International Child Labor Regulation 101: What Corporations Need to Know About Treaties Pertaining to Working Youth

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INTRODUCTION

The decision in Roe v. Bridgestone Corp. (2007) has signaled that transnational corporations (TNCs) that have sufficient minimum contacts with the United States may be subject to liability in U.S. courts for international child labor violations committed abroad. This liability may arise under the Alien Tort Statute (ATS), which allows aliens to bring claims in U.S. courts for torts in violation of an international treaty or the law of nations. In Bridgestone, Liberian workers alleged that their corporate employer at the Firestone rubber plantation near Harbel, Liberia, encouraged or even required them to put their children to work in order to meet extremely high production quotas. At the plantation, children as young as six years old allegedly tapped raw latex from rubber trees, ap-

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3. See WorldWide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (holding that the forum state may not exercise in personam jurisdiction over a defendant that did not establish minimum contacts with the state).
5. Id.
6. The plaintiffs asserted claims under the ATS, Thirteenth Amendment, California law, and 18 U.S.C. § 1595 (a federal statute authorizing civil actions for criminal forced labor violations), but these claims were dismissed. Bridgestone Corp., 492 F.Supp. 2d at 1024.
7. Bridgestone Corporation is headquartered in Japan and, along with its consolidated subsidiaries, is the world’s largest manufacturer of tires and rubber products. Bridgestone Group, 2007 Annual Report 1, 79 (2008).
9. According to the pleadings, workers at the Firestone plantation cut rubber trees with a machete to allow the raw latex to drip into cups mounted on the trees, collected the latex from the cups into buckets, and brought the latex to the collection location carrying two, seventy-five-pound buckets at a time. To earn a daily wage equivalent to $3.19, a worker must collect latex from 1125 trees. Bridgestone Corp., 492 F.Supp. 2d at 991, 994.
plied pesticides to the trees without any protective equipment, and performed other “back-breaking” work. The employer moved to dismiss for failure to state a claim, but the court denied the motion and concluded that these allegations, if proven, may give rise to a violation of international law. As the Bridgestone litigation continues, TNCs are confronted with the need to identify international child labor standards so as to avoid liability.

In addition to the risk of liability, failure of TNCs or TNCs’ suppliers to comply with international child labor standards may pose reputational risks. An incident involving Gap Inc., an international apparel, accessories, and personal care products retailer, illustrates this point. In October of 2007, in an article entitled “Child Sweatshop Shame Threatens Gap’s Ethical Image,” the U.K. newspaper, The Observer, reported that Gap Inc. had received merchandise from a factory in India where children as young as ten years old worked sixteen hours a day without pay. In response, Gap Inc. issued a press release stating that Gap Inc. discontinued the work order placed with that factory. The press release, however, was silent on the future fate of child laborers and whether they in fact continued working at that factory after Gap Inc. discovered the violations. This raises the question of how TNCs should respond to child labor incidents to assure compliance with international law.

This Note analyzes the treaty law pertaining to the child labor issues involved in the Bridgestone litigation and the Gap Inc. incident. To be clear, long before Bridgestone, businesses that conducted activities in a foreign jurisdiction could be subject to liability under that jurisdiction’s domestic laws. This Note examines child labor standards imposed by

10. Id. at 988, 991, 994, 1019, 1021.
11. Id. at 1021.
15. See id.
international law, which historically has been shaped by treaties, customary international law, and the general principles of law. In recent years, “a mushrooming of international norms and institutions” has embraced other categories, such as peremptory norms and “soft law.”

While various sources of international law may relate to the problem of international child labor, this Note focuses on treaties and conventions,
which, at least until recently, have represented the strongest form of international legal obligations.\footnote{See James Avery Joyce, World Labour Rights and Their Protection 21 (1980).}

This Note argues that child labor, as a problem of social and economic development, requires TNCs to act proactively. Often, after exposure in the media for its association with a supplier that uses child labor, a U.S. or other Western company will impulsively discontinue its relationship with the supplier or require that child laborers be dismissed from the supplier’s production.\footnote{Guatemalan Kohl’s Apparel-Maker Signs Labor Pledge, MILWAUKEE J. SENTINEL, July 2, 2007, available at http://www.nlcnet.org/article.php?id=412 (quoting Charles Kernaghan of the National Labor Committee, a U.S. nongovernmental organization, who has pointed out that when a U.S. company, in order to avoid the association with a sweatshop, withdraws its orders, “the workers [at the sweatshop] get doubly punished”).} This reactive approach does not squarely address the issues that child labor raises and may be inconsistent with the principles of children’s human rights. Where a TNC detects incidents of child labor, the TNC should focus on creating meaningful alternatives for children dismissed from work.

This Note proceeds in five parts. Part I examines the phenomenon of child labor and the role of domestic and international law in child labor regulation. Part II analyzes the child labor standards adopted by the International Labour Organization (“ILO”), including the Worst Forms of Child Labor Convention.\footnote{Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.} Part III discusses the human rights of economically active children, as codified in the Convention on the Rights of the Child.\footnote{Seven out of ten working children harvest crops and tend livestock in agriculture. Twenty-two percent of working children are in the services sector, where some of them} Part IV addresses the significance of child labor standards set forth in U.S. free trade agreements (“FTAs”). Part V concludes the analysis and provides recommendations and planning considerations for the implementation of international child labor standards in TNCs’ corporate compliance programs.

I. CHILD LABOR AS AN INTERNATIONAL CONCERN

onomic activities” of children are understood to encompass various productive functions, paid and unpaid, formal and informal, legal and illegal.\textsuperscript{32} In this context, as the Bridgestone court has pointed out, “national and international norms accommodate a host of different situations” where children’s work is acceptable.\textsuperscript{33} This raises the issue of defining prohibited activities encompassed by the term “child labor.”

\textbf{A. Defining “Child Labor”}

Children’s economic activities exist within a continuum. On one end of the continuum are various exploitative forms of labor, such as the bonded labor allegedly involved in the Gap Inc. incident.\textsuperscript{34} Bonded labor, common in South Asia, arises when an indebted family puts their children to work to pay off the debt.\textsuperscript{35} As bonded children work for nominal wages and the creditor typically retains the major part of the wages as interest,\textsuperscript{36} which may be as high as sixty percent, the bondage status may pass to the next generation.\textsuperscript{37} On the other end of the continuum are activities of children who were fortunate to become apprentices in trades, which is

\begin{itemize}
  \item Worst Forms of Child Labor Convention, \textit{supra} note 28, art. 2; Convention on the Rights of the Child, \textit{supra} note 29, art. 1 (providing that “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”).
  \item The term “economic activity” “encompasses most productive activities undertaken by children, whether for the market or not, paid or unpaid, for a few hours or full time, on a causal or regular basis, legal or illegal; it excludes chores undertaken in the child’s own household or schooling.” ILO, International Labour Conference, May 31–June 16, 2006, Report of the Director-General, \textit{The End of Child Labour: Within Reach, Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work}, at 6, Rep. I(B), available at \url{http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-i-b.pdf} [hereinafter ILO, \textit{The End of Child Labour}].
  \item Roe v. Bridgestone Corp., 492 F. Supp. 2d 988, 1020 (S.D. Ind. 2007).
  \item McDougall, \textit{supra} note 13.
  \item \textit{World Vision UK, Offering Hope, Not Despair: Eradicating Child Labour Without Putting Children Workers on the Streets} 17 (1997).
  \item Rassam, \textit{supra} note 35, at 821.
\end{itemize}
sometimes the only realistic way to learn vocational skills in some countries. In India, for example, children in families of artisans, craftsmen, and farmers traditionally join their family trade and learn while working alongside the family members. The question then becomes what factors can distinguish “child labor” from other economic activities of children.

In order to answer this question, it is helpful to identify the concerns that child labor raises and the policies underlying the child labor prohibition. One concern is the children’s health and well-being. For example, in Bangladesh alone, fifty child laborers are injured by machinery daily, and three of those fifty become permanently disabled. Another concern is the exploitation of children, as in Guatemala and El Salvador, where tens of thousands of domestic servants as young as eight years of age work ninety-hour weeks. Working children are also often deprived of educational opportunities, for example, in rural areas in Mexicali Valley, Mexico, where child labor is common and school attendance during the harvesting season drops significantly. Entering the workforce too early reduces the children’s future earnings by thirteen to twenty percent and hardly benefits the domestic economy because children are generally less productive than adults. Ultimately, the child labor prohibition aims to

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40. ILO, World Day Against Child Labour, supra note 30. In developing countries, the rate of injury and illness of working children ranges from twelve percent (for boys in agriculture) to thirty-five percent (for girls in construction). ILO, Child Labour in Africa (2005), available at http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1009&context=child.
41. Child Domestics, supra note 30.
44. Employers in certain industries attempt to justify child labor under the “nimble fingers” theory, which holds that children are more productive than adults in carrying out certain tasks, such as manual tasks that require dexterity. This theory, however, would not be defensible “were it not for the fact that child labor is much cheaper, more subservient, and therefore better exploited by employers.” M. Neil Browne et al., Universal Moral Principles and the Law: The Failure of One-Size-Fits-All Child Labor Laws, 27 Hous. J. Int’l L. 1, 28–29 (2004). See also Savitri Goonesekere, The Best Interests of the Child: A South Asian Perspective, in THE BEST INTERESTS OF THE CHILD: RECONCILING CULTURE AND HUMAN RIGHTS 117, 143 (Philip Alston ed., 1994) (discussing Mehta v. State of Tamil Nadu, a 1990 decision of the Supreme Court of India, which held that the need for children’s work in the matches industry in Sivakasi outweighed the concern for
eliminate practices that impede children’s development and education. As a matter of social policy, the child labor prohibition ensures the development of human capital and, consequently, long-term social and economic growth.

The prohibition of child labor, however, does not discourage children from contributing to the family’s budget, learning vocational skills and participating in communal life through their economic activities. Daily, some 30,000 children worldwide die as a result of extreme poverty, and thus, children’s economic activities may be essential to their survival. A factory in Kutsia, Bangladesh, for instance, dismissed orphans who were too young to work. These children eventually attempted to return to the factory by bribing the supervisors or by staying on after bringing lunch to their elder siblings because it was the children’s only opportunity to earn a living. In addition, through their productive activities, children integrate into the community, as in Africa, where children as young as ten years old begin imitating their family members in the household and farm tasks, and then move to other tasks, including serving the elders in their community. As such, notions about the appropriateness of children’s economic activities vary among countries.

their well-being since “tender hands of children are more suited to the sorting out of the manufactured product, and processing it for purposes of packing”).


47. See Breen Creighton, Combating Child Labour: The Role of International Labour Standards, 18 COMP. Lab. L.J. 362, 363 (1997) (providing examples of children’s work that is not abusive or exploitative); ILO, World Day Against Child Labour, supra note 30 (discussing child labor in agriculture and pointing out that not all work negatively affects children).


50. Id.

B. The Role of Domestic Law in Regulating Child Labor

Child labor laws originally developed in domestic legal systems and reflected domestic ideology, economy, and culture. In the United States, for example, the 1938 Fair Labor Standards Act was adopted after the *Lochner* era of free labor ideology and left the entire agricultural sector unregulated. Today, this federal statute outlaws only “oppressive” child labor and, generally, sets fourteen as the minimum age for nonagricultural work, but exempts from regulation children’s work at family-owned businesses and farms, as performers and babysitters, and in certain other settings. In India, in turn, where child labor is common, the 1986 Child Labour (Prohibition and Regulation) Act restricts employment of children under fourteen only in specific occupations and


[A] condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age.

58. *Id.* §§ 203, 212, 213(c)–(d), 214.
processes, including tasks characteristic of the South Asian economy such as the making of beedi (hand-rolled local cigarettes),\textsuperscript{60} carpet-weaving,\textsuperscript{61} and, as of 2006, working in \textit{dhabas} (road-side eateries) and tea-shops.\textsuperscript{62} These examples demonstrate that individual governments can tailor their domestic child labor laws to fit into their specific economic and social policies.

Domestic child labor regulation may also respond to unique changes occurring in a particular jurisdiction. In Russia, for instance, the 1990s jump from a centrally planned economy to the free-market “gangster capitalism”\textsuperscript{63} has led to a demographic crisis, which has resulted in a 750,000–800,000 annual population drop\textsuperscript{64} and the emergence of “street children”—homeless and orphaned children living in the streets.\textsuperscript{65} The 2001 Russian Labor Code addresses this crisis by prohibiting employment of children under sixteen\textsuperscript{66} and affirmatively guarantying thirty-one

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\item \textsuperscript{61} Child Labour (Prohibition and Regulation) Act, Act No. 61 (1986) (India), \textit{available at} http://labour.gov.in/cwl/ChildLabour.htm (click on the “Child Labour (Prohibition & Regulation) Act” hyperlink). The Constitution of India provides that “no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.” \textit{India Const.} art. 24. \textit{See also} Dasgupta, \textit{supra} note 39, at 1304–07 (examining the laws of India pertaining to child labor).
\item \textsuperscript{63} \textit{George Tsogas, Labor Regulation in a Global Economy} 6 (2001).
\item \textsuperscript{64} This decrease is a result of a misbalance between the population birth and death rates. This problem is sometimes referred to as the “lost generation of the 1990s.” A.G. Gliskov et al., \textit{Prava i Obuzhannosti Nesoversennoltnih (Kommentarii k Zakonodatel’STVU o Pravah Nesoversennoltnih i Zaščite Ëtih Prav ) [Rights and Duties of Minors (Commentary on the Legislature on the Rights of Minors and Protection Thereof)]} 8–9 (2007).
\item \textsuperscript{65} \textit{U.S. Dep’t of Labor, Bureau of Int’l Labor Affairs, U.S. Department of Labor’s 2006 Findings on the Worst Forms of Child Labor} 389–90 (2007).
\item \textsuperscript{66} Three exceptions to this rule are (1) employment of a child fifteen years or older who has graduated from or left in accordance with the federal law a basic general (secondary) educational establishment, (2) light work of a fourteen-year-old, not harmful to the child’s health and education process, with the consent of one parent (guardian or custodian) and the patronage body, outside of school hours, and (3) participation in the creation and/or performance of art works, without any harm to the child’s health and moral development, in movie, theatre, concert and circus organizations, with the consent of one parent (guardian or custodian) and the patronage body. Trudovoi Kodeks [TK] [Labor Code] art. 63 (Russ.), \textit{available at} http://www.ilo.org/dyn/natlex/docs/WEBTEXT/60535/}
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days of paid vacation to workers under eighteen\(^67\) and an annual medical examination at the employer’s expense.\(^68\) The City of Moscow responded on the local government level by mandating employers with more than a hundred employees to set a four percent minimum quota for orphans under twenty-three, adolescents under eighteen, and the disabled.\(^69\) As individual States and local governments may seem better positioned in designing specific policies with respect to child labor, it is important to address why child labor is also regulated internationally.

C. Regulating Child Labor on the International Level

Parallel with the development of domestic child labor laws, the idea of international regulation of child labor emerged, and it was supported by regulatory, economic, and humanitarian arguments.\(^70\) Less labor regulation in one country may be a factor in attracting employers from other parts of the world,\(^71\) which, consequently, disadvantages workers in countries with tougher labor laws, such as developed countries.\(^72\) Labor regulation on the international level curbs such attempts to gain a competitive edge by sacrificing labor protections.\(^73\) As for the economic aspect of international child labor regulation, poverty is a significant cause

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\(^65\) Trudovoi Kodeks [TK] [Labor Code], supra note 66, art. 267 (“Employees under [eighteen] years old are granted an annual paid leave of [thirty-one] calendar days at any time convenient to them.”).

\(^66\) Id. art. 266 (“Persons under [eighteen] years old are to be employed only after preliminary medical survey and are to pass an annual medical survey up to when they reach [eighteen] years old. The medical surveys specified in the present Article are paid at the expense of the employer.”).


\(^68\) Id. at 17–18.

\(^69\) Tsogas, supra note 63, at 19, 35–36; Cleopatra Doumbia-Henry & Eric Gravel, Free Trade Agreements and Labour Rights: Recent Developments, 145 Int’l Lab. Rev. 185, 189 (2006) (discussing the concern about a “protectionist backlash from the developed countries” in enforcement of labor rights through trade agreements).

\(^70\) Valticos, supra note 27, at 17–18.


\(^72\) See Tsogas, supra note 63, at 19, 35–36; Cleopatra Doumbia-Henry & Eric Gravel, Free Trade Agreements and Labour Rights: Recent Developments, 145 Int’l Lab. Rev. 185, 189 (2006) (discussing the concern about a “protectionist backlash from the developed countries” in enforcement of labor rights through trade agreements).

\(^73\) Doumbia-Henry & Gravel, supra note 72, at 189; Kolben, supra note 71, at 206–07.
and, at the same time, a consequence of child labor. In developing countries, where child labor is prevalent, this creates a vicious cycle, and so international regulation of child labor may help to break this cycle. Moreover, labor rights (which in the United States are often referred to as “workers’ rights”) involve human rights, such as the right to be free from exploitation. These arguments have prompted the gradual development of international child labor regulation, as reflected in the conventions of the ILO.

II. CHILD LABOR STANDARDS IN THE ILO CONVENTIONS

The ILO is an international body that develops labor standards through adoption of conventions and recommendations and engages govern-

74. Browne et al., supra note 44, at 26–27. See also Worst Forms of Child Labor Convention, supra note 28, pmbl. (stating that “child labor is to a great extent caused by poverty”).

75. Agarwal, supra note 45, at 665. Sub-Saharan Africa has the highest percentage of economically active children (twenty-six percent), followed by the Asian-Pacific region (less than twenty percent), and Latin America and the Caribbean (five percent). ILO, Facts on Child Labour 2006, supra note 30.


79. Universal Declaration of Human Rights, supra note 78, at 72.

80. The ILO conventions have the force of treaties and bind the States that ratify such conventions. The ILO recommendations are nonbinding policy guidelines. JOYCE, supra note 25, at 26; TSOGAS, supra note 63, at 43–44.
ments, employers, and workers in the standard-setting process in a model known as the “tripartite structure.” Prior to 1973, the ILO generated standards for individual economic sectors, such as industry or agriculture, and focused on “child welfare” rather than child labor abolition. The 1973 Minimum Age Convention No. 138, which is currently in force, was the first “umbrella” convention that covered all economic sectors and identified the goal of child labor abolition. The United States has not ratified this Convention. The Convention, however, provides a framework for analyzing the 1999 Worst Forms of Child Labor Convention, which the United States has ratified.


82. See, e.g., ILO Convention (No. 59) Fixing the Minimum Age for Admission of Children to Industrial Employment, June 22, 1937, 40 U.N.T.S. 217; ILO Convention (No. 10) Concerning the Age for Admission of Children to Employment in Agriculture, Nov. 16, 1921, 38 U.N.T.S. 143; ILO Convention (No. 6) Concerning the Night Work of Young Persons Employed in Industry, Nov. 28, 1919, 38 U.N.T.S. 93; ILO Convention (No. 5) Fixing the Minimum Age for Admission of Children to Industrial Employment, Nov. 28, 1919, 38 L.N.T.S. 81.


87. Minimum Age Convention, supra note 84, pmbl., art. 1.

88. Id. pmbl., art. 10.

89. ILOLEX Database of Int’l Labour Standards, supra note 85.

A. The Framework of the Minimum Age Convention No. 138

The 1973 Minimum Age Convention No. 138 distinguishes child labor from other economic activities of children based on the child’s age and the work setting. Children under eighteen years old generally may not engage in work “which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons.” As Recommendation No. 146 accompanying the Convention provides, the determination regarding the types of work to which this limitation will apply should take into consideration relevant international standards, such as those pertaining to the use of dangerous substances and processes. In contrast, States may permit adolescents between thirteen and fifteen years of age to perform “light work,” defined as work that is “not likely to be harmful to their health or development” and does not prejudice children’s education or vocational training. This correlation between the child’s age and the type of work created a new framework for defining child labor across economic sectors.

Despite this progress in defining child labor, the Convention failed to attract a sufficient number of ratifications at the time of its adoption, especially among the States where child labor was common, such as India, Indonesia, and Pakistan. Developing countries, contending with “ex-
plosive population growth, endemic poverty, and lack of adequate infrastructure,98 found the Convention insufficiently flexible, despite its “flexibility clauses,”99 because the Convention failed to identify the immediate priorities and a methodology for achieving the goal of child labor abolition.100 As for developed countries, the Convention’s presumption that the work of children under thirteen is impermissible under any circumstances contradicted the preference of such countries to leave the part-time work of youth, such as morning newspaper delivery by a twelve-year-old, in the realm of parental control and public opinion rather than regulation by law.101 Thus, the Minimum Age Convention No. 138 provided a new framework for analyzing child labor, but failed to achieve international consensus on the issue.

B. The Worst Forms of Child Labor Convention: Reaching a Consensus

In the 1990s, the ILO undertook a “strategic shift”102 in its policy on child labor and identified the elimination of the worst forms of child labor as a priority. The ILO moved from traditional labor issues, such as the regulation of work conditions, to criminal law areas, such as child trafficking and the economic exploitation of children through prostitution and military recruitment.103 This approach culminated in the 1999 Worst Forms of Child Labor Convention, a product of the realization that immediate steps needed to be taken to abolish intolerable forms of child labor.104 One hundred and sixty-five countries, including the United States, have ratified this Convention.105

98. Creighton, supra note 47, at 388.
99. Id. at 391. Under the Minimum Age Convention, in certain circumstances, States may exclude limited categories of work from the application of the Convention, and developing countries, in particular, may set the minimum age at fourteen years. In addition, the Convention does not apply to certain types of work performed as part of children’s education or training. Minimum Age Convention, supra note 84, art. 2(4), 4, 5(3), 6.
100. Creighton, supra note 47, at 390–92.
101. Id. 386–88.
102. Smolin, supra note 97, at 942.
103. See Worst Forms of Child Labor Convention, supra note 28, pmbl., art. 3(a)–(c) (recognizing “the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour,” such as trafficking and forced or compulsory military recruitment of children).
105. ILOLEX Database of Int’l Labour Standards, supra note 85.
The Convention applies to all persons under eighteen years of age and focuses on the abolition of two categories of child labor: the “unconditional worst forms of child labor” and “hazardous work.” The unconditional worst forms of child labor include “all forms of slavery or practices similar to slavery,” debt bondage, and the use of children in various illicit activities. These forms of labor are prohibited unconditionally because improving their conditions would not justify such practices. Similarly to the Minimum Age Convention No. 138, hazardous work encompasses “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” The Worst Forms of Child Labor Convention refers to a list of considerations for identifying “hazardous work” as set forth in ILO Recommendation No. 190. These considerations include, without limitation, exposure to dangerous machinery and substances damaging to health. Because of its focus on the intolerable forms of child labor, the

106. Worst Forms of Child Labor Convention, supra note 28, art. 2.
107. The ILO Worst Forms of Child Labour Recommendation refers to the forms of child labor prohibited under Article 3(d) of the Convention as “hazardous work.” ILO Worst Forms of Child Labour Recommendation (No. 190) art. 3, June 17, 1999, available at http://www.unhcr.org/home/RSDLEGAL/3ddb6ef34.pdf. Commentators use the term “unconditional forms worst forms of child labor” to refer to the practices identified in Article 3(a)–(c) of the Convention. See, e.g., Noguchi, supra note 104, at 358.
108. The unconditional forms of child labor comprise the following:

   (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and servitude and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties.

Worst Forms of Child Labor Convention, supra note 28, art. 3(a)–(c).
110. The Worst Forms of Child Labor Convention replaced the word “jeopardize” in the definition of “hazardous work” in the Minimum Age Convention with the word “harm”: “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” Compare Worst Forms of Child Labor Convention, supra note 28, art. 3(d) (emphasis added), with Minimum Age Convention, supra note 84, art. 3(1).
111. Worst Forms of Child Labor Convention, supra note 28, art. 4(1).
112. ILO Worst Forms of Child Labour Recommendation (No. 190), supra note 110, art. 3.
113. Other relevant considerations are “work which exposes children to physical, psychological or sexual abuse”; “work underground, under water, at dangerous heights or in confined spaces”; “work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads”; “work in an unhealthy environ-
Convention has limited its scope, but achieved greater acceptance than the Minimum Age Convention No. 138.114 Unlike its predecessor, the Worst Forms of Child Labor Convention provides guidance on achieving its goals and mandates a proactive approach to the child labor problem.115 The Convention stresses the need to “reach out to children at special risk”116 and prevent children from engaging in the worst forms of child labor.117 With respect to children removed from work, the Convention emphasizes the importance of measures for “rehabilitation and social integration”118 and access to free basic education and vocational training.119 Thus, the Convention makes it clear that not only should children be protected from certain categories of work, children should also be protected from the need to work.

Empirical data supports this approach and shows that child labor abolition requires proactive measures that address the root causes of child labor. For example, the *bolsa escola* program in Brazil provides a monthly minimum salary to poor families whose children stay in school.120 This eliminates the need for the children to join the workforce too early and prevents them from dropping out of school, which has made the program a success.121 Remedial and educational programs such as *bolsa escola* show that the solution to the child labor problem lies in “capacity building”122 measures—steps aimed at enhancing the economy, educational system, and civic participation in a community.123

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117. *Id.* art. 7(2)(a).
118. *Id.* art. 7(2)(b).
119. *Id.* art. 7(2)(c).
121. *Id.*
III. HUMAN RIGHTS OF ECONOMICALLY ACTIVE CHILDREN

The Convention on the Rights of the Child, which memorializes the principles of children’s human rights, identifies two aspects of children’s economic activities. On the one hand, children have the right to be free from exploitation and involvement in hazardous work, as well as to enjoy rest and leisure. On the other hand, children have the rights to survival and an adequate standard of living, which are implicated in situations where children work in order to support themselves and their families.

The interaction between these two aspects of children’s economic activities can be illustrated by the public debate that surrounded the 1992 Child Labor Deterrence Act proposed in the U.S. Congress. This bill sought to introduce sanctions with respect to imported products made with child labor and, thus, advance children’s right to be free from exploitation. In response to this bill, Bangladeshi local activists asserted that dismissing children from the garment industry would mean throwing them into the streets without means of subsistence and effectively forcing


126. The Convention on the Rights of the Child provides that States “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” Convention on the Rights of the Child, supra note 29, art. 32.

127. Id. art. 31.
128. Id. art. 6(2).
129. Id. art. 27.
131. Id. § 5.
the children into more hazardous occupations,\(^\text{132}\) which would jeopardize the children’s rights to survival and an adequate standard of living. In fact, between 1992 and 1995, Bangladeshi manufacturers dismissed tens of thousands of children who subsequently became rickshaw pullers, brick carriers, rag-pickers, and prostitutes.\(^\text{133}\) Some 40,000 children dismissed from the factories were never seen again.\(^\text{134}\) This example demonstrates that children’s right to be free from exploitation and their right to survival should be balanced.

As the right to survival is a necessary condition for the enjoyment of other rights, one may suggest that the right to survival should trump other rights. But this logic fails in situations involving hazardous work, for example, deep sea fishing. In the Philippines, a country of seven thousand islands, children work in *pa-aling*, or deep sea fishing, where, carrying hoses attached to a surface air compressor, children dive approximately thirty to fifty feet without protective gear and chase fish into the nets.\(^\text{135}\) This exposes children to ear injuries, shark attacks, and drowning.\(^\text{136}\) The example of deep-sea fishing shows that the very economic opportunity that enables a child to earn a living and survive may, at the same time, expose the child to occupational hazards, and thus, threaten the child’s survival. The difficulty in balancing the two rights may be paralyzing for the employer: regardless of whether the employer dismisses the child from work or allows the child to work, the employer would in effect take away the child’s rights.

The “best interests” principle helps to resolve this tension. This principle, as codified in the Convention on the Rights of the Child, provides that, in all actions involving the child, the “best interests of the child shall be a primary consideration.”\(^\text{137}\) The drafters’ use of the indefinite article in the term “a primary consideration” shows that the child’s inter-


\(^{133}\) Seabrook, supra note 49, 64–65; World Vision UK, supra note 36, at 7.

\(^{134}\) Hertel, supra note 132, at 270. See also World Vision UK, supra note 36, at 7 (discussing the consequences of dismissing children from work).


\(^{136}\) Id.

ests are not an overriding factor,\textsuperscript{138} but the choice of the word “consideration” (as opposed to “element” or “factor”) demonstrates that the child’s interests “must actually be considered.”\textsuperscript{139} As such, this principle accommodates various ideological, social, and cultural approaches in a universal norm and demands the consideration of the child’s unique circumstances.\textsuperscript{140}

The concept of children’s participatory rights may aid in ascertaining such circumstances. The Convention on the Rights of the Child provides for a bundle of participatory rights, namely, the freedom of expression, conscience, and assembly.\textsuperscript{141} In essence, the concept of participatory rights or “participation” requires that, depending on the child’s maturity, the child should participate in decisions about his or her life\textsuperscript{142} and have the opportunity to be “present or consulted.”\textsuperscript{143} As children have been “the most photographed and the least listened to members of society,”\textsuperscript{144} the Convention’s codification of this broad range of participatory rights is a step forward in the fulfillment of children’s rights.\textsuperscript{145}

Participation empowers the child by including the child in the decision-making process concerning his or her life, which the following examples illustrate. A nongovernmental organization (“NGO”), Save the Children UK, which conducted evaluation missions in Honduras, Bangladesh, and Burkina Faso, engaged children in data collection and found that children-interviewers can be “particularly effective as children may relate to

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\textsuperscript{139} Id. at 13.
\textsuperscript{140} Id. at 16.
\textsuperscript{141} Convention on the Rights of the Child, supra note 29, art. 13–15 (establishing the freedom of expression; freedom of thought, conscience, and religion; freedom of association and peaceful assembly, respectively). See Rutkow & Lozman, supra note 124, at 165 (discussing children’s participatory rights codified in the Convention).
\textsuperscript{142} Convention on the Rights of the Child, supra note 29, art. 12 (providing for the right of the child “who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”).
\end{flushright}
each other in a more open way." 146 Another NGO, Undugu Society, organized group meetings for street children in Mathare Valley, a slum in Nairobi, Kenya, who supported themselves by collecting plastic, scrap metal, and paper bags around the city. 147 In the course of these meetings, children learned how to read a weighing scale and calculate the price of what they were selling in order to avoid being cheated by the street buyers. 148 The children ultimately decided to sell scrap metal directly to the factory where the price would be fixed, making cheating less likely. 149 These examples demonstrate that working children find ways to subsist in a dangerous world on a daily basis, and therefore, they can help in identifying realistic solutions to the child labor problem.

IV. CHILD LABOR STANDARDS IN FREE TRADE AGREEMENTS

In addition to the ILO conventions and the Convention on the Rights of the Child, several U.S. FTAs set forth child labor standards. Generally, parties entering into an FTA agree to eliminate tariffs and other barriers to trade in goods among themselves, facilitating easier access to each other’s markets. 150 This integration of regional trade regimes may reveal inequalities in labor conditions in such regimes, which some FTAs address by imposing labor standards, also referred to as “social clauses.” 151 Alternatively, signatories to an FTA may choose to enter into a side agreement with respect to labor standards, such as the North American Agreement on Labor Cooperation (“NAALC”). 152 NAALC was the first labor accord to supplement an FTA, namely, the 1992 North American Free Trade Agreement between Canada, Mexico, and the United States (“NAFTA”). 154

147. HART, supra note 144, at 25.
148. Id.
149. Id.
151. TSOGAS, supra note 63, at 19–20. See also Doumbia-Henry & Gravel, supra note 72, at 186, 189 (discussing enforcement of labor standards through trade agreements).
153. LESLIE ALAN GLICK, UNDERSTANDING THE NORTH AMERICAN FREE TRADE AGREEMENT 121 (2d ed. 1994).
The inclusion of labor standards in FTAs opens the possibility of using trade sanctions as a mechanism for enforcing these standards—an avenue unavailable under the ILO conventions. Under the ILO Constitution, the ILO may recommend “such action as it may deem wise and expedient to secure compliance,” but the ILO has never imposed, and, under the current version of the ILO Constitution, does not have express authority to impose, economic sanctions. Currently, the United States is a party to over a dozen bilateral and regional FTAs. These FTAs differ in their approaches to the use of trade sanctions in enforcing child labor standards, as NAALC, the 2000 U.S.-Jordan FTA, and the 2004 Central American-Dominican Republic-U.S. FTA (“CAFTA-DR”) illustrate.

A. NAALC: The First Labor Accord to Accompany an FTA

NAALC was intended to address the concern of U.S. labor unions about the potential accelerated migration of U.S. jobs to Mexico, where the relatively high existing labor standards were inadequately enforced. This accord, however, does not establish new standards, and its

155. See Andrew T. Guzman, Trade Labor, Legitimacy, 91 CAL. L. REV. 885, 886–87 (2003) (observing that “trade sanctions may be the only effective way of establishing core labor standards”).
156. Constitution of the International Labour Organisation, supra note 81, art. 33.
effect in terms of improvement in the labor conditions has been limited.\textsuperscript{163} NAALC neither incorporates international child labor standards nor introduces minimum standards for the signatories’ domestic laws.\textsuperscript{164} Instead, the accord affirms the parties’ rights to establish their own labor laws:\textsuperscript{165} each party has to “ensure” that such laws provide for “high standards” and “strive to improve” them.\textsuperscript{166} NAALC identifies eleven “guiding principles”\textsuperscript{167} that the signatories agree to promote, including “labor protections for children and young persons.”\textsuperscript{168} This principle requires “the establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full physical, mental and moral development of young persons, including schooling and safety requirements.”\textsuperscript{169} Neither in this pronouncement nor elsewhere in the agreement does NAALC set child labor abolition as a goal or specify the minimum age for employment of children.\textsuperscript{170}

The enforcement mechanisms for these relatively weak standards are toothless.\textsuperscript{171} NAALC expressly denies any party’s rights to “undertake law enforcement activities” on another party’s territory\textsuperscript{172} and any right to private actions in domestic legal systems.\textsuperscript{173} The NAALC signatories agree to advance the guiding principles through collaboration, cooperation, and information exchange.\textsuperscript{174} For these purposes, NAALC creates several procedures and bodies for dispute resolution through consultations and arbitration,\textsuperscript{175} including the Commission for Labor Cooperation.\textsuperscript{176} Under these procedures, however, it may take a dispute over three

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{163}] Hagen, supra note 162, at 925; Thomas J. Manley & Ambassador Luis Lauredo, International Labor Standards in Free Trade Agreements of the Americas, 18 E\textsc{mory} Int’l L. Rev. 85, 104, 111, 113 (2004).
\item[\textsuperscript{164}] See NAALC, supra note 152; Hagen, supra note 162, at 925; Manley & Lauredo, supra note 163, at 104; Smith, supra note 162, at 79, 86.
\item[\textsuperscript{165}] NAALC, supra note 152, art. 2.
\item[\textsuperscript{166}] Id.
\item[\textsuperscript{167}] Id. annex 1, pmbl.
\item[\textsuperscript{168}] Id. annex 1, para. 5.
\item[\textsuperscript{169}] Id.
\item[\textsuperscript{170}] See NAALC, supra note 152.
\item[\textsuperscript{171}] Hagen, supra note 162, at 927–30; Manley & Lauredo, supra note 163, at 105; Spracker & Brown, supra note 162, at 365–66.
\item[\textsuperscript{172}] NAALC, supra note 152, art. 42.
\item[\textsuperscript{173}] Id. art. 43.
\item[\textsuperscript{174}] Glick, supra note 153, at 121.
\item[\textsuperscript{175}] NAALC, supra note 152, arts. 27–41.
\item[\textsuperscript{176}] Id. art. 8.
\end{enumerate}
\end{footnotesize}
years to reach the stage where sanctions may be considered,177 and even in that case, remedies in the form of monetary penalties and suspension of trade benefits under NAFTA are limited to “persistent patterns” of non-enforcement.178

Meanwhile, child labor in Mexico continues to be a problem.179 Between 1999 and 2005, sixteen percent of children ages five to fourteen in Mexico were engaged in child labor.180 The majority of these children worked for small companies, in agriculture and construction, where labor enforcement is inadequate.181 A recent incident involving nine-year-old David Salgado Aranda, as reported by the U.N. Children’s Fund, supports this contention.182 David migrated with his parents to Sinaloa, northern Mexico, looking for seasonal work, similar to some 300,000 other migrant workers’ children ages six and older.183 While David was working picking tomatoes, he was run over by a tractor and killed.184 David was too young to have been working on a commercial plantation. As these reports and statistics illustrate, NAALC did not have the anticipated positive effect on labor conditions in Mexico.185 This instrument, however, raised the issue of the protection of working children, which was a step toward solving the child labor problem.

B. The High Watermark of Child Labor Standards: The U.S.-Jordan FTA

The subsequently concluded U.S.-Jordan FTA provides more stringent labor protections than NAALC. The U.S.-Jordan FTA reaffirms the signatories’ obligations as ILO members,186 incorporates internationally recognized minimum age standards,187 and contains a “no relaxation

177. GLICK, supra note 153, at 130; Spracker & Brown, supra note 162, at 372.
178. NAALC, supra note 152, arts. 27(1), 39, 49; Spracker & Brown, supra note 162, at 370–72.
179. See BACON, supra note 42, at 16, 40–41 (discussing the problem of child labor in Mexico).
183. Id.
184. Id.
186. U.S.-Jordan FTA, supra note 160, art. 6(1).
187. Id. art. 6(6)(d).
clause,” under which the parties may not weaken existing domestic labor standards. 188 The agreement enforces compliance with labor provisions through trade sanctions. 189 Due to its high standards and direct enforcement through trade sanctions, the U.S.-Jordan FTA has been characterized as the high watermark in FTA labor protections. 190 The U.N. Committee on the Rights of the Child has praised the measures for eliminating child labor in Jordan, including the enhancement of domestic child labor laws in Jordan and establishment of a national database on child labor. 191 This FTA indicates that where the ILO, lacking the ability to impose economic sanctions, fails to enforce international labor standards, trade agreements could potentially take on this role. 192

C. CAFTA-DR as a “Missed Opportunity” 193 to Improve Labor Conditions

CAFTA-DR stands out among U.S. FTAs because it has created the second-largest free trade area for U.S. exports in Latin America. 194 In terms of labor protections, CAFTA-DR is similar to NAALC in that it only addresses the parties’ enforcement of their own “labor laws,” 195 which CAFTA-DR defines to include the parties’ laws “directly related” to the international minimum age requirements and the elimination of the worst forms of child labor. 196 CAFTA-DR subjects labor claims to dispute resolution procedures separate from those for commercial disputes’ 197

188. Id. art. 6(2).
189. Id. art. 10.
192. See supra note 155 and accompanying text.
194. Pagnattaro, supra note 190, at 386.
195. CAFTA-DR, supra note 161, art. 16.2(1)(a).
196. Id. art. 16.8. Each signatory promises to “strive to ensure” that it does not derogate from its labor laws in a way that “reduces adherence” to the international standards referenced in the FTA, but each party retains discretion over “investigatory, prosecutorial, regulatory and compliance matters.” Id. arts. 16.2(1)(b), 16.2(2).
197. Under CAFTA-DR, an aggrieved party has to first seek consultations with another party and, if that fails, escalate the issue to the Labor Affairs Council—a body “comprising cabinet-level or equivalent representatives” of the signatories (or their designees), and overseeing labor matters under CAFTA-DR. CAFTA-DR, supra note 161, arts. 16.4, 16.6(1), 16.6(4), 16.6(8). CAFTA-DR establishes a Labor Cooperation and Capacity Building Mechanism to advance capacity building activities in the area of labor stan-
and does not authorize trade sanctions for labor violations. Instead, CAFTA-DR contains a provision for “monetary assessment” payable to a fund that CAFTA-DR creates, which means that such assessment is not payable to the aggrieved party. Additionally, CAFTA-DR caps such monetary assessment at fifteen million U.S. dollars per year. For its failure to establish and strictly enforce labor standards, this FTA has been criticized in the United States as inadequate.

A representative of the National Labor Committee, a U.S. NGO whose mission is to help “defend the human rights of workers in the global economy,” recently visited the Legumex factory in Guatemala, a signatory to CAFTA-DR. The Legumex factory processes fruits and vegetables for export to the United States. Through reports of the National Labor Committee, the international community learned that at the factory, thirteen-year-old children were working twelve-hour shifts, wearing only t-shirts in an area surrounded by food freezers. A child worker cutting vegetables for the U.S. consumer has to cut every head of broccoli into ninety-seven pieces in sixty-four seconds, thus, making one cut every seven-tenths of a second throughout the shift. For the duration of their twelve-hour shifts, children cutting watermelons stand in an inch of watermelon juice dripping from the cutting tables, children’s wrists swollen and their feet cracked and bleeding. These findings support the contention that CAFTA-DR was “a missed opportunity” in improving labor conditions in CAFTA-DR countries.

dards, but the lack of funding of this mechanism has undermined its significance. Pagnataro, supra note 190, at 432.

198. See CAFTA-DR, supra note 161, ch. 16; Pagnattaro, supra note 190, at 432.

199. CAFTA-DR, supra note 161, art. 20.17(4).

200. Id.

201. Id. art. 20.17(2).

202. Kolben, supra note 71, at 203–04; Pagnattaro, supra note 190, at 432.


205. Id.

206. The National Labor Committee reports that the employer did not allow children to wear sweaters because of the fear that lint from the sweaters could get onto the products.

207. Id.

208. Id.

To conclude, U.S. FTAs that contain provisions concerning working children generally do not set new child labor standards. These agreements, however, encourage the signatories to comply with existing standards and raise awareness regarding child labor issues. Some FTAs also enforce child labor standards through trade sanctions.

V. CORPORATE COMPLIANCE WITH INTERNATIONAL CHILD LABOR STANDARDS

As international child labor standards are evolving, TNCs seeking to manage their litigation and reputational risks should incorporate these standards into their compliance programs. The purpose of a compliance program is to ensure that individual and collective behavior within the corporation follows applicable laws.\footnote{Jay A. Sigler & Joseph E. Murphy, Interactive Corporate Compliance 56, 104 (1988).} In a compliance program, the focus is on development of specific business processes and internal mechanisms that proactively prevent and avoid violations of law.\footnote{Id. at 47–48, 79–81, 104.}


These ethical business initiatives contribute to the goal of child labor abolition, but differ from compliance programs in that ethical business initiatives are voluntary and primarily designed as a marketing
tool.\textsuperscript{217} In contrast, compliance programs focus on internal policies and procedures guiding TNCs’ employees and suppliers and reflecting specific legal standards.

To create a compliance program, TNCs first need to identify the applicable child labor standards and establish measures implementing these standards in TNCs’ practices and supplier reviews. As the Gap Inc. incident demonstrates,\textsuperscript{218} TNCs also need to develop procedures governing their response to child labor incidents.

\textbf{A. Identifying and Implementing Applicable Standards}

As the analysis of treaties and conventions pertaining to child labor shows, three categories of child labor violate international law:\textsuperscript{219} the unconditional worst forms of child labor,\textsuperscript{220} “hazardous work,”\textsuperscript{221} and employment of children under a minimum age (which may be set between fifteen and twelve, depending on the States’ international obligations and domestic regulation).\textsuperscript{222} Based on the definitions of these categories, the bonded child labor allegedly involved in the Gap Inc. incident should fall under the realm of the unconditional worst forms of child labor.

The engagement of children in the application of pesticides and fertilizers without protective equipment, as alleged in \textit{Bridgestone},\textsuperscript{223} may violate international law as a practice exposing children to hazardous substances. This shows that despite the fact that international child labor standards set the outer limits of permissible labor practices involving youth, TNCs may confront situations where the international standards are violated.

To comply with these standards, TNCs should implement more stringent screening and monitoring measures. The initial supplier screening should extend beyond the inspection of the suppliers’ records and premises. Record review or a single visit to the supplier’s factory would not reveal, for instance, that children at the factory use their relatives’ employee numbers to appear on the books as adult workers or that the sup-

\begin{itemize}
\item \textsuperscript{217} See Tsogas, supra note 63, at 11 (“T]he ‘ethical consumer,’ sensitized to human rights and environmental issues, sees shopping as a complement to (or substitute for) other forms of direct social activity.”).
\item \textsuperscript{218} McDougall, supra note 13.
\item \textsuperscript{219} ILC, \textit{A Future Without Child Labor}, supra note 86, at 9.
\item \textsuperscript{220} Worst Forms of Child Labor Convention, supra note 28, art. 3.
\item \textsuperscript{221} Id. art. 3(d); Minimum Age Convention, supra note 84, art. 3; ILO Worst Forms of Child Labour Recommendation (No. 190), supra note 110; ILO Minimum Age Recommendation (No. 146), supra note 95.
\item \textsuperscript{222} Minimum Age Convention, supra note 84, arts. 2(3), 4(2), 5(1), 7. \textit{See also} ILC, \textit{A Future Without Child Labor}, supra note 86, at 9–10.
\item \textsuperscript{223} Roe v. Bridgestone Corp., 492 F. Supp. 2d 988 (S.D. Ind. 2007).
\end{itemize}
plier may keep a second set of records, which easily “bamboozle”\textsuperscript{224} TNCs. To avoid this, TNCs can use accounting and social monitoring firms experienced in evaluating supply-chain risk and compliance with child labor standards.\textsuperscript{225} The contract with the supplier should address this concern and include the supplier’s on-going certification of compliance with international and local child labor laws\textsuperscript{226} and a provision giving TNCs’ representatives, such as social monitoring firms, the right to inspect the supplier’s premises and records at any time without prior notice to the supplier.

TNCs or their representatives should conduct follow-up visits to the supplier’s factory. To that end, TNCs should maintain a current list of all production sites of its suppliers. For instance, the policy of IKEA, an international furniture and home products franchise,\textsuperscript{227} requires suppliers to disclose the locations of all production sites.\textsuperscript{228} This policy should extend to the suppliers’ subcontractors as well. In order to ensure the accuracy of information on child labor compliance that the suppliers provide to the TNCs’ headquarters, TNCs may engage local unions in the monitoring process.\textsuperscript{229} TNCs may arrange training sessions for the suppliers’ workers to increase their awareness with respect to child labor issues. To improve incident reporting, TNCs may establish a hotline or other anonymous reporting system, such as an independent worker survey.\textsuperscript{230} These measures will ensure that the TNC’s management is aware of the TNC’s and its suppliers’ labor practices and can timely respond to any potential violations.


\textsuperscript{225} See, e.g., Cal Safety Compliance Corporation, http://www.cscc-online.com (last visited Nov. 10, 2008) (providing that “CSCC is dedicated to helping our clients build secure and socially responsible relationships with their supply chain partners”).

\textsuperscript{226} See HUMAN RIGHTS WATCH, SMALL CHANGE: BONDED CHILD LABOR IN INDIA’S SILK INDUSTRY (2003), http://www.hrw.org/reports/2003/india/ (providing recommendations to the international community with respect to child labor policies).


\textsuperscript{228} IKEA SERVICES AB, IKEA’S POSITION ON CHILD LABOR (2003), 1, http://www.ikea.com/ms/en_AU/about_ikea_new/about/read_our_materials/ikea_position_child_labour.pdf (“The supplier must agree to provide lists of all places of production.”).


B. Responding to Child Labor Incidents

When a TNC discovers child labor incidents in its own or its suppliers’ labor practices, the TNC’s remedial and follow-up measures should take into consideration children’s rights, such as the right to be free from exploitation231 and the right to survival and an adequate standard of living.232 To balance these rights, the TNC should engage the affected children in a discussion about possible solutions to the problem233 and assure that the best interests of the child are given a primary consideration.234 Following this approach, TNCs may find that an instant severing of ties with a noncompliant supplier or immediate dismissal of children from the workplace without creation of any alternatives to work may not, on balance, benefit the children.

While under certain circumstances, withdrawal and dismissal may be a justified measure, it may not constitute a sound policy if applied alone and without a case-by-case determination. Admittedly, withdrawal from a relationship with a noncompliant supplier or removal of children from work may be perceived as mitigating the TNC’s potential liability and deterring future noncompliance on the part of other suppliers. According to Gap Inc., for example, in 2006, it severed ties with twenty-three noncompliant factories.235 TNCs, however, are increasingly recognizing the limitations of this approach.

The solution to the child labor problem should take into consideration the best interests of the child and focus on creating meaningful alternatives for children dismissed from work. The apparel and accessories retailer H&M Hennes & Mauritz AB (“H&M”),236 for instance, reports that when it discovers “underage workers” at its supplier’s site, H&M, in cooperation with the supplier, contacts the family of the affected child and seeks a solution in the child’s best interests.237 One such solution has been allowing the child to continue education and paying wages to the child’s family during the study period until the child reaches the appro-

232. Id. art. 6(2).
233. See supra note 141 and accompanying text.
234. See supra note 142 and accompanying text.
priate age. Similarly, to address the child labor issue at its suppliers’ plants, Levi Strauss & Co., a multinational apparel company, made a decision to pay for the children’s education and school supplies until they reach a minimum age when they would be offered a job at the plant. These capacity-building measures, providing resources and creating opportunities for the implementation of child labor standards in the local communities, serve the goals of child labor abolition more effectively than mere dismissal of child laborers from work.

Development of capacity-building measures presents a fertile ground for creative solutions. In rural areas in developing countries, for instance, children often have to walk long distances to get to school, and simply providing basic transportation may increase the chances that these children will continue attending school, as opposed to joining the workforce too early. In identifying these solutions, TNCs may partner up with NGOs that have experience in capacity building. Starbucks Corporation, an international coffee retailer and coffee-house chain, for example, partnered with Save the Children USA, an international relief and development organization, in bringing bilingual education to Mayan communities in Guatemala, which will expand the employment prospects for children in these communities.

Although these measures increase the TNCs’ immediate cost of doing business, such cost is unlikely to be prohibitive. Generally, compliance programs incur costs, but are necessary for the business in order to avoid litigation, regulatory, and reputational risks. Additionally, by operating or otherwise doing business in jurisdictions with cheaper labor (where incidents of child labor are more likely) TNCs already reduce their labor costs and reap other benefits of globalization, a process that “has generated vast fortunes” for TNCs. The cost-benefit analysis of the measures addressing the child labor problem should take into account this relative reduction in overall costs, as well as other factors related to economic disparities between developed and developing countries such as the relative cost of living. The National Labor Committee estimates that an extra payment of twenty-five cents per garment paid by U.S. retailers to Ban-

238. Id.
241. WORLD VISION UK, supra note 36, at 10.
242. ILO, World Day Against Child Labour, supra note 30.
245. Hiatt & Greenfield, supra note 71, at 40–41.
gladeshi vendors would provide the Bangladeshi economy with assistance eight times exceeding the current U.S. aid, and thus, create new economic opportunities. In return, capacity-building measures will have a positive long-term effect on these communities, which will benefit the TNCs by developing the future workforce.

CONCLUSION

TNCs are increasingly becoming aware of the litigation and reputational risks posed by the use of child labor in TNCs’ and their suppliers’ international operations. There are hardly any “quick fixes” in this area because child labor issues are rooted in social and economic problems such as the lack of resources and opportunities. In developing countries, children have to work to support themselves and their families, and thus, child labor is a problem of development rather than merely an issue of corporate misfeasance. This understanding is important for instilling the need for TNCs to take measures that anticipate and address potential child labor incidents. Using the guidance provided in treaties pertaining to working youth, TNCs should approach child labor proactively, resist distancing themselves from this problem, and embrace the opportunity to create meaningful alternatives for child laborers.

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