Protecting the Innocents: The Inter-American System and Securing the Girl-Child’s Rights

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By

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Although the international community has improved its advocacy and protection of women’s and children’s rights in international law, the girl-child remains at risk and unprotected. The girl-child is the most vulnerable, disenfranchised category, deriving from her status as both a female and a child. Although an investment in the girl child is an investment in humanity and the future, all too often girls’ needs go unmet. Her basic rights are denied through her need of food, shelter, clothing, health care, education, safety, and freedom from harassment and exploitation. There is a lack of international, regional, and national law recognizing the girl-child as a social category, leading to a lack of recognition and obligation to the girl-child. This lack of obligation is evident in the deficiency of legislative and judicial mechanisms and ultimately a lack of protection. The disparity in international, regional, and national law between the girl-child’s natural rights and her afforded rights leads to overall neglect in the form of ineffective protection and enforcement. The lack of effective implementation and/or enforcement mechanisms accompanying law has led to widespread disregard on the public and private level. I contend that the international community, as well as regional organizations and nations, perpetuate, and in some cases commit, human rights abuses against the girl-child through their neglect. Protection for women, children, and the girl-child is especially ineffective as abuses are unofficially condoned through the widespread inattention by authorities to human rights issues and violations. The evidence of abuse against these sectors of society has been overwhelmingly undocumented.

First, I will describe the human rights afforded on the international and regional arena. I will next examine the situation of the girl-child, documenting the status of women and children in the world. Then, I turn to Latin America. Finally, I conclude that there is a gap between afforded rights and protection of these rights. Examining this gap, I contend it is a result of not recognizing an important social group: the girl-child. I will then focus on a case study of the OAS and Latin American region to document its efforts and shortcomings toward this group. In conclusion, I will offer recommendations.

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Introduction

"The acceptance of universally binding standards of Human Rights as laid down in the Universal Declaration of Human Rights and in the International Covenants of Human Rights is essential...Respect for fundamental human rights should not remain an ideal to be achieved but a requisite foundation for every human society."  Unfortunately, human rights are neither universally nor uniformly respected. In particular, the girl-child is the most vulnerable, disenfranchised category, deriving from her status as both a female and a child. Although an investment in the girl-child is an investment in humanity and the future, all too often girls’ needs go unmet. Her basic rights are denied through her need of food, shelter, clothing, health care, education, safety, and freedom from harassment and exploitation. The girl-child of today is the woman of tomorrow. The situation of the weakest of society is a chief indicator of human development. Therefore, I focus on the girl-child, not to ignore the plight of other groups, but that her development may promote social, cultural, economic, and political progress.

Although the international community has improved its advocacy and protection of women and children’s rights in international law, the girl-child remains at risk and unprotected. There is a lack of international, regional, and national law recognizing the girl-child as a social category. Consequently, the lack of recognition leads to a lack of obligation to the girl-child. This lack of obligation is evident in the deficiency of legislative and judicial mechanisms and

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ultimately a lack of protection. Presently, law for the girl-child must be amassed from two sources, women’s law and children’s law. Although there has been a substantial evolution and progress in the last decade to further improve women’s rights and children’s rights, there are several interrelated problems. These problems concern the status of women and children – while the girl-child is not acknowledged in the traditional human rights framework. Former Chief Justice of India, Justice P.N. Bhagwati, cites three reasons accounting for the neglect of women’s, and concurrently children’s, rights in the mainstream of human rights:

1. Mainstream human rights bodies are overwhelmingly adult male;

2. There is a division between civil and political rights versus economic, social and cultural rights. Although official rhetoric proclaims rights as indivisible, civil and political rights have taken relative prominence on international and national agendas, especially by Western governments. Governments view rights as negative; the duty of the government is not to infringe or deny these rights. Many Third World countries argue for the supremacy of economic and social rights, rendering the government with positive duties. These duties obligate the government to act in order to meet basic needs. Women and children’s issues derive from their status as the most vulnerable of society. Both groups do not have adequate social power. The general neglect of economic and social rights furthers the neglect of the situation of women and children; and

3. There is a mainstream dichotomy between public and private responsibility limiting the rights of women and children. Traditional human rights have focused on state violations against individuals or groups. This focus does not recognize the majority of violations perpetuated against women and children.²

The above issues are severe limitations of international law in the advancement of women’s rights. This analysis is easily conferred upon the girl-child. First, the conceptualization of human rights in the past did not involve women and, therefore, currently does not incorporate a gender perspective. Second, many crucial issues that the girl-child faces are not defined as human rights. Examples include under-development, illiteracy, gender segregation, and systematic violence. As a result, legally binding norms do not exist or are not addressed by traditional human rights bodies. Thirdly, *de facto* and *de jure* discrimination against females has been justified by governments as cultural, religious or ethnic norms, inhibiting proper international response to violations. If the girl-child is not a legal category, her problems and abuses are not documented. If her problems and needs are not documented, she is not viewed as a worthy victim. It is an issue of framing: without adequate documentation, important issues and violations cannot be addressed. Without proper framing of the issues as violations against the girl-child’s inherent dignity, the human rights of the girl-child will never be realized. With this perpetuating cycle, how will the girl-child obtain her rights?

The above limitation in framing leads to human rights violations against the girl-child that are not sufficiently addressed by the international community. The disparity in international, regional, and national law between the girl-child’s natural rights and her afforded rights leads to overall neglect in the form of ineffective protection and enforcement. The lack of effective implementation and/or enforcement mechanisms accompanying law has led to widespread impunity on the public and private level. I contend that the international community, as well as regional organizations and nations, perpetuate, and in some cases commit, human rights abuses against the girl-child through their neglect. Protection for women, children, and the girl-child is especially ineffective as abuses are unofficially condoned through the widespread inattention by

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authorities to human rights issues and violations. The evidence of abuse against these sectors of society have been overwhelmingly undocumented.⁴

First, I will describe the human rights accorded on the international and regional arena. I will next examine the situation of the girl-child, documenting the status of women and children in the world. Then, I turn to Latin America. Finally, I conclude that there is a gap between afforded rights and protection of these rights. Examining this gap, I contend it is a result of not recognizing an important social group: the girl-child. The girl-child is the most vulnerable of all groups, deriving from her inferior status as both a female and child. I will then focus on a case study of the OAS and Latin American region to document its efforts and shortcomings toward this group. I will conclude by offering recommendations.

**International Human Rights Law**

International human rights, housed in a body of international treaties as well as generally recognized customs and norms, have a basis in international law. Based on the notions that human rights of individuals and groups are a matter of international concern, international human rights law solidifies the international community’s interest in preventing or punishing offenses against humanity committed within a state. A treaty is a contract between nations and a promise by each signatory that it will faithfully carry out the objectives of the covenant and, therefore, is legally binding. International human rights have been developed by representatives of many nations in a “complex, unorganized, political process; treaties are designed for diverse national societies, maintained by diverse national institutions, and monitored in uncertain, small ways by primitive international procedures in a loose international political system.”^5^ Many treaties brought about by the United Nations form the basis of the law governing relations among nations, but treaties and agreements that states have made with other states also fall into the category of international human rights law. On December 10, 1948, the United Nations enshrined a broad list of rights in the Universal Declaration of Human Rights, considered universal and inalienable to all individuals. This document is important in the development, consolidation, and promotion of international human norms by focusing the world’s attention to human rights and setting fundamental standards.

Rights imply what is essential to a human’s well being. Moreover, “rights” require a government be activist, intervening, and committed to economic and social planning for the

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society to ensure these rights. David M. Trubek contends international human rights law is synonymous with “programmatic obligation,” obligations which bind states to undertake programs to guarantee minimum levels of economic, social, and cultural well-being to all citizens. In other words, international human rights obligate governments to adopt necessary laws and measures. The justification for this line of reasoning can be found in Articles 55 and 56 of the United Nation’s Charter. Article 55 commits the United Nations to promote “higher standards of living, employment and development, solutions to international economic, social, and health problems; international cultural and educational cooperation; and respect for human rights” while Article 56 pledges the member nations to achieve these purposes both separately and jointly. These rights have progressively been incorporated into national systems. I will later draw upon the obligation of member states derived from Article 55 and 56 to assert the need for specific girl-child treaties and programs.

**Human Rights Instruments**

The main body of the international law of human rights includes the United Nations Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, collectively referred to as the International Bill of Rights. The international community has further identified, defined, promoted, and protected human rights in a host of other specific treaties over the last half of the 20th century including the International Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. A first glance, one must note the lack of a specified treaty for the girl-child. Although this does not necessarily

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indicate neglect from the international community, one can speculate such an absence does not positively promote her rights either.

International human rights law recognizes and distinguishes between civil and political rights and “social welfare rights” (these include economic, social, and cultural rights). The International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly in 1966 and in effect in 1976, is the most detailed and specific body of social welfare rights. It approaches individual welfare from the social view, presuming that individual welfare results in part from the economic, social, and cultural conditions in which a person lives. The important crux is that the government has an obligation to ensure the adequacy of such conditions. A government satisfies its commitment through programs to protect, promote, and ensure the rights. The duty applies equally to all signatory states, regardless of political or economic systems and level of development.

The Economic Covenant is relevant to women’s and children’s economic and, consequently, overall human rights status. It provides “normative guidance for all states and provides an explicit system of international monitoring of progress towards its goals,” achieved through rights specifically guaranteed by the convention, the principle of progressive realization, and the system of generic implementation. Rights recognized in the Covenant include the right to self-determination, right to work in safe and healthy working conditions, right to fair wage including the principle of equal compensation, right to leisure, right to social security, right to an adequate standard of living, right to health, right to an education, and the right to

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10 Article 6, ibid.
11 Article 7, ibid.
12 Article 7, ibid.
13 Article 9, ibid.
14 Article 11, ibid.
15 Article 12, ibid.
participate and enjoy the cultural life of the society. According to David M. Trubek, the Economic Covenant is oriented around the principle of progressive realization. Rights are “recognized” rather than “declared” or “ensured.” This implies that the Party to the covenant has a different obligation in the area of these rights. In addition, Article 2(1) states the principal obligation of the parties in the social area is “to take steps…with a view to achieving progressively the full realization of rights” recognized. This indicates that the rights must be implemented, even if over time, by a program of activities. The clause concedes governmental restraints, particularly in the matter of resources, by calling for the State to “take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources.” Different rates of progress are acceptable with social welfare as a priority.

The overall implementation system is generically oriented. International social welfare law includes a body of “general norms, specific standards, and concrete programmatic efforts by which the international community creates standards, monitors progress, and assists states in their efforts to meet their obligation to progressively realize the rights specified in the Universal Declaration and the Economic Covenant.” Principal international responsibility for implementation of social welfare rights lie with specialized agencies. A severe limitation with the Commission on Human Rights and the Economic and Social Council is the inability to make specific comments, recommendations, or appraisals of specific countries. The effective power of the Commission is tied to activities of the specialized agencies such as the International Labour Organization (ILO), the World Health Organization (WHO), and the United Nations Educational,
Scientific, and Cultural Organization (UNESCO). These agencies have an important role in the process and realization of rights. First, the agencies are able to contribute to the process through the development of general positive programs to promote general welfare. The agencies also have the authority to provide specific analyses of country situations and performances. Specific standards and guidelines as well as shaping positive programs are also generated by these agencies in order to provide a more accurate assessment of individual and aggregate progression. The Economic Covenant has left it to the agencies to clarify the norms and develop appropriate measures to promote the social welfare rights. Unfortunately, focus is only given to the areas and groups that are represented by these groups. Traditionally, the girl-child has been an ignored constituency.

The primary medium for human rights within the UN system is the Commission on Human Rights, a functional body of the UN Economic and Social Council. The Commission appoints Special Rapporteurs to conduct independent research and investigations on specified issues or countries. In addition, each human rights instrument has a committee that serves several functions. Currently, there is no Special Rapporteur or Committee appointed to deal with the status and rights of the girl-child. Why is this important? First, the special Rapporteur or committee would be able to provide constant attention to the situation of the girl-child. The Rapporteur or committee would hold regular and special sessions to review reports submitted by state parties concerning the girl-child. The Rapporteur or committee would monitor implementation of the relevant convention. Moreover, the Rapporteur or committee would be charged with clarifying the meaning of provisions and make recommendations concerning their implementation.

The “generic” implementation clause coupled with progressive realization highlight the main impediment within the international community to the realization of rights for the girl-child

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(through basic human rights). Unfortunately, the clauses do not impose an immediate obligation upon the States, permitting States to shirk their international responsibility through slow or no implementation. A quantitative study is needed to sufficiently deduce if the clauses have produced positive results in the status of the girl-child.

The Economic Covenant specifically mentions the rights of women and children in several areas, however the reader must note the lack of specific reference to the girl-child. Article 3 binds the States to “ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights.”[^23] Article 7 explicitly recognizes the right to “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women…with equal pay for equal work.”[^24] Mothers have special recognition and protection in Article 10(2) in which a “reasonable period before and after childbirth” should be accorded to them with “paid leave or leave with adequate social security benefits.”[^25] However, this recognition also confers a burden on the woman. In international law and in most societies, a woman’s primary role is one of a child-bearer and child-rearer. Such a defined role limits her power and opportunities outside the home. Furthermore, the Covenant pledges protection and assistance to families due to their unique responsibility of “care and education of dependent children.”[^26] Section 3 of Article 10 deals specifically with the situation of child labor, stating, “Children and young persons should be protected from economic and social exploitation. Their employment in work harmful…should be punishable by law.”[^27] Age limits for labor were also mentioned without details.

I will now turn to the specific treaties concerning women’s rights and then children’s rights. It is important to analyze the international community’s efforts toward these groups because the girl-child is both a female and child, and, therefore, her rights are closely associated.

[^24]: Ibid.
[^25]: Ibid.
[^26]: Article 10(1), ibid.
[^27]: Ibid.
International Treaties Concerning Women’s Rights

The right and principle of equality of women with regard to security, liberty, integrity and dignity of a human being has been enshrined in international instruments. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, and the Declaration on the Elimination of Violence Against Women in addition to other international mechanisms have established and promoted the rights of women. These international human rights treaties provide a common framework for defining and assessing the progress of women. Supplementing this international law are International Labor Organization Conventions and a series of actions governments have agreed to undertake in UN conferences held throughout the 1990s. In particular, at the 1993 World Conference on Human Rights, UN Commission on Human Rights adopted a resolution that called for the rights of women to be integrated into the human rights mechanisms of the United Nations. In a milestone declaration, governments affirmed:

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated.28

As stated in the United Nations Charter, the purpose of the organization is to maintain international peace and security and achieve international cooperation “without distinction as to race, sex, language, or religion.” The nondiscrimination clause is based on the determination to

“reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the
equal rights of men and women.”29 The International Covenant on Civil and Political Rights
further states the fundamental right a person has as his or her human rights without discrimination
to sex. Under Article 26, the Covenant provides equal protection before the law that shall
“prohibit any discrimination and guarantee to all persons equal and effective protection against
discrimination on any ground such as race, colour, sex, language, religion, political, or other
opinion.”30

Denouncing discrimination based on sex does not protect against discriminatory
approaches, monitoring, and enforcement in practice. As the international community recognized
that “extensive discrimination against women continues to exist,” the Convention on the
Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted on
December 18, 1979 and entered into force on September 3, 1981. It emphasizes the principles of
equity, justice, and nondiscrimination with regard to the treatment of women.31 The CEDAW is
the only international treaty that is gender-specific to date. Discrimination against women is
defined as:

any distinction, exclusion or restriction made on the basis of sex which has the
effect of purpose of impairing or nullifying the recognition, enjoyment or
exercise by women, irrespective of marital status, on a basis of equality of men
and women, of human rights and fundamental freedoms in the political,
economic, social, cultural, civic or any other field.32

In general, women are entitled to the right to life, the right to equality, the right to liberty and
security of person, the right to equal protection under the law, the right to be free from all forms
of discrimination, the right to the highest standard of attainable physical and mental health, the

30 Article 26, International Covenant on Civil and Political Rights, United Nations Treaty Collection,
31 Convention on the Elimination of All Forms of Discrimination Against Women, United Nations Treaty
32 Article 1, ibid.
right to just and favorable work conditions, and the right to not be subject to torture, or other inhuman treatment and punishment.\textsuperscript{33}

According to a United Nations Development Fund for Women (UNIFEM) report on the progress of women, “the CEDAW Convention’s great strength is that it requires that governments take positive actions to promote and protect the rights of women.”\textsuperscript{34} The Convention pledges the effort by State Parties to embody the principle of equality in their national constitutions and laws, adopt appropriate legislation prohibiting discrimination against women, establish legal protection for women in the public institutions to ensure freedom from discrimination, to refrain from discriminating against women, to eliminate discrimination by public and private officials, persons, and organizations, and to modify or abolish existing structures that contribute to the culture of discrimination in the country.\textsuperscript{35} Measures that are undertaken to accelerate equality between men and women are not considered discriminatory. In fact, these temporary measures are encouraged to fulfill the objectives of equality of opportunity and treatment for women. In particular, Article 5 affirms that the States will take measures to modify social and cultural patterns that exist in the society that perpetuate the culture of prejudice.

Women are guaranteed the right to participate with equal status in both public and private life. In the public domain, women are guaranteed the right to work in government\textsuperscript{36} and as representatives of the government on the national and international level.\textsuperscript{37} In a woman’s private life, she is guaranteed the right to her nationality regardless of her husband’s actions.\textsuperscript{38} She is pledged an equal opportunity in the field of education: similar conditions, similar access to curriculum and teachers, elimination of stereotypes of the role of men and women that continue


\textsuperscript{36} Article 7, \textit{ibid.}

\textsuperscript{37} Article 8, \textit{ibid.}

\textsuperscript{38} Article 9, \textit{ibid.}

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the concept of inferiority of the sex, and access to specific educational information that includes family planning.\textsuperscript{39} She is promised the right to work with the same employment opportunities as males, the right to equal compensation for equal job duties, the right to social security, the right to protection of health and safety in working conditions, and the right to freedom from discrimination during the prenatal and postnatal periods, including but not limited to maternal leave with “comparable social benefits without loss of former employment.”\textsuperscript{40} Access to health care services with a pledge to “granting free services where necessary” during pregnancy is guaranteed in Article 12. A woman is guaranteed the right to enter into marriage of her own consent. She is afforded the same rights as her husband with respect to family planning, family responsibilities and guardianship, personal rights (right to choose a family name, a profession, and an occupation), and ownership or management of property.\textsuperscript{41} Although the girl-child is not specifically mentioned, CEDAW holds important implications for the argument of her rights. The girl-child benefits from the efforts of CEDAW indirectly. The greatest strides that CEDAW attempts are in the adult stage of a female, and do not focus on the early childhood and adolescent stages.

The Convention also establishes the Committee on the Elimination of Discrimination against Women to promote, coordinate, and monitor the measures and implementation of the document.\textsuperscript{42} The Committee is composed of persons nominated by the Member States and elected in their individual capacity to serve. It is obligated to report annually to the General Assembly of the United Nations on its activities as well as to make general assessments and recommendations based on the examination of reports submitted by the individual states.\textsuperscript{43} Article 18 of CEDAW requires States Parties to prepare an initial report to CEDAW within one

\textsuperscript{40} Article 11, \textit{ibid}.
\textsuperscript{41} Article 16, \textit{ibid}.
\textsuperscript{42} Article 17, \textit{ibid}.
\textsuperscript{43} Article 21 and Article 18, \textit{ibid}.
year of notification and periodic reports every four years. Article 22 calls upon specialized agencies to make reports to the CEDAW Committee on countries under review per session. The Committee also accepts and uses NGO shadow reports, although the Convention does not explicitly provide for them. The Convention also calls for specialized agencies to work with the Committee. The UN had an important follow-up role to play and it was hoped that the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) would develop a basis for governments to report regularly on their efforts to address the confluence of racism and sexism. With the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women entering into force, the CEDAW’s role expands. It can now receive and consider complaints from individuals or groups within its jurisdiction. However, the mechanism, as of November 2001, had yet to be utilized.

Although CEDAW is the second most widely ratified UN human rights treaty, it is also the treaty with the greatest number of substantial reservations. Reservations severely undermine the power and scope of the convention and committee. One substantial limitation of the convention is its neglect of gender-based violence. As human rights advocates Day and Brodsky contend, “a division between rights to economic security and rights to personal liberty is purely artificial. In the circumstances of women who have violent or psychologically abusive male partners…the indivisibility of economic issues from violence issues is clear.”

Concerned that women were especially vulnerable and victims of violence, the international community, under the auspice of the United Nations, adopted the Declaration of the Elimination of Violence against Women. Violence against women is generally defined by the document as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty,

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whether occurring in public or private life."\(^{45}\) This limited definition of violence is further elaborated in Article 2 of the Declaration as encompassing, but not limited to, acts of violence occurring within the domestic unit, in the general Community, and perpetuated or condoned by the State itself. Condemning violence, States pledge to punish acts of violence against women, adopt legislation in their penal, civil and labor codes that condemn and sanction such acts of violence, provide women with the access to the institutions and mechanisms of justice for redress, provide resources to support women suffering from the abuses of violence, and to adopt measures that modify existing social and cultural structures that contribute to violence against women.\(^{46}\)

The international community furthered its pledge to advance women’s human rights with a series of UN conferences in the 1990s. Governments reaffirmed basic human rights principles and agreed to take action on a broad range of issues in order for women to realize their rights in practice. Through specified targets and benchmarks, these conferences offer a framework for international and national actions, monitoring, and accountability. While this increases operational usefulness due to their focus and crystallized commitments, the declarations and documents adopted by the conferences are not legally binding. The conferences and topics were as follows: the 1990 World Conference on Education for All held in Jomtien, Indonesia, the 1992 UN Conference on Environment and Development held in Rio de Janeiro, Brazil, the 1993 World Conference on Human Rights held in Vienna, Austria, the 1994 International Conference on Population an Development held in Cairo, Egypt, the 1995 World Summit on Social Development held in Copenhagen, Denmark, the 1995 Fourth World Conference on Women held in Beijing, China, and the 1997 World Food Summit held in Rome, Italy.

The 1993 UN Second World Conference on Human Rights in Vienna marked a turning point in women’s human rights. Through the work of women’s advocacy groups, women’s rights were recognized as human rights in the Vienna Declaration and Programme of Action. The


\(^{46}\) Article 4, *ibid.*
United Nations human rights system had evolved into a two track system: with "mainstream" human rights issues being taken up in the "mainstream" human rights bodies, and women's rights being addressed in the women-specific institutions: the Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women. As a result of the mainstreaming directive on gender, "mainstream" human rights bodies began to address the concerns of women, as well as men, and to consider the impact of laws, policies and programs on the lives of women and men. The Fourth World Conference on Women held in 1995 in Beijing served as a significant forum for women’s issues. At the conference, governments agreed to a Platform for Action that outlined goals and recommendations in twelve critical areas of concern for women. The primary strategy was gender mainstreaming. This strategy resulted in a directive to integrate or mainstream a gender perspective into all policies and programs of the United Nations, concluding that gender equality can only be achieved when all policies and programs at both the international and national level take into account the impact of the policy or program on women and men. Perhaps more importantly for my analysis, the Platform for Action included a section on the girl-child, with strategic goals and recommendations. By bringing the girl-child’s agenda to the forum, the discourse on the girl-child is slowly creeping onto the international agenda.

As a result, the Human Rights Committee considers violence against women, women's reproductive health and women's enjoyment of citizenship rights. The Committee against Torture takes up torture of women, including through sexual violence, and the Committee on the Elimination of Racial Discrimination addresses the multiple disadvantages experienced by women from marginalized racial groups, trafficking in women and migrant women. It is routine
for all human rights treaty bodies to consider specific barriers to women's enjoyment of the rights in their respective treaties when considering States parties' reports.47

I now turn to the international instruments to protect the human rights of the child. A person cannot function as a full woman unless her rights are protected at a young age. Children's rights and women's rights are human rights; the human rights of women and of children are indivisible, are interlinked and are equally important for the status and well-being of the girl-child.

**International Treaties Concerning Children’s Rights**

The draftsmen of the 1945 Charter of the United Nations and the Universal Declaration of Human Rights did not specifically refer to children. In international law, children’s rights were subordinated to their parents or guardians. As the United Nations became the forum for internationalizing protection for the basic human rights of individuals, NGOs centered their campaign for children’s rights on the international arena. NGOs were instrumental in the passage of the breakthrough document of the Convention on the Rights of the Child, officially adopted in 1989. The moral demands that first took shape in a 1924 League of Nations declaration on the rights of a child acquired legally binding force in the Convention for 191 nations. It states that “the child that is hungry should be fed; the child that is sick should be helped…and the orphaned and the homeless child should be sheltered and succored.”48 Only the United States and Somalia have not signed the Convention, making it the most widely signed document in the shortest period of time than any other U.N. Convention on human rights.

Prior to the adoption of the Convention on the Rights of the Child, the League of Nations and the United Nations, in 1924 and in 1959 respectively, recognized certain principles regarding


children’s rights and called upon the international community to take measures to protect these rights. The preamble of the United Nations Declaration on the Rights of the Child states, “mankind owes to the child the best it has to give.”\textsuperscript{49} However, these instruments were not legally binding. Thirty years later, the United Nations solidified the rights of the child first introduced in the Declaration with the passage of the Convention on the Rights of the Child \textit{(CRC)}. The CRC consists of a preamble and 54 articles. It is based upon four basic principles found in articles 2, 3, 6, and 12. Article 2 articulates the first principle: the right to be free from discrimination. The second principle contains “the best interest of the child” principle. It states that “in all actions concerning children…the best interests of the child shall be a primary consideration” by public or private bodies. Article 6 addresses the third general principle. This principle enshrines the sanctity of the right to life, outlining the child’s right to life, survival, and development. The right to development goes beyond physical health and development but covers mental, emotional, social, cognitive, and cultural development. Children are entitled to certain programs and opportunities related to the qualitative aspect of survival. The fourth principle, housed in Article 12, requires State Parties to assure to the child the right to be heard. It recognizes the importance of the child’s participation and opinion in matters concerning her.

The Convention covers civil and political rights as well as economic, social, and cultural rights. In Article 1, a child is defined as any human being below the age of 18. The document grants special protection to the child so “he shall be given opportunities and facilities…to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner.”\textsuperscript{50} The international community further pledges, “in the enactment of laws…the best interests of the child shall be the paramount consideration.”\textsuperscript{51} The Convention grants the political

\textsuperscript{51} Ibid.
and civil rights of the right to life, right to a name and nationality, right to expression, freedom of thought, conscience, and religion. Economic and social rights include the right to health and treatment, right to social security, right to an adequate standard of living, right to an education, right to culture, right to leisure, and the right to dignity and worth. The CRC also contains protections against many abuses faced by children: physical violence, sexual exploitation, sale, trafficking and abduction, drug abuse, capital punishment, torture, deprivation of liberty, and economic exploitation.

In addition to recognizing specific rights of the child, the signatories also agreed to enact measures to ensure and promote these rights. Children are pledged protection from physical danger, adequate nutrition, appropriate immunizations, and an adult with whom to form an attachment, an adult to provide care, appropriate developmental stimulation and opportunities, as well as opportunities for self-expression. The CRC contains guidelines for the regulation of adoption, child protective services, juvenile justice systems, refugee processes, and care for disabled children. It clearly indicates its strong respect for the role of parents and family as the child’s primary support structure.

The reporting requirement is elemental to the proper functioning of the CRC. This requirement is delineated in Article 44: States Parties undertake to submit an initial report two years after ratification and periodic reports every five years thereafter. NGOs and other specialized agencies may prepare reports for submission under Article 45(a). NGOs also may

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53 Article 7, ibid.
54 Article 13, ibid.
55 Article 14, ibid.
56 Article 24, ibid.
57 Article 26, ibid.
58 Article 27, ibid.
59 Article 28, ibid.
60 Article 30, ibid.
61 Article 31, ibid.
62 Article 39, ibid.
63 Article 32, ibid.
prepare a shadow report, which enables the committee to compare the report of the NGO with that of the state.

Another important element to the CRC is the Committee on the Rights of the Child, the monitoring body. This committee is responsible for receiving State reports and overseeing implementation. The committee’s mandate includes writing guidelines that assist States in structuring their own domestic legislation to comply with the CRC. The body promotes public accountability through raising awareness of issues that concern a child’s welfare. This body has a strong mandate to raise awareness, however, the body of the CRC is weak in enforcement mechanisms. For example, the CRC stipulates that the Committee receives State and NGO reports. However, it does not give the Committee the ability to initiate critical reports.

A body of international law and documents protects children. The International Labor Organization Convention 182 on the Worst Forms of Child Labor is an important instrument along with the CRC to combat hazardous and exploitative labor. The ILO Treaty was adopted multilaterally in 1999. It requires nations to take immediate and substantive action “to secure the prohibition and elimination of the worst forms of child labor.”65 Included in the definition was the sale and trafficking of children, debt bondage, serfdom, and compulsory labor. The Optional Protocol of the CRC on the Sale of Children, Child Prostitution, and Child Pornography, adopted by the U.N. General Assembly on May 25, 2000, contains provisions focusing on commercial sexual exploitation of children. It requires all signatory States to incorporate into their criminal codes or penalties for the commercial sexual exploitation of children.

The implementation, monitoring and reporting processes for CEDAW and CRC have been addressed as dealing with separate issues, separate sets of rights. But, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child lay out fundamental rights common to all human beings, regardless of age. Each of

these treaties should be used in complementarity to the other. Areas of potential collaboration include:

- use of CEDAW to extend children's rights into adulthood;
- extension of children's rights to deal with gender-specific rights of girls;
- collaboration on rights to education and health for women and children;
- issues of violence against women and children;
- collaboration on issues of socioeconomic rights for women and children;
- role of men, community and government in relation to children;
- use of the treaty process for government accountability.

The above list elucidates the gap in the protection of the girl-child by the two bodies of law and their committees. The Committees, in discussing areas for collaboration, recognize that the girl-child has been marginalized by their specific mandates.

Women can be advocates for the rights of the girl-child. Women and children can develop common strategies to realize CRC and CEDAW as national standards. Within this, the special needs of girl-children must be highlighted. An explicit human rights approach must be established to link women's and children's rights. I am not advocating that a focus on the similarities and overlapping responsibilities of the CRC or CEDAW should be used to narrow the rights granted to children and women as human beings by general human rights law. In practical situations the rights must be prioritized. An important concept to predicate is to provide life chances for the girl-child. The realization of these rights is a partnership between the government, community and the family based on an understanding of promoting these rights. Strategies to facilitate the process of achieving rights within the CRC and CEDAW must take into account cultural attitudes, political and economic factors and laws and policies as expressed by each of these institutions.
Regional Treaties of the Americas

The gap in protection of the girl-child on the international stage can be found on the regional and national level in the Inter-American system as well. The Inter-American system is the hemispheric protection mechanism of the Organization of American States, promoting and defending human rights in the Americas. It is built on two distinct legal bodies, the original Charter of the Organization of the American States and the American Convention on Human Rights (American Convention). The American Convention serves as the main instrument, establishing the two organs for safeguarding its principles of the Inter-American Commission on Human Rights (IACHR) based in Washington, D.C. and the Inter-American Court of Human Rights (IACJ) based in San Jose, Costa Rica.

The General Assembly of the OAS adopted the American Convention at an inter-governmental conference in 1969 and the Convention entered into force in July 1978 with the requisite 11th ratification. Throughout its early history, the Convention had been denied its rightful place as a powerful instrument in protecting human rights in the hemisphere because the majority of the OAS members including the powerful states of the United States, Brazil, Argentina, and Mexico were not signatories. Presently the Convention is an important legal document with the states of Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela (Trinidad and Tobago has formally withdrawn from the Convention) recognizing and acceding to its jurisdiction. The Convention is modeled after the European Convention on Human Rights, the 1948 American Declaration on the Rights and Duties of Man, and the International Covenant on Political and Civil Rights. It has 84 articles that codify more than 24 distinct rights including

the rights to juridical personality, to life, to humane treatment, to personal liberty, to a fair trial, to privacy, to a name, to nationality, to participation in government, to equal protection of the law, and to judicial protection. It also specifically outlaws slavery and proclaims the basic political rights of freedom of conscience, religion, thought, expression, association, movement, and residence.

Article 26 is an important clause particularly affecting the lives of women and children in the hemisphere. It provides that the State Parties will undertake measures with a view to achieving economic, social, educational, scientific and cultural standards set forth in the OAS charter. The OAS General Assembly further adopted the protocol to the American Convention on economic, social, and cultural rights on November 14, 1988. Rights directly affecting women and children recognized by the Additional Protocol are: the right to work,67 just and equitable conditions of work,68 the right to social security,69 the right to health,70 the right to a healthy environment,71 the right to food,72 the right to education,73 the right to the formation and protection of families,74 the rights of children,75 and the protection of the elderly.76 The Protocol also provides that Article 13, the right to an education, is subject to the individual petition procedure of the Inter-American Commission on Human Rights.

In the first article, the State Parties to the American Convention pledge “to respect” and “to ensure” the “free and full exercise” of the rights enshrined in the document “to all persons subject to their jurisdiction.”77 Consequently, this pledge encumbers both positive and negative

68 Article 7, ibid.
69 Article 9, ibid.
70 Article 10, ibid.
71 Article 11, ibid.
72 Article 12, ibid.
73 Article 13, ibid.
74 Article 15, ibid.
75 Article 16, ibid.
76 Article 17, ibid.
duties. The state both has an obligation to not violate an individual’s enumerated rights as well as an obligation to undertake measures to ensure and protect the rights. However with regards to Article 26 and the Additional Protocol on Economic, Social and Cultural Rights, the Convention requires the State Parties to “adopt measures…with the view to achieving progressively…the full realization of the rights implicit in the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States.” It is clear that States are incumbent to adopt measures, implying a positive obligation.

**Specific Protocols for the Rights of Women and Children in the Americas**

The full protection of human rights has been a primary principle governing the actions of the member states of the Organization of American States. While the American Convention provides the framework for the basic human rights guaranteed by the state Parties, several conventions and treaties have been adopted to deal with specific issues regarding women and children. These regional instruments include:

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women was adopted by the OAS. The definition of violence is similar to the aforementioned UN Declaration on the Elimination on Violence Against Women as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.” Article 2 of the Convention covers a more extensive definition. The definition of violence includes “rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the

workplace, as well as in educational institutions, health facilities or any other place.” In addition, special emphasis is placed on

the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.

The Convention affords women the rights to be free from violence in both the public and private sphere, as well as the enjoyment of the rights protected in regional and international instruments. These rights include the right to have her physical, mental and moral integrity respected, the right to be free from torture, the right to her inherent dignity of person respected and her family protected, and the right to equal protection under the law. Recognizing violence prevents and nullifies the exercise of civil, political, economic, social, and cultural rights, Article 4 grants a women the right to rely on international or regional instruments to protect her rights.

This particular passage has proved helpful in the petition process of the Inter-American Human Rights Commission. Discrimination is a special case of violence against women and treated in Article 6 of the Convention. A women has a right to be free from discrimination and educated free from “stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.” Articles 7 and 8 house the duties of the State, pledging them “to eradicate, prevent, and punish violence” against women. Specifically, article 7 calls for immediate adoption of measures to: a) stop state or state institutional action of violence against women, b) to act with diligence to prevent, investigate, and impose penalties for violence against women, c) to adopt legislative measures that protect a woman against violence as well as repeal, amend, or modify existing laws and customs that sustain or allow for the persistence of violence.

80 Article 2 (b), Inter-American Convention on the Elimination of Violence Against Women, www.oas.org
81 Article 9, ibid.
82 Article 3, ibid.
83 Article 4, ibid.
84 Article 6 (b), ibid.
against women, and d) to establish the necessary legal and administrative methods to ensure justice. Article 8 defines the progressive measures to be taken by the State parties. In addition to promoting an awareness and observance of the right of women to be free from violence, States pledge to modify social and cultural patterns of men and women “including the development of formal and informal educational programs…to counteract prejudices, customs and all other practices.” The State also agrees to create educational programs for administrators, law enforcement, and other state actors. The State agrees to provide specialized services for victims “through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children” and “to provide… effective readjustment and training programs.” It can be argued that the international protection and efforts on behalf of women would benefit the girl-child. However, the efforts would most likely have an indirect effect and, if focused on women, would only affect the girl-child after adolescence. This would not attend to her needs during childhood.

The mechanisms of protection are a system of national reports to the Inter-American Commission of Women detailing the measures that the States have enacted. Article 11 also allows for the State Parties and the Inter-American Commission of Women to request advisory opinions from the Inter-American Commission. Article 12 permits individuals, groups, and nongovernmental organizations to lodge petitions with the IACHR alleging violation of Article 7 of the Convention.

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86 Article 8 (d), (f), ibid.
The Most Vulnerable Minority: The Girl-Child

The girl-child of today is the woman of tomorrow. The skills, ideas and energy of the girl-child are vital for the full attainment of the goals of equality, development and peace. For the girl to develop her full potential she needs to be nurtured in a [secure] enabling environment, where her spiritual, intellectual and material needs for survival, protection and development are met and her equal rights safeguarded.  

A report on the girl-child by World Vision Canada expands this notion, stating.

Releasing her potential is not only a justice issue in terms of creating a level playing field that would enable the girl-child to contribute equally to the world’s future, it is a strategic issue that demands her full involvement in order to reverse the deterioration that has transpired as a result of her marginalisation. Historical and social disadvantages have prevented women from playing an equal role in their society’s development. Efforts to reverse these discriminatory attitudes and practices often result in programmes for women. While these efforts are important, their impact is often over-shadowed by the woman’s perception of her role, and low self esteem developed through childhood. We need to develop the woman’s sense of value and future potential while she is a girl-child in order to fulfill that potential as a woman.

Gender equality is a matter of human rights and a condition for social justice. Additionally, equality is a necessary and fundamental prerequisite for development. "Societies that discriminate on the basis of gender pay a significant price – in greater poverty, slower economic growth, weaker governance, and a lower quality of life," declares Elizabeth King, lead economist in the Bank's Development Research Group. Perhaps more importantly, to guarantee human rights of women guarantees human rights of future generations. Mothers are the lifelines for children, the best guarantors of a child’s health. “When mothers survive and thrive, children

According to the Save the Children’s State of the World’s Mothers, “investments in safe motherhood programs and practices, and in education for girls and women are…the most essential.” A serious consequence of poor maternal nutrition and health on the newborn is premature birth and/or low birth weight, affecting 20 million infants in the developing world. Low birth weight, in turn, has many consequences for the newborn, including a greater likelihood of death in infancy or childhood, stunting, mental retardation and chronic health problems. United National Children’s Education Fund (UNICEF) estimates that eliminating malnutrition during pregnancy can “reduce an infant’s risk of death and disease by almost one-third.” Equally important to a girl-child’s overall health is her level of education. A mother’s educational level also has a profound effect on her child’s health and quality of life — at all stages. Studies indicate that higher rates of literacy are closely correlated with lower child mortality. Better-educated women are more likely to provide better nutrition and to secure health care for their children as well as encourage higher educational attainment for her children, particularly her daughters.

The above discussion is a short illustration of the importance of securing human rights for the girl-child. It is important to secure her inherent dignity as a human-being. I will document that the girl-child is the most vulnerable and marginalized group because of her position as both a female and child, two vulnerable and marginalized groups. World Vision International has identified twelve essential issues for the girl-child: harmful traditional practices, domestic violence and sexual abuse, commercial sexual exploitation and trafficking, armed conflict, HIV/AIDS, child labour, children alone, participation, education, access to economic

www.savethechildren.org/mothers/ sowm01
91 Ibid.
95 Ibid.
opportunities, nutrition, and health care. Furthermore, poverty is an overarching, pervasive problem that exacerbates the aforementioned issues. Each of the issues is not a separate problem but intertwined with the others. This is a particular problem when recommending solutions. I will focus my assessment on violence of the girl-child. Violence against the girl-child is gender-based violence, including but not limited to: domestic violence, sexual abuse, sexual exploitation, international trafficking in women and children, forced prostitution and sexual harassment, violence resulting from cultural prejudice, pornography, ethnic cleansing, armed conflict, foreign occupation, and traditional harmful practices. All violence conflicts with the dignity and the worth of the girl-child afforded in international law. Violence must be prevented and eradicated as step to safeguarding her full rights. Due to her situation as a marginalized group, the girl-child’s plight has not been extensively documented. Therefore, I mainly extrapolate from the situation of women and children to document the abuse suffered by the girl-child.

**Poverty: The Worst Violator**

Poverty acts as the worst human rights violation against the world’s people, especially affecting the most vulnerable of the world’s population, women and children. With four-fifths of the world’s wealth concentrated in one-fifth of the world’s population, the majority of the 1.5 billion people living on $US 1 dollar a day or less are women and children, a widening gap of poverty now referred to as “the feminization of poverty.” Unfortunately, pervasive economic recession, as well as political instability in some regions, has been responsible for setting back development goals in many countries. This has led to the expansion of unspeakable poverty. As a result of family disintegration, population movements between urban and rural areas, international migration, war and internal displacements, one-fourth of all households worldwide

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are headed by women and many other households are dependent on female incomes. Female-maintained households are very often among the poorest because of wage discrimination as women are documented to earn on average slightly more than 50 percent of their male counterparts for similar work. Globalization, although creating new opportunities for women with education and professional skills, has intensified the existing inequalities and insecurities in which women are subject. It has meant a loss of livelihood as jobs are moved in the “race to the bottom” and in other sectors a loss of labor rights such as the right to social benefits and the right to organize. The rapid process of change and adjustment in all sectors has also led to increased unemployment and underemployment, with particular impact on women. Additionally, globalization is affecting the domestic sector, forcing women to work with the double burden of providing the primary care in the household. According to the 1999 United Nations Human Development Report (UNHDP), “Globalization is putting a squeeze on care and caring labour.”

UNICEF contends that “attention to the youngest children is most needed where it is most difficult to guarantee – in countries gripped by intractable poverty, violence and devastating epidemics…with the global economy booming, the majority of children still live in poverty.” The poor are most likely the victims and perpetrators of violence. The youngest suffer disproportionately under the yolk of poverty, the “core of pervasive violation of children’s rights” and defining their entire existence. According to UNICEF, 4 out of 10 children live in extreme poverty. Impoverished children are malnourished, lack clean water, inadequate sanitation, and have a lower life expectancy. As survival is the primary concern, children often are required to work, usually spending long hours in despicable conditions. Other children are forced into conditions of slavery or semi-slavery with no legal or medical protection. Girls fare worse with no other avenue other than prostitution.

100 Ibid., p. 32.
The widening gap between rich and poor particularly affects women and children; subsequently the girl-child is at increased risk in poverty-stricken situations. Health, education, and enjoyment of liberty free from violence are all vital parts of a dignified life for the girl-child and inextricably tied to the economic environment in which she lives. A girl-child living in poverty is often denied access to critical resources. Her health care and nutritional needs are not given priority; she lacks sufficient access to education and support services, and her participation in decision-making at home and in the community are minimal. A girl who lacks economic independence is also more vulnerable to violence. Caught in the cycle of poverty, she lacks access to resources and services to change her situation.

The Situation of Women in the World

Women's rights must still be negotiated, and violations of women's rights have not generated substantial attention or a standard of protection. Women are victims of violence, or threat of violence, denial of nurturance and educational opportunities, exposed to horrific gender-based rituals such as genital mutilation, enslavement or sex trafficking, and exposure to inadequate medical care as well as denied access to employment, housing and economic self-sufficiency, and decision-making processes. In summary, women are victims of gender discrimination. These violations and abuses compromise a women’s autonomy.

Discrimination is perhaps the most fundamental human rights violation and provides justification for the categorization of others as inferior, less human, and less deserving of equal treatment or equal enjoyment of rights. Discrimination is violence against a group and takes many forms. In all regions of the world, those who are discriminated against are denied equal rights to the exercise of citizenship. They are denied equal rights to food, shelter, work, health care, education and/or credit. They are stigmatized and treated with intolerance.
Women are the largest population discriminated against in the world. Women carry a disproportionate share of the problems of coping with poverty, social disintegration, unemployment, environmental degradation and the effects of war. “Absolute poverty and the feminization of poverty…continued violence against women and the widespread exclusion of half of humanity from institutions of power and governance underscore the need” to make respect for women's rights a more central part of the international human rights agenda. Women's rights have traditionally been viewed as separate from human rights. The reluctance of governments to promote respect for women's rights systematically and thoroughly weaken these gains every day. It is generally acknowledged that all issues, including economic, security, environment, peacekeeping, disarmament, trade, telecommunications, and many more have gender impacts.

A systematic form of discrimination is the lack of representation of women. A worldwide movement towards democratization has opened up the political process in many nations, but the popular participation of women in key decision-making as full and equal partners with men, particularly in politics, has not yet been achieved. On average, women represent 10% of all elected legislators worldwide and in most national and international administrative structures, both public and private, they remain underrepresented.

Unfortunately, the lack of representation in the government is not the only institution where women are systematically underrepresented. Education and schools are another example. Gender-biased educational processes, including curricula, educational materials and practices, teachers' attitudes and classroom interaction, reinforce existing gender inequalities. In 1990, 130 million children had no access to primary school; of these, 81 million were girls. This can be

103 Ibid.
attributed to such factors as customary attitudes, child labor, early marriages, lack of funds and lack of adequate schooling facilities, teenage pregnancies and gender inequalities in society.

Violence against women, and consequently girls, continues to be a constant feature of a woman’s existence, experienced in armed conflict, sexual assault, or domestic violence. Article 1 of the United Nations Declaration on Violence Against Women defines gender-based violence as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life." Since violence is a perversion of power, it most often affects the most vulnerable and weakest of society: women and children. Violence against women has been called "the most pervasive yet least recognized human rights abuse in the world." One in three women had been physically assaulted or abused, typically by someone she knew, either has her husband or a family member, according to a study conducted by the United Nations Population Fund. The Human Rights Watch 2002 Report states, “Violence and the threat of violence were ever-present in women's public and private lives. In situations of political upheaval, state custody, domestic contexts, and other situations involving private actors and NGOs, women's physical and sexual integrity was at risk in all regions.” This violence includes a wide range of violations of women’s human rights, including trafficking in women and girls, rape, and wife abuse. Since the Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the United Nations General Assembly in 1979, important progress has been made in establishing gender-based violence as a human rights concern. Nevertheless, governments have not effectively provided the protection to women afforded to them. The World Health Organization (WHO) cites violence

against women as a major public health issue that affects a woman’s physical, sexual, reproductive, and psychological health as well as using a disproportionate amount of health care resources. Violence against women also has another equally devastating side effect. Violence against women equates to violence against children. Children and infants are twice exposed first through direct attacks and second through women’s powerlessness.

**The Situation of Children in the World**

With the adoption of the Convention of the Rights of the Child, the largest generation of children has led healthier and safer lives. However, there are appalling abuses against the most vulnerable of victims, children, that go unnoticed, undocumented, or unchanged on the world system each day. According to Kofi Annan, the Secretary-General of the United Nations, “too many children still live outside the protection of society. Too many still see their rights abused or threatened.”

Too many children wake up every morning to face the tragedy of armed conflict, many times as participants in the conflict as armed soldiers having been recruited or kidnapped at a very young age. Too many children work under extremely difficult conditions, often in forced servitude or prostitution. Too many children are denied the chance to learn in a classroom. Too many children face the threat of starvation and ill health from poverty and the lack of decent health care. On November 20, 1989, the world’s leaders promised the children of the world the right to life, liberty, education, and health care with the passage of the Convention by the United Nations General Assembly. But these promises have been broken.

In the world community, 55% of children were born in Asia, 16% in sub-Saharan Africa, 7% Middle East and North Africa, 6% Central and Eastern Europe and the CIS, 8% in Latin America and the Caribbean basin, and 8% in industrialized nations. Each child was born with inherent rights, a legacy of the international community’s desire to protect the innocent

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generation and secure the future of society. However, their experiences are not the same. UNICEF reports that 33% of the world’s children are unregistered, resulting in the children having no official existence or recognition of nationality, 32% of children suffer from malnutrition before the age of five, and 27% are not immunized against any diseases. These factors all contribute to the mortality rate under 5 reaching 9%. Those that do live past their fifth year still face a grim life with 18% of children having inadequate access to safe drinking water and 39% living without proper sanitation. Although a basic right, education is denied to 18% of the world’s children, 11% of who are girls. A UNICEF report confirms that nearly a billion people entered the new millennium illiterate, and, in the year 2000, 130 million children did not have access to basic education. Girls constituted 73% of that cohort. According to Human Rights Watch, millions of children do not have access to education, work long hours in unsafe conditions, suffer in orphanages or detention centers among other violations of their human rights.

The world community faces many obstacles that hinder children enjoying their full rights, including conflict, health issues especially HIV/AIDS, forced labor, denial of education, and most importantly pervasive, persistent poverty. In a report investigating and detailing human rights abuses against children, the NGO Human Rights Watch found “a disturbing but persistent theme – in every region of the world, in almost every aspect of their lives, children are subject to unconscionable violence, most often perpetrated by the very individuals charged with their safety and well-being.” Violence is used against children because they are least able to protect themselves, particularly children in war zones and refugee camps, on the street, in school, and in fields and factories.

111 Ibid.
112 Ibid.
115 Ibid.
Harmful Traditional Practices

According to the World Vision International Girl-child Report, “Harmful traditional practices are institutionalized practices that cause physical harm, with multiple psychological and sociological impacts.” Examples include:

- Female genital mutilation
- Early marriage
- Son preference
- Female infanticide
- Early Pregnancy
- Dowry or Bride Price
- Nutritional taboos
- Traditional birth practice

The life of a girl-child is often filled with many abuses and suffering. Discrimination against women begins at the earliest stages of life and must be addressed at this stage. When she is very young, the practice of son preference threatens her survival. Son preference is common in all areas, with girls suffering from lack of adequate health care, an unequal share of nutritious food, and in extreme form, female infanticide. The practice of prenatal sex selection, higher rates of mortality among very young girls and lower rates of school enrollment for girls as compared with boys suggest that son preference is curtailing the access of girl-children to food, education, and health care and even life itself. Female infanticide is a result of the low status of female children. Women are often pressured to kill their female children. An estimated 60 to 100 million girls are missing, resulting from infanticide and neglect.

Despite the fact that women's health care has expanded in the last two decades, women have unequal access to these services. The mortality rate of girls is higher than that of boys in many developing regions. According to the United Nations, maternal mortality is responsible for

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117 Ibid., p.12
one fourth to one third of all deaths of women of child-bearing age in third world countries.\textsuperscript{118} Ninety-nine percent of these deaths occur among women in the developing world. It is estimated that half a million women die unnecessarily from pregnancy-related complications each year, 99 percent of these women live in developing countries where women have little or no access to vital prenatal care. In areas of extreme poverty, women and girls often have a secondary place in nutritional priorities. According to the United Nations Populations Fund, in one region of India, girls were four times more likely than boys were to suffer from malnutrition.\textsuperscript{119} An estimated 450 million adult women in developing countries are stunted resulting from childhood protein-energy malnutrition.\textsuperscript{120} HIV/AIDS has risen on the global agenda as the main cause of death among women in the Americas and sub-Saharan Africa. As the attainment of health is a human right and dependent on its protection, the “status of women’s health is a representation of the value of women’s dignity in society.”\textsuperscript{121}

As she grows older, the girl-child is at risk of physical violation. A particular violation of the girl-child is the practice of female genital mutilation. World Vision International documents 85 to 114 million women worldwide are victims of genital mutilation, at a rate of 6,000 per day.\textsuperscript{122} Short term effects of this traditional practice include hemorrhaging, infection, and pain; long-term effects are more dangerous and result in infertility, infection, obstructed labour, and/or psychological trauma.\textsuperscript{123}

The girl-child is dependent upon her caregivers, but often these caregivers maltreat her. However, as she leaves the home, she trades one form of violation for another in the form of early marriage. In some cases, she is a piece of chattel bought and sold through dowry or bride prices.

\textsuperscript{119} United Nations Development Fund, www.undf.org
\textsuperscript{123} Ibid.
A dowry is money or material goods paid to the groom and his family. A bride price is money or goods paid to the bride’s family. Early marriage is a practice with many negative consequences. Practiced in all regions of the world, early marriages cause tremendous harm to girls. Early marriage discourages education of girls (resulting in health consequences). Early marriage is strongly associated with early pregnancy that brings the risk of toxemia, hemorrhage, prenatal mortality, and low birth weight.124 Radha Paul, Vice President for the People of World Vision International, states

> Early marriage is the start for so many harmful practices – the beginning of so many other things: poor health, lack of education, fistulas and poverty. It is taken for granted because it is so ingrained into culture…more deep-rooted than [female genital mutilation]. There are laws in most countries but they are not enforced.125

The root of the problem with harmful traditional practices is within the culture and the low status of girls. Socialization teaches girls and boys that she is inferior. Although these traditional practices are in violation of international law, they persist within communities. In fact, communities and national governments act with impunity through discriminating laws and lack of enforcement of laws to protect girls.

**Domestic Violence and Sexual Abuse**

While many reports document state-sponsored violations against women and children, the public-private dichotomy leaves the girl-child at increased risk of violation in the domestic sphere. The threat of violence is ever-present in a girl’s life. Violence against the girl-child continues to be a constant feature of a female’s existence, experienced as domestic violence, sexual assault, incest, honor killings, and dowry violence. Violence is major societal issue, affecting the health and development of the girl and community. Additionally, it is intensified by poverty, dislocation, and previous maltreatment.

Certain forms of violence are gender-based violence: rape, domestic violence, incest, forced prostitution, female genital mutilation, female child abuse, and honor killings. Gender-based violence includes the use of male privilege by treating the woman less equally. Its perpetuation serves to continue male power and control, sustained by a culture of silence and denial. Despite the universal prevalence, violence is considered the single most underreported crime. Rape is one of the most widely committed violent crimes against women. Due to the nature of rape, it is narrowly defined as a sexual or private act and results in it being ignored as a crime. Rape is a tool of power in the domestic and political sphere. Under repressive regimes and in conflict situations, rape often serves as a strategic function and tactical weapon. Human Rights Watch documented instances of rape to force family members into submission, punish those sympathetic to the opposition, subjugate and inflict shame, or as a means of ethnic cleansing in areas of conflict. Impunity in cases of rape is particularly widespread. National laws generally portray rape as a crime against honor or decency, not a crime against a physical integrity. This mischaracterization diminishes a woman’s chance to seek justice against her abuser or abusers, especially if the crime was committed in the domestic sphere.

Schools are all too often a source of violence and abuse, undermining the child’s developmental and cognitive processes, leading to higher dropout rates, psychological trauma, physical injury, disability, and even death. Girls are at particular risk of violence in schools from both their classmates and school authorities. Two-thirds of the 130 million children in the developing world out of school are girls. In addition to the gender barriers to education, obstacles at school are equally as detrimental to a girl’s educational aspirations. Gender-based

violence in the form of rape, sexual assault, physical assault, and sexual harassment of girls is “widespread and committed by both teachers and male students.”130 Victimization also includes the failure to act effectively to prevent violence or abuse or lack of response by school officials. Many girls choose to leave school to protect themselves from the negative environmental, however, the majority of girls stay and suffer in silence. Sexual violence at school is viewed as something to be endured, inevitable and inescapable.

**Commercial Sexual Exploitation and Trafficking**

“To see women and girls lined up in a brothel, numbered and available to any man who picks them is to see them dominated and humiliated, stripped of their power.”131

Perpetuating violence in children is the practice of commercial sexual exploitation of children, especially young girls. An estimated 700,000 to one million women and children are transported and sold into some form of slavery.132 It is a complex phenomenon increasingly prevalent within and between countries, leading to physical and psychological trauma to the victim. Commercial sexual exploitation includes child prostitution, sex tourism, trafficking in girls for purposes of prostitution or forced marriages, as well as child pornography.

The underlying causes are varied and often interrelated. Primary factors are poverty, armed conflict, displacement of peoples, and the rise of market forces and consumerism. Poverty is perhaps the most widespread factor, “[creating] a predatory family and community environment in which some of the worst exploiters are parents, family members, relatives or

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friends.” Armed conflict severs the girl from her foundation, often separating her from her family and community. It also introduces dire economic and social circumstances with a person unable to meet daily requirements. According to the Final Report on the Trafficking of Women and Children for Sexual Exploitation in the Americas, “economic necessity, responsibility as heads of households, illiteracy or minimal education, lack of training in technical skills, and a history of sexual abuse” contribute to a young girl or woman’s risk. All the above factors and situations stem from the girl or women’s low status in society. The risk is increased by gender-based discrimination, unemployment, poverty, weak migration controls, corruption, and the impact of globalization.

Traffickers moved their human victims around the globe, held them in debt bondage, seized their passports, and threatened them or their families with harm if they resisted. Ever-tightening border controls and the lack of legal opportunities to migrate often forced women to turn to traffickers, increasing their vulnerability to abuse. Unfortunately, laws that do exist often punish the girl, criminalizing her rather than treating her as a victim. Most often, trafficking victims, not traffickers, faced prosecution, detention, and fines for illegal entry into the state, document fraud, and failure to procure a work permit—all administrative violations that directly arose from their status as trafficking victims. Perpetrators are rarely prosecuted. Unfortunately, WVI reports that there is little evidence that international campaigns have had strong effects on local levels or that there is a resulting decrease in viewing the girl-child has goods or property. The situation is allowed to foster in the Americas and elsewhere due to the lack of human, technical, and financial resources. There is also a lack of specialization by authorities.

Trafficking is a violation of many human rights of women and the girl-child. She is denied the right to liberty, right not to be held in slavery or involuntary servitude, the right to be free from cruel and inhumane treatment, the right to be free from violence, and the right to health. Her movements are restricted. The trafficker forces her into a situation of dependence and debt bondage. Physical abuse is common by the traffickers. Other violence includes psychological, physical, and sexual violations that generate depression, suicidal thoughts and attempts, physical injuries, and even death.\textsuperscript{136} The practice puts the girl-child at risk of health problems, both with short and long term effects. Involvement in such activities increases the incidence of HIV/AIDS and other sexually transmitted diseases. There is also an increased risk of cervical cancer, unwanted pregnancy, and forced abortion.

Sexual exploitation is particularly damaging to the girl-child. She is at risk of sexually transmitted diseases due to the lack of information and vulnerable to more infections due to her lack of physical development. She lacks the “skills, power and ability to negotiate condom use” increasing her risk.\textsuperscript{137} While the practice may have detrimental physical and health consequences, the trauma and stigmatization of the practice leaves her unable to form attachments and interpersonal relationships.

\textbf{Armed Conflict}

Vast political, economic and ecological crises persist in many parts of the world. Among them are wars of aggression, armed conflicts, foreign occupation, civil wars and terrorism. These

\textsuperscript{137} Phinney, \textit{op. cit.}
situations are combined with discrimination and violations of human rights and fundamental freedoms accorded to all women. The years since the Fourth World Conference on Women held in Beijing in 1995 have witnessed an increase in the number of armed conflicts and an increase in the abuse of human rights of women and girls by both State and non-state actors, including militias. While acts of violence, especially sexual, in the context of armed conflict are recognized internationally as a war crimes and a crimes against humanity, perpetrators are rarely brought to justice. Violence is a pervasive aspect of a women’s life. Women who have fled their homes in search of sanctuary from violence too often found themselves confronting yet more sexual and physical violence as refugees.

Women continue to face abuses associated with armed conflict and civil unrest. Rape and sexual assault, in particular, are employed to achieve specific military or political objectives. When women seek refuge in other countries, they continued to experience sexual and other forms of physical violence in and around refugee camps. Moreover, in armed conflicts, women suffered from a broad array of abuses not limited to violence by combatants.

Armed conflicts raging around the world have produced appalling abuses of children’s rights. In armed conflicts, children are victims of violence and every year thousands are killed, maimed, raped and tortured. Girls suffer the added violence of rape and sexual assault. UNICEF documents, in the last ten years that two million children died resulting from armed conflict and six million children were injured or disabled.

300,000 children under 18, boys and girls, are fighting as soldiers with government armed forces, paramilitaries, or non-state armed groups in more than 41 countries according to

the Coalition to Stop the Use of Child Soldiers global survey released in June 2001. One-third of these child-soldiers are girls. The problem is most critical in Africa and Asia, however, it is not isolated to these continents. Child soldiers have been documented by international nongovernmental organizations such as Human Rights Watch and Amnesty International in Angola, Colombia, Lebanon, Liberia, Sierra Leone, Sudan, and Uganda. In addition, 85 countries recruit hundreds of thousands of other children to serve in some aspect of armed service. According to the survey, millions of children “receive military training and indoctrination in youth movements and schools. While most child soldiers are aged between 15 and 18, the youngest age recorded...is seven.” Often these children are recruited among refugee communities or ethnic diasporas and trafficked across borders from second countries. Human Rights Watch reports, “Children are most likely to become child soldiers if they are poor, separated from their families, displaced from their homes, living in a combat zone or have limited access to education. Orphans and refugees are particularly vulnerable to recruitment.” Children make ideal soldiers due to their qualities as children. Their physical vulnerability and easily impressionable minds make them cheap, expendable, and easier to condition. Children perform many functions for the armed organizations. They serve as human mine detectors, spies, servants, and sexual slaves. Some children have been conditioned to commit atrocities against their own families or communities.

The use of children as soldiers has devastating consequences for the child and the society. Denied a childhood and often subjected to horrific violence, the full psychological impact on children of participation in armed conflict, especially those who have witnessed or committed atrocities, is only beginning to be explored. Armed conflict has accounted for 2 million children

142 Coalition to Stop the Use of Child Soldiers, op. cit.
143 Ibid.
being slaughtered, 6 million injured or permanently disabled and 12 million left homeless between 1990 and 2000.\textsuperscript{145} Conflict has orphaned or separated more than 1 million children from their families in the last decade. Children and women are the most vulnerable to conflict, with an estimated 80 to 90 per cent of those who die or are injured in conflicts as civilians.\textsuperscript{146} In addition, conflicts deprived many children of food, shelter, medical care, and mental well-being.

A serious consequence of armed conflict are refugees. Of the 57.4 million refugees and displaced people in the world, 80\% are women and children. According to Human Rights Watch, more than half of the world’s refugee population is children.\textsuperscript{147} As Dennis McNamara, former director of the Division for International Protection for the United Nations High Commissioner for Refugees, states “Refugee children suffer a form of double jeopardy. A denial of their human rights made them refugees in the first place; and as child refugees they are also frequently abused, as the most vulnerable category of an already vulnerable population.”\textsuperscript{148} Children made up the largest proportion of internally displaced populations in many countries racked by internal conflicts such as Afghanistan, Angola, and Liberia. After suffering appalling abuses that forced them to leave their homes and countries, children are vulnerable to hazardous labor exploitation, physical abuse, denial of education and health services, sexual violence and exploitation, cross-border attacks, militarization of refugee camps, and recruitment as child soldiers. Women, and in particular the girl-child, experience conflict and displacement differently. Gender-based inequity is exacerbated.\textsuperscript{149} Refugee girls are at particular risk of sexual violence in the form of rape, sexual assault, and other forms. An International Rescue Committee report cited in the Human Rights Watch Report documents of 3,800 women and girls, 26\% of

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\item \textsuperscript{148} qtd in HRW, “Promises Broken.” Human Rights Watch. www.hrw.org/campaigns/crp/promises/refugees.html
\item \textsuperscript{149} World Vision International, “Girl-child Report,” \textit{op. cit.}
\end{itemize}
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females between the ages of 12 and 49 reported having been subjected to violence in Burundi refugee camps. Article 22 of the Convention of the Rights of the Child grants special protection to refugee children and further care is also promised to those not being cared for by their parents. All too often, the international community has largely ignored their plight.

**Health Issues**

“Violence is a public health issue in almost every industrialized and developing country in the world...leaving physical and psychological wounds.”150 However, conflict is not the only scourge that threatens the health and rights of children. HIV/AIDS, affecting 34.3 million people in the world including 1.3 million children under the age of 15, has only recently taken center stage on the international community’s agenda. In a report to the Special Session of the UN General Assembly on HIV/AIDS in February 2001, the Secretary-General Kofi Annan described the AIDS epidemic as a “crisis of governance and a crisis of leadership.”151 With the scourge primarily affecting adults, 18 to 40 years, the pandemic deprives children of their parents. The United Nations has estimated that 13 million children under 15 have lost a parent to AIDS in sub-Saharan Africa, the region most heavily affected.152 The region accounts for 70% of the world’s HIV-infected people, 80% of AIDS deaths and 90% of AIDS orphans.153 Even if the disease does not orphan children, they are often forced to drop out of school to provide for the family. The June 2001 report by the Nelson Mandela Children’s fund found these children were malnourished, unschooled, aged beyond their years and girls being forced into prostitution to survive.154

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152 Ibid.
The Situation of the Girl-Child in Latin America

Throughout Latin America, young girls are beaten and severely punished in their homes; young women suffer physical, psychological, and sexual abuse by husbands; on the streets, young children first suffer alone the stigma of being *abandonados*, sell drugs, and are forced into prostitution or the commercial sex trade. In this region, most often these abuses are “encouraged by a lack of political will to curtail them…faces of countless people who are impacted by violence remain obscured and ignored, even as cultures of violence, primarily against children, continue to grow and flourish.”\(^{155}\) In fact, World Vision International states in its report, “Faces of Violence in Latin America and Caribbean,” in almost all Latin American countries violence accounts for one of the five primary causes of death of children. In Brazil, Colombia, Venezuela, El Salvador, and Mexico, violence is the leading cause of death.\(^{156}\)

The 1995 Human Rights Watch World Report reports “the persistence of egregious, systematic human rights violations in countries with institutional democracies” in Latin America.\(^{157}\) According to the report, “torture, police abuse, assassinations of political activists and ‘disposable people’, electoral irregularities, and threats against the press co-existed with the nominally democratic governments and were tolerated by them.”\(^{158}\) Equally disturbing is the region’s wealth concentration. The region has the most unequal distribution of income and assets in the world with UNICEF reporting nearly 80 million people remaining in extreme poverty.\(^{159}\) The human rights situation in Latin America varies considerably from country to country. While state-sponsored human rights abuses have dramatically declined in most countries, they are on the increase in Colombia and Mexico. If there is one violation that is common to most of the continent, it is impunity, the lack of punishment and often of investigation to those who are responsible for committing the most dire human rights abuses.

\(^{156}\) Ibid.
\(^{158}\) Ibid.
In Latin America, “violence against women from the Conquest to the present day has served to inculcate patriarchal social values that subordinate women, control their lives, limit their human potential, and curb their contributions to real national development.”160 Violence against women can take the form of domestic physical, emotional or psychological abuse, marital rape, forced isolation, murder, gender-based malnutrition, and the extensive use of pornography and other demeaning images of women. The violence of sexism is reflected in the statistics on domestic violence: in varying studies of wife abuse, researchers have found that in Santiago, Chile, and Quito, Ecuador, 60% of adult women sampled had been beaten by a partner. In Sacatepequez, Guatemala, the figure reaches 74%. Even in Costa Rica, 54% of women sampled at a child welfare clinic reported being physically abused.161 Marital rape is common in Guatemala, Bolivia, Puerto Rico, and Colombia.

Impunity for violence against women extends to rape and sexual assault of women in Latin America. Many countries mischaracterize rape as a crime against a woman’s honor or decency. Rape is a weapon of war in many countries such as Colombia, Peru, Haiti, and Guatemala. The use of rape by the military regime in Haiti after the ousting of President Aristide is well-documented by the international community. Between January 1994 and June 1994, the United Nations/Organization of American States’ International Civilian Mission (MICIVIH) documented 66 rapes “of a political nature” in Haiti alone.162 In addition, the Inter-American Commission on Human Rights documented first hand 20 cases of rape by the military and state authorities from May 16-20, 1994. Women have suffered during Peru’s fifteen-year internal war as targets of violence, both physical and sexual, by both parties. Rape and other forms of torture were used to intimidate, punish, coerce, humiliate, and degrade. Although official statistics do not exist, Human Rights Watch claims the number of rapes by security forces every year was

161 Ibid.
extremely high.\textsuperscript{163} Even when the rape was reported to the correct authority, legal redress was minimal. Human rights advocates claim rapists were actively protected by the police and army.

A form of violence extended to children and adolescents is the denial of “true citizenship.”\textsuperscript{164} “The majority of the poor are children…society uses them, punishes them, sometimes kills them: it almost never listens to them and it never understands them,” states Eduardo Galeano.\textsuperscript{165} Although children have certain legal rights, they are not considered social actors and are vulnerable to varying and extreme forms of abuse. Of the 185 million children in Latin America, an estimated six million are suffer under severe aggression and 80,000 are killed every year in their own home.\textsuperscript{166} According to UNICEF, seven of the top ten countries with the highest child murder rates are in Latin America.\textsuperscript{167} Violence against the girl-child threatens her survival. A more covert form of violence is gender-based malnutrition. According to the 1995 United Nations Development Program Report, in Latin America and the Caribbean, 31% of girls are underweight compared with 17% of boys. In addition, a child born in Latin America has a 50% chance of suffering malnutrition and poor health from insufficient and unsanitary living. In Latin America, there are fifteen million exploited children, facing poverty, a life on the street, as a child soldier, or of intense labor, HIV/AIDS.

A particularly vulnerable group of children is the \textit{abandonado}, an adolescent with little or no education, eeking out a life on the streets. Thirty million of the region’s poor are street children known as \textit{abandonados}, frequently targets of “social cleansing” – mass murders carried out by privately funded security forces in the name of public order.\textsuperscript{168} In one case in Brazil, the security forces rounded up 20 male teens, beat them motionless with clubs, assembled them into a

\textsuperscript{164} World Vision International, “Faces of Violence in Latin America and the Caribbean,” www.wvi.org
\textsuperscript{166} World Vision International, “Faces of Violence in Latin America and the Caribbean,” \textit{op. cit.}
gasoline-soaked pile, and burned them alive.\textsuperscript{169} Although the practice of “social cleansing” peaked in 1988-1991, the practice is still prevalent in society with routine roundups of the meninos. Casa Alianza, the Latin American branch of the New York based Convenant House, claims Honduras was the Central American nation with the worst record in 2001 in terms of treatment of children, due to the torture and killings of street children.\textsuperscript{170} Casa Alianza documents the murders of 1000 minors in Honduras from 1998 to December 2001. In addition, Salvador, an organization that works on behalf of poor children in Central America, claims an average of 50 extrajudicial killings a month were documented in Honduras in 2001.\textsuperscript{171}

Guatemala has 6,000 street children in Guatemala City alone, estimates Casa Alianza.\textsuperscript{172} The region has been plagued by hundreds of extrajudicial executions of street children by methods of death squads, torture, death threats, and forced disappearances often by the state police authorities.\textsuperscript{173} Children are highly susceptible to police abuse and intimidation due to their poor living conditions. In addition, street children lack resources to education and employment.

Public perception labels these children as delinquents deserving punishment rather than victims in need of protection. Impunity is widespread, with public officials unwilling to prosecute crimes against abandonados. The girl-child is at increased risk of violence and exploitation on the street. However, the statistics on girl abandonado are sparse, indicating first a gap in her categorization and second in her protection.

Violence on the street is not the only problem facing children in the region. Regional and intrastate conflict also threaten the lives of children. Although the incidence of child soldiering has been reduced in Latin American conflicts, thousands of children under 18 years of age continue to fight with both state and non-state armed forces or groups. The countries most

\textsuperscript{171} \textit{Ibid}.
\textsuperscript{173} Munoz, Nefer, \textit{op cit}.
affected by this problem are Colombia and Peru according to the Coalition to Stop the Use of Child Soldiers. In Colombia, tens of thousands of children have been used as soldiers by all sides in conflicts. Government-backed paramilitaries recruit children as young as 8; while guerrilla forces use children to collect intelligence, make and deploy mines, and serve as advance troops in ambush attacks. Also noted in Colombia is the Armed Revolutionary Forces of Colombia (FARC)’s forced recruitment over the border in Venezuela. In Peru, the leftist Sendero Luminoso (Shining Path) movement forcibly recruited several thousand children from the indigenous communities. Problems also persist in Paraguay where there are a large number of children serving in the Paraguayan armed forces, and Mexico. Reintegration of former child soldiers poses challenges in El Salvador, Guatemala and Nicaragua. Most Latin American countries set 18 years or more as the minimum age for voluntary or conscripted service. Unfortunately, conscription laws have been applied in discriminatory manners, targeting the poor and minorities in particular cites the Coalition to Stop the Use of Child Soldiers. A universal feature of the armed forces of the region is the brutalization of recruits, especially young conscripts.

“Growing levels of poverty in the region have had a critical effect on the ability of governments to strengthen the economic and social protection of women and children.”

Increasingly, it is becoming difficult to find solutions to the problems associated with the low status of women and children. Cultural practices condone and perpetuate such actions of domestic abuse. Growing poverty has had dire consequences such as the increased incidence of HIV/AIDS. It is estimated that 210,000 adults and children contracted the HIV virus in 2000,

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176 Coalition to Stop the Use of Child Soldiers, op. cit.
bringing the total number of people living with HIV to 1.8 million.\textsuperscript{179} Haiti is the worst affected country in the region with an estimated 74,000 children orphaned by AIDS. According to CODEHUCA, an umbrella of 12 nongovernmental organizations from seven countries of Central America, Nicaragua and Honduras are the countries that posted the greatest number of violations of economic, social and cultural rights in 2001, due mainly to high poverty and marginalization.

Perhaps the sign of the girl-child’s position in society is the widespread prevalence of sex and commercial trafficking in the region. Sex tourism is increasing in Central and South America, a destination for men who desire sex with children. In fact, sex tourism is a significant aspect of the industry in many countries. This practice is an indication of gender inequality and her subordinate status in society. There are indications that young girls are being sold illicitly across borders for the sex trade. Guatemala City reports as many as 2,000 prostitutes in over 600 brothels. A similar number of girls are in the same situation in San Jose, Costa Rica according to Casa Alianza. The Dominican Republic has a high proportion of the trade with 25,000 child prostitutes. However, the estimates are higher in Brazil with as many as 500,000 girl prostitutes.\textsuperscript{180} Nicaragua is the point of transition for trafficking, facilitating the flow from both the north and south. Victims are generally routed through Honduras and El Salvador, with Guatemala, Belize or southern Mexico as their final destinations. According to the CIM report on trafficking, trafficking is most visible on the border of Guatemala and Mexico.\textsuperscript{181} This is in part due to the promise of reaching America. In Trinidad and Tobago, girls are employed as exotic dancers and provide escort services.\textsuperscript{182} In short, such practices are tolerated by society and


\textsuperscript{181} Langberg, Laura A. “Final Report on the Trafficking of Women and Children for Sexual Exploitation in the Americas” to the CIM Committee, www.oas.org

perpetuated by sexual taboos and a machismo culture. Response mechanisms are inadequate according to the CIM report with “disinterest, corruption and limited resources” affecting police investigations and the judicial system, few initiated court proceedings, and few convictions.\textsuperscript{183} An example is Colombia. In Colombia, officials estimate two to four women are victims of trafficking each day. This is despite antitrafficking legislation signed into law in July 2001.\textsuperscript{184} The new legislation is limited in scope, dealing only with women trafficked outside of Colombia for forced prostitution. This definition does not cover other scopes of trafficking. The law is also weak in the case of enforcement, giving prison sentences of only four to six years for traffickers. In addition, there is no witness protection program established to adequately address the needs of the victim during and after the judicial process.

Latin American laws and practices reflect the belief that women are subordinate to men. An example of this discrimination is that a woman cannot enjoy basic rights of citizenship such as the right to property. This is evident in the Chilean civil code permitting men the exclusive right to the wife’s property and control over household decisions. An extreme violation of the girl-child’s rights is practiced in Argentina, Mexico, and Colombia – early marriage. In these particular countries, the marriage age for a girl is lower than her male counterpart.

Even with the existence of international law defining and governing women’s and children’s rights, their rights are undermined by the discrepancies between some national legislation and international law and international instruments on human rights. Overly complex administrative procedures, lack of awareness within the judicial process and inadequate monitoring of the violation of the human rights of all women, coupled with the underrepresentation of women in justice systems, insufficient information on existing rights and persistent attitudes and practices perpetuate women's de facto inequality. De facto inequality is also perpetuated by the lack of enforcement of, inter alia, family, civil, penal, labour and commercial laws or

\textsuperscript{183} Langberg, Laura A. “Final Report on the Trafficking of Women and Children for Sexual Exploitation in the Americas” to the CIM Committee, www.oas.org
\textsuperscript{184} Human Rights Watch, http://staging.hrw.org/wr2k2/print.cgi?women.html
codes, or administrative rules and regulations intended to ensure women's full enjoyment of human rights and fundamental freedoms.\footnote{Fourth World Conference on Women Beijing Declaration for a more detailed list of violence against women, http://www.un.org/womenwatch/daw/beijing/platform/declar.htm.}
The Organization of American States: An Analysis of Its Efforts to Protect the Girl-Child

The situation of women and children has generated many international and national efforts. In most cases, these efforts have focused on international, regional, or national law. However, many of the problems result now from the lack of implementation and enforcement mechanisms. I am calling for an “era of implementation” that focuses on prevention, protection, and participation with application on the girl-child. This should include seeking to prevent harmful practices, protecting the girl-child from violence and sexual abuse, and improving the environment of the girl so she is secure. This involves a shift from fighting for new standards to focusing on effective implementation of existing law. I now turn to an analysis of the Inter-American system and its efforts in human rights prevention, protection, and enforcement for the girl-child.

The Organization of American States (OAS) is the oldest international regional organization. The member states of the OAS include Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, United States, Uruguay, Venezuela, and Cuba holding Observer Status. The purposes and principles of the organization are found in Articles 2 and 3 of the Charter governing the organization. The basic objectives of the OAS are: to strengthen the peace and security of the hemisphere; to prevent possible causes of difficulties and to ensure the peaceful settlement of disputes that may arise among the member states; to provide for common action on the part of
political, juridical, and economic problems that may arise among them; and to promote, by cooperative action, their economic, social, and cultural development. Specifically, this paper will focus its attention on the Human Rights organs of the OAS. Within the system, human rights abuses are referred to the human rights organs of the OAS through Commission and Court. Therefore, I will focus my analysis on these two organs to elucidate the efforts made toward the rights of the girl-child in the region. My analysis will draw primarily from the Inter-American Human Rights Commission (IACHR) and the Inter-American Human Rights Court (IACJ), in addition to the specialized organs of the Inter-American Commission of Women and the Inter-American Children’s Institute, elucidating their efforts at promotion, implementation, and protection of human rights in the Americas.

The Inter-American Commission on Human Rights (IACHR)

The Inter-American Commission on Human Rights (IACHR) is the first line of defense in a two-tiered system. Established in 1960, it is an institution created by the American Convention as well as an OAS Charter organ. Under the OAS Charter, all member states are subject to the jurisdiction of the Inter-American Commission of Human Rights and the provisions of the American Declaration of the Rights and Duties of Man. Article 112 of the OAS Charter calls for an “Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights…”186 The American Convention reiterates this mandate of the Commission and further describes its functions in Article 41 as follows:

a. to develop an awareness of human rights among the peoples of America;
b. to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and

constitutional provisions as well as appropriate measures to further the observance of those rights;
c. to prepare such studies or reports as it considers advisable in the performance of its duties;
d. to request governments of the member states to supply it with information on the measures adopted by them in matters of human rights;
e. to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they requested;
f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and
g. to submit an annual report to the General Assembly of the Organization of American States.\(^ {187}\)

The Commission is composed of seven experts with legal backgrounds who function as interpreters and appliers of the law. Under Article 34, they are to be of “high moral character and recognized competence in the field of human rights.”\(^ {188}\) Nominated by member states and elected in their individual capacity for a 4-year term of office, they do not act as government representatives. The seven-person Commission, meeting for 2 weeks every 4-month interval, has administrative, drafting, diplomatic, and quasi-judicial functions. First, the Commission acts as a promoter of human rights based on sections 41(a), (c), and (e) through education and research programs devoted to human rights. An important role in promotional activities has been the Commission’s role in drafting inter-American conventions on human rights subjects. The Commission has been instrumental to the drafting and adoption of the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Forced Disappearance of Persons, the Protocol of San Salvador, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.\(^ {189}\)

Additionally, there is the protective function detailed by sub-sections 41(b), (c), (d), and (g). These provisions empower the Commission to take on general and specific measures to prevent violations of human rights by any member state of the OAS, regardless if the state has ratified the American Convention. Measures include country studies, on-site visits to different countries to analyze and report on the status of human rights, and observer missions. The Commission also regularly examines human rights issues as they relate to certain key topics. It has appointed Special Rapporteurs to analyze and report on the rights of women, the rights of indigenous peoples, the rights of migrant workers, the rights of displaced persons, the right to freedom of expression, and the rights of the child. In my research, I did not find the rights of the girl-child addressed as a separate issue, leading me to infer that the gap at the international level is equally present on the regional level.

**Petitions:** As petitioning is an important function of the IACHR, I will now turn to the process in detail. The Commission has almost exclusively executed its enforcement duties through the individual cases and general inquiries into the human rights situation of particular countries. Article 41(f) grants the Commission the ability to examine and investigate petitions that charge state parties with violations of their obligations under the American Convention. According to the OAS, “One of the Inter-American Commission’s key functions is to examine petitions filed by individuals who claim the violation of a protected right by the state.” To put the Commission’s grave responsibility in perspective, in 1996 70% of the 800 cases pending before the Commission alleged violations of the rights to life and physical integrity.

Once applicable requirements are met, the Commission will process a petition, report its findings and, where appropriate, recommend measures to be carried out by the state to remedy the

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violation. If the country involved has accepted the Inter-American Court’s compulsory jurisdiction, the Commission may submit a case to the Court for a final binding decision.

Although typical in other international or regional institutions, the Convention does not allow for inter-state complaints. In order for inter-state complaints to be admissible, both States must recognize the jurisdiction of the Commission. Submitting complaints alleging violations committed against their own nationals, against stateless persons, or against nationals of another state is permissible under Article 45(1). In 2001, the rules of procedure for both the Commission and the Court were amended to give victims and their representatives a more direct voice in proceedings and to make it easier for cases to reach the Court. As Thomas Buergenthal, a scholar of the Inter-American system, states,

> It is undisputed that the availability of the right of private petition enhances the effectiveness of an international system for the protection of human rights. By enabling individuals to assert their own claims, the right of private petition makes the enforcement of human rights less dependent on the extraneous political considerations that tend to motivate governmental action and inaction.\(^{192}\)

The ability of an individual to file a petition is unique among international human rights instruments. Under the American Convention, the ability to file petitions is not limited to individuals. Article 44 allows for “any person or group of persons, or any nongovernmental entity legally recognized in one of more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.”\(^{193}\) It is possible for a person with no direct interest or standing to bring the case before the system as a breach of the Convention. Also, there is no requirement that the petitioner be within the jurisdiction of the respondent state. NGOs such as Amnesty International and

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Americas Watch have played essential roles in the functioning of the inter-American human rights system by bringing both complaints and acting as *amicus curiae* before the Court.194

The admissibility of a petition is conditioned on the exhaustion of domestic resources and remedies195 and submitted within 6 months of final domestic notification of judgment of the alleged violation.196 The American Convention provides that other extenuating circumstances will not prevent the admissibility of the petition if the petitioner can show that a) the domestic legislation of the state did not afford due process of law, b) the victim was denied access to domestic solutions or was prevented from exhausting all domestic resources, or c) there was a delay in the final judgment.197

If the petition is deemed *prima facie* admissible, it moves on to the second stage of investigation by the IACHR. The Commission examines the allegations, seeks government information, investigates the facts, and holds hearings.198 The Commission is able to dismiss a case that does not meet the requirements. Many critics of the system have claimed this provides the Commission with inordinate powers to decide as both litigator and judge on the case’s merits. Thomas Buergenthal notes, “[T]his power is clearly not to be used by the Inter-American Commission to adjudicate on the merits.”199 At this point, the Commission must allow for an avenue of friendly settlement between the parties. If a friendly settlement is reached, the Commission submits a report to the Secretary-General of the OAS.

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196 Article 46(1)(b), ibid.
197 Article 46(2), ibid.
198 Article 41(1)(c) & (d), ibid.
If a friendly settlement is unable to be reached, the case proceeds to the third stage. The Commission writes a report with the facts of the case that emerged from its investigations. The Commission also reaches a conclusion concerning the case. Recommendations by the Commission are acceptable. The report is given to the states concerned and it has three months to act. During the stipulated three months, the case may be settled by the parties involved or submitted to the second tier of the Inter-American system, the Inter-American Court of Human Rights.

In the fourth stage, a case is neither settled nor submitted to the Court. The Commission may by an absolute majority vote to accept the final report, which may or may not contain the answer to the question if the state has “taken adequate measures” to remedy the situation. The report can then include recommendations and a timetable for action by the State.

There are several obstacles to the Commission fulfilling its mandate. As enumerated, the Commission is charged with many and varied tasks in order to “promote respect for and defense of human rights.” It is a burden to an organization with limited resources. As a result, this dearth of support and oversight by the OAS has resulted in the individual case system resolving too few cases, suffering lengthy delays, lacking investigative capacity, lacking transparency and due process, lacking consistent participation and compliance by states, passing too few cases to the Court, relying on NGO lawyers in the presentation of cases before the Court and thereby undermining impartiality, and, finally, lacking follow-up and monitoring.

201 Article 41, ibid.
The Inter-American Court of Human Rights (IACJ)

The American Convention on Human Rights established the second tier of the human rights mechanism in the Inter-American Court of Human Rights (IACJ). The mission of current Inter-American Court of Human Rights (IACJ), established in 1980 by the OAS, is to interpret and apply the American Convention on Human Rights in order to safeguard the fundamental rights and freedoms enshrined in the document in respect of persons under its jurisdiction. The Convention vested with two distinct judicial functions to the IACJ: the contentious jurisdiction and the advisory jurisdiction. Under the contentious jurisdiction, the Court has the power to adjudicate issues relating to charges that a State Party has violated the Convention. The advisory jurisdiction grants the court interpretation authority of the American Convention and other human rights treaties.

The IACJ derives its contentious jurisdiction powers in Article 62 of the American Convention. According to the Convention, the State Party “may…declare that it recognizes as binding…the jurisdiction of the Court on all matters relating to the interpretation or application” of the Convention.\(^\text{203}\) The State Party is under no obligation to accept the Court’s contentious jurisdiction. The State Party is able to “unconditionally, on the condition of reciprocity, for a specified period, or for specific cases” recognize the jurisdiction under declaration or special agreement at the time of ratification or thereafter.\(^\text{204}\) The following countries have accepted the Inter-American Court’s compulsory jurisdiction: Argentina, Barbados, Brazil, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela. In 1999, Peru announced that it no longer accepted the Court’s compulsory jurisdiction, but the


\(^{204}\) Article 62 (1), (2). Ibid.
Court subsequently ruled that such a decision was “inadmissible” and that the only way for a state to withdraw from its obligations would be to denounce the American Convention entirely.\textsuperscript{205}

The Court, like its counterpart IACHR, is composed of seven judges who must be nationals of Members States. Judges must be of the highest moral character and intimately competent in the field of human rights. Judges serve in their individual capacity for a six-year term. The organizational component of the Court includes a President, a Vice-President, a Permanent Commission and a Secretariat. The Court sits in two regular sessions a year open to the public with the ability to convene a special session given to the President.

The Court typically hears cases by individual claimants, with allegations particularly against secular institutions. Before June 1, 2001, the American Convention provided “only the State Parties and the Commission shall have the right to submit a case before the Court,”\textsuperscript{206} not an individual petitioner. In order for an individual complaint to be heard before the Court, the Commission must refer it. The IAHRC serves first as a vetter to establish the case’s viability and then files a petition before the Court as the primary advocate on behalf of the victim. Article 61 sets the skeletal procedure for a case to be heard before the Court: the Inter-American Commission must first have dealt with the case and reached the third stage of its proceedings with a report adopted or it must be a complaint between two State Parties. Reforms of the Court’s rules went into effect on June 1, 2001, expediting the case process and allowing plaintiffs to directly participate in the trials to plead their cases with their own lawyers. This is an important development. As scholar Scott Davidson contends, the calling of witnesses, experts and other individuals is a crucial part of the Court’s procedure.\textsuperscript{207}

An additional power of the Court in contentious cases is the ability to grant temporary injunctions. The power is contained in Article 63 (2), stating, “In cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.”208 This extraordinary power is a means to prevent further violence and violation of an individual claimant. It is not only available when a case is pending before the Court but also when a petition, complaint, or investigation is underway by the Commission before the Court has entered the process for adjudication.

Article 63 concerns judgments rendered by the Court. It charges the Inter-American Court with ruling on whether there was a violation of the American Convention and if so what rights the injured party should be given. The steps to be taken to remedy the breach or violation in addition to any damages agreed upon are also within the Court’s functions. Article 68 specifically deals with monetary damages with the clause “part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.”209 Enforceability of judgments is a critical issue. According to Article 68, States undertake to comply with the Court’s judgment in any case to which they are parties and accept the Court’s jurisdiction. However, the Court lacks the power to enforce its decisions. The only recourse is its ability to submit a report to the General-Secretary of the OAS, detailing its work over the previous year and non-compliance of states with its judgments.210

209 Article 68(2), ibid.
210 Article 65, ibid.
The advisory function of the Court is an important feature of the human rights system, allowing for professional consultation concerning interpretation of the American Convention and other human rights instruments as well as opinions regarding compatibility with domestic law. This gives the member parties a reasonable degree of similar hemispheric-wide compliance. Article 64 makes it explicitly clear that the Court’s function is not limited to the State parties of the American Convention but to all members and institutions of the OAS as well as other human rights instruments. The Court may be asked to give an advisory opinion in three cases. First, a Member State or an organ of the OAS may ask the Court to interpret the Convention. Second, Member States or organs of the OAS may ask the Court to interpret any international human rights treaty. Lastly, any Member State may ask the Court to give an opinion regarding the compatibility of the State’s domestic laws with the Convention or other treaty concerning human rights. Although the advisory function is not binding, Thomas Buergenthal argues this “distinction may not be of great practical significance…Much more important is its impact as a force capable of legitimating governmental conduct and the perception of governments about the political cost of non-compliance.”

The Court is unable to accomplish the full adjudication and protection of human rights due to critical and interrelated impediments. One unexpected problem is the return to democracy in the Americas. Contrary to what one would expect, in most of the countries in the region the fall of oppressive regimes has not correlated into a downturn in the numbers of human rights cases filed before the system. In fact, there has been an even greater workload, a threefold increase in the last decade. The Court, having handled 39 cases since 1986, expects to receive a docket of 20 to 25 cases a year on average starting in 2002. This seeming contradiction is

rooted, however, in the new freedoms that have come with democracy. As repressive regimes release their control, greater social transparency exposes a large number of areas where fundamental rights are violated, and the relative failure of some of the countries' judicial systems to find a satisfactory resolution for dealing with the high number of violations. “The current structure cannot keep pace with its caseload.”

By being unable to fulfill its obligations under the American Charter, the Court is attributing to the neglect and lack of effective protection and enforcement mechanisms that serve to safeguard the girl-child.

The OAS has considered several initiatives in order to help the Inter-American Court properly fulfill its mandate. The first initiative is to establish a permanent court. This court will enable the IACJ to function on a fixed basis with resident judges. In addition, the Court would meet year-round, rather than holding four annual sessions. A permanent court will further promote greater independence and impartiality of the body. In addition, a permanent court bestows a degree of moral authority in the establishment, building the Court’s credibility and prestige with the objective set of procedures that serve to protect due process of law and ensure effective and predictable decisions. The permanent court will ensure justices are fully devoted to the Inter-American law system, increasing competency of the law and administering justice. A second measure essential in the pursuit of truth and justice is to broaden access by allowing the individual independent representation before the Court. However, with a staff of only 13 to 15 lawyers, the IACHR is only able to deal with 30 of 800 open cases in a year. As a result, the Commission only sent 13 of 93 cases to the Court in the years 1996-1998. “The ability of victims to obtain an adequate resolution of their cases is restricted and, in most cases, nullified”

216 Ibid.
by an overworked Commission. Moreover, the individual’s ability to petition directly will ensure greater justice by relieving the IAHRC of its current dual role. It will enjoy complete independence, impartiality, and freer resources to engage in its investigative capacity, thereby fully developing a case’s merits.

The Inter-American system is still pursuing full justice. “While all OAS member states have not ratified the American Convention, do not fully accept the jurisdiction…and do not incorporate the substantive standards of the American Convention…very little progress will be made in the genuine strengthening of the…system,” states Judge Antonio Cancodo, President of the IACJ.217 Twenty-five out of the 35 member states of the OAS have not ratified the Convention and 17 have not accepted the contentious jurisdiction of the Court. Scholars Thomas Buergenthal and Douglass Cassell argue the system’s failures originate in the states.218 These parties, instead of being protectors, promoters and defenders of human rights have instead been gross violators or have tolerated patterns of abuse. Through inaction, States violate the rights of the girl-child. In addition, Buergenthal and Cassell have documented several shortfalls of the system on the regional level in material resources and diplomatic support; inconsistent selection of judges, commissioners and staff; allocation of too many and conflicting roles to the Commission.219

Funding is, perhaps, the most crucial element. Funding for the Commission and Court is grossly inadequate to cover the requisite functions. The establishment of a permanent Court will require an increase in its funding. The IACJ budget has not enabled it to adequately cover, year after year, the ongoing increase in operating expenses associated with its increased caseload and

219 Ibid., p. 542-543.
inflation. The system has relied heavily on voluntary state and observer contributions, which are unreliable from year to year and bring scrutiny as to the system’s objectivity. As Buergenthal and Cassell note, it is easier for states to maintain the status quo, keeping the Commission and Court under-funded so that they may not fully carry out their mandates than to publicly oppose the system.\(^{220}\)

The limitations of the Court evince that the issue of impunity is not only a lack of enforcing compliance but also a lack of providing required resources to the agencies and organizations that carry out the law. The girl-child is not only being neglected in the private sphere but also in the public sphere, along with every other human being, through the lack of resources and dedication by member States to the IACHR, IACJ, and other organizations and government agencies.

**The Rights Protected in the Inter-American System**

The substantive rights that the Inter-American Human Rights System afford and protect are contained in the major international UN documents previously mentioned, the American Convention on Human Rights, and the Protocol of San Salvador (the Additional Protocol on Economic, Social and Cultural Rights). Documents and treaties relating to women and children include the Convention on the Prevention, Punishment, and Eradication of Violence Against Women. It is important to caution with the following analysis by Scott Davidson who notes that the American system has not reached the level of “detailed jurisprudence…where both the quantity and quality [of decisions]…are substantial and significant” as other regional human rights organs, namely the European Commission and Court.\(^{221}\) The rights that have generally been considered by the Commission and Court have involved widespread and gross violations. In


the area of women and children, the Commission and Court have only recently asserted significant jurisdiction and concerted effort. The Commission is regularly analyzing the situation of women and gender-specific problems in special reports on member states. The recent Report on the Situation of Human Rights in Ecuador, Report on the Situation of Human Rights in Brazil, Report on the Situation of Human Rights in Mexico have sections on human rights issues in relation to women. A common theme in the special sections is the problem of violence against women.

Although she is not a legal group, the precedents set by the Commission and Court affect girl-child. In the following section, I have identified several key human rights of the girl-child and analyzed the record of the IACHR and IACJ on these issues:

**Right to Life:** Preeminent and fundamental among all rights is the right to life protected by Article 4 of the American Convention on Human Rights. It states that every individual has the right to life and right to have his or her life respected. The Commission and the international community have widened this second aspect of the right to life. In the 1993 report on Nicaragua, the Commission stated,

> a trend has been observed to consider the right to life as a broader and more general concept, characterized not only by the fact of being the legal basis of all the rights, but also by forming an integral part of all human rights that are essential for guaranteeing access for all human beings to all goods, including legal possession of same, necessary for the development of their physical, moral and spiritual existence.  

The Commission intimately relates this right to economic and social rights. The issue of the right to life is still too vague for optimal protection of the girl-child. Several aspects that the Commission and Court must widen this right to include malnourishment, boy preference, and infanticide.

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The Right to Humane Treatment: Personal Integrity

Rape: The system addressed the issue of rape as torture with the case of Raquel Martin de Mejia in March of 1996. The Commission utilized the 3-part definition in the Inter-American Convention to Prevent and Punish Torture. The Commission found all elements had been met: the petitioner was inflicted by “an intentional act through which physical and mental pain and suffering,” the act was committed with a “purpose,” and the act was done in this case by a public official. The Commission also found that the State violated her right to honor respected and dignity recognized under Article 11. In its findings, the Commission referred to the effects of rape defined by the UN Special Rapporteur against Torture. It found that rape inflicted psychological as well as physical trauma and the sexual abuse was a “deliberate outrage” to the dignity of a woman.

In the case of Maria Elena Loayza Tamayo, the Court found the state guilty of the violations filed by the Commission under the American Convention of being arbitrarily and illegally arrested and detained, subjected to torture and inhumane treatment, and denied the right to a fair trial. The Commission also argued that rape violated the victim’s right to humane treatment. Without establishing a test of burden of proof, the Court declined the rape charge. The Commission further identified rape as a “weapon of terror” and a “crime against humanity under customary international law” when it conducted an on-site visit to observe and document the alleged systematic violations of rape against women in Haiti in 1994. Due to fear of reprisals, the victims did not wish to pursue justice through the petition process. By interviewing victims and doctors in confidentiality, the Commission found that the practice of sexual violence by the de facto regime was “widespread, open and routine.” This particular report documents the widespread neglect in the issue of rape. The State is not fulfilling its responsibility under the

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224 Ibid.
225 Ibid.
American Charter, and by allowing perpetrators to not be prosecuted and punished under the law, acting with impunity against women and the girl-child.

The Commission adopted the merits report on the case of Ana Beatriz and Celia Gonzalez Perez in April 2001. The Commission found the State of Mexico responsible for the illegal detainment, torture, and rape of the two women by military personnel in Chiapas in violation of Articles 1, 5, 7, 8, 11, 25 of the American Convention.226

The girl-child is especially vulnerable to rape. It is a violation of her fundamental human rights that causes physical, psychological, and emotional damage. Unfortunately, the Court has not established consistent case law with the issue of rape. Due to the inconsistency with the definition of rape and enforcement by the Court against perpetrators, I assert that the OAS is unable to fully protect the girl-child in this arena.

Domestic Violence: In the case of Maria da Penha Maia Fernandes, the Commission established the State’s duty to apply due diligence “to investigate, prosecute and punish domestic violence.”227 This case implies that the regional organization is trying to dismiss the public/private dichotomy. The facts of the case indicate extensive domestic abuse of the husband, Marco Antonio Heredia Viveiros, who shot, attempted to electrocute and kill his wife. The case stayed in the Brazil’s judicial system for 8 years before there was a conviction. The appeal process revoked the original decision after 3 years. A second trial convicted the husband to 10 years and six months in jail. The Commission found the judicial system guilty of impunity, allowing a case to remain in the system for 17 years without resolution. It found the State in violation of Articles 1, 8, and 25 of the American Convention. Article 24 was violated due to the pattern and custom of violence against women, indicating insufficient measures by the state of

227 Ibid.
Brazil to combat the problem. This impunity is in direct violation of the State’s duties under Article 7 of the Convention of Belem do Para.

In the Case of X and Y, a child and her mother brought charges of violence against the state of Argentina. The child and her mother had been subjected to vaginal inspections while visiting an inmate in prison. The Court found the inspections as “more than a restrictive measure as it involves the violation of a woman’s body” and absolutely an “inadequate and unreasonable” measure in the case of the minor. The Court found the state in violation of the American Convention under articles 5, 11, 25, 8, and 1.1. This case clearly shows that existing law can be brought to bear for the protection of a girl’s rights.

*Freedom from Slavery:* Article 6(1) of the American Convention prohibits slavery and involuntary servitude with specific mention to trafficking in women and children. Although the definition in the Convention is vague, the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery has offered a workable definition for the system. Article 1(c) and (d) clearly define it as “any institution or practice whereby:

(i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
(ii) the husband of a women, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
(iii) a woman on the death of her husband is liable to be inherited by another person; or
(iv) any institution or practice whereby a child or young person under the age of eighteen years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

In relation to the sexual exploitation of children and child prostitution, the region has attempted to comply with Articles 34, 35, and 36 of the CRC that urge State Parties to undertake national and multilateral agreements. Several countries such as Barbados, Dominica, Jamaica, etc have

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adopted Sexual Offence Act legislation. Neither the Commission nor the Court have directly dealt with the issue of slavery or the sex trade and its related practices. This is an area where the girl-child is particularly vulnerable and exploited. The lack of efforts by the Commission or Court implies a widespread neglect by both the regional organization and member States to protect the girl-child.

Rights of the Child

The rights of the child are protecting by the CRC and in the Americas by Article 19 of the American Convention and Article 16 of the Protocol of San Salvador. In particular, the Commission has studied the situation of minor children as disappeared persons. In 1999, the Inter-American Court ruled on the *Bosques* case involving the rights of the child for the first time in 20 years. It is an important precedent in the Inter-American system for cases that concern human rights abuses of street children and reflects the increase in prominence of children’s rights. In 1994, *Casa Alianza* and Center for Justice and International Law (CEJIL) presented the case to the Inter-American Commission on Human Rights. The NGOs charged the state of Guatemala with procedural and substantive due process irregularities in a case that indicted two national police officers with the torture and killing of five street children. Three main arguments supported this claim. First, the Guatemalan judicial authorities in charge of investigation carried out their tasks insufficiently. Second, the State omitted crucial evidence at trial, including the testimony of the mothers of three of the murdered boys. Third, state officials knowingly failed to protect key witnesses. According to lawyers of *Casa Alianza*, the Guatemalan justice

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system is “slow, ineffective, and highly susceptible to corruption and intimidations, resulting in high levels of impunity.” In fact, 86% of cases involving children’s rights presented by Casa Alianza before the Guatemalan judicial system between 1990 and 1998 remained unresolved. In the Bosques case, the Guatemalan court cited insufficient evidence in the case and failed to convict the two officers. The advocates turned to the IACHR after exhausting domestic remedies through the appeals process. The Commission found the state to be in violation of several articles of the American Convention: Article 1 (Obligation to respect rights), Article 4 (Rights to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial), Article 19 (Rights of the Child), and Article 25 (Right to Judicial Protection). The State also breached Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. After failing to reach a friendly settlement, the Commission presented the case to the Inter-American Court.

On November 19, 1999, the Court decided the Bosques case. It found the Guatemalan government in violation of Articles 1, 4, 5, 7, 8, 19, and 25 of the American Convention and Articles 1, 6, and 8 of the Convention to Prevent and Punish Torture. The Bosques case is the first time the Court condemned a state for violating children’s rights. It is also the first binding and enforceable case concerning police brutality against street children before an international tribunal. The Court placed special emphasis on the vulnerable circumstance of children in Latin America and stressed the state’s duty to protect the right to life. The opinion added, “The need for protection of the weakest – such as street children – requires a definitive interpretation of the right to life which considers the minimum conditions for a dignified life. The state party has a

233 Ibid.
234 Ibid.
235 Ibid.
special duty to protect the lives of the most vulnerable and defenseless, such as street children."\textsuperscript{236} The reparations phase required the State to pay U.S. $508,865.91 in victim compensation for the families and to establish a school for street children in memory of the five victims.\textsuperscript{237} In addition, the Court ordered Guatemala to bring its internal laws into accordance with Article 19, the Right of the Child.

**Special Rapporteur on the Rights of Women**

Case law is not the only arena for the promotion and protection of human rights in the Inter-American system. In the effort to renew the hemisphere’s commitment to the rights of women, the OAS established the office of the Rapporteurship of the Rights of Women in 1994. The initial mandate of the Special Rapporteur was to analyze the laws and practices of member states that affect the rights of women and their compliance with international legal norms and obligations of equality and nondiscrimination. Although equality and nondiscrimination are important cornerstones for women to fully enjoy their rights, the Commission and Rapporteur placed the issue of violence against women at the top of their agenda. Violence against women was cited by the organs as a gross manifestation of gender-based discrimination. The current Special Rapporteur for the Rights of Women, Marta Altolaguirre, a Guatemalan attorney and notary, has worked to coordinate regional as well as international efforts to achieve greater effectiveness. Through a joint declaration with the UN Special Rapporteur on “Violence against Women, Its Causes and its Consequences” and the African Commission of Human Rights Special Rapporteur on the Rights of Women in Africa, the exchange of information, sharing ideas and strategies of approaching emerging issues relating to women, harmonizing recommendations to member states, communication regularly with regional and international NGOs was established.


\textsuperscript{237} Ibid.
“The Report on the Status of Women in the Americas”

The problem of violence against women and women’s rights reached the level of thematic concern of the organs of the Inter-American System with the release of “The Report on the Status of Women in the Americas.” The study was conducted by the Special Rapporteur of the Inter-American Commission of Human Rights, and its findings were accepted and released by the IACHR in 1998. The Report analyzes the compliance of the Member States and organization with their international obligations as they apply to women. Although the report indicates encouraging evidence that women’s rights are being placed on the social agenda and reforms are being instituted within the member states, the consensus reached by the report denotes that serious violations exist. Poverty and armed conflict were particularly cited for having a disproportionately negative effect on women.

The eradication of violence against women was a priority objective and given a constructive focus in the report. The Report indicates the institutional measures, national policies, and judicial protection afforded to women by the countries in the area of violence pursuant to their obligations in the American Convention (Article 5) and Convention of Belem do Para (Articles 3 and 7):

- Argentina adopted law 24, 417, Protection Against Family Violence in 1994.
- Bolivia adopted law 1,674 on Domestic or Family Violence in 1995.
- Brazil’s 1988 Federative Constitution committed the state to create mechanisms to address, prevent, and punish violence in the family.
- Canada established the elimination of violence against women in its Federal Plan for Gender Equality. Canada’s federal programs include the Family Violence Initiative that provide assistance to over 3000 programs and the establishment of emergency shelters and houses for battered women and children.
- Chile enacted protection for all members of the family group suffering from aggression by another family member with the Intrafamiliar Violence Act in 1994.
- Colombia passed Law 294 in 1996 to prevent, remedy and punish intrafamily violence.
- Ecuador created women’s precincts in 1994 and adopted the law on Violence Against Women and Family in 1995.
- Guatemala enacted the Law for the Prevention, Punishment, and Eradication of Intrafamily Violence in 1996.
Guyana adopted the Domestic Violence Act of 1996 that classified violence against women as a punishable crime.
- Honduras recently enacted a law on domestic or intrafamily violence.
- Jamaica adopted the Offenses against the Person Act with special provisions for crimes against women.
- Mexico passed the Intrafamily Violence Protection and Assistance Act in 1996.
- Panama classifies the mistreatments of minors and intrafamilial violence as crimes in Law 27 of 1995.
- Uruguay enacted Law 16,107 to regulate violence against women.
- Peru regulates family violence under Law 26,260/93.
- The United States created the Violence Against Women Office in 1994 and passed the Violence Against Women Act, part of the Violent Crime Control and Law Enforcement Act of 1994.238

In addition to legislation, OAS member states have institutional mechanisms to address the issue of violence against women. Costa Rica has established the Commission for Attention to and Prevention of Intrafamily Violence. The 1990 Law on the Promotion of Social Equality for Women mandated the Ministry of Justice and the National Center for the Development of Women and Family promote programs to provide protection and guidance to victims of violence and work to prevent it. Uruguay established a Technical Office to support Victims of Family Violence in 1992. In many countries, the issue of family violence is a priority of government institutions. The countries of Argentina, Brazil, Colombia, and the United States, for instance, have institutions that implement programs at different levels (local, regional, national) to support and assist women and children who have been victims of domestic violence.239

Regulations and services that ease the filing of complaints in cases of domestic violence in certain member countries are present in many OAS member states. Brazil’s system dates to the mid-1980s with assistance services through offices and precincts to provide protection for women. Other countries’ practices have followed in the 1990s. Argentina created a Specialized Police Unit to assist judges and victims of family violence. Chile’s carabineros (police) receive specialized training on dealing with victims. Women’s precincts and legal offices take

239 Ibid.
complaints of family violence in Colombia and Ecuador. Costa Rica has ordered police to intervene *de oficio* when requested in cases of domestic violence and many testify as witnesses at trial. The *Delegacion de la Mujer* of the Ministry of Justice may file complaints and offer legal support. Mexico has provided an extensive system of support with the Technical Judicial Police centers that care for victims of violence, Therapy Centers that provide both care as well as report to the Attorney General, and a special department that takes complaints of sexual abuse. The United States established the National Domestic Violence Hotline that provides assistance and shelter information.\(^{240}\)

The Report found that the problem of violence was exacerbated by a lack of resources, poverty, and the marginalization of broad sectors of the population. This analysis can also apply to the situation of the girl-child, a group not addressed in the report and, consequently, marginalized by it. The Special Rapporteur reports that there is an absence of adequately trained personnel to deal with violence against women in the region. For example, police officials, judicial authorities, and professional health workers do not receive appropriate training in Honduras and Guatemala. In Chile, Guatemala, Honduras, Mexico, Paraguay, Peru and Venezuela, there is no follow-up after a complaint has been filed.\(^{241}\)

In many states, legal technicalities hinder a woman’s ability to obtain justice. In Brazil and Ecuador, the law of the state defines domestic violence as a crime of private action and limited to the private sphere for which the state has no jurisdiction to prosecute. Guatemala classifies violence as a private health issue and not a public, punishable crime. A majority of the countries in the hemisphere contains criminal classification codes for crimes committed against women such as rape, statutory rape, abduction, and sexual abuse. These crimes, however, are defined as violations against a woman’s honor or decency, indicating that claims of victimization


\(^{241}\) *Ibid.*
are dependent upon a woman’s “honor, social decency, virginity, chastity, and/or good morals.”

Action is incumbent upon the State. The Report refers to Article 2 of the Convention for the Punishment, Prevention and Eradication of Violence against Women (Convention of Belem do Para) and Article 1.1 of the American Convention, claiming the State has an obligation to “act with due diligence to prevent violations of human rights and to take remedial action whenever violations do occur.” The Inter-American Court of Human Rights further asserts evidence of the State’s duty in the case of Velasquez Rodriguez, ruling that a State entails responsibility “not because of the act itself, but of the lack of due diligence to prevent the violation or to respond to it as the Convention requires.” The Report recommends States to “adopt suitable legislation on violence against women, ensuring that violence, intrafamilial or domestic violence…caused or tolerated by the State…is duly investigated, tried before a court, and punished.”

The recommendations of the Report to address violence against women include:

- Transform the Rapporteurship of Women Rights into a Working Group on the Rights of Women;
- Working Group will undertake and submit reports concerning women’s issues. The first report should center on violence against women in the hemisphere;
- Further legislation should be adopted to guarantee that violence is investigated, referred to the judicial system according to country procedure, and punished;
- Fully implement and provide sufficient funding for programs in existence that address violence such as law enforcement training programs and victim’s shelters;
- Create programs to address the issue of violence;
- Amend criminal codes that violate the rights of the victim including:
  - Codes that require the victim to marry her rapist
  - Codes that refer to dignity or morals should be classified as crimes against personal integrity, liberty, and privacy
  - Codify crimes such as incest
  - Broaden the definition of rape; and
- Amend the judicial system to assure swift and appropriate justice and reparations including access to legal representation.

243 Ibid.
244 Ibid.
245 Ibid.
246 Ibid.
Although the report is extensive in its review of the problem of violence and its effects on women, the report fails to address the problem of violence and the girl-child specifically. The marginalization of the girl-child is evident on the regional level by the lack of reporting and resources dedicated to documenting the abuses against her. If the abuses are not documented, there cannot be further progress. The problem must first be addressed in terms of quantitative and qualitative research. Once the problem is defined, laws and mechanisms such as the ones described above for the protection of women will result. Therefore, I suggest a thematic report on the issue of violence and the girl-child as an initial step.

**Inter-American Commission on Women**

The Inter-American Commission of Women, or CIM (*Comisión Interamericana de Mujeres*), is an autonomous organ of the Organization of American States. It has been active since its establishment in the 1920s. Led by women, the commission’s goal is to shape international norms concerning women’s rights in the Americas and improve women’s lives. The organization focused the early years of its existence particularly on the political and civil rights of women. To bring the organization in line with the changing social and political milieu, its mandate expanded in 1968 to include economic, social, cultural, and educational issues in 1968. Through leadership courses, seminars, National Committees of Cooperation and other group activities, the CIM became the primary vehicle in the Americas to strive to “bring the *de facto* situation in line with the *de jure* condition, for without this, reform cannot be considered fully achieved.”

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As a specialized commission of the Organization of American States, the Inter-American Commission of Women has long worked to improve the rights and status of women throughout the Americas. By ensuring the governments’ compliance concerning women at all levels and for the achievement of the standards set forth in the OAS Charter and American Convention, the CIM works to incorporate and increase participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation.

As “the answer to the inter-American system to the needs of American women” the CIM’s main objectives and functions are:

1. To help create in society the necessary conditions to enable everyone to enjoy the fundamental human rights and thus to achieve the full integration of women in the economic, social, civic, educational, and cultural development process;

2. To analyze the problems of American women in order to identify areas in which it is necessary to intensify action to encourage the development of their personality, to achieve their just aspirations and to enable them to participate in the over-all development of their countries;

3. To appeal to governments to comply with provisions aimed at solving the problems of women that have been approved by inter-American or international conferences, the General Assembly of the OAS and by their own assemblies;

4. To serve as an advisory body to the Organization of America States and its organs in matters relating to the well-being of women throughout the hemisphere;

5. To establish close cooperative relations with inter-American agencies and those of worldwide scope, and with public and private organizations when work concerns women;

6. To promote integration and participation of women in all fields through leadership courses, seminars, and other group activities;

7. To send periodic reports to the General Assembly of the OAS on the principal activities that have been carried on in connection with the work of the Commission;

8. To submit to the governments of the American states and to the General Assembly reports on the civil, political, social, economic, and cultural status of women in America, on the progress achieved in those fields, and on the problems that, in its opinion, should be considered, and to submit them resolutions that will promote their solution.248

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CIM has worked both on the international and local levels. The early achievements of CIM involved recognition of women’s rights in the political and civil arena. In the area of recognition of political rights, the CIM obtained approval and ratification of the Convention of the Nationality of Women in 1933 at the Seventh International Conference of American States in Montevideo, Uruguay. Article 1 of the Convention on the Nationality of Women stated, “There shall be no distinction based on sex as regards nationality, in their legislation or in their practice.”\(^\text{249}\) It has worked to gain women’s suffrage in the extension of suffrage to women in the 1930s, 1940s, and 1950s, and the ultimate passage into international law of the Inter-American Convention on the Granting of Political Rights to Women in Bogotá on May 1948. In this Convention, State Parties agree, “the right to vote and to be elected to national office shall not be denied or abridged by reason of sex.”\(^\text{250}\) The third significant piece of legislation of the CIM’s early career is the signature and ratification of 15 out of the 20 participating states at the Ninth International Conference of American States of the Inter-American Convention on the Granting of Civil Rights to Women” also in Bogotá on May 1948. Article 1 of this Convention grants “to women the same civil rights that men enjoy.”\(^\text{251}\) It has also successfully lobbied regional, national, and local governments to take women and gender issues into account with development strategies. In addition, CIM has successfully campaigned to establish Women’s Bureaus in the Member Countries and is continuously working to monitor and strengthen them. In order for women to be more fully aware of their rights, the CIM established the Inter-American Program for Training Women Leaders.

The most recent success of the CIM is the negotiation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women. Violence against women is a global phenomenon linked to patriarchal cultural values and social structures that


\(^{250}\) Ibid., p.8.

\(^{251}\) Ibid., p.9.
subordinate women. In Latin America, grass roots women’s organizations and the Inter-
American Commission of Women have directed their efforts to pressing the governments of the
Americas to address the endemic problem of violence against women. As the issue of violence
has increased in the public sphere, grass root and regional women’s organizations advanced the
issue onto the public agenda.\footnote{Meyer, Mary K. “Negotiating International Norms: The Inter-American Commission of Women and the Convention of Violence Against Women.” Aggressive Behavior. Vol. 24, 1998. p.136} By 1990, 379 organizations dealt with the issue of violence and women in Latin America. Primarily, their functions focused on gathering statistical information and forming education programs. The CIM utilized the momentum of the organizations to push for the creation and adoption of a treaty in the first phase in 1988. By 1990, the second phase included a meeting of consultation that defined the framework of the treaty. This phase included a call for action by the Inter-American system and the need for such a treaty for the hemisphere. The drafting of the treaty began in 1991. Although several issues addressed by the CIM affect the girl-child, she is not a specialized victim to be served by the committee. However, the record of the CIM is testament to the importance of establishing bodies to serve marginalized and violated sectors of society. Acting as a constant source of pressure and encouraging forward momentum, the CIM is able to promote women’s rights in the hemisphere. The girl-child needs a similar body to promote her rights. I will discuss this issue in detail later in the paper.

**The Inter-American Children’s Institute**

Although there is not a specific organization to deal with the relevant issues of the girl-child, there is such an organization within the OAS to deal with issues relating to children. The Inter-American Children’s Institute, known by its Spanish acronym IIN (*Instituto Interamericano del Nino*), is a specialized organ of the OAS dealing with children’s issues of the hemisphere. Uruguayan pediatrician, Dr. Luis Morquio, conceived of the IIN to serve as a center of action and dissemination of information on children’s issues. Established by the Fourth American Congress
on Children’s Issues in 1924, the organization is headquartered in Montevideo, Uruguay. The following declaration on the Rights of the Child was presented at the inauguration of the IIN on June 9, 1927:

1) **Right to Life.** The sum of all rights, for the sole reason of having been born. The right to a home to live in; to maternal care; to obligatory paternal recognition with all of the responsibilities of paternity; and to the State overseeing physiological development and prosperity.

2) **Right to Education.** First, to attend Kindergarten. Second, to attend elementary school. The abolition of the system of city schools. The abolition of verbalist, book-oriented teaching. The reintegration of children into nature, through a school of activities, work, joy – School Parks – to achieve reactions in body and spirit – health, intelligence and emotion – and prepare children to be the builders of their own destiny and of social greatness.

3) **Right to Specialized Education.** Health schools, outside, in forests and fields, schools outside under the sun, for the abnormal, the deficient, the sick, and the weak.

4) **Right to Maintain and Develop Personality.** The study of vocations, systems of spiritual orientation without artifice, that may only be achieved in School Parks, in the return to nature, by the reaction of the intimate to life outside. The recognition, in practice of education systems, of the right to be a child, to live and feel as a child, free from the cold artificiality of the school-cloister and from the pedagogical dogma that informs it.

5) **Right to Complete Nutrition.** The mother's right to raise her child. State security for mothers without resources. Milk services. The installation of school snack programs. The installation of School-Cafeterias for minors who work before this table of Rights has been comprehensively met.

6) **Right to Full Economic Assistance.** This right signifies parents' obligation - or, in their absence, the State's obligation – to ensure the child an economic situation without hardship. The right to housing, clothing, and to all opportunities for well-being that man's work puts at the service of world progress.

7) **Right to Land.** Land to inhabit. The recognition of children's right to occupy their place in the world, for the sole fact of having been born. Land to work, put at the disposal of the School Parks, for the development of their energies, their vital impulse, their restlessness, and their faculties of observation, so that they may learn for themselves in the vast panorama of the universe and understand that life is an immutable law of solidarity in the effort of creation.

8) **Right to Social Consideration.** All for the child, the abolition of the legal distinction between legitimate and illegitimate children. The child is simply a child. Children have a right to their parents. The transformation of orphanages and reformatories, where the "Pavilion" system annuls personality, into family colonies for education and work, organized in small social nuclei confined to father and mother who include in their affection for their children, a small group of children without a home.

9) **Right to Joy.** The absolute recognition of this right in family life without economic hardship, in the active school in nature, in education without artifice, at a table where there is bread, in a home where there is a hearth. The right to air and light, to land that is cultivated, fire that warms and water that purifies. The right to be a child to be a man, to form, with healthy bodies and clean souls, the builders of liberty, the architects of the world's conscience.
10) **The Sum of these Rights of the Child is the Integral Right: The Right to Life.** On its recognition and observance, depends the greatness of peoples. On health and joy, and on the unhampered education of children for culture, work, liberty and cooperation, rest the values of man's destiny in a new chapter of history.253

From its inception, the IIN was primarily concerned with health issues of children and adapted throughout the years with the changing social, economic, and political milieu with the creation of several technical divisions. The six divisions of main concern for the IIN: juridical, social, educational, health and drug prevention, information systems, civil registries and vital statistics. Central to its mandate is to affect and improve the realities affecting the lives of the children in the hemisphere. The Charter of the IIN clearly shows no gender dimension to its goals and rights.

The IIN has recognized the importance of rights for children. It has worked with legislation as one of the main vehicles to improve the integration of children, adolescents, and family into society. In fact, almost all of the legislation on children has been influenced by or the product of encounters, investigations, and the efforts of the IIN since 1916. The IIN has worked intimately with the governments of Bolivia, Costa Rica, Ecuador, Guatemala, Paraguay, and the Dominican Republic in the formulation of codes for minors and special legislation to protect children and the family. In addition, the IIN was the first institution to train human resource personnel in the specialized administration of justice. Efforts included university courses on formation, specialization, and actualization of judges and directors of executive organizations for the protection of minors stipulated by such international documents as the CRC. With the passage of the CRC, the IIN has directed its efforts to creating a body of law on the national and regional level to comply.

Social policy is an important area of concern for the IIN. It has worked with various countries and nongovernmental organizations in areas of adoption, poverty, abandonment, institutional development, and professional training. The IIN has provided technical training to

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develop, monitor, and evaluate programs and projects to improve the management of children’s shelters and national organizations in charge of coordinating such activities. The Unit of Social Affairs was created with the mandate to study the social aspects of poverty and marginalization paying particular attention to their impact on the family and the child. The main contribution in the social area is in the area of training. It has developed courses, seminars, workshops, and techniques geared to improving the care of families and children.

The educational activities of the IIN focus on handicap, learning disabilities, early intervention and stimulation, care of muscular sensorial disorders, vocational rehabilitation and pre-school education. Specifically, country programs in early intervention and stimulation have been developed in Chile, Uruguay, Colombia, Venezuela, Brazil, Peru, the Dominican Republic, and Jamaica.

The IIN has worked to provide effective information and programs in the area of health. Topics of particular attention have been comprehensive socio-medical care of children and adolescents, nutritional problems, and education on health for the individual, family and school level. Programs have also been instituted for medical doctors and paramedics, universities, and public health schools. Recent efforts focus on drug addiction.

The most specific program related to the girl-child is the IIN partnership with PLAN, a Guatemalan based NGO. This partnership is developing a database of birth registration in six countries in Central America and the Caribbean: El Salvador, Guatemala, Haiti, Honduras, Nicaragua, and the Dominican Republic. The future aims of the program is to develop a process that includes support to high-risk pregnant mothers, newborn babies, and ensure medical checks and guaranteed vaccinations as well as register the babies.

Recently the IIN has refocused its efforts to further serve the children of the Americas in its Strategic Plan 2000-2004. As stated in the plan, the mission of the IIN is:

- To offer a forum for inter-American dialogue on children’s issues
- To push for the formulation of regional and national policies
- To promote new ideas and proposals and act as a gathering point for the search for solutions
• To encourage technical solutions in the management of child-related issues
• To form alliances with other organs of the Inter-American System and UN for the purpose of increased coordination
• To prepare an Annual Report of the Situation of Children in the Americas
• To endorse participation by children

In order to achieve the mission, the IACI strategy is to create a “National Child and Adolescent System” (SNI) and offer five strategic products in the areas of Legislation, targeted public policies, and information for the monitoring of the rights of children and adolescents.254 The National Child and Adolescent Program, designed to be adaptable to every country, emanates from the Convention of the Rights of the Child. The Program contains political and programmatic dimensions with the “aim to ensure that no child in [the Americas] is excluded from the rights conferred upon him or her as a person and as a citizen.”255 It aims to “structure and systematize the relations between all actors,” administrative, judicial, public and private, to guarantee the rights of the CRC.256

The IACI has been instrumental in the preparation of special child legislation in the individual States as well as preparing four Inter-American Conventions. The IACI would continue to provide advisory services and develop legislation prototypes. The legal arm focuses efforts on maintaining and updating resources on legislation relating to children and adolescents, the family, and specialized children’s legislation (child labor, children in conflict with the law, adoption, etc). In addition, the IACI will develop plans to train juvenile and family court judges, lawyers, and other governmental positions.

The creation of a Children’s Rights Program will coordinate the social activities of the IACI through targeted public policies. The targeted public child and adolescent policy prototype works to ensure that the most vulnerable are affected, the service is tailored for the request, to afford the opportunities of the CRC and other treaties to the disadvantaged. Issues of violence

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254 IACI. “Strategic Plan 2000-2004.” Inter-American Children’s Institute, OAS, www.oas.org
255 Ibid.
256 Ibid.
against children and adolescents are addressed in the areas of early health care, family abuse, early pregnancy, street children, commercial sexual exploitation, and children in armed conflict.

The IACI strategic plan is a proactive step forward for the hemisphere in the area of children’s issues and rights. There are integral protection programs for the issues of labor, institutionalized children, adoption, and foster care. In the area of violence, programs for street children, prevention, children in conflict with the law, and sexuality are slated for implementation. Unfortunately, the plan does not adequately address other issues of violence and several related consequences. In fact, while there are sectoral governmental bodies for the issues of public security, food, education, health, housing, justice, women, and family, a SNI system lacks one for violence. Additionally, the Plan does not specifically address the issue of HIV/AIDS. With the epidemic on the rise in the region, a concerted effort consisting of educational, health and other interrelated area (commercial sexual exploitation, etc) measures must be pursued aggressively.

It is essential that the rights of the girl-child be protected. In such a vulnerable societal position, as both a girl and a child, her needs require specialized attention. As a first step, the National Child System needs to create a specific HIV/AIDS arm and a girl-child arm under the auspice of the integral protection programs with public and private collaboration.
Recommendations

A key component of human rights promotion and protection on the international arena, and in the Americas, are nongovernmental organizations (NGOs). NGOs have developed a crucial niche in the human rights field, acting as watchdogs and a support base to guarantee the implementation of international, regional, and national standards of human rights. NGOs function as “unofficial ombudsmen safeguarding human rights against governmental infringement.” According to Makau Mutua, international NGOs have been the “primary engine of growth” for the human rights movement and their purpose is to seek to enforce the application of human rights norms internationally, particularly toward repressive states in the South, in areas formerly colonized by the West.

The intersection of law, policy, and enforcement is on the NGO level. NGOs can take the lead in being a voice for citizens—including children, whose voices are denied in many countries. NGOs need to form coalitions to act as monitors of the implementation process. As monitors, the NGOs must pressure governments to ensure adequate compliance and act as a second front in the human rights system. As monitoring coalitions, the NGOs have many and varied functions, including: ensuring that laws are continuously renewed; regularly scrutinizing the status of women and children; evaluating future programs and isolate critical cases; scrutinizing government policies; building expertise through research and test cases; and, periodically producing public reports. In many international treaties, including those previously

discussed, NGOs are invited to summit reports on country or thematic issues to the committee. Failure to continuously monitor CRC and CEDAW implementation may result in the degeneration of the two conventions into a broad statement of principles and little more.

I am not advocating simply passing treaties on the girl-child. Although an international treaty is a proactive step in the process of ensuring the legalization and enjoyment of the girl-child’s rights, it is not sufficient. As I have documented, the mere existence of an international human rights treaty does not equate to full implementation on the regional, national and local level. International law without compliance and enforcement are worthless to her situation. Governments must not only refrain from violating the human rights of all woman (a negative responsibility) but must work actively to promote and protect these rights, a positive duty. The gap between the existence of rights and their effective enjoyment derives from a lack of commitment by Governments to promoting and protecting those rights and the failure of Governments to inform women and men alike about them. A system of implementation is essential; therefore, I am calling for an era of implementation. Effective implementation requires appropriate mechanisms and adequate resources including funding.

I recommend key actions to be taken to protect and support the girl-child. The Beijing Declaration issued a call to action in which “the human rights of all women and the girl-child … form an integral part of United Nations human rights activities. Intensified efforts are needed to integrate the equal status and the human rights of all women and girls into the mainstream of United Nations system-wide activities and to address these issues regularly and systematically throughout relevant bodies and mechanisms.”\(^{259}\) I advocate the appointment of a Special Rapporteur on the Girl-Child at the UN and on the regional level at the OAS. The Office of the Special Rapporteur would provide full and sustained attention to the issues concerning the girl-child. The Rapporteur could act as a conduit to merge the issues of women’s concern with

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children’s issues to serve the specialized needs of the girl-child. The Special Rapporteur should be devoted to developing age-appropriate safe and confidential program while serving to increase cooperation and coordination between CEDAW and CDW Committees. Cooperation and coordination have been indicated as key areas to improve at the UN. In fact, the 1995 Beijing Declaration calls for

improved cooperation and coordination between the Commission on the Status of Women, the United Nations High Commissioner for Human Rights, the Commission on Human Rights, including its special and thematic rapporteurs, independent experts, working groups and its Subcommission on Prevention of Discrimination and Protection of Minorities, the Commission on Sustainable Development, the Commission for Social Development, the Commission on Crime Prevention and Criminal Justice, and the Committee on the Elimination of Discrimination against Women and other human rights treaty bodies, and all relevant entities of the United Nations system, including the specialized agencies.260

This call to action should include the girl-child. In addition, the Special Rapporteur on the Girl-Child should serve to develop a comprehensive policy program, including the UN’s goal of gender mainstreaming that would emphasize the girl-child.

An essential component of the policy program should be the focus on the national and local level. National law must comply with international standards. Human rights will exist in name only unless the human rights of women and children, inter alia girl-child, are fully recognized and effectively protected, applied, implemented, and enforced in local laws and practices. National and local practices include family, civil, commercial, and penal codes as well as bureaucratic rules and regulations. However, the prejudices that pervade familial, educational, and societal institutions are equally as constraining and damaging. In order to achieve this form of compliance, the Special Rapportuer should work to establish Girl-Child Bureaus in member countries much like the Women’s Bureaus in the OAS. The Special Rapporteur must continuously work to monitor and strengthen these bureaus.

The Beijing Declaration calls on the international community, governments, and civil society (non-governmental organizations and the private sector) to take strategic action in the following critical areas of concern for the girl-child:

- The persistent and increasing burden of poverty on the girl-child
- Inequalities and inadequacies in and unequal access to education and training
- Inequalities and inadequacies in and unequal access to health care and related services
- Violence against the girl-child
- The effects of armed or other kinds of conflict on the girl-child, including those living under foreign occupation
- Inequality in economic structures and policies, in all forms of productive activities and in access to resources
- Insufficient mechanisms at all levels to promote the advancement of women
- Lack of respect for and inadequate promotion and protection of the human rights of women
- Stereotyping of women in all communication systems, especially in the media
- Gender inequalities in the management of natural resources and in the safeguarding of the environment
- Persistent discrimination against and violation of the rights of the girl-child.261

The strategic objectives are:

- Eliminate all forms of discrimination against the girl-child.
- Eliminate negative cultural practices and prejudices against girls.
- Promote the awareness of the girl-child’s rights and her needs and potential.
- Eliminate discrimination against girls in education and development
- Eliminate discrimination against girls in health and nutrition.
- Eliminate the economic exploitation of the girl-child.
- Eradicate violence against the girl-child.
- Promote the girl-child's awareness of and participation in social, economic, and political life.
- Strengthen the role of the family in improving the status of the girl-child.262

While all the above issues are important to fully respect the human rights of the girl-child, violence is the most pressing. As “violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms,”263 the most important objective of the Special Rapporteur must be the prevention and protection of the girl-child against violence. This integrated, coordinated approach must include the harmful traditional

262 Ibid.
263 Ibid.
practices, domestic violence and sexual abuse, commercial sexual exploitation and trafficking, armed conflict, and health issues relating to the violence. The Special Rapporteur should urge governments to take urgent action to stop all forms of violence against women in private and public life. As I have stated previously, the private sphere is particularly difficult to regulate and is not covered by international and regional law. It is imperative to combat violence in this sphere.

The Special Rapporteur must be the foremost girl-child advocate on the international arena. In order for the Special Rapporteur to affect the local level, he or she must form coalitions with NGOs. More importantly, the Special Rapporteur must function as a policy formulator, creating definable goals and general guidelines to achieve the objectives. With different societal and governmental circumstances, local committees and NGOs are better equipped to adapt the guidelines. They are closer to the girl-child and her unique circumstances.

Governments should establish the rights of the girl-child from violence through international law and then implement these rights in their national legislation and practices. Due to the lack of international law emphasizing the girl-child, the governments should undertake to pass and ratify the Convention on the Rights of the Child (covering her rights as a child) and the Convention on the Elimination of Violence Against Women (covering her rights as a woman). To combat violence against the girl-child, governments should take suitable legislative, administrative, social and educational measures to protect the girl-child, in the domestic and public sphere, from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. In general, laws enacted in the countries should aim to train law enforcement officials to deal with the victim and her circumstances, provide strong support systems in the country to the victim (i.e. shelters that provide physical and emotional support post-trauma, advocates to help the girl-child navigate the legal system in a timely and efficient manner to reduce undue stress to the victim), and strong
laws and sentences should be available to prosecute the perpetrator in order to prevent future violence.

Measures to respond to physical and sexual abuse of girls should include, but not be limited to:

- Enact and enforce legislation prohibiting female infanticide, prenatal sex selection, genital mutilation, and incest;
- Provide the girl with medical, social and psychological support services to assist girls who are subjected to violence;
- Remove the girl from the situation;
- Seek conviction of the perpetrator; and
- Reunite the girl with her family.\(^{264}\)

Measures to deal with sexual exploitation and commercial trafficking should be multi-pronged and integrated to address economic, cultural, social, political, and legal issues and should include, but are not limited to:

- Strengthen national and international legislation to prohibit sexual exploitation, child prostitution and child pornography;
- Provide appropriate training to enforcement institutions (i.e. police and judicial officers) regarding their human rights obligations toward girl-child;
- Provide gender sensitivity training for those administering to the victim after a violent encounter; and
- Assure security for the girl-child willing to cooperate in giving evidence against exploiters and traffickers.\(^{265}\)

Measures to deal with violence during armed conflict include, but are not limited to:

- Appoint a Child Protection Advisor to peacekeeping missions to serve the needs of the girl-child

Violence does not occur in a vacuum. The girl-child’s rights and needs will not be fulfilled unless a more holistic approach is taken. The first line of attack against violence is to pass laws against all forms of violence against the girl-child. A concurrent issue is to ensure swift enforcement and adjudication to the fullest extent of the law. Nevertheless, this line of attack is not a preventive measure; it serves the girl-child only after she is violated. The world community

\(^{264}\) For a more detailed plan of how to deal with the girl-child in situations of physical or sexual abuse, see World Vision International, “Girl-child Report,” p.20, www.wvi.org

\(^{265}\) Ibid., p.24.
(and in particular governments) must strive to ameliorate her economic, social, and cultural
conditions that perpetuate violence. However, this will require a change in world perception of
state obligation. The international community views the girl-child’s right to be protected against
violence as a negative duty by itself and governments – the duty of the government is not to
infringe or deny the right to be free from violence. Yet, in order for violence to be eradicated, the
international community must view its obligation in a different light. It is incumbent that they
undertake positive duties that obligate the international community and national governments to
meet basic needs through action. Issues concerning the girl-child derive from her status as the
most vulnerable of society without adequate social power.

Education is an important component to any program that serves to promote a healthier,
rights-based life for the girl-child. Special measures must be taken to ensure that young women
have the life and educational skills necessary for participation in all levels of social, cultural,
political and economic life. In addition to a focus on traditional education, the girl-child must be
knowledgeable on her rights. Therefore, the Special Rapporteur, working with regional
organizations and national governments’ Ministries of Education, must develop a comprehensive
human rights education program to raise awareness among the girl-child of her rights. The girl-
child is not the only group that must be educated on her rights. Due to societal prejudices, men,
women, and boys must also be aware of the girl-child’s rights. Other portions of the Special
Rapporteur’s program must include a focus on healthcare and the girl-child. The girl-child must
receive the same resources as boys. Employment creation and opportunities should also be
included in the program so that the girl-child is more independent and able to provide for herself
and her children. In addition, the Special Rapporteur must join the coalition of UN agencies and
international NGOs pressing for more female representation in the government structure.
I am advocating a new commitment to the future: a commitment to inspire and support a more just society. This commitment must not be deterred until every girl-child in the world is free from “injustice, oppression, and inequality and free to develop [her] own potential.” 266

References


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