppress the use of all forms of compulsory/forced labor as soon as possible.<sup>45</sup> ILO No. 29 defines forced or compulsory labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>46</sup> Article IV reminds signatories that private individuals, companies, and associations are no longer permitted to utilize forced or compulsory labor.<sup>47</sup> Signatories are also obligated to “ensure that penalties imposed are really adequate and strictly enforced.”<sup>48</sup> Pakistan agreed to abide by the terms of this convention in 1957.<sup>49</sup>

*c. United Nations Convention on the Rights of the Child*

While the ILO has been the impetus behind establishing international labor standards, the United Nations has also played a vital role in the effort to limit child labor and terminate bonded labor. The United Nations Convention on the Rights of the Child is the most widely accepted human rights instrument in history.<sup>50</sup> This treaty delineates the most explicit obligations a country has to eradicate child labor. A country must “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or that interferes with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”<sup>51</sup> The Convention directs states to implement these protections through appropriate legislative, administrative, social, and educational measures and, in particular:

- a. provide for a minimum age or minimum ages for admissions to employment;

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45. Convention Concerning Forced or Compulsory Labour, June 28, 1930, 39 U.N.T.S. 55, at art. 1 [hereinafter ILO C.29].

46. *Id.* at art. 2.

47. *Id.* at art. 4.

48. *Id.* at art. 25.

49. Int’l Labor Org., *supra* note 43.

50. Green, *supra* note 7, at 177. *Convention on the Rights of the Child*, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Agenda Item 108, U.N. Doc. A/RES/44/25 (1989), reprinted in 28 I.L.M. 1456, 1456 (1989), available at <http://www.unicef.org/crc/convention.htm> (last visited Oct. 26, 2004). Members of the United Nations Commission on Human Rights, independent experts, and observer delegations of non-member governments, non-governmental organizations, and UN agencies drafted this convention over a ten-year period. *Id.*

51. *Id.* at art. 32.

- b. provide for appropriate regulation of the hours and conditions of employment; and
- c. provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.<sup>52</sup>

This convention also mandates countries to impose effective remedies and more diligent monitoring of child labor.<sup>53</sup>

The Convention on the Rights of the Child also stipulates that each child has the right to an education<sup>54</sup>—primary education must be “compulsory and available free to all.”<sup>55</sup> Further, secondary education, including vocational education, must be “available and accessible to every child,” with the progressive introduction of free secondary education.<sup>56</sup> States must “make educational and vocational information and guidance available and accessible to all children” and “take measures to encourage regular attendance and the reduction of drop-out rates.”<sup>57</sup>

Because of its universal acceptance, the Convention on the Rights of the Child has increased international awareness of children’s rights and established clear obligations for the proscription of child labor.<sup>58</sup>

#### *d. The United Nations Declaration of the Rights of the Child*

The United Nations Declaration of the Rights of the Child (Declaration) requires all nations to recognize the rights contained in the proclamation and to “strive for their observance by legislative and other measures.”<sup>59</sup> The Declaration establishes certain inviolable principles, including the child’s right to “develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity.”<sup>60</sup> The Declaration also asserts a child’s right to

52. *Id.* at art. 32.

53. *Id.* at arts. 32, 43, 44.

54. *Id.* at art. 28.

55. *Id.*

56. *Id.*

57. *Id.* at art. 28(1)(d)(e).

58. Green, *supra* note 7, at 181–82. Also note, the Convention obtained more signatures at its signing than any previous United Nations human rights treaty; it broke records by going into force just six months after its signing ceremony; and more nations have become State parties to the Convention than to any other United Nations human rights treaty. CYNTHIA PRICE COHEN, *Introduction to THE RIGHTS OF THE CHILD: INTERNATIONAL INSTRUMENTS XX-XXI* (Maria Rita Saulle & Flaminia Kojanec eds., 1995).

59. *Declaration of the Rights of the Child*, G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, at 19, U.N. Doc. A/4354 (1959).

60. *Id.* at 20.

free and compulsory education,<sup>61</sup> entitlement to play, and recreation.<sup>62</sup> Similar to the Convention on the Rights of the Child, the Declaration provides that a child must not work before an appropriate minimum age and must not labor in any employment which would compromise the child's education or health or interfere with the physical, mental, or moral development of the child.<sup>63</sup> The Declaration's mandates are evolving norms and are becoming universally binding international law.<sup>64</sup>

### 3. *Other Influential International Instruments Considered Customary International Law*

#### a. *The Minimum Age Convention*

Employers who utilize child laborers often argue that the laborer is no longer considered a child by Pakistani culture. In an effort to eliminate such excuses, the ILO adopted the Minimum Age Convention.<sup>65</sup> The Minimum Age Convention stipulates that ratifying states fix a minimum age and defines a range of minimum ages in which no child should be permitted to work. The minimum age for employment is no less than the age of completion of compulsory schooling, and in any case, no less than fifteen years.<sup>66</sup> Where the economy and educational facilities are insufficiently developed, the minimum age should not be less than fourteen years.<sup>67</sup> If the child is engaged in hazardous work, the minimum age is eighteen.<sup>68</sup> Though Pakistan has not ratified this treaty, its standards are arguably influential as states attempt to curb child labor and may even be considered customary international law.<sup>69</sup> In the past, Pakistan did agree to implement a minimum age standard in the industrial sector—Pakistan ratified the Minimum Age (Industry) Revised Convention No. 59 in 1955.<sup>70</sup>

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61. *Id.*

62. *Id.*

63. *Id.*

64. See *The Paquete Habana*, 175 U.S. 677, 694 (1900) (emphasizing that international customs and practices evolve into binding law through the passage of time).

65. Convention concerning Minimum Age for Admission to Employment, June 6, 1973, 1015 U.N.T.S. 297, art. 1 [hereinafter ILO C.138].

66. *Id.* at art. 2.

67. *Id.*

68. *Id.* at art. 3.

69. As of 2002, 116 countries have adopted the Minimum Age Convention (ILO C.138). Because a great number of countries recognize the importance of setting a minimum age, the convention may be evolving into customary international law. "A Future Without Child Labour: Global Report" under the Follow-up to the ILO Declaration on Fundamental Principles and Rights of Work, Int'l Labor Conf., 90th Sess. 2002, at annex 2. See also FAUST, *supra* note 25.

70. ILO C.138, *supra* note 65. The international minimum age for employment

*b. The United Nations Charter*

The goals of the United Nations Charter (U.N. Charter) include: "[T]he promotion of higher standards of living; full employment; conditions of economic and social progress and development; the employment of international machinery for the promotion of economic and social advancement of all peoples; and the achievement of international cooperation in solving international problems of an economic character."<sup>71</sup> The United Nation's role is to create a body of international human rights law.<sup>72</sup> Obviously the U.N. Charter's employment provisions apply to child laborers—the principles of the U.N. Charter are offended when child laborers are prevented from achieving economic and social development.

*c. Universal Declaration of Human Rights*

The Universal Declaration of Human Rights (Declaration of Human Rights) contains principles and standards of behavior applicable to all peoples in all nations.<sup>73</sup> The Declaration of Human Rights emphasizes as fundamental the right of every person to life, liberty, security, equality, and dignity.<sup>74</sup> Among the rights memorialized are: "[T]he right to freedom from slavery; freedom from cruel, inhuman or degrading treatment; freedom from arbitrary arrest and from interference with family; the right to recognition as a person before the law."<sup>75</sup> This instrument also focuses on certain economic, social, and cultural rights

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"shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than fifteen years." *Id.*

71. U.N. CHARTER pmbl., arts. 1, 55.

72. See J.M. Spectar, *Pay Me Fairly, Kathie Lee! The WTO, The Right to a Living Wage, and a Proposed Protocol*, 20 N.Y.L. SCH. J. INT'L & COMP. L. 61, 78–79 (2000) (stating the mechanisms in which human rights laws are emerging); U.N. CHARTER, *supra* note 71, at art. 55.

73. *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR 3d Sess., pt. 1, at 72, U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*]; see also *Fernandez v. Wilkinson*, 505 F. Supp. 787, 796 (D. Kan. 1980). Since 1948, the Universal Declaration of Human Rights has become the inspiration for national and international efforts to promote and protect human rights and fundamental freedoms. It set the direction for all efforts in the field of human rights and provided the basic philosophy for the legally binding international instruments that followed, including instruments addressing the rights of ethnic minorities, women's rights, and most recently, children's rights.

74. *Universal Declaration*, *supra* note 73, at arts. 3–5.

75. *Id.* at arts. 4–6, 9.

that are inviolate, including the right to work and the right to equal pay for equal work, the right to education, the right to a standard of living adequate for health and well-being, the right to rest and leisure, and the right to participate in the cultural life of communities.<sup>76</sup> All of the above rights are unattainable to a child engaged in bonded labor. Although initially considered only declaratory and non-binding, presently the standards set forth in the Declaration of Human Rights are becoming binding customary international law through wide acceptance and recitation by nations.<sup>77</sup>

*d. United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*

In November 2000, the United Nation's General Assembly adopted the United Nations Convention against Transnational Organized Crime, supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Protocol). This instrument addresses another form of juvenile labor, child trafficking, which was reaching epidemic proportions. For the purposes of the Protocol, "trafficking in persons" is defined as:

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments of benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, . . . forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>78</sup>

The use of bonded child labor is in direct violation of this Protocol.

In sum, though Pakistan has not officially bound itself to the above instruments, each instrument is customary international law. Custom is evidenced by two elements: a generally accepted state practice and *opinio juris* (accepted by law).<sup>79</sup> The ban of bonded child labor has gained widespread respect, becoming a principle of customary international law and therefore, binding upon all nations. Thus, Pakistan's blatant intransigence regarding its child labor problem directly violates customary international law.

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76. *Universal Declaration*, *supra* note 73, at arts. 23–25.

77. *Fernandez*, *supra* note 73, at 795; Amy Beth Abbott, *Child Soldiers—the Use of Children as Instruments of War*, 23 SUFFOLK TRANSNAT'L L. REV. 499, 502 (2000).

78. Protocol to Prevent, Suppress and Punish the Trafficking of Person, especially Women and Children, G.A. Res. 55/25, U.N. GAOR, 55th Sess., Supp. No. 49, at art. 3(a), U.N. Doc. A/55/49 (2001).

79. *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, 97 (June 27).

#### 4. National Laws regarding Child Labor

International law, as well as Pakistani national law, prohibits the use of bonded child labor. International law mandates that Pakistan prohibit all forms of slavery, including debt bondage, child servitude, and forced labor. International law also expects Pakistan to protect children from economic exploitation and hazardous work.<sup>80</sup> To fulfill these international obligations, Pakistan passed laws to eliminate the use of child-bonded labor.<sup>81</sup> Though such efforts appear admirable, Pakistan fails to enforce such legislation.<sup>82</sup>

##### a. *The Constitution of the Islamic Republic of Pakistan*

First, the Constitution of the Islamic Republic of Pakistan (Constitution) prohibits all forms of forced labor.<sup>83</sup> Ulfat Hussein Kazmi, the President of the Global Foundation, stated that the Constitution prohibits the use of children under the age of fourteen in factories, mines, and other hazardous occupations.<sup>84</sup> Penalties for violation of the Constitution include fines of up to 20,000 rupees or one-year imprisonment.<sup>85</sup> The Constitution also states that the government "shall remove illiteracy and provide free and compulsory secondary education within a minimum possible period."<sup>86</sup> Bonded child labor is also arguably prohibited under the supreme law of the land, but the military government suspended the

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80. See above discussion regarding international instruments that Pakistan is a party to, as well as customary international law that is binding.

81. The following domestic laws attempt to curb child labor: (1) The Constitution of the Islamic Republic of Pakistan; (2) the Employment of Children Act; (3) The Bonded Labor System Act; and (4) The Employment of Children Rules.

82. According to one Pakistani newspaper: "[T]here are approximately 3.3 million child labourers in Pakistan . . . unofficially there are around eight million children engaged in child labour. The society calls on the government to take effective measures to impose a ban on child labour and ensure free, quality and compulsory education to every child." *3.3 Million Child Labourers in Pakistan*, THE NATION, Nov. 14, 2003, at 1, available at <http://www.nation.com.pk/daily/Nov-2003>.

83. PAK. CONST. pt. II (Fundamental Rights and Principles of Policy), ch. II, art. 37(e), available at <http://www.pakistani.org/pakistan/constitution/part2.ch2.html> ("[M]ake provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex. . .").

84. *The Pak Trib.*, June 30, 2003, available at <http://www.paktribune.com>.

85. *Id.* Though 20,000 rupees sounds rather draconian, such a fine amounts to only \$349 U.S. dollars. To a small business owner, 20,000 rupees may serve as a deterrent, but to a large factory owner it only serves as a slap on the hand. Currency converted at Universal Currency Converter, at <http://www.xe.com> (n.d.).

86. PAK. CONST. pt. II (Fundamental Rights and Principles of Policy), ch. II, 37(b).

Constitution in October 1999.<sup>87</sup> President Pervez Musharraf promised that the Constitution would become effective once again after the 2002 national elections.<sup>88</sup>

*b. The Employment of Children Act*

The Pakistan National Assembly passed the Employment of Children Act in 1991, which prohibits the use of child labor in industries hazardous to children's health.<sup>89</sup> In those industries where employment is permissible, the law prohibits children under fourteen from working.<sup>90</sup> The law limits the workday of a child to seven hours, including a one-hour break after three hours of labor.<sup>91</sup> A working child must be given at least one day off per week,<sup>92</sup> and a child may not work overtime.<sup>93</sup> Employers must furthermore maintain an employment register of laboring children that labor inspectors may examine.<sup>94</sup>

*c. The Bonded Labor System (Abolition) Act*

In 1992 Pakistan passed the Bonded Labor System (Abolition) Act, a measure that specifically abolished bonded labor.<sup>95</sup> The Bonded Labor System Rules of 1995 provided penalties for those who: (1) continue the use of bonded labor; (2) omit or fail to restore property to the bonded laborer; and (3) abet in an offense.<sup>96</sup> This act also established Vigilance Committees whose functions include: advising local government on how to implement the law; helping in the rehabilitation of freed bonded laborers; ensuring that the letter of the law is being carried out; and providing any assistance necessary to achieve the objectives of the act.<sup>97</sup>

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87. INT'L LABOUR ORG., STOPPING FORCED LABOUR 351 (2001), at [http://www.ilo.org/dyn/declaris/declarationweb.download\\_blob?var\\_documentID=1578](http://www.ilo.org/dyn/declaris/declarationweb.download_blob?var_documentID=1578). Prime Minister Nawaz Sharif tried to fire General Musharraf in October 1999. Instead, Musharraf seized power promising to bring "true" democracy to Pakistan. As of the date of this comment, General Musharraf is the current president of Pakistan.

88. *Id.* It is unclear whether this promise has been fulfilled.

89. Silvers, *supra* note 2, at 82.

90. Employment of Children Act, § 2 (1991) (Pak.), available at <http://www.ilo.org/dyn/natlex/docs/webtext/22707/64834/e91pak01.htm> (last visited Oct. 25, 2004).

91. *Id.* § 7.

92. *Id.* § 8.

93. *Id.* § 7.

94. *Id.* § 11. The Employment of Children Act prohibited the use of child labor in conditions that were hazardous to the children. The Bonded Labor Act of 1992 abolished the enslavement of children. Silvers, *supra* note 2, at 3.

95. STOPPING FORCED LABOUR, *supra* note 87, at 34.

96. *Id.*

97. *Id.* at 35.



*d. The Employment of Children Rules*

The Pakistan legislature also passed the Employment of Children Rules in 1995.<sup>98</sup> This act created more stringent requirements for employers to maintain a minimum standard of health and safety in a child's working environment.<sup>99</sup> Violations of its provisions result in a maximum one-year prison term and/or a fine of 20,000 rupees for the offender.<sup>100</sup>

While Pakistan's laws condemn the use of bonded child labor, as well as hazardous child labor, the practice nonetheless persists. The Pakistani government estimates that 3.3 million children are currently working in its borders.<sup>101</sup> Nongovernmental organizations (NGOs) maintain that this figure is a gross underestimation, and the real figure is closer to ten million.<sup>102</sup> Indeed, while Pakistan's ratification of international agreements and initiation of programs to help combat child labor are promising, the U.S. Department of Labor questions Pakistan's ability to abolish the worst forms of child labor.<sup>103</sup>

The Department of Labor's pessimism in this regard stems from several reasons. First, Pakistan's government institutions are hesitant to enforce child labor laws due to the high levels of family poverty.<sup>104</sup> Pakistani parents need their children to work to ensure familial survival. Second, the regulation and prosecution of cases involving forced and bonded child labor are nearly impossible because of their elusive character.<sup>105</sup> Employers do everything in their power to conceal the use

98. Employment of Children Rules, S.R.O. 387 (I) 1995 (1995) (Pak.), available at <http://www.ilo.org/dyn/natlex/docs/webtext/44242/65005/e95pak01.htm>.

99. *Id.*

100. *Id.*; PAK. CONST. pt. II (Fundamental Rights and Principles of Policy), ch. II, art. 37(e).

101. Owen Bennett-Jones, *Pakistan Wants Action on Child Labour*, BBC News, Sept 8, 1999, at 1, available at [http://news/bbc.co.uk/1/hi/world.south\\_asia/4'4672.stm](http://news/bbc.co.uk/1/hi/world.south_asia/4'4672.stm). According to Asma Jahangir, a lawyer fighting child labor in Lahore, most organized legal activism against bonded labor focuses on the brick kiln industry. Thus, many Pakistanis who are conscious of the bonded labor system (aside from bonded laborers themselves) underestimate the problem and believe it to be a system limited to the brick kilns. Karim, *supra* note 1, at 8.

102. *Id.*

103. U.S. DEP'T OF LABOR, BUREAU OF INT'L LABOR AFFAIRS, FINDINGS ON THE WORST FORMS OF CHILD LABOR: TRADE AND DEVELOPMENT ACT OF 2000, at 13 (2003) [hereinafter WORST FORMS OF CHILD LABOR].

104. *Id.*

105. *Id.* at 14.

of child labor, and corruption runs rampant.<sup>106</sup> Third, Pakistan lacks the “financial and human resources” to effectively enforce their anti-child labor laws.<sup>107</sup> Fourth, child labor is linked to the caste system—an institution that has proven extremely difficult to eradicate.<sup>108</sup> Finally, “political instability, complacency, and corruption within governments make good laws and adequate resources ineffective.”<sup>109</sup> Even the Federal Secretary of the Ministry of Labour, Manpower and Overseas Pakistanis stated: “Legislation alone is not a panacea; it will work only if accompanied by measures that create a conducive national environment which promotes the eradication of child labour.”<sup>110</sup>

### *C. Steps Taken by the Pakistani Government to Eradicate Child Labor*

Pakistan already has legislation in place to abolish bonded labor and the worst forms of child labor, but what means has the government implemented to achieve this noble end? Has the incidence of child labor been reduced in the country? In 1996, a journalist for *The Atlantic Monthly* charged that Pakistan’s efforts to curb the use of child labor were practically non-existent.<sup>111</sup> “Given its relative prosperity, its constitutional prohibition against child labor, and its leaders’ signatures on every U.N. human- and child-rights convention, Pakistan’s de facto

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106. See Silvers, *supra* note 2, at 5.

107. WORST FORMS OF CHILD LABOR, *supra* note 103, at 14.

108. Human Rights Watch/Asia found it difficult to document particular abuses against non-Muslim bonded laborers as non-Muslims. However, eight Christians and three Hindus interviewed by HRW stated that they were forced to work harder and were punished more brutally than Muslim bonded laborers. Asif Ali, a landlord from Sindh, told HRW that “the Kohlis and Bheels (low-caste Hindus) were *kaffirs* (infidels) and did not deserve any rights.” Despite the difficulty in documenting specific violations against non-Muslim bonded laborers as non-Muslims, it should be noted that the government of Pakistan legally discriminates against religious minorities, and its practices have created a climate where the basic rights of such minorities are violated with impunity. Karim, *supra* note 1, at 15. According to a report by the Asian Development Bank, bonded agricultural laborers in the Sindh province of Pakistan, known as Haris, hail from lower caste and “untouchable” groups of Indian origin. In lower Sindh, many live in unregistered villages and so have no political rights. Many are illiterate and often ignorant of the laws that are meant to protect them. *Sindh Rural Development Project (TA 3132-PAK) Final Report*, vol. 1, ASIAN DEV. BANK (2000).

109. *Id.* In 1998, Pakistan’s economy was in a state of financial crisis. Using that as an excuse, the government continues to claim that the use of child labor helps them in the international trade arena. See DEP’T OF STATE, 1998 COUNTRY REPORT ON ECONOMIC POLICY & TRADE PRACTICES: PAKISTAN (1999), available at [http://www.state.gov/www/issues/economic/trade\\_reports/south\\_asia98/pakistan98.html](http://www.state.gov/www/issues/economic/trade_reports/south_asia98/pakistan98.html).

110. Reports and Documents Submitted to ILO Conference, 90th Sess. (June 2002), available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/reports.htm>.

111. Silvers, *supra* note 2, at 2. Author notes that the use of children’s labor is an institution throughout the Third World. “But few countries have done less to abolish or to contain the practice than Pakistan.” *Id.*

dependency on child labor is troubling and to its critics inexcusable."<sup>112</sup> Is this charge still viable?

The government has made more of a concerted effort to curb the use of child labor since 1996. The National Policy and Action Plan of May 2000 delineated three particular goals: immediate eradication of the worst forms of child labor, a progressive elimination of child labor from all sectors of employment, and implementation of programs meant to prevent children from entering the workforce.<sup>113</sup>

One means to achieve these goals is through membership in the International Programme on the Elimination of Child Labour (IPEC), an International Labor Organization group whose goal is the progressive elimination of child labor.<sup>114</sup> With the help of IPEC, Pakistan has established Work Pilot Programs in several provinces infamous for their use of child labor.<sup>115</sup> In Peshawar, IPEC established rehabilitation centers for children rescued from the workplace.<sup>116</sup> These centers include health care facilities, vocational guidance and training, and alternative income programs for families.<sup>117</sup> IPEC, with the support of the Pakistan Carpet Manufacturing and Export Association, implemented a similar program to combat child labor in the carpet industry.<sup>118</sup>

To further bolster its efforts, the government established Bait al-Mal, a

112. *Id.*

113. Yousef Kanlal, *Forward* to MINISTRY OF LABOUR, MANPOWER AND OVERSEAS PAKISTANIS, NATIONAL PLAN OF ACTION AND POLICY FOR THE ELIMINATION OF CHILD LABOUR (2000) [hereinafter PAK. NAT'L ACTION PLAN], available at <http://www.ecpat-esp.org/documentacion/planes-nacionales/Pakist%C3%A1n.pdf>. Yousaf Kanlal is the Secretary of the Ministry of Labour, Manpower, and Overseas Pakistanis.

114. IPEC achieves this goal by: strengthening the capacity of governments to deal with the problem, promoting a worldwide movement to combat child labor, providing alternatives for children and families to ensure that they do not wind up in a worse situation, and influencing national educational policies so that education systems prevent kids from being drawn prematurely into the labor force. INT'L PROGRAMME ON THE ELIMINATION OF CHILD LABOR (IPEC), ILO-IPEC PROGRAMME IN PAKISTAN (1998), available at <http://www.ilo.org/public/english/standards/ipec/action/31asia/pakist98.htm>.

115. Other ILO-IPEC projects include: elimination of child labour in the soccer ball industry; Combating Abusive Child Labour through Prevention, Withdrawal, and Rehabilitation; Elimination of Child Labour in Surgical Industry in Sialkot; Combating Child Labour in Carpet Industry in Pakitsan; and Combating Child Labour through Education and Training. PAK. NAT'L ACTION PLAN, *supra* note 113, at app. IX.

116. *Id.* at app. X.

117. *Id.*

118. IPEC, COMBATING CHILD LABOUR IN THE CARPET INDUSTRY IN PAKISTAN 3, PAK/99/05/050 (1999). Once the program finished, IPEC supported PCMEA to continue its efforts in other areas.

government welfare agency.<sup>119</sup> This agency operates over thirty-three rehabilitation centers throughout the country.<sup>120</sup> Targeting children who have worked in hazardous occupations, the agency provides both children and their families with training and stipends for lawful income-generating activities.

The Embassy of Pakistan informed the United States Department of Labor that it is mandating strict implementation and enforcement of their labor laws and of the United Nations' Declaration of the Rights of the Child.<sup>121</sup> Such efforts include regular inspections and raids of employers.<sup>122</sup> The government formed the National Committee on the Rights of the Child to perform the functions elucidated in the Convention on the Rights of the Child, Article 43. This committee also serves an advisory role, informing the government of hazardous businesses utilizing child labor.<sup>123</sup>

Another group, the National Commission for Child Welfare and Development, works in tandem with the National Committee to set up rehabilitation centers for children rescued from hazardous employment.<sup>124</sup> Pakistan also established the Child Care Foundation to ascertain the extent of child labor in the labor sectors and to ensure the welfare of the kids through education and health care.<sup>125</sup> Coupled with this paternalistic role, the foundation instituted a certification system that denotes child-labor-free products.<sup>126</sup>

Child labor initiatives such as the Child Care Foundation are key tools in combating child labor. Education, however, may be the most potent tool in both combating and preventing the use of children in the workforce. Children with no access to quality education have little alternative but to enter the labor force.

The Constitution of Pakistan states that every child up to the age of sixteen has the right to an education.<sup>127</sup> One provision in particular

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119. ILO-IPEC PROGRAMME IN PAK., *supra* note 114.

120. PAK. NAT'L ACTION PLAN, *supra* note 113, at app. X. A child exposed to hazardous labor is withdrawn and enrolled in the rehab center. Uniforms and reading materials are free. Each student is given 150 rupees per month. These children are kept in the center for four years to complete a middle school education. If the child wishes to continue his education, Bait-ul-Mal will assist the child in fulfilling this wish. *Id.*

121. CYNTHIA METZLER & ANDREW J. SAMET, U.S. DEP'T OF LABOR, PUBLIC HEARINGS ON INTERNATIONAL CHILD LABOR 3 (1997).

122. *Id.* From January 1995 to January 1997, 14,943 inspections were carried out. These inspections culminated in 8,183 prosecutions and 1,349 convictions.

123. *Id.*

124. *Id.* at 4.

125. *Id.*

126. *Id.* The Child Care Foundation also launched a publicity awareness campaign in the media on child labor to ensure that Pakistanis understand the negative ramifications of child labor.

127. PAK. CONST. pt II (Fundamental Rights and Principles of Policy), ch. 2, 37(b). The 1973 constitution was suspended in October 1999 when the military government

states that the government "shall remove illiteracy and provide free and compulsory secondary education within a minimum possible period."<sup>128</sup> Despite these constitutional obligations, education is not compulsory at the national level in Pakistan.<sup>129</sup> In fact, only two of the four provinces in Pakistan have compulsory primary education laws in effect.<sup>130</sup>

Despite this lack of a nationwide compulsory education law, the Minister of Labour, Manpower, and Overseas Pakistanis reported that the government is working to expand educational opportunities for all Pakistani children.<sup>131</sup> "The Policy envisages that 90 [percent] of the children in the primary age group (5-9) are expected to be in schools by the year 2002-3; the promulgation and enforcement of compulsory primary education law could be possible by 2004-5 ..."<sup>132</sup> To garner support locally, social welfare departments in each of the provinces attempt to convince employers and parents that education is invaluable.<sup>133</sup>

As a member of IPEC, Pakistan is also committed to ILO's "Education for All" (EFA) program. Participating governments agree to accelerate efforts to eliminate child labor and to attain the goal of universal primary education by the year 2015.<sup>134</sup> In the North West

assumed power. After the 2002 elections, the Constitution was to go into effect once again with the addition of a number of amendments.

128. *Id.*

129. World Education Services-Canada, World Education Database, "Pakistan" at <http://www.wes.org/ca/wedb/pakistan/pkfacts.htm>.

130. In December 1994, the Punjab Assembly passed the Punjab Compulsory Primary Education Act, making primary education mandatory in the province. In October 1996, the North West Frontier Province passed the NWFP Compulsory Primary Education Act of 1996. See ANEES JILLANI & ZARINA JILLANI, CHILD RIGHTS IN PAKISTAN: ISLAMABAD: SOCIETY FOR THE PROTECTION OF THE RIGHTS OF THE CHILD, 125-27 (2000).

131. PAK. NAT'L ACTION PLAN, *supra* note 113, at 11.

132. *Id.* The only statistics available are from 1998-1999. According to the Ministry of Labour, seventy-seven percent of primary age children are attending school (15.35 million kids); 4.59 million primary age children are not attending school. This number increases as the child's age increases. Over 8.08 million middle age children are not attending school. See *id.* at 2.

133. *Id.* at 11. In the USDOL Public Hearings, a Pakistani craft magazine stated that "putting children through school can be a heavy burden on families barely able to survive. Not only is education usually relatively expensive, but there are also the potential earnings of the children that families have to forsake when their children go to school." Guy Thijs, *Attacking the Root Cause of Child labour*, DOMOTEX ISSUE '98 at 112, contained in ALEXIS M. HERMAN & ANDREW J. SAMET, U.S. DEP'T OF LABOR, 2 PUBLIC HEARINGS ON INTERNATIONAL CHILD LABOR (1998) [hereinafter 1998 PUBLIC HEARINGS ON INT'L CHILD LABOR].

134. INT'L LABOUR ORG., CHILD LABOUR AND EDUCATION: AN IPEC PERSPECTIVE 1 (2002), available at [http://www.ilo.org/public/english/standards/ipcc/publ/policy/childlabour\\_education.pdf](http://www.ilo.org/public/english/standards/ipcc/publ/policy/childlabour_education.pdf).

Frontier, IPEC trained 2500 teachers to educate victims of child labor.<sup>135</sup>

Pakistan is also working in close collaboration with NGOs and employers to bolster its efforts. Two such efforts in the sporting goods and carpet weaving industries evidence an increased effort of the government and the private sector.

In Sialkot, a Pakistani region infamous for its abuse of children in the soccer ball stitching industries, the government, along with IPEC and the Federation of International Football Association (FIFA), promulgated the Red Card to Child Labor program.<sup>136</sup> This program created a system of advocacy, awareness raising, community mobilization, and rehabilitation for child workers. The local industries transferred their home-based stitching enterprises to stitching centers—a change that allows supervisors to drop in unexpectedly, ensuring that the manufacturer has not employed children. FIFA promises to encourage soccer federations and teams worldwide to participate in the “Red Card to Child Labor” program.<sup>137</sup>

The Pakistan Carpet Manufacturers and Exporters Association (PCMEA) collaborated with the Ministry of Commerce’s Export Promotion Bureau to institute a well-funded program for the prevention and eradication of child labor.<sup>138</sup> First, the PCMEA established a fund of close to one million dollars to subsidize rehabilitation centers.<sup>139</sup> All carpet exporters contribute 0.25 percent of the factory’s declared value to the fund, which is managed by government and non-government representatives.<sup>140</sup> “Since 1998, as part of the project interventions, over 10,000 carpet weaving children and their at-risk younger sibling were provided with non-formal education.”<sup>141</sup>

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135. *Id.* at 3.

136. *FIFA Teams up with United Nations to Tackle Child Labour*, DAILY TIMES (Pak.), at 5, Feb 13, 2003, available at [http://www.dailytimes.com.pk/default.asp?page=story\\_15-2-2003\\_pg5\\_5](http://www.dailytimes.com.pk/default.asp?page=story_15-2-2003_pg5_5).

137. *Id.* FIFA is both socially minded and personally motivated. Last year, the public criticized FIFA’s use of “child labour” soccer balls in the World Cup.

138. IPEC, IPEC ACTION AGAINST CHILD LABOUR 2003-2003: PROGRESS AND FUTURE PRIORITIES 24 (2003), available at [http://www.ilo.org/public/english/standards/ipcc/publ/download/implementation\\_2003en.pdf](http://www.ilo.org/public/english/standards/ipcc/publ/download/implementation_2003en.pdf). At the U.S. Department of Labor hearings, a representative of the PCMEA stated that “the specific objective of the programme is to withdraw and rehabilitate all children from hazardous and exploitative labour at all work places including homes by the year 2000. The larger objective is to withdraw children under fourteen years of age from all forms of labour and rehabilitate them by 2010.” Letter from Pak. Carpet Mfr. & Exporters Ass’n to Sonia A. Rosen [hereinafter PCM Letter], reprinted in 1998 PUBLIC HEARINGS ON INT’L CHILD LABOR, *supra* note 133, at 4.

139. *Id.* All carpet exporters, including carpet manufacturers outside the project area, are taxed 0.25 percent of the declared value of the rug. This program has been applied to subsequent projects as well, including the soccer ball and surgical instrument industries.

140. *Id.* at 4.

141. *Id.* “The communities, which initially exhibited outright hostility to the NGO workers, are now thrilled with the outcome of the programme, want more of it and are

Both the Red Card program and the PCMEA collaboration exemplify instances in which the government of Pakistan has mobilized private sector resources for child labor elimination efforts. American-based corporations are contributing to these efforts as well with labeling initiatives. Consumers, aware now that certain consumables are produced by oppressive child labor, have shown a propensity to avoid private enterprises that utilize such labor to increase their profit margin. K-Mart encountered scathing criticism when it was revealed that Kathie Lee Gifford's clothing line was the product of child labor.<sup>142</sup> To avoid such a public backlash, corporations such as Reebok, NIKE, Rugmark, Mattel, and Wal-mart created a labeling system certifying that all products are made without child labor.<sup>143</sup>

In September 1997, Saga Sports, NIKE's only Pakistani soccer ball contractor, instituted rehabilitation centers throughout Sialkot.<sup>144</sup> Saga pays for former child laborers' education, while hiring family members who are legally able to work. Each center includes a fair price food store, health care clinics, childcare facilities, and schools. Saga also allows close monitoring of its facilities to ensure that no underage laborers are hired.

Reebok launched a similar program to ensure that child laborers did not produce Reebok soccer balls. First, Reebok demanded that all production occur at a facility in which all workers are at least age fifteen.<sup>145</sup> Second, external monitors corroborate that all workers are legal and that no balls are being outsourced to home based stitching sites, where children could plausibly stitch the soccer ball.<sup>146</sup> Third, vocational training and formal education facilities are established for all

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looking for ways to sustain its impact." *Id.*

142. Paul Tharp, *Kathie Lee Doesn't Want to be a Fashion Victim*, N.Y. POST, Nov. 20, 1998, at 43, available at 1998 WL 25309455.

143. BUS. FOR SOC. RESPONSIBILITY, ISSUE BRIEF: CHILD LABOR, at 8 (2002) [hereinafter BSR Brief], available at <http://www.bsr.org/CSRResources/IssueBriefDetail.cfm?DocumentID=49773>.

144. *Id.* at 8. Another program similar to NIKE's was instituted in 1998 and includes Adidas, Brine, Mitre, Puma, Reebok, and Umbro. Each of these manufacturers has promised only to purchase soccer balls from local enterprises who participate in the monitoring program. As of February 1998, nineteen education centers had been created for former child workers, and nearly \$2 million was expected to become available as seed capital for families previously dependent on income from child labor. *Id.*

145. *Id.* Note that both NIKE and Reebok may be taking a strong stand on the issue of child labor to gain favorable attention from consumers and to increase the reputation of its company.

146. *Id.*

children in the region.<sup>147</sup> This is just another example of Pakistani manufacturers and global companies taking positive steps to address the issue of child labor. One must ask, however, what served as the impetus for such increased efforts: pressure from the Pakistani government or from irate consumers.

#### *D. The Present Scope of the Problem*

A Pakistani newspaper recently reported that, “unofficially, eight million children work for various employers.”<sup>148</sup> Approximately two million children labor in hotels, carpet factories, workshops, boot polishing stands, and vending carts throughout the country.<sup>149</sup> Thus far, the government fails to institute a plan to rescue these children and provide them with an education.<sup>150</sup> Bonded labor is still deeply entrenched in the agricultural sector; the government is only removing bonded labor from the industrial sector. This complacency is in complete derogation of the Bonded Labour Act of 1991. Global March, a leading NGO, reports that “even where landlords are caught red-handed with bonded laborers they still manage to escape justice.”<sup>151</sup> The government also fails to attack child labor in mechanic shops. An estimated 5,000 children fix engines in auto shops throughout one province of Pakistan.<sup>152</sup> The transgressions continue unabated in various sectors of Pakistan’s economy.<sup>153</sup>

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147. *Id.*

148. *3.3 Million Child Labourers in Pakistan*, *supra* note 82. The article states that the official number of child laborers is 3.3 million. The number is inflated to eight million because there is no reliable system in place to provide accurate numbers. *Id.*

149. District Multan—4000 Children Behind Bars, PAK. PRESS INT’L INFO. SERV., Jan. 9, 2003, available at 2003 WL 5424695.

150. *Id.*

151. *Bonded Child Labour in Pakistan*, CHILD LABOUR TODAY, Apr. 12, 1998, available at [http://www.globalmarch.org/child\\_labour\\_today/research18.php3](http://www.globalmarch.org/child_labour_today/research18.php3). One case discussed in this article is quite compelling. A powerful landowner lost 100 bonded laborers after a local police raid. Despite this transgression, the landowner was neither prosecuted for breaking the law nor prevented from obtaining other bonded laborers. In fact, the very police who seemingly rescued these bonded laborers returned them to the landowner. The landlords in this region (Sindh) are powerful and have corrupted many local law enforcement officers.

152. Sohail Ahmed, *Rough Ride for Pakistan’s Boy-Mechanics*, BBC NEWS, Sept. 30, 2003, available at [http://news.bbc.co.uk/2/hi/south\\_asia/3139382.stm](http://news.bbc.co.uk/2/hi/south_asia/3139382.stm). The author states: “It is no secret that child labour is widespread in Pakistan. The country may have signed and ratified the UN Convention of the Rights of the Child, article 32 of which protects children from employment which is hazardous or hampers their education. But these laws have not been enforced.” Note, this article was published in 2003.

153. The U.S. Department of Labor contends that children are still a pervasive part of Pakistan’s economy. Young boys are kidnapped and trafficked to the Gulf States to work as camel jockeys. Debt bondage still exists in the brick kiln industry. Children work as garbage scavengers, carpet weavers, and smugglers of contraband and drugs.



Even more disconcerting, Pakistan is not even acknowledging the most recent culprits: governmental and private armed groups. Children under the age of fourteen are actively recruited to fight in Afghanistan, Jammu, and Kashmir. Many child soldiers are expected to provide labor, guard captives, conduct espionage, and fight combatants.<sup>154</sup>

Sources also indicate that the government actively recruits children under eighteen, in direct derogation of the United Nations Optional Protocol.<sup>155</sup> Informal Islamic schools, known as *Madrasas*, are training children to fight in armed conflicts throughout the region.<sup>156</sup> No law regulates and no governmental agency monitors these *Madrasas*.<sup>157</sup> The father of a thirteen-year-old boy sent to fight in Afghanistan remarked: "I handed him over to the school to learn the Qur'an, not to handle guns. He is too young to fight in a war."<sup>158</sup>

Though Pakistan purports to be revamping its educational system, generally speaking, these alterations are still inadequate.<sup>159</sup> First, the

Even in provinces heavily scrutinized, over 2,000 children were found working in the textile power looms and almost 4,000 discovered laboring in auto shops. See U.S. DEP'T OF LABOR, ADVANCING THE CAMPAIGN AGAINST CHILD LABOUR: EFFORTS AT THE COUNTRY LEVEL (2002) [hereinafter ADVANCING THE CAMPAIGN AGAINST CHILD LABOUR], available at <http://www.dol.gov/ILAB/media/reports/iclp/Advancing1/CL%20Advance%20Camp.pdf>. The situation may be even direr for those children working as domestic servants. Over eighty percent of such workers are girls. Many must contend with physical and sexual abuse. Presently, no laws protect them from abuse or regulate their wages, hours, or working conditions. *Child Slaves*, THE NATION (Pak.), Nov 14, 2003, at 1.

154. LAURA A. BARNITZ, CHILD SOLDIERS: YOUTH WHO PARTICIPATE IN ARMED CONFLICT 6-9 (1999). Children participating in armed conflict may also be victims of rape. Some children have reported their duties to include providing sex for the soldiers. Remember, these children are under eighteen. By American standards, this would be considered statutory rape. *Id.*

155. COALITION TO STOP THE USE OF CHILD SOLDIERS, CHILD SOLDIERS 1379 REPORT (2002), available at [http://library.amnesty.it/cs/childsoldiers.nsf/Document/child%20soldiers%201379%20report%20\(2002\)?OpenDocument](http://library.amnesty.it/cs/childsoldiers.nsf/Document/child%20soldiers%201379%20report%20(2002)?OpenDocument). U.N. Optional Protocol states that "no soldier less than 18 should be sent to participate in active hostilities." Pakistan has not signed this UN instrument. Pakistan's Air Force recruits prospective fighter pilots from 16 years of age. *Id.*

156. *Id.*

157. *Id.* at 72-73.

158. *Id.* at 73. For several weeks the school would not even admit that this 13-year-old was gone. When school administrators finally admitted that he had left, they told his parents that the boy left of his own accord to fight in Afghanistan. Interestingly, one month later, the boy returned saying: "I was persuaded to go to Afghanistan by the *nazim* of the school." *Id.*

159. A new study by the International Labour Office says the benefits of eliminating child labor will be nearly seven times greater than the costs, or an estimated US\$5.1 trillion in the developing and transitional economies, where most child laborers

education costs still serve as a deterrent for poor families. In fact, the expenses incurred from the primary level to the secondary level increase substantially.<sup>160</sup> Many families cannot afford to pay for uniforms, books, supplies, and transportation.<sup>161</sup> Second, many families rely upon the income generated by their children.<sup>162</sup> Third, some parents contend that the present curriculum taught in these schools is substandard.<sup>163</sup> A Pakistani newspaper stated that twenty-four percent of kids do not attend school because the quality is low and the content fails to include life-skills. The present system, essentially, is not tailored to meet the needs of the individual child laborer.<sup>164</sup>

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are found. What is more, the study, conducted by the ILO International Programme on the Elimination of Child Labor (IPEC), says child labor—which involves one in six children in the world—can be eliminated and replaced by universal education by the year 2020 at an estimated cost of US \$760 billion. “What’s good social policy is also good economic policy. Eliminating child labour will yield an enormous return on investment—and a priceless impact on the lives of children and families,” says ILO Director-General Juan Somavia. The costs are a wise investment as each extra year of schooling stemming from universal education to the age of fourteen results in an additional eleven percent of future earnings per year, yielding global benefits of just over US\$5 trillion. Press Release, Int’l Labor Org., New ILO Study Says Economic Benefits of Eliminating Child Labour Will Vastly Outweigh Costs (Feb. 3, 2004), at <http://www.ilo.org/public/english/bureau/inf/pr/2004/4.htm>.

160. ADVANCING THE CAMPAIGN AGAINST CHILD LABOUR, *supra* note 153.

161. *Id.*

162. Families also benefit from the economic value of unpaid child labor. “When a child takes care of a younger sibling or gathers firewood, for example, money is unlikely to change hands, but the activity has real economic consequences. Human needs—child minding and fuel provision—that would otherwise go unmet are being serviced. . . . If children withdraw from some or all of these activities, either households will have to accept a lower level of self-provision or they will have to find some other people . . . to fill in.” IPEC, INVESTING IN EVERY CHILD: AN ECONOMIC STUDY OF THE COSTS AND BENEFITS OF ELIMINATING CHILD LABOUR 50 (2003) [hereinafter INVESTING IN EVERY CHILD], available at [http://www.ilo.org/public/english/standards/ipsec/publ/download/2003\\_12\\_investingchild.pdf](http://www.ilo.org/public/english/standards/ipsec/publ/download/2003_12_investingchild.pdf) (last visited Dec. 26, 2004).

163. *Policy Considerations for Ending Child Labor in Pakistan*, YESPAK., Oct 3, 2003, available at <http://www.yespakistan.com>.

164. All of these problems can be solved. IPEC conducted an economic study of the costs and benefits of eliminating child labor. For roughly fifteen years during which the education program is implemented, its economic burden will exceed its returns. However, after 2020, Pakistan will only benefit from improved education and health. For example, Brazil implemented an education program coupled with an income transfer program to eliminate the worst forms of child labor. Such a program distributes income to families below the poverty line while requiring school-age children to attend class.

Money is given to poor families with school-age children (seven to fourteen years old) engaged in the worst forms of labor, and it is conditioned on children going to school instead of working. . . . Children from counties above 250,000 inhabitants and from the state’s capital receive US\$32 per month . . . , while others receive US\$20. . . . In December 2001, 749,353 children benefited from this program in Brazil, resulting in government expenditure of US\$27.6 million dollars . . . a year. . . . In addition to the direct benefit given to each child, the program also includes a supervised time of leisure, culture and sports, complementing children’s school time. Moreover, orientation and

The inadequate education system indicates an even greater problem is looming in the background, which the government has failed to address. An official at the Labor Department admits: “[W]e have been concentrating on making these children aware of the hazards of labor, but their main problem is poverty, and the government has limited resources to offer alternatives to child labor.”<sup>165</sup> An employer states: “[W]e can’t refuse parents who bring these children because of their poverty.”<sup>166</sup> Rashid, a child laborer, recounts what his mother told him: “[Y]ou are poor and have no right to an education, because you have to feed your two sisters.”<sup>167</sup>

Impoverished families are forced to pawn their children off to a willing employer in order to supplement the income needed for mere survival. Legislation alone is not a panacea. The government must accompany such labor laws with social programs meant to reduce poverty.

### III. THE IDEAL SOLUTION

The most effective means to end the worst forms of child labor in Pakistan is by making it a *jus cogens* norm. Under Article 53 of the Vienna Convention, a *jus cogens* norm is “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”<sup>168</sup> The physical and psychological abuse endured by child laborers is torture, which is forbidden under customary international law,<sup>169</sup> as well as international treaties.<sup>170</sup> Also, child laborers are

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support through social and educational activities are given to children’s families. Currently, the industries targeted by the program are: coal and other mining, brick manufacture, milling, joinery, trash collection, quarrying, textiles, salt processing, meat-packing, fishing and plantation agriculture in cotton, tobacco, sugar cane, citrus, sisal, etc.

INVESTING IN EVERY CHILD, *supra* note 162, at 55.

165. Ahmed, *supra* note 152. The government is providing few economic incentives to lure kids away from paying jobs. *Id.*

166. *Id.*

167. *Id.* This child’s father passed away. His mother depends upon him as the sole breadwinner. Rashid’s weekly income is seventy cents, the norm for children who work in auto shops. *Id.*

168. Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 331, available at <http://www.fletcher.tufts.edu/multi/texts/BH538.txt>.

169. RESTATEMENT, *supra* note 28, § 702(d).

enslaved. Freedom from slavery has long been exalted as a fundamental human right and the prevention of slavery is an international obligation of the highest order.<sup>171</sup>

### A. *Torture is a Jus Cogens*

The prohibition of torture is considered *jus cogens* under international law.<sup>172</sup> Thus, a state violates international law if it practices, encourages, or condones torture or other cruel, inhuman, or degrading treatment or punishment.<sup>173</sup> The Restatement (Third) Foreign Relations Law defines torture in two ways. First, torture is equivalent to “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted ...”<sup>174</sup> Second, torture is also defined as “an aggravated and deliberate form of cruel, inhuman, or degrading treatment or punishment.” NGOs have documented many instances of physical and psychological cruelty against child laborers.

#### 1. *Abuses in the Brick Kilns*

In the brick kilns, the mortality rate is high.<sup>175</sup> Few employers provide

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170. See *Filartiga v. Pena-Irala*, 630 F.2d 876, 880 (2d Cir. 1980).

171. Yasmine Rassam, *Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slavery Trade Under Customary International Law*, 39 VA. J. INT'L L. 303, 306–08 (1999).

172. RESTATEMENT, *supra* note 28, § 702(d) cmt. g.

173. *Id.* At the very least, Pakistan's failure to eradicate child labor demonstrates its encouragement if not complicity in the cruel and inhumane treatment of children. Hilary Charlesworth notes that “[i]nternational concern with torture arises only when the State itself abandons its function of protecting its citizenry by sanctioning criminal action by law enforcement personnel.” Hilary Charlesworth, *et. al.*, *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 628 (1991).

174. RESTATEMENT, *supra* note 28, at cmt. g. The Restatement also references the definition in the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment:

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for an reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent of acquiescence of a public official or other person acting in an official capacity.

G.A. res. 39/46, U.N. GAOR, 39th Sess., Annex, Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984).

175. Global March against Child Labour, *Child Labour in the Brick Kilns of Pakistan* [hereinafter *Child Labour in the Brick Kilns*], in U.S. DEP'T OF LABOR, 2 THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN U.S. AGRICULTURAL IMPORTS & FORCED AND BONDED CHILD LABOR 104 (1995), available at <http://www>.

amenities to protect against the scorching sun in the summer and the frigid cold of the winter.<sup>176</sup> Children inhale noxious fumes and fine quartz dust daily. Many children suffer from at least one of the following diseases: tuberculosis, chronic chest infections, silicosis, eye infections, or blindness.<sup>177</sup> Seven-year-old Mustafa reported he was slapped and kicked by the *jamadār* for not working diligently.<sup>178</sup> Other children recounted beatings with hot iron rods, shovels, and shoes.<sup>179</sup>

This torture is not only physical but also mental. "The children ... grow up in a climate of insecurity and fear, being daily witnesses of their parents being humiliated, insulted or worse."<sup>180</sup>

## 2. Abuses in the Carpet Industry

Abuse in the carpet weaving factories runs rampant as well. First, the environment in the factories is appalling. In an airless, sweltering room, children squat on a small rutted wood platform weaving for ten to twelve hours a day.<sup>181</sup> Incessant contact with chemical dyes poisons the skin, insufficient light impairs sight permanently, and the inhalation of wool dust damages the lungs. Other common ailments afflict the children, including respiratory infections, scabies, eczema, tuberculosis, skin ulcers, emphysema, carpal tunnel syndrome, and arthritis.<sup>182</sup> Second, children often face corporal punishment for challenging authority or

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[globalmarch.org/cl-around-the-world/copy-sweat-toil95/pakistan-brick-kilns.php3](http://globalmarch.org/cl-around-the-world/copy-sweat-toil95/pakistan-brick-kilns.php3).

176. *Id.*

177. *Id.* Brick laborers also suffer from joint and back problems. Kids may carry as many as 2,000 bricks per day, and each brick weighs approximately three pounds. Other reported illnesses included skin diseases, spine curvature, asthma, and lung disease. DAVID L. PARKER ET AL., *STOLEN DREAMS: PORTRAITS OF WORKING CHILDREN* 63–67 (1998).

178. Karim, *supra* note 1, at 43–44.

179. *Id.* at 46.

180. *Child Labour in the Brick Kilns*, *supra* note 175.

181. KUKLIN, *supra* note 10.

182. *Id.* at 21. A journalist visited several carpet factories in Pakistan and was horrified by the abominable conditions and treatment these children face on a regular basis.

They were small, thin, malnourished, their spines were curved from lack of exercise and from squatting before the loom. Their hands were covered with calluses and scars, their fingers gnarled from repetitive work. Their breathing was labored, suggestive of tuberculosis. Collectively these ailments, which pathologists call captive child syndrome, kill half of Pakistan's working children by age twelve.

*Id.* See Silvers, *supra* note 2, at 8.

failing to fulfill the foreman's expectations.<sup>183</sup> On a wall in one factory a sign warns: "[A]ny child caught sleeping is fined with two hundred rupees[;] any [child] caught trying to escape is beaten viciously and violently."<sup>184</sup> Akbar, a ten-year-old weaver, recounts:

The master screams at us all the time, and sometimes beats us. We're slapped often. Once or twice he lashes us with a cane. I was beaten ten days ago, after I made errors of color in carpet. He struck me with his fist quite hard in the face. I was fined one thousand rupees and made to correct the errors by working two days straight.<sup>185</sup>

Even if such torture is reported to local law enforcement, police rarely prosecute owners for such abuse.<sup>186</sup>

Labor may even harm a child through the task itself, the tools used, the conditions of work, or any other factor that affects his physical, mental, or psychological development. Health and safety hazards for laborers under the age of eighteen are even more pronounced. First, due to their lack of maturity and experience, children are more prone to occupational hazards. Second, exposure to dust, chemicals, and other toxic substances, as well as physical strain, can initiate irreversible damage to their growing bodies. Further, child laborers are also psychologically and intellectually disadvantaged—most children who work are unable to attend school. Those who do attend school are too fatigued to give much thought or effort to their education.

The abuses these children endure are torture. Allowing abusive child labor to continue unabated is a violation of *jus cogens* norms and demands an immediate remedy with impetus from the international community.

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183. Errors in weaving, late loan payments, and delays in production are punished with draconian beatings. All child laborers interviewed by Human Rights Watch Asia stated they had been either physically, psychologically, or sexually abused. See Karim, *supra* note 1, at 54. Also note, 200Rs. converts to US\$4. Currency converted at Universal Currency Converter, *supra* note 85.

184. Karim, *supra* note 1, at 54.

185. Silvers, *supra* note 2, at 8.

"Salim," aged nine, was not very good at weaving carpets. His incompetence infuriated the foreman of the center at which he worked. Consequently, he was slapped and beaten with a stick on a daily basis. Once, after he made a terrible mistake, the foreman took a shearing knife and made a deep cut between "Salim's" thumb and index finger. "Salim" was so terrified of the foreman that he did not attempt to register the complaint.

Karim, *supra* note 1, at 55.

186. *Id.* Also note, many incidents are not reported. Salim was beaten daily because he did not excel at weaving carpets. On one occasion, the foreman cut a deep wound between Salim's thumb and index finger because Salim made a big error in the carpet. Salim failed to report this incident because he was utterly terrified of the foreman. *Id.*

*B. Slavery is a Jus Cogens*

Since the turn of the century, the prohibition of slavery has been considered a *jus cogens* norm.<sup>187</sup> An Inquiry Commission of the ILO reiterated this stating: “[T]here exists now in international law a peremptory norm prohibiting any recourse to forced labor and that the right not to be compelled to perform forced or compulsory labor is one of the basic human rights.”<sup>188</sup> Forced labor is analogous to the shackles placed on slaves in the nineteenth century. Since international law prohibits slavery, this proscription should apply to bonded child labor as well.

Why is child labor slavery?<sup>189</sup> The ILO defines forced or compulsory labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered

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187. The prohibition of slavery is listed in the ICJ’s catalogue of *erga omnes* obligations. It also amounts to a *jus cogens* norm, a rule of such overriding importance that it permits no derogation. See LAURI HANNIKAINEN, PEREMPTORY NORMS (*JUS COGENS*) IN INTERNATIONAL LAW 75–81 (1988). See also IAN BROWNLEE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 515 (1990). A vast amount of treaties and conventions, dating back at least two-hundred years, denounce slavery and particular forms of slavery. See African Charter on Human and Peoples’ Rights, June 27, 1981, 1520 U.N.T.S. 217; International Covenant on Civil and Political Rights, Dec. 19, 1966, arts. 2, 8, 999 U.N.T.S. 171, 173, 175; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 4, 213 U.N.T.S. 221, 224; Declaration of the Eight Courts Relative to the Universal Abolition of the Slave Trade, Feb. 8, 1815, 63 Consol. T.S. 472.

188. INT’L LABOUR ORG., REPORT OF THE COMMISSION OF INQUIRY APPOINTED UNDER ARTICLE 26 OF THE CONSTITUTION OF THE INTERNATIONAL LABOR ORGANIZATION TO EXAMINE THE OBSERVANCE BY MYANMAR OF THE FORCED LABOR CONVENTION, 1930 (No. 29) para. 203 (1998), available at <http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.htm>. The Committee based this conclusion on several factors: (1) the Forced Labor Convention, 1930, (2) many States have prohibited forced labor at the constitutional level, (3) numerous international human rights instruments explicitly banned forced labor, (4) forced labor was closely related to the protection of other basic human rights, and (5) the provisions of international law of armed conflict prohibiting forced labor. *Id.* ¶ 202.

189. While not meeting all of the criteria of the classical definition of slavery, the practices of . . . debt bondage . . . [and] forced labor . . . do share similar elements that deem them obvious candidates for inclusion in the term “modern forms of slavery.” First, each practice contains an element of extreme, direct physical and/or psychological coercion that gives an individual or state virtual domination over every aspect of a person’s life. Although no state denies a juridical personality to any individual subjected to these practices by explicitly recognizing legal ownership of him or her by other persons, the victims of these practices are indeed susceptible to ownership by others because of state complicity or lack of enforcement of domestic laws.

Rassam, *supra* note 171, at 320.

himself voluntarily.”<sup>190</sup> Threatening tactics and the fear of punishment compel children to work six or seven days a week, day and night. Child laborers are exploited and lack the means and voice to mandate safe, healthy working conditions. For the most part, these children are treated as property or chattel, similar to American slaves prior to the abolition of slavery.

Child laborers suffer a similar plight endured by slaves. Children lack the choice of whether to work. Any earnings are a mere pittance, and by no means compensate for the amount of work exacted each day. A twelve-year-old girl maintained she was chattel: “I have never been paid for my labour because I am a slave and their property.”<sup>191</sup>

In fact, the bonded labor system is well entrenched in Pakistani society and is just a modern version of slavery.<sup>192</sup> A child can become bonded in several ways. First, a child may be kidnapped and sold to a contractor. For example, young Pakistani boys are kidnapped and trafficked to the Gulf States to labor as camel jockeys.<sup>193</sup> A child may also become bonded when their labor is required to repay a loan.<sup>194</sup> Rarely do children live to see their loans repaid. To ensure that the children do not escape, various forms of force are implemented. A carpet weaver recounted the threats made by his employer to ensure no one would escape: “[W]e were threatened with being thrown in boiling oil.”<sup>195</sup> In many cases, children are kept under surveillance, sometimes under lock and key.<sup>196</sup>

Bonded labor is prevalent in agriculture as well.<sup>197</sup> Children and

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190. Madeleine Grey Bullard, *Child Labor Prohibitions are Universal, Binding and Obligatory Law: The Evolving State of Customary International Law Concerning the Unempowered Child Laborer*, 24 Hous. J. INT'L L. 139, 150 (2001).

191. Karim, *supra* note 1. Another child stated her family had been enslaved for over five generations. She stated she and her father have been sold several times. *Id.*

192. See Rassam, *supra* note 171, at 321, 328–29.

193. ADVANCING THE CAMPAIGN AGAINST CHILD LABOUR, *supra* note 153, at 182.

194. In the agricultural sector, the children assume the debts of their parents when their parents die or become too old to continue working. Some families take out additional loans of money or goods, using their child's labor as collateral. *Bonded Child Labour in Pakistan*, *supra* note 151.

195. KUKLIN, *supra* note 10, at 20.

196. Hassan Mujtaba, *The Living Dead*, NEWSLINE, Dec. 1992, at 49. Many children working on farms are physically enslaved in prisons to prevent escape.

About thirty kilometers east of Tando Allahyar . . . is a fort like structure. Its walls, fourteen feet high, are strategically covered with barbed wire. . . the residents of the area have long known that the building, commonly referred to as a *kot*, is a private prison where the all-powerful landlord of the area incarcerated his *haris* (peasants). The armed guards deployed in the bunkers to keep watch over the inmates were familiar sites. . .

*Id.* Over 132 children were found chained to iron fetters.

197. Karim, *supra* note 1, at 58. The government does little to eradicate this feudal system. Human Rights Watch attributes this to the significance of the agricultural sector



adults are purchased and sold by landowners. Lal, a forty-year-old sharecropper working in Sindh, informed Human Rights Watch that his entire family has worked in a sugarcane field their whole lives. In fact, he has been working for this landlord since early childhood. To garner freedom, the landlord expected Lal to pay off his entire family debt—a feat utterly impossible to accomplish.<sup>198</sup> Another farm laborer, twelve-year-old Sakina, morbidly states: “I pluck cotton and chilies, harvest wheat and other crops and do whatever is asked by the landlord. ... They beat me and keep us hungry. I can’t leave or my parents will be beaten and where will I go?”<sup>199</sup>

The prohibition against slavery and torture is *jus cogens*, prevailing over all other forms of international law. Child laborers are often subjugated, like slaves, and endure tortuous abuse—child labor is therefore both slavery and torture. Thus, the international community has the means to punish any country that fails to eradicate child labor.

#### IV. CONCLUSION

Pakistan has not done enough to successfully curtail the use of child labor within its borders. International human rights instruments enshrine certain principles central to the rights of children. These rights include:

- Children are generally entitled to the protection granted in international human rights law to all human beings;
- Children are entitled to special treatment and have a distinct status in international human rights law; and
- All people, including children, have a right to life. They may not be arbitrarily deprived of life.

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in Pakistan’s economy. Agriculture generates one quarter of the nation’s GNP and employs roughly fifty percent of its labor force. *Id.* at 59.

198. *Id.* at 63. Sharecroppers such as Lal receive a mere pittance for their work. Wages are generally barely enough to ensure his individual subsistence. No money is left over to repay the debt. “As he earns subsistence wages, it is impossible for him to repay the debt.” *Id.*

199. *Bonded Child Labour in Pakistan*, *supra* note 151.

Many of the children come from ethnic minorities, formally pastoral Hindu tribes that have a very low social status and are subject to gross discrimination. Whole families can be trapped for generations working to pay the high rates of interest on a loan taken from the landlord. They receive no wages and the only way they can buy medicines or meet other daily expenses is to ask the landlord for a further loan.

*Id.*

Many forms of child labor do in fact divest children of these rights.

Pakistan has passed laws limiting child labor and indentured servitude. Sadly, despite Pakistan's repeated promises to eliminate the use of child labor, they have universally disregarded both their own laws outlawing the practice and the international conventions that they have signed, including the Convention on the Rights of the Child and the ILO Conventions. Approximately eleven million children aged four to fourteen keep Pakistan's factories operating.<sup>201</sup> The historical dependence upon child labor, coupled with the standard business objective to maximize financial gain, is a significant barrier to the elimination of abusive child labor.

Only one means can effectively and successfully improve the brutal and squalid conditions that these children face each day. The international community must conclude that Pakistan has acted contrary to a *jus cogens* norm by allowing child labor to continue within its borders.<sup>202</sup> While the United Nations and the International Labor Organization have led the crusade to end child labor, lack of enforcement power limits the effect they can have in ensuring that obligations are carried out.<sup>203</sup>

The international community threatens trade sanctions and punishment by the International Court of Justice for the illegal use of fishnets in international waters. What sanctions have been administered for using children as laborers? None. Isn't it time, at the very least, to safeguard children as vigorously as the international community protects fish?

AINES SMITH

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201. Green, *supra* note 7, at 184.

202. International laws are difficult to enforce. Some commentators argue that child labor should not be abolished because it would be too expensive to enforce, and enforcement may be ineffective. In response, John Weeks proffers:

On a regular and extensive basis, societies enact and seek to implement many prohibitions, which are difficult and expensive to enforce. The "cost of enforcement" argument could be equally applied to most activities that societies define as crimes: drug use, theft, etc. Further, there are many crimes against capital, which are extremely difficult both to define and enforce, yet are implemented regularly: insider trading, theft of intellectual property, embezzlement, to name a few. Child labour, often in the form of forced child labour, is a crime in most countries. It should be penalized as such within the framework of free trade.

John Weeks, *Economic Integration in Latin America: Impact on Labour*, available at <http://www.ilo.org/public/english/employment/strat/publ/etp18-7.htm> (last visited Jan. 17, 2005).

203. Garg, *supra* note 36. Also note, Pakistan is not the only culprit. Throughout the world, at least 250 million five- to fourteen-year-old children labor. Roughly fifty to sixty million of these children are aged five to eleven. *Id.* at 475.