

MISSING CHILDHOOD: HOW CULTURAL NORMS AND GOVERNMENT SYSTEMS CONTINUE TO SUPPORT CHILD LABOR IN AGRICULTURE

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I. INTRODUCTION

From its inception, the International Human Rights Movement has expressed a commitment to protecting the rights of children.¹ Nonetheless, the ex-

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1. *See generally* G.A. Res. 217A, Universal Declaration of Human Rights (Dec. 10, 1948), *reprinted in* RICHARD B. LILICH ET AL., INTERNATIONAL HUMAN RIGHTS: DOCUMENTARY SUPPLEMENT 15-20 (Aspen Publishers 2009); Convention on the Rights of the Child, art. 32, Nov. 20, 1989, 1577 U.N.T.S. 3.

ploitation of children (*e.g.*, child labor) persists around the globe. This Note will examine some of the reasons why child exploitation continues in agriculture in both the United States and abroad. The following two reasons will be considered in further detail: (1) the enforcement, or lack thereof, of legislation banning or regulating child labor and (2) cultural relativism as a force preventing the passage of such legislation in the first place.

In Part II, this Note discusses the concept of cultural relativism as it manifests itself in the United States. Specifically, this part looks at present and proposed federal legislation like the Fair Labor Standards Act and the strong opposition to amending it, which would eliminate the special exceptions for children working in agriculture. Part III discusses the implications of a nation having laws that prohibit child labor in agriculture, but still fails to properly enforce them. Focusing on Kazakhstan and El Salvador, Part III also addresses how other governmental systems can lead to the persistence of child labor, despite having these laws. Finally, Part IV analyzes the documents of the International Human Rights community that address the topic of children's rights. Part IV also discusses the potential success story of Bolivia and its government's multi-faceted approach to fighting child labor in sugar cane harvest. Taking into account these documents and prior successes, Part IV sets out recommendations for what nations can do to eradicate the harmful child labor that continues to exist within their boundaries.

II. CULTURAL RELATIVIST RESISTANCE TO UNIVERSAL STANDARDS REGARDING (AGRICULTURAL) CHILD LABOR – THE UNITED STATES AS A CASE STUDY

Every American has the idyllic image of the child working on the farm. It is the little boy or little girl out in the field, working alongside their siblings and their parents breathing in the fresh air out on the farm and learning about the benefit of hard work. Their work on the farm is not seen as something that steals their childhood; instead, it is considered a necessary part of childhood. After all, how are children supposed to learn about the importance and necessity of hard work that will help them to succeed in life? As Hugh D. Hindman points out: “Parents, employers, and the children themselves saw agricultural labor as a normal, expected, and generally beneficial part of growing up. But the general public too saw nothing wrong with children working on the farms. This was wholesome work in the good outdoors under close parental supervision—who could object?”²

This widespread general acceptance and promotion of children working in agriculture in the United States has led to federal legislation that has failed to

2. HUGH D. HINDMAN, CHILD LABOR: AN AMERICAN HISTORY 249 (2002).

protect these children,³ even though they are working in what is considered one of the three most dangerous sectors of labor.⁴ What many fail to recognize is that the children most harmed by working in agriculture are not those who work on family farms.⁵ Consequently, the cultural relativism in the United States serves to perpetuate a form of child labor in agriculture that is not the one thought to exist by the citizens.

A. The Fair Labor Standards Act: A History Of Exceptions

Misconceptions about what child labor in agriculture actually entails has led to a series of federal law exceptions that protect rather than limit the labor of children in agriculture. Because “the toil of children in fields is [seen as] somehow different from the sweat and strain of children in the textile mills,”⁶ the Fair Labor Standards Act has, from its inception in 1938, included provisions that specifically exclude child labor in agriculture from some of its general protections.⁷ Although amendments have been introduced since 1938, any attempt to strengthen the protections or make them the equivalent of the protections for children working in other sectors has ultimately failed, in great part due to the agricultural lobby, which has as its mission the preservation of the family farm way of life.⁸

Any efforts by Congress to regulate child labor prior to the Fair Labor Standards Act in 1938 were thwarted by a Supreme Court that believed that this regulation was best left to state governments.⁹ Ultimately, by 1934 the problems of working conditions and the necessity for worker protection became a priority for the Executive Branch.¹⁰ This concern that came from the Executive Branch

3. Linda C. Majka & Theo J. Majka, *Child Farm Workers in United States Agriculture*, in CHILDREN’S HUMAN RIGHTS: PROGRESS AND CHALLENGES FOR CHILDREN WORLDWIDE 173, 178 (Mark Ensalaco & Linda C. Majka eds., 2005).

4. MARGARET WURTH & JANE BUCHANAN, HUMAN RIGHTS WATCH, TOBACCO’S HIDDEN CHILDREN HAZARDOUS CHILD LABOR IN UNITED STATES TOBACCO FARMING 89 (Jo Becker, et al., eds., 2014).

5. See Majka & Majka, *supra* note 3, at 175.

6. 112 CONG. REC. 20338 (1966).

7. See generally 29 U.S.C.S. § 213 (LexisNexis 2015).

8. See Jeanne M. Glader, Note, *A Harvest of Shame: The Imposition of Independent Contractor Status on Migrant Farmworkers and its Ramifications for Migrant Children*, 42 HASTINGS L.J. 1455, 1463-65 (1991).

9. *Hammer v. Dagenhart*, 247 U.S. 251, 276-77 (1918); see *Bailey v. Drexel Furniture Co.*, 259 U.S. 20, 38-44 (1922).

10. Megan McGinnis, Note, *Child Farm Labor Under the Fair Labor Standards Act*, 20 KAN. J.L. & PUB. POL’Y 155, 167 (2010).

led to the successful passage of the Fair Labor Standards Act in 1938.¹¹ Though the Fair Labor Standards Act appears to have a great impact on protecting working children, this great protection is only extended to children working in sectors other than agriculture and is limited by exceptions for children working in agriculture.¹² The employment of children younger than sixteen years old is generally prohibited, except in agriculture.¹³ While fourteen and fifteen year olds “may not work before 7 a.m. or after 7 p.m.”¹⁴ in sectors other than agriculture, “[a] child of any age may be employed by his or her parent or person standing in place of the parent at any time in any occupation on a farm owned or operated by that parent or person standing in place of that parent.”¹⁵ In other words, even though a nine year old may not be permitted by federal law to work with a parent in a cool air conditioned office filing papers, children are permitted to complete any task, so long as a parent or someone acting as a parent is the employer, in the industry that federal data indicates is the most dangerous option for young workers.¹⁶

This general lack of protection for children working in agriculture under the Fair Labor Standards Act continued despite the fact that various amendments were made to the Act. It took until 1950 for an amendment to be passed that prohibited children under age sixteen from being employed on farms during school hours.¹⁷ One amendment that may have been promising was passed in 1966.¹⁸ This amendment prohibited employment of children under sixteen in agricultural occupations that the Secretary of Labor deemed hazardous.¹⁹ One important group of children, however, was left out of this protection: children working for their parents on family farms.²⁰ Furthermore, while children could work in what was determined to be a hazardous occupation in agriculture at the

11. See generally Fair Labor Standards Act of 1938, ch. 676, § 1, 52 Stat. 1060 (codified as amended at 29 U.S.C. § 201 (2012)); McGinnis, *supra* note 10, at 168.

12. WURTH & BUCHANAN, *supra* note 4, at 101.

13. 29 C.F.R. § 570.2(a) (2015).

14. WURTH & BUCHANAN, *supra* note 4, at 101.

15. U.S. DEPT. OF LABOR, CHILD LABOR REQUIREMENTS IN AGRICULTURAL OCCUPATIONS UNDER THE FAIR LABOR STANDARDS ACT 3 (2007), <http://www.dol.gov/whd/regs/compliance/childlabor102.pdf>.

16. WURTH & BUCHANAN, *supra* note 4, at 101.

17. Fair Labor Standards Amendments of 1949, Pub. L. No. 393, §11(c), 63 Stat. 910, 918 (codified as amended at 29 U.S.C. § 213(c) (2012)).

18. Fair Labor Standards Amendments of 1966, 89 Pub. L. No. 601, § 203, 80 Stat. 830, 834 (codified as amended at 29 U.S.C. § 213); Michael A. Pignatella, Note, *The Recurring Nightmare of Child Labor Abuse—Causes and Solutions for the 90s*, 15 B.C. THIRD WORLD L.J. 171, 181 (1995).

19. 29 U.S.C.S. § 213(c)(2) (LexisNexis 2015); Pignatella, *supra* note 18, at 181.

20. See 29 U.S.C.S. § 213(c)(2).

age of sixteen, they could not do the same in non-agricultural sectors until the age of eighteen.²¹ The Senate in its explanation for rejecting prohibitions on the employment of children on farms other than the family farm pointed to the common argument of opponents to stronger child labor protections that agricultural work was “somehow cleaner, somehow more fun, less dangerous, and really educational.”²² In other words, the idea that child labor in agriculture could in no way be harmful and that there was nothing wrong with it, which was strongly held at the time that the Fair Labor Standards Act was passed, was still very much present almost thirty years later.

There is one amendment that strengthened the protections of the Fair Labor Standards Acts, by barring children who are under twelve years old from working on farms.²³ Once again, however, those children working on family farms are excluded,²⁴ and consequently, the protections for children in agriculture are not complete. That these exceptions continue to stand today despite information that highlights the dangers of children working in agriculture only reinforces just how strong this cultural relativism is in the United States. The belief that it cannot possibly hurt a child to work, particularly in the fields with their parents, continues to undermine protection of child laborers.²⁵

This idyllic image of the farm child and the desire to preserve this way of life was instrumental in stopping the passage of the 2011 proposed revisions to the Fair Labor Standards Act.²⁶ These proposed revisions would have strengthened the current child labor prohibitions of “agricultural work with animals and in pesticide handling, timber operations, manure pits and storage bins.”²⁷ Furthermore, it would have prohibited “farmworkers under age 16 from participating in the cultivation, harvesting and curing of tobacco.”²⁸ None of these new prohibitions would have applied to family farms.²⁹

And yet, the response from the farming community was strong; they stood

21. Fair Labor Standards Amendments of 1966, § 203; Pignatella, *supra* note 18, at 181.

22. 112 CONG. REC. 20338 (1966).

23. Pignatella, *supra* note 18, at 181.

24. *Id.*

25. *See id.* at 199; McGinnis, *supra* note 10, at 173.

26. Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties, 76 Fed. Reg. 54836, 54836 (Sept. 2, 2011); *see* News Release, U.S. Dep’t of Labor Wage & Hours Div., U.S. Labor Dep’t. Proposes Updates to Child Labor Regulations (Aug. 31, 2011).

27. News Release, U.S. Dep’t of Labor Wage & Hours Div., *supra* note 26; *see* Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties, 76 Fed. Reg. at 54837.

28. News Release, U.S. Dep’t of Labor Wage & Hours Div., *supra* note 26.

29. Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties, 76 Fed. Reg. at 54836.

firm in their opposition. Many farmers saw these revisions to the Fair Labor Standards Act as an “attack on the rural way of life.”³⁰ One citizen described the exposure to the dangers on a farm as necessary, pointing out that a kid will not learn about the farming culture without being fully involved.³¹ The representative for the Tennessee Farm Bureau Federation likened the dangers and risks that children are exposed to when working on farms to the risks that they face when playing sports or riding in a car.³² Even when the Department of Labor explicitly pointed out that none of these new provisions would apply to family farms, the strong opposition centered on the idea that these provisions would lead to the denigration of small family farms.³³

The need to protect the family farm, as an example of cultural relativism as the force behind the persistence of child labor in the United States, is perhaps best encapsulated in the act proposed by legislators in response to the proposed revisions: the “Preserving America’s Family Farms Act.”³⁴ This proposed Act specifically spells out that Department of Labor “regulations should not adversely impact the longstanding tradition of youth working on farms where they can gain valuable skills and lessons on hard work, character, and leadership.”³⁵ The Act also highlighted the fact that “working on a farm has become a way of life for thousands of youth across the rural United States.”³⁶ While this is true, statistics show that a significant number of these youths are not working in the safety of their family farm.³⁷ They are the children of migrant farm workers or are migrant farm workers themselves that came to the United States in order to make money to send back home to their families.³⁸ These children are at greater risk of being exploited for their work on the farm because they may not speak the English language,³⁹ and their employers are not their parents. Furthermore, some

30. *Proposed Child Labor Rules Could Alter Farm Life*, NPR (Dec. 28, 2011), <http://www.npr.org/2011/12/28/144385356/proposed-child-labor-rules-could-alter-farm-life>.

31. *Id.*

32. *TFFB Speaks out About Child Labor Law Proposal*, TENN. FARM BUREAU FED’N, <http://www.tnfarmbureau.org/content/tfbf-speaks-out-about-child-labor-law-proposal> (last visited Apr. 4, 2016).

33. Guadalupe T. Luna, *Unsavory Associations - Placing Migrant Children in Harm’s Way: The Withdrawal of Child Labor Rules From the Fair Labor Standards Act*, 16 SCHOLAR 333, 359 (2014).

34. See *Preserving America’s Family Farms Act*, H.R. 4157, 112th Cong. § 1(b)(2) (2d. Sess. 2012).

35. *Id.*

36. *Id.*

37. See BENJAMIN HESS, *CHILDREN IN THE FIELDS: AN AMERICAN PROBLEM* 6 (Darlene Adkins et al. eds., 2007).

38. *Id.*

39. See Lee Tucker, *Adolescent Farmworkers in the United States: Endangerment and*

employers may attempt to evade responsibility for these children by hiring the parents as independent contractors, which they believe in turn technically makes the children the employees of a parent.⁴⁰ As a result, they could arguably fall under the family farm exception, also known as the parental exemption.⁴¹ Therefore, while this Act may have been well intentioned, it only served to reinforce the myth of who the children working on the farm are and undermined the push for protections that the children toiling out in the field rightly deserve.

Beginning with the Fair Labor Standards Act, the United States federal government has in one way or another fought to save the family farm and the idyllic (yet mostly mythical)⁴² and glorious life of the child working on that farm. The agriculture exceptions in the Fair Labor Standards Act were intentionally included to preserve that American way of life, and the subsequent amendments to the Act made sure that it would continue to be preserved.⁴³ On their face, the amendments appeared to be adding further restrictions.⁴⁴ These restrictions and new prohibitions, however, still fell short of those for other sectors of labor despite the fact that agriculture is one of the most dangerous sectors and, therefore, should have more restrictions.⁴⁵ The most recent proposed changes to the Act, though motivated by a desire to protect the children who are not working on a family farm, were eventually withdrawn.⁴⁶ The reason given by the Department of Labor for the withdrawal was the government's commitment to the preservation of the family farm, and its respect for the rural way of life.⁴⁷

Exploitation, in *FINGERS TO THE BONE: UNITED STATES FAILURE TO PROTECT CHILD FARMWORKERS* (Lois Whitman & Michael McClintock eds., 2000), http://www.hrw.org/reports/2000/fmwrkr/fmwrkr006-02.htm#P268_31062.

40. Marc Linder, *Paternalistic State Intervention: The Contradictions of the Legal Empowerment of Vulnerable Workers*, 23 U.C. DAVIS L. REV. 733, 754 (1990).

41. *Id.*; see 29 C.F.R. § 570.126 (2015).

42. Data shows that from 1998-2002, nearly 60% of youth fatalities in agriculture actually occurred on family farms. *Child Labor Enforcement: Are we Adequately Protecting our Children? Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Labor*, 110th Cong. 10 (2008) (statement of Alexander J. Passantino, Acting Administrator of the Wage and Hour Division, U.S. Department of Labor).

43. See 29 U.S.C. § 213 (2012).

44. See, e.g., Fair Labor Standards Amendments of 1966, 89 Pub. L. No. 601, § 203, 80 Stat. 830, 834 (codified as amended at 29 U.S.C. § 213 (2012)).

45. See WURTH & BUCHANAN, *supra* note 4, at 101.

46. Bruce Rolfsen, *Child Farm Labor Safety Proposal Withdrawn; No Plans to Revisit Rule if Obama Reelected*, BLOOMBERG BNA (May 3, 2012), <http://www.bna.com/child-farm-labor-n12884909201/>.

47. *Id.*; Gabriel Thompson, *Why are Children Working in American Tobacco Fields?*, THE NATION (Nov. 12, 2013), <http://www.thenation.com/article/177136/why-are-children-working-american-tobacco-fields>.

B. Children's Act for Reasonable Employment (CARE) Faces Great Opposition Year After Year

The influence of organizations like the Tennessee Farm Bureau Federation has also affected the success of another piece of legislation aimed at equalizing the protections for children working in agriculture: the Children's Act for Reasonable Employment (CARE Act).⁴⁸ This particular Act has been regularly introduced in Congress since 2001.⁴⁹ And yet, the exceptions set out in the Fair Labor Standards Act continue to stand, leaving many children vulnerable to exploitation and long-term harm from working on farms and being exposed to pesticides.⁵⁰ The Act was most recently introduced in Congress in 2009,⁵¹ 2011,⁵² and then again in 2013.⁵³

Though the text of the most recent versions of the Act differ from the original, this most likely stems from a shift in the focus on the type of child labor that should be prohibited. Whereas in 2000, there was a great concern about the well-being of children who were engaged in selling things door-to-door,⁵⁴ the concern has shifted in more recent years to the welfare of children working in agriculture.⁵⁵ The purpose of this Bill in its most recent form has been to close the loopholes established in the Fair Labor Standards Act.⁵⁶ When she introduced the most recent version of the Act on June 12, 2013, Congresswoman Roybal-Allard

48. Children's Act for Responsible Employment of 2013, H.R. 2342, 113th Cong. (2013).

49. Sharon Fawcett, *The Children's Act for Responsible Employment (CARE Act) Would Help Protect Child Farmworkers*, THE CHILD LABOR COAL. (July 11, 2013), <http://stopchildlabor.org/?p=3521>. It was also introduced in 1998 by Senator Harkin. 144 CONG. REC. S9426 (daily ed. July 30, 1998) (Statements on Introduced Bills and Joint Resolutions).

50. *Id.*

51. Press Release, Helen Machado, Office of Representative Lucille Roybal-Allard, Bill Introduced to Protect Farmworker Children and Keep Them in School (Sept. 15, 2009), <http://roybal-allard.house.gov/news/documentsingle.aspx?DocumentID=144907>.

52. Children's Act for Responsible Employment of 2011, H.R. 2234, 112th Cong. (2011).

53. H.R. 2342.

54. See Children's Act for Responsible Employment of 2000, S. 3100, 106th Cong. § 3 (2000); WILLIAM G. WHITTAKER, CORNELL UNIV. ILR SCH., CHILD LABOR IN AMERICA: HISTORY, POLICY, AND LEGISLATIVE ISSUES 21-22 (2005), http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1204&context=key_workplace.

55. See Fawcett, *supra* note 49; Machado, *supra* note 51; Alexandra Nikolchev, *Children Working on Farms at Younger Ages, Report Says*, PBS (May 17, 2010), <http://www.pbs.org/wnet/need-to-know/economy/children-working-on-farms-at-younger-ages-report-says/507>.

56. *CARE Act Reintroduced-Would Equalize Protections for Children who Work in U.S. Agriculture*, THE CHILD LABOR COAL. (Nov. 3, 2011), <http://stopchildlabor.org/?p=2509>.

pointed out that “the United States is not immune to the scourge of child labor. Long hours and dangerous working conditions are, sadly, a reality for hundreds of thousands of children working in our country’s fields and farms.”⁵⁷

Since 2009, the proponents of this Act have attempted to resolve this persistence of child labor in agriculture by closing the gap between the protections spelled out in the Fair Labor Standards Act for children working in the non-agricultural sectors and those working in the agricultural sector.⁵⁸ Under the current exceptions to the Fair Labor Standards Act, children working in agriculture can work in an occupation found to be hazardous at the age of sixteen.⁵⁹ The CARE Act would classify employment of a sixteen- or seventeen-year-old in a hazardous occupation as “oppressive child labor,”⁶⁰ which would make it illegal under the Fair Labor Standards Act.⁶¹ The Act also proposes the striking of the waiver provision of the Fair Labor Standards Act that allows employers to apply to the Secretary of Labor for a waiver of the child labor provisions to children who are between the age of ten and twelve and would work as hand harvest laborers on a piece rate payment basis.⁶² Finally, the CARE Act would increase the penalties for violation of any of the provisions protecting children laboring in agriculture, and these penalties would include possible imprisonment for up to 5 years for “[a]ny person who repeatedly or willfully violates any of the provisions of section 12, and such violations result in or cause the death or serious injury or serious illness of an employee under 18 years of age at the time of such violation”⁶³

The CARE Act, like the amendments proposed by the Department of Labor in 2011, still provides for the parental exception.⁶⁴ In other words, even though these amended and added provisions would increase the protection of the migrant child laborers who need it, the Act would still not infringe on the family farm. Furthermore, as indicated by its repeated introduction, the CARE Act has yet to become law.⁶⁵ It will remain to be seen whether this Act will finally become law, and thus, be a start to the eradication of harmful child labor in the United States.

57. 159 CONG. REC. H3295 (daily ed. June 12, 2013).

58. *See, e.g.*, Children’s Act for Responsible Employment of 2013, H.R. 2342, 113th Cong. (2013).

59. *See* 29 U.S.C. § 213 (2012).

60. H.R. 2342.

61. *See* 29 U.S.C. § 213.

62. 29 U.S.C.S. § 213(c)(4) (LexisNexis 2015); H.R. 2342.

63. H.R. 2342.

64. *Id.*

65. *Id.*; Children’s Act for Responsible Employment of 2015, H.R. 2764, 114th Cong. (2015); Children’s Act for Responsible Employment of 2011, H.R. 2234, 112th Cong. (2011); Fawcett, *supra* note 49.

C. Stories of America's Children In The Fields

A discussion about the harmful impact of the exceptions in United States federal law that allow for children to work in agriculture, without giving voice to the children who suffer as a result, would not give the issue justice. Giving a voice to the children who face severe hardships on a daily basis highlights the disparity between the general views of who actually are the children working on farms, and what this child labor actually constitutes. Working on a farm is thought to be healthy and good for the child, but Danielle S., only sixteen years old, would become sick from working in the tobacco fields: "It happens when you're out in the sun. You want to throw up. And you drink water because you're so thirsty, but the water makes you feel worse. You throw up right there when you're cutting, but you just keep cutting."⁶⁶ She is not alone, and others fare even worse.⁶⁷

According to the National Farm Medicine Center, "agriculture still generates the second-highest fatality rate among youth workers."⁶⁸ In other words, the death of a child working on a farm is, unfortunately, not unique. In the summer of 2011, two fourteen-year-old girls were killed while they were working in the fields de-tasseling corn for the Monsanto Corporation.⁶⁹ Hannah Kendall and Jade Garza were killed "after they came in contact with irrigation equipment or a nearby puddle conducting high voltage."⁷⁰

Even the children who do survive while working on farms often end up facing several other disadvantages in life. There is disagreement on the exact numbers, but at the very least, 45% of farmworker children never graduate from high school.⁷¹ Many of the children interviewed by Human Rights Watch cited the need to help support their families financially as the main reason they began working.⁷² Without a high school diploma, these children run the high risk of becoming stuck as a farmworker once they reach adulthood.⁷³

Those who work in tobacco thus end up facing exposure to nicotine for the remainder of their working lives. One study found that non-smoking adults who worked in the tobacco fields had "similar levels of nicotine in their bodies as

66. WURTH & BUCHANAN, *supra* note 4, at 37.

67. See HESS, *supra* note 37, at 13 (noting that a fourteen-year-old boy died after losing his balance fell into an operating cattle feed grinder).

68. Douglas Belkin & Scott Kilman, *Midwest Teenage Rite Ends in Tragedy*, WALL ST. J., July 29, 2011, <http://online.wsj.com/articles/SB1000142405311904888304576474452455817760>.

69. *Id.*

70. *Id.*

71. HESS, *supra* note 37, at 18.

72. WURTH & BUCHANAN, *supra* note 4, at 32.

73. HESS, *supra* note 37, at 18.

smokers in the general population.”⁷⁴ If adults have such high levels of nicotine in their bodies, one can only imagine that children working in the same conditions would have similar levels.⁷⁵ In a report by the United States Surgeon General, it is highlighted “that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development.”⁷⁶ In other words, not only do children working in the fields face educational disadvantages because many of them do not complete high school, but they are also at risk for long-term health problems.

When many think of horror stories about child labor they think of children working in factories, or working in sweatshops. Children laboring away or even dying while working in the fields are not images or stories that usually come to mind. Most Americans saw and continue to see farm labor as “a divine occupation, strengthening the moral constitution of the child.”⁷⁷ In order for that view to change, a voice needs to be given to the children who do work in these hazardous conditions. The stories of the American children laboring in fields across the country need to be shared.

III. A LACK OF ENFORCEMENT AND OTHER SYSTEMATIC CAUSES FOR THE PERSISTENCE OF CHILD LABOR – KAZAKHSTAN AND EL SALVADOR AS CASE STUDIES

While the United States may have federal laws that inadvertently legalize child labor in agriculture through a series of exceptions to the Fair Labor Standards Act, nations like Kazakhstan and El Salvador do have specific laws on the books that prohibit child labor. These laws, however, though noble in their attempt, prove to be ineffective in their own way. The combination of a lack of enforcement of these laws and other systemic causes (including the practice of paying field laborers a lump sum at the end of the season) counteract a lot of the positive impact these laws may have had. Consequently, despite having laws on the books, both El Salvador and Kazakhstan still have child labor in agriculture: Kazakhstan in its tobacco fields and El Salvador in its sugar cane fields.

74. WURTH & BUCHANAN, *supra* note 4, at 40; Natalie M. Schmitt et al., *Health Risks in Tobacco Farm Workers – a Review of the Literature*, 15 J. PUB. HEALTH 255, 255 (2007).

75. Schmitt et al., *supra* note 74.

76. U.S. DEP’T OF HEALTH OF HUMAN SERVS., *THE HEALTH CONSEQUENCES OF SMOKING – 50 YEARS OF PROGRESS* 8 (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

77. Davin C. Curtiss, Note, *The Fair Labor Standards Act and Child Labor in Agriculture*, 20 IOWA J. CORP. L. 303, 308 (1995).

A. Refusal To Face Reality: Lack Of Enforcement As A Method Of Ignoring The Existence Of Child Labor

Many nations across the world have ratified the international human rights doctrines, but not all have taken the extra step of implementing some of the goals or expectations set out in these doctrines into their own national law. Kazakhstan is one nation that has; not only has Kazakhstan ratified the ILO Convention on the Worst Forms of Child Labor, Kazakhstani law actually prohibits child labor in harmful sectors.⁷⁸ Thus, as agriculture is often considered one of the most harmful and dangerous sectors of labor,⁷⁹ ideally this would result in the non-existence of child labor in agriculture. And yet, because the prohibition is not actually enforced, which is in part caused by a lack of funding, child labor still exists and persists in Kazakhstan.⁸⁰

Child labor is especially prevalent in Kazakhstan's tobacco fields, even though tobacco farming is one of the harmful sectors in which child labor is prohibited.⁸¹ Despite having ratified the ILO Worst Forms of Child Labor Convention in 2003 and participating in the ILO-IPEC regional program "aimed at contributing to the elimination of the worst form of child labor[.]"⁸² Kazakhstan has not eliminated child labor in this sector. The root of the problem stems from a general lack of protection for migrant workers, who make up a great number of the workers on these tobacco farms.⁸³ Because most of these migrant workers, including their children, are working on these farms unofficially or with irregular migration status, the normal avenues for reporting abuses are not available to them in the first place.⁸⁴ Government officials have told Human Rights Watch that, instead of investigating any allegations made by these migrant workers, the

78. HUMAN RIGHTS WATCH, "HELLISH WORK" EXPLOITATION OF MIGRANT TOBACCO WORKERS IN KAZAKHSTAN 91 (2010) [hereinafter "HELLISH WORK"].

79. WURTH & BUCHANAN, *supra* note 4, at 89; *Child Labour in Agriculture*, INT'L LABOUR ORG., <http://www.ilo.org/ipecc/areas/Agriculture/lang-en/index.htm> (last visited Feb. 21, 2015); see Raneer Khooshie Lal Panjabi, *Sacrificial Lambs of Globalization: Child Labor in the Twenty-First Century*, 37 DENV. J. INT'L L. & POL'Y 421, 440 (2009).

80. See, e.g., "HELLISH WORK", *supra* note 78, at 102.

81. "HELLISH WORK", *supra* note 78, at 102; Joseph J. Amon et al., *Child Labor and Environmental Health: Government Obligations and Human Rights*, INT'L J. PEDIATRICS, July 2012, at 2-3.

82. "HELLISH WORK", *supra* note 78, at 102.

83. See *id.* at 75; Richard Solash, *Tobacco Workers in Kazakhstan Face Exploitation, Child Labor*, RADIO FREE EUR. RADIO LIBERTY (July 16, 2010), http://www.rferl.org/content/Exploited_Tobacco_Workers_Child_Laborers_In_Kazakhstan_/2101903.html.

84. "HELLISH WORK", *supra* note 78, at 75.

government would seek to deport the migrant worker.⁸⁵

This inability of the migrant workers to self-report any possible violations of labor laws including the prohibition against child labor in harmful sectors, has not been mitigated by strong government-led enforcement via inspections of work sites. A labor inspectorate does exist, and according to statistical information they conducted 22,116 inspections in 2009.⁸⁶ Whether or not these inspections were adequate is highly questionable as “[m]inistry officials have acknowledged that the funding available for inspectors is not adequate to carry out thorough inspections.”⁸⁷ Furthermore, there was no data given as to the exact sector of labor where these inspections took place, and so it is unclear whether any of these inspections were conducted for an agricultural employer.⁸⁸ Interviews conducted by Human Rights Watch with migrant workers, local officials, and landowners involved in tobacco growing indicated a complete lack of inspections.⁸⁹ Human Rights Watch was told by one migrant worker that, “[i]n ten years of working here, I have never seen the labor inspectorate.”⁹⁰

Kazakhstan is not the only nation that fails to enforce its prohibition against child labor in some of its most dangerous sectors of labor in agriculture. As Claxito Mejia Hernandez (a member of the Legislative Assembly) has said, “[t]here are very good [child labor] laws, but the problem is the application of the laws by the public institutions.”⁹¹ El Salvador is one nation who falls in this category. Despite having an “official ministry position that sugarcane work by children was prohibited” it is still prevalent.⁹² This can be explained both by a lack of funding and execution of inspections, and two common misconceptions that render any inspections done essentially useless.⁹³ In 2002, there were only four inspectors who specialized in agriculture, and the Ministry’s Unit for the Eradication of Child Labor lacked the equipment, staff, and funding to carry out its mission.⁹⁴ As one former labor inspector told Human Rights Watch, “[h]e was often

85. *Id.*

86. *Id.*

87. BUREAU OF INT’L LABOR AFFAIRS, U.S. DEP’T OF LABOR, KAZAKHSTAN 327 (2011), <http://www.dol.gov/ilab/reports/child-labor/findings/2011TDA/kazakhstan.pdf>.

88. “HELLISH WORK”, *supra* note 78, at 75.

89. *Id.* at 76.

90. *Id.* (quoting Human Rights Watch interview with Chainara Ch., Malybai, June 11, 2009).

91. Michael Bochenek, *El Salvador Turning a Blind Eye: Hazardous Child Labor in El Salvador’s Sugarcane Cultivation*, HUM. RTS. WATCH, Jun 2004, at 63 (alteration in original).

92. *Id.* at 65.

93. *See id.*

94. *Id.*

unable to conduct inspections in the field because of a lack of transport.”⁹⁵

This lack of funding and execution was not mitigated by positive and effective inspections that did take place, in large part due to two big misconceptions held by the officials in charge of the inspectorate.⁹⁶ The first of these misconceptions is that “sugarcane work by adolescents did not violate the international prohibition on harmful or hazardous child labor.”⁹⁷ This thought was tied to a belief that young children were not involved in the harvest of sugarcane, and that there was a distinction to be made between adolescents and children.⁹⁸ In other words, these officials believed that child labor should really only be considered a serious problem if children thirteen years or younger were engaged in it.⁹⁹ The second misconception was that “child ‘helpers’ were not workers with the right to the protections of the labor code.”¹⁰⁰ Child “helpers” are the younger children (some as young as 8 years old) who usually work with another child or an adult.¹⁰¹ They are generally not listed on the employment roll.¹⁰² Salvadoran law, however, classifies these child “helpers” as laborers, and thus, considers them as exempt from protections provided by their nation’s laws.¹⁰³ Salvadoran officials are classifying an entire group of workers as invisible to justify (in their minds) their inaction in eradicating child labor in one of the most dangerous sectors of labor.¹⁰⁴

In sum, despite the fact that both Kazakhstan and El Salvador both have laws that specifically prohibit child labor in tobacco and sugar cane respectively, child labor in these fields of agriculture still persists. This is in great part due to the fact that there is a general lack of enforcement of these laws. In Kazakhstan the lack of enforcement is directly tied to a lack of protection for the migrant workers working in the tobacco fields with their children.¹⁰⁵ Government officials are more likely to deport the migrant worker who reports a labor violation than they are to investigate the accusation.¹⁰⁶ In El Salvador, it is a matter of a lack of funding for sufficient inspections that would detect violations of these

95. *Id.*

96. *See id.*

97. *Id.*

98. *See id.* at 65-66.

99. *See id.* at 66.

100. *Id.*

101. *See id.* at 15, 26, 66.

102. *Id.* at 26, 54.

103. *See id.* at 66.

104. *Id.* at 4, 64, 66-67.

105. “HELLISH WORK”, *supra* note 78, at 75.

106. *Id.*

laws.¹⁰⁷ This lack of government action is further undermined by the beliefs that adolescents working in the sugarcane fields are not prohibited child labor, and that the younger children working as “helpers” are not classified as child laborers, and therefore, were not in violation, nor deserving of the government’s protection.¹⁰⁸

B. Low Wages, And The Prospect of Poverty: A System That Leaves Parents and Sometimes the Children Themselves With Little Choice

A lack of enforcement of child labor prohibition in these dangerous sectors like tobacco and sugarcane farming by nations is further undermined by the actions of the migrant workers themselves, who are greatly influenced by the system in which they must work. Governmental systems that pay workers at the end of the season for the amount they have harvested leave adults with a hard choice to make.¹⁰⁹ Do they “force” themselves into poverty or do they fight it by having their children come and work with them, so that they can make more money? Families with their own farms are often unable to hire workers, and in order to keep themselves from slipping deeper into poverty, they become “dependent on their own labour force, including the children.”¹¹⁰ Finally, ironically, children working in agriculture with their parents sometimes enter the labor force in order to raise the money they need to attend school, but usually the working hours cause them to miss school.¹¹¹

In violation of Kazakhstani law, migrant tobacco workers are not paid any regular wages during the eight or nine months that they are employed and working in the tobacco fields.¹¹² Instead, the head of the household is usually paid one lump sum at the end of the tobacco season.¹¹³ This serves as an incentive or motivation for two troubling phenomena that contribute to the prevalence of child labor in the tobacco fields.¹¹⁴ Because the lump sum payment received by tobacco workers at the end of the season is often based on the volume of tobacco produced (harvested) by the worker, the parents are more inclined to bring their children with them to the fields.¹¹⁵ These workers feel that “they must commit as

107. Bochenek, *supra* note 91, at 65.

108. *Id.* at 65-66.

109. “HELLISH WORK”, *supra* note 78, at 7, 32; see Solash, *supra* note 83.

110. Marten Pieter van den Berge, *Children in Traditional and Commercial Agriculture*, in *HAZARDOUS CHILD LABOUR IN LATIN AMERICA* 151 (G.K. Lieten ed., 2011).

111. Bochenek, *supra* note 91, at 41, 43

112. “HELLISH WORK”, *supra* note 78, at 7.

113. *Id.*

114. See *id.* at 12.

115. *Id.* at 7, 90; Solash, *supra* note 83.

much effort and as many working hands as possible each day to tobacco farming in hopes of producing the expected volume of tobacco and of receiving decent earnings at the end of the season.”¹¹⁶ In other words, these workers feel pressured to employ their children in an effort to maximize their earnings, so that they can attempt to make a living.

This method of paying a lump sum at the end of the season also creates a risk of the families becoming indebted to their employers.¹¹⁷ Because they do not receive a regular wage, they become dependent on their employer (the landowner) for basic necessities like food, medications, and medical treatment.¹¹⁸ The costs of these necessities are then deducted from the end-of-season payment, and if these costs exceed the value of the tobacco harvested, the families could become indebted to their employer.¹¹⁹ Sometimes, migrant families are already at the “mercy” of their employers because their employers have paid for their travels to Kazakhstan.¹²⁰ In these cases, there is an even greater motivation for parents to have their children work with them, so that they can work off that debt as quickly as possible.

Not only are parents motivated to bring their children with them to the fields; they are also less inclined to report any labor violations to the authorities.¹²¹ In some situations, the employer takes the family’s passports at the beginning of the work term, which means that they have no way of leaving because they cannot leave the county without a passport.¹²² If they were to report their employer for having their children work, their chances of being able to leave would further decrease because it is likely that the employer would then be more inclined to further withhold the return of their passports.¹²³ Furthermore, since the families generally arrive in Kazakhstan with little money to their name, they are unlikely to leave the fields no matter how terrible the conditions may be because they really need that payment at the end of the season.¹²⁴ In other words, though the system of paying field workers at the end of the season may look like a good plan on paper, in reality, it serves as a deterrent to the reporting of labor violations and as an incentive for parents to have their children work with them in a hazardous occupation.

Some parents choose to take their children out of school in order to harvest

116. “HELLISH WORK”, *supra* note 78, at 90.

117. *Id.* at 7, 32.

118. *Id.* at 32.

119. *See id.* at 7, 48, 99.

120. *See id.* at 32.

121. *See id.* at 48.

122. *Id.* at 52.

123. *See id.* at 87.

124. *Id.* at 43.

as much tobacco as possible so that they are able to get the biggest lump sum payment at the end of the season.¹²⁵ In other cases, for example in El Salvador, children choose to enter the workforce in an effort to raise money to go to school.¹²⁶ Unfortunately, this often results in the children not attending school despite having the money to do so because the hours in the field conflict with school hours as the harvest season often lasts into the school year and the children are often too tired from working in the fields to be successful in school.¹²⁷

The government of El Salvador has said that schools cannot charge annual or monthly fees that prevent families from being able to send their children to school.¹²⁸ And yet, there are many families who simply cannot afford to pay the “dues” (monthly fees) or buy the necessary school supplies and uniforms.¹²⁹ Thus, they are left with no other choice but to have their children join them in the sugarcane fields so that they might be able to earn the necessary money.¹³⁰ One young teenager interviewed by Human Rights Watch was working in the fields and trying to go to school at the same time.¹³¹ Despite working in the fields he could not afford to buy new black shoes, and as a result, he faced being thrown out from the school.¹³² He told Human Rights Watch, “[t]omorrow I’m going to go to school, but I’m wearing white shoes. I don’t think they’ll let me in. The director said that boys who aren’t wearing the uniform, they’ll throw them out; they won’t give them classes.”¹³³

Despite the fact that education is often seen as the solution to child labor,¹³⁴ in Kazakhstan, it often is not an option for the children working in the tobacco fields.¹³⁵ These families migrate from their home nation (Kyrgyzstan in most cases) to Kazakhstan to work in the fields and earn money.¹³⁶ The children end up working with their parents because they are unable to enroll in school.¹³⁷ In order to enroll their child(ren) in school, “a parent or guardian must present a document verifying permanent residence in the Republic of Kazakhstan with a

125. *Id.* at 90.

126. Bochenek, *supra* note 91, at 43.

127. *Id.* at 41-42.

128. *Id.* at 44.

129. *Id.* at 41.

130. *Id.* at 43.

131. *See id.* at 45.

132. *Id.*

133. *Id.* at 46.

134. *Id.* at 48.

135. “HELLISH WORK”, *supra* note 78, at 100-01.

136. *Id.* at 23.

137. *Id.* at 98-100.

stamp indicating residency registration.”¹³⁸ Even though this requirement exists, government officials and local trade union representatives in Kazakhstan assured Human Rights Watch that, “migrant workers’ children could attend local schools without difficulty.”¹³⁹ Many migrant worker parents, however, cited the residency registration as an obstacle that prevented them from being able to send their children to school.¹⁴⁰

Children being unable to attend school while in Kazakhstan and instead working in the tobacco field leads to two things. Some of them do continue to go to school in their home state of Kyrgyzstan when they return from the tobacco harvest.¹⁴¹ These children, however, miss at least two or three months of school while they are working in the fields and being exposed to tobacco, high heat and sun, and pesticides.¹⁴² They miss these two or three months (sometimes even six or seven) because they generally come down with their parents for the tobacco harvest season, leaving school early in April and then going back to school in November.¹⁴³ Others may have started out by only missing two or three months, but ended up dropping out or missing multiple years of school.¹⁴⁴ Sometimes, it was the family’s choice not to return to Kyrgyzstan.¹⁴⁵ In one family’s case, however, there was no choice: they fell “into a situation of debt bondage when their first employer charged [the mother] excessive recruitment fees which he required her to repay.”¹⁴⁶

It is easy to blame the government for not enforcing their own laws prohibiting child labor, specifically in hazardous occupations like cutting sugarcane and harvesting tobacco. A lack of enforcement of these laws alone, however, is not sufficient to perpetuate the existence of child labor. In the case of Kazakhstan, the method of payment by lump sum at the end of the season encourages parents to bring their children with them to the fields because they will be able to earn more through the additional labor.¹⁴⁷ In El Salvador and Kazakhstan, fee and registration requirements set by schools, and the normal needs for school supplies, further encourage child labor because they leave both the child and the family with little choice.¹⁴⁸ Either the children choose to work in the fields to

138. *Id.* at 97-98.

139. *Id.* at 100.

140. *Id.*

141. *Id.* at 98.

142. *Id.* at 92, 98.

143. *Id.* at 12, 98-99.

144. *Id.* at 99.

145. *Id.*

146. *Id.*

147. *Id.* at 12, 90; Solash, *supra* note 83.

148. Bochenek, *supra* note 91, at 43-44; “HELLISH WORK”, *supra* note 78, at 100.

raise money to go to school, or their parents make the decision for them.¹⁴⁹ Regardless of who makes this decision, even those who choose to go to school and work in the field sometimes end up leaving school because they are simply too exhausted from their days in the field to be successful in school or they are forced to leave because they still cannot afford the proper uniform.¹⁵⁰ In sum, the prospect of poverty and the desire to avoid it and the financial resources required to go to school, both contribute to the prevalence of child labor.

IV. METHODS OF CHANGE: WHAT SHOULD BE DONE TO PROTECT THE RIGHTS OF CHILDREN WORKING IN AGRICULTURE

The continued existence of child labor in the forms described is either indicative of weak national laws or a weak international human rights regime. As will become evident when considering the documents addressing child labor and children's rights in general, the international human rights community does in fact have a clear stance on child labor: it does not support it, particularly when the labor places the child in situations where the child's health and general well-being are at risk.¹⁵¹ Consequently, the discussion of approaches to eradicating hazardous child labor in the nations themselves must center around what the each country can do to change their domestic laws, and perhaps their societal conception of what hazardous child labor is, so that their efforts and laws protect, rather than infringe, on the rights established in the documents of the international human rights community. Any approach taken by nations, in order to be successful, will have to be a multi-faceted one as no one approach will solve the problem.

A. Looking At the Promises And Goals Set Out By The International Human Rights Community

The presence and persistence of child labor in agriculture that exposes children to significant hazards like acute nicotine poisoning, heat stroke, and lacerations from machetes cannot be explained by a lack of interest or concern by the international human rights community. From its inception, this community has had a focus on the protection of the child. In the Universal Declaration of Human Rights, the General Assembly of the United Nations included the following as two of the many human rights it believed to be fundamental: children are entitled to "special care and assistance" above the standard of living and care that humans in general are entitled to, and they also have "the right to education."¹⁵²

149. Bochenek, *supra* note 91, at 43, 45.

150. *Id.* at 42-45.

151. See, e.g., Convention on the Rights of the Child, *supra* note 1.

152. G.A. Res. 217A, Universal Declaration of Human Rights (Dec. 10, 1948), *reprinted in* RICHARD B. LILICH ET AL., INTERNATIONAL HUMAN RIGHTS: DOCUMENTARY SUPPLEMENT

These ideals are furthered in the Convention on the Rights of the Child, which more specifically addresses child labor.¹⁵³ According to the Convention, there is “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.”¹⁵⁴ Those nations that have ratified the Convention are expected to set a minimum age of employment, regulations for hours and conditions of employment, and “[p]rovide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”¹⁵⁵

The third international document relevant to the discussion of child labor, and any attempts to end it, is the Worst Forms of Child Labour Convention of the International Labour Organization.¹⁵⁶ This Convention, as stated in its preamble, was created in part because the International Labour Convention felt there was “the need to adopt new instruments for the prohibitions and elimination of the worst forms of child labour, as the main priority for national and international action.”¹⁵⁷ Its definition of the worst forms of child labour, as is most applicable here, includes “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.”¹⁵⁸

These documents, despite not having any enforcement mechanisms themselves,¹⁵⁹ are powerful in their own right. The Convention on the Rights of the Child has been almost universally ratified.¹⁶⁰ Both Kazakhstan and El Salvador have signed and ratified it.¹⁶¹ In fact, only two nations have not ratified the Convention: the United States and Somalia.¹⁶² Consequently, the Convention itself

15-20 (Aspen Publishers 2009).

153. Convention on the Rights of the Child, *supra* note 1.

154. *Id.* art. 32.

155. *Id.*

156. *See generally* Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Nov. 19, 2000, 87 I.L.C.1999.

157. *Id.*

158. *Id.* art. 3.

159. Ursula Kilkelly, *Strengthening the Framework for Enforcing Children’s Rights: An Integrated Approach*, in CHILDREN’S HUMAN RIGHTS: PROGRESS AND CHALLENGES FOR CHILDREN WORLDWIDE 53, 55 (Mark Ensalcaco & Linda C. Majka eds., 2005); Majka & Majka, *supra* note 3, at 8.

160. Mark Ensalcaco, *The Right of the Child to Development*, in CHILDREN’S HUMAN RIGHTS: PROGRESS AND CHALLENGES FOR CHILDREN WORLDWIDE 9, 12 (Mark Ensalcaco & Linda C. Majka eds., 2005).

161. *Convention on the Rights of the Child*, UNITED NATIONS (Feb. 22, 2016), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&lang=en.

162. *Id.*; Ensalcaco, *supra* note 160, at 12.

has at least some moral weight and should be something that influences even the two nations that have not ratified it. Just like the Convention on the Rights of the Child, the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour has been ratified by a great number of nations (143 in this case).¹⁶³ The United States did ratify this Convention placing it under the obligation to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency.¹⁶⁴

But, as indicated by the continuing presence of child labor harmful to the children involved, in Kazakhstan, El Salvador, and the United States, it takes more than ratification of these international human rights documents to end child labor of any kind. In order to truly eradicate harmful child labor, a nation must be willing to analyze its governmental functions and programs (including education and employment of adults) as a whole, as well as the mindset of society. Only then can a nation stand a chance of ending something that many probably think ended in the United States with the prohibition of child labor in factories.

B. A Success Story And A Twist: Bolivia Uses Various Approaches That Lead To A Reduction In Child Labor In Sugar Cane And Then Takes A Drastic Step

Despite its persistence in the United States, El Salvador, and Kazakhstan, there is hope that one day harmful child labor can be eliminated in these nations. This achievement, however, will require nations to approach it with more than a mere prohibitory law and penalties for those who are found to have employed children in violation of that law. A successful end to child labor will require a revamping of the nation's educational system, or even its general employment laws including those that set the minimum wage. For proof that this multifaceted approach can have success in reducing the children employed in dangerous sectors of agriculture like sugar cane, one must look no further than Bolivia.

Six years after the International Labour Organization conducted an evaluation of the child labor problems in sugar cane fields in Bolivia, there has been a reduction in the number of children working in the sugar cane fields.¹⁶⁵ In Bermejo, where some of these sugar cane harvesting camps are located, "most children under 12 years old are attending primary school" whereas just six years ago,

163. Jill Marie Gerschutz & Margaret P. Karns, *Transforming Visions into Reality*, in CHILDREN'S HUMAN RIGHTS: PROGRESS AND CHALLENGES FOR CHILDREN WORLDWIDE 31, 40 (Mark Ensalaco & Linda C. Majka eds., 2005).

164. Press Release, Int'l Labour Org., U.S. Ratifies ILO Convention Against the Worst Forms of Child Labour (Dec. 2, 1999), http://www.ilo.org/global/about-the-ilo/media-centre/press-releases/WCMS_071320/lang-en/index.htm.

165. Laura Baas, *Children on Bolivian Sugar Cane Plantations*, in HAZARDOUS CHILD LABOUR IN LATIN AMERICA 191, 204 (G. K. Lieten ed., 2011).

none of the children from the camps had attended school.¹⁶⁶ This increase in school attendance by the young children of the camps is most likely the result of the project carried out by LABOR and the Federation of Harvesters from August 2006 to July 2008.¹⁶⁷ Members of the Federation went around visiting the camps and discussed the issue of child labor with the harvesters and their families.¹⁶⁸ Furthermore, the Federation hosted its own radio program called “*La voz del zafrero (The Voice of the Harvester)*.”¹⁶⁹ In this radio program they discussed the fact that children working in sugar cane fields is prohibited.¹⁷⁰

Along with these outreach programs, the government and UNICEF have employed teachers and established schools specifically for children of the harvesters.¹⁷¹ Some of these schools are mobile; the teacher is expected to move with the camp when the harvesters move on to the next site where they can work.¹⁷² Some of the teachers are hired to teach leveling classes, (most likely at the local schools) that help the children get back on track and make up any of the curriculum they missed while they were migrating with their families.¹⁷³ Other programs have been implemented by the state with the assistance of other organizations and include an outreach program aimed at getting women to earn their own income so that the child’s income is no longer needed, as well as a program that initiated conversations between all the key players in the sugar cane industry.¹⁷⁴ This program had as one of its goals: having all the players agree to, and see the need for an improvement in the working conditions for the adults, which in turn would decrease the need for their children to work.¹⁷⁵ If the parents are able to earn sufficient wages for their work, they are less likely to feel like they need to bring their children to the fields with them.

There are still children working in the sugarcane harvest in Bolivia at this time,¹⁷⁶ however, so it is important to not oversell these programs. One important lesson from the attempts made by Bolivia is that one approach alone will not do the trick. Furthermore, the eradication of child labor in these hazardous

166. *Id.*

167. *Id.* at 205.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *See id.* at 191, 205, 207 (noting that despite a program offering classes for children in the camps, some children chose to help their parents in the field because that is what they were used to).

agricultural occupations is not something that will happen overnight. Most of these children work with their families because they have nowhere else to go and the adolescents generally work because of economic necessity.¹⁷⁷ Unless they can earn that income in another way, or the younger children have something else to do (like attend school) they will continue to work in sugarcane.¹⁷⁸ An end to child labor also means an end to a society's view that child labor is beneficial, and a society's mindset is difficult to change: it takes more than a change in laws, or a brief training about the dangers of the labor that children are involved in.¹⁷⁹

This is evident even in Bolivia itself, as the nation just recently took a more drastic step—moving far away from its attempts to eliminate child labor through education about its hazards—to an attempt to resolve the child labor issue. After lobbying by the child workers themselves, the President of Bolivia declared that “[t]he state shouldn’t outlaw child labor. It should protect them.”¹⁸⁰ The President may have been inclined to agree with the arguments set forth by the Union of Boy, Girl and Adolescent Workers of Bolivia (more commonly known as UNATSBO)¹⁸¹ because he himself had “helped his destitute family by selling ice cream, baking bread, laying bricks and . . . herding 50 llamas across the Andes to trade them for corn and dried meat.”¹⁸²

In its “Pronouncement” the Organización de Niños, Niñas y Adolescentes Trabajadores de Cochabamba (ONATSCO)—another organization that lobbied for the legalization of child labor—explained why its members believe legalizing child labor was necessary.¹⁸³ They point out that they, and the rest of the children of Bolivia, only work because it is necessary - they do not work because they want to.¹⁸⁴ They use the money they earn to help support their families, pay for their studies, food, or clothing.¹⁸⁵ Considering these arguments, and that “[c]hildren under 14 make up 58% of the 850,000 child laborers in Bolivia,” it is not surprising that many do not see a problem with the legalization of children

177. *Id.* at 191, 202-03.

178. *Id.*

179. *Id.* at 191, 209.

180. John Otis, *Newest Legal Laborers in Bolivia: Children*, WALL ST. J., Oct. 29, 2014, <http://www.wsj.com/articles/newest-legal-laborers-in-bolivia-kids-1414627368>.

181. *Bolivia Makes Child Labor Legal, In an Attempt to Make it Safer*, NPR (July 30, 2014), <http://www.npr.org/templates/transcript/transcript.php?storyId=336361778>.

182. Otis, *supra* note 180.

183. *See Pronunciamento*, ORGANIZACIÓN DE NIÑOS, NIÑAS Y ADOLESCENTES TRABAJADORES DE COCHAMBAMBA [ONATSCO] 4 (2014) (Bol.).

184. *Id.*

185. *Id.*

laborers as young as ten years old.¹⁸⁶ The government of Bolivia has been known to believe that maintaining the politically correct position - that children should not work - amounts to hypocrisy.¹⁸⁷

With this new law, which has an amended code for children and adolescents, the Bolivian government has ended the alleged hypocrisy.¹⁸⁸ As a result, children as young as twelve can work under contract so long as they have parental consent.¹⁸⁹ Children who are only ten years old “may be self-employed, as long as [they] stay in school.”¹⁹⁰ Many anti-child labor organizations have voiced their opposition and concern over this new development in Bolivia.¹⁹¹ A few have pointed out that this new amendment is actually in violation of international child labor standards, which set the minimum age for children to work at fourteen years old.¹⁹² Yet, the Bolivian government has stood firm on its decision to legalize child labor, pointing to their own child labor success story: the President himself.¹⁹³ He has been known to point out that, “I have worked since I was very young and now I am the president of the country.”¹⁹⁴ Whether it will be successful in achieving the protections children working need, and changing the state of child labor in Bolivia for the better, however, still remains to be seen. For now, Bolivia stands alone in its actions, and other nations should carefully consider taking such a drastic step.

C. *Not One Golden Key: The Need For a Multifaceted Approach*

When something has become ingrained in both the tradition and culture of a nation, it will take more than one report on the dangers and harm of the practice to convince a nation to eradicate it successfully. In order for Kazakhstan, El Salvador, and the United States to eradicate harmful child labor in agriculture, each nation will have to tailor its approach to fix the societal and governmental practices of its nation that contribute to the persistence of child labor. By ratifying the Convention on the Rights of the Child, integrating the principles it sets out, making the necessary changes to the Fair Labor Standards Act to broaden its protections, and launching a successful campaign that leads Americans to change

186. Otis, *supra* note 180.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. Jack Simpson, *Bolivia Becomes First Nation to Legalise Child Labour*, THE INDEP., July 19, 2014, <http://www.independent.co.uk/news/world/americas/bolivia-becomes-first-nation-to-legalise-child-labour-9616682.html>.

192. *Id.*

193. Otis, *supra* note 180.

194. *Id.*

their view on what it means for children to work in the field, the United States may be successful. Kazakhstan and El Salvador will have to reconsider their government programs for employment and set a livable minimum wage that would apply to agricultural laborers regardless of their immigration status. Like the United States, in order to be completely successful, both Kazakhstan and El Salvador will have to launch successful campaigns that change their people's perception of what harmful child labor in agriculture is. Only when the people themselves believe that their children should not be working in agriculture will any governmental change be successful. Finally, it is important that this change is accomplished in a manner that does not impose another nation's values regarding child labor on the nation making the change, as the people of the nation are less likely to be receptive to these changes if they feel it is another nation imposing its values and views on what harmful child labor includes.¹⁹⁵

The United States in this instance is unique, because unlike Kazakhstan and El Salvador, it has not ratified the Convention on the Rights of the Child. While ratification may ultimately only be symbolic, it will be a necessary step in the right direction and will send a message to the citizens and the rest of the world that the United States is committed to the rights of its children. Along with ratifying the Convention, the United States should retract the understanding it had attached when ratifying the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which explicitly stated that the definition of worst forms of child labour was understood not to include "situations in which children are employed by a parent or by a person standing in the place of a parent on a farm owned or operated by such parent or person."¹⁹⁶ In other words, despite ratifying the Convention that arguably specifically targets this type of hazardous child labor on farms, the United States maintained the "family farm" exception that allows for such labor to persist. The United States government needs to repeal this understanding. Such a step by the government would indicate that they have accepted that child labor on a farm can be considered one of the worst forms of child labor.¹⁹⁷ If the government accepts

195. Some countries have criticized the global campaign to end child labor as "an attempt by the 'first world' to impose its values and their conditions on other countries without understanding local cultures and the needs of children and their families." Michael F. C. Bourdillon, *Translating Standards into Practice: Confronting Local Barriers*, in CHILD LABOR AND HUMAN RIGHTS: MAKING CHILDREN MATTER 143, 159 (Burns H. Weston ed., 2005).

196. 145 CONG. REC. S14226 (daily ed. Nov. 5, 1999).

197. "Agriculture has the second highest fatality rate among youth workers at 21.3 per 100,000 full time equivalents compared to 3.6 per 100,000 across all industries." NAT'L CTR. FOR FARMWORKER HEALTH, FARMWORKER HEALTH FACTSHEETS: CHILD LABOR IN AGRICULTURE 3 (2012); *Occupational Injuries and Deaths Among Younger Workers—United States, 1998-2007*, 304 JAMA 33, 33-35 (2010).

this fact, then perhaps its citizens will be forced to realize that the myth of the happy farm child does not apply to all children working on farms, even if they do fall under the “family farm” exception.¹⁹⁸

When and if that societal mental shift is achieved, the United States government will have to begin the overhaul of its labor laws. One way for the government to increase the protections for children working in the fields is to reintroduce and pass the Children’s Act for Responsible Employment, which as it was introduced in the past, would close the gap between the protections provided for children who work in the agricultural sector and those who do not.¹⁹⁹ Congress could take the step of at least protecting one group of child laborers by passing the recently introduced bills (in both the Senate and the House) seeking to amend the Fair Labor Standards Act “to prohibit employment of children in tobacco-related agriculture by deeming such employment as oppressive child labor.”²⁰⁰ Finally, Congress could also remedy the lack of protections for children working in agriculture by adopting the “Youth Worker Protection Act” (H.R. 3139), which was introduced in the 108th Congress by Representative Lantos.²⁰¹ This Act, like the Children’s Act for Responsible Employment, would amend the Fair Labor Standards Act.²⁰² These amendments would include a work permit requirement and would require notification of serious work-related injuries.²⁰³ The Youth Worker Protection Act outlines who would be required to notify the state agency designated to oversee the work permit system—who would in turn notify the parents of the minor—and it includes the employer of the minor.²⁰⁴ If the child had to receive medical attention, or if the injury led to an investigation, then the medical professional that tended to the child and the employee of the law enforcement agency doing the investigation would also be required to notify the state agency.²⁰⁵ Furthermore, if, as a result of the injury, the child is absent from school for more than three days, “an appropriate employee of the school” is re-

198. Some farmers have hired migrant parents as independent contractors, which they believe makes the migrant children of the parent to be employees of their parent, and therefore, the farmer believes he is not required to provide the children with the protections guaranteed under the Fair Labor Standards Act. Glader, *supra* note 8, at 1456; Linder, *supra* note 40, at 753-54.

199. See Children’s Act for Responsible Employment of 2013, H.R. 2342, 113th Cong. (2013); *CARE Act Reintroduced-Would Equalize Protections for Children who Work in U.S. Agriculture*, THE CHILD LABOR COALITION (Nov. 3, 2011), <http://stopchildlabor.org/?p=2509>.

200. H.R. 1848, 114th Cong. (2015); S. 974, 114th Cong. (2015).

201. WHITTAKER, *supra* note 54, at 31.

202. Youth Worker Protection Act, H.R. 3139, 108th Cong. §§ 201(3), 205 (2003).

203. *Id.*

204. *Id.* § 205.

205. *Id.* § 205(b).

quired to notify the state agency.²⁰⁶

The state agency would be required to compile and retain statistical data relating to these injuries reported along with statistical data derived from the work permits.²⁰⁷ This would lead to a better understanding of the prevalence of child labor in all sectors, which would help advocates against child labor show those who believe there is no problem that there in fact is a problem. In other words, this would be one way of holding the employers accountable and hopefully creating a safer work environment for the children that would also alert the rest of society to the existence of child labor. If ultimately the United States cannot eradicate child labor in agriculture,²⁰⁸ the least it can do is increase the protections for these children, so that when they do work in these dangerous conditions, they are not suffering injuries that could end their life or change their quality of life with a permanent disability.

Considering the strong societal belief that farm work is healthy and good for children, the United States may be more successful if it eradicates hazardous child labor indirectly. One way that the United States may be able to eradicate child labor in agriculture without actually banning it outright is by improving its laws that protect the adult farmworkers. Amending and improving the wage labor laws for adult farmworkers would go a long way in achieving this goal. When the parents are able to earn a living and support their families through the work they do, they will not feel the need to have their children join them in the fields.²⁰⁹ In other words, a livable wage for adult farmworkers will allow the children to stay in school and at the very least earn their high school diplomas.²¹⁰

Kazakhstan and El Salvador may have a better chance of being able to successfully eradicate the harmful child labor in their nations. Unlike the United States, both of these nations currently have laws that prohibit that specific form of child labor. These nations should therefore implement a multi-agency approach that addresses the issues of inspections, barriers to education, and wages. If Kazakhstan modifies its wage laws so that lump sum payments at the end of the harvest season are prohibited, and instead has a law that requires employers to pay their employees a livable wage on a biweekly or monthly basis, then par-

206. *Id.* § 205(b)(4).

207. *Id.* § 206(a).

208. When the Department of Labor proposed its amendments to the Fair Labor Standards Act in 2011, Missouri and Iowa passed resolutions stating their opposition to the amendments emphasizing their infringement on traditional farm life. H.R. Con. Res. 59, 96th Gen. Assemb., 2d Reg. Sess. (Mo. 2012); S. Res. 112, 84th Gen. Assemb., (Iowa 2012). Tennessee passed a bill that prohibited the use of public funds for the regulation or enforcement of any of the proposed amendments. H.B. 2669, 107th Leg., (Tenn. 2012).

209. See HESS, *supra* note 37, at 16.

210. See *id.* at 16, 19.

ents will no longer feel the need to bring their children to work. However, this will only be successful in keeping children out of the fields if Kazakhstan also makes sure that these children (many of whom are immigrants) are able to attend school, and that there are proper inspections so that any violations of the child labor laws are caught. Similarly, El Salvador will have to make sure that its inspection department has sufficient funding and equipment. The government of El Salvador will also have to implement a program that will end the two misconceptions held by many of its own officials. Like the United States, an end to child labor in the sugar cane fields of El Salvador will require a change in perception of what harmful child labor is, along with governmental reforms.

Because child labor has been a part of society and the culture of nations for so long, any change is likely to be met with resistance. Therefore, in order for a nation to be successful in eradicating harmful child labor or at least increasing the protections for children working in these hazardous sectors, each will have to tailor its approach to fix the governmental practices that contribute to the persistence of child labor in a way that addresses the concerns expressed by its people. The United States will have to make sure that when it proposes amendments to the protections for children working in agriculture, it recognizes and addresses the concerns of the people who still believe that a child working on a farm is healthy and good for the child. Kazakhstan and El Salvador will have to make sure that enforcement of its laws prohibiting child labor in tobacco and sugar cane fields is combined with the establishment of programs and support for alternatives for the children in the form of education opportunities. Because child labor in agriculture is a complex issue, so heavily dependent on the culture and society of a nation, there is no golden key that will solve the problem; successful eradication of harmful child labor in agriculture will require a multifaceted approach.

V. CONCLUSION

On the international stage, the world has made great strides in promoting and protecting children's rights. Since its inception, the international human rights community has been dedicated to the cause of addressing children's rights in its Universal Declaration on Human Rights and then by passing the Convention on the Rights of the Child. Despite this commitment, harmful child labor (i.e., the exploitation of children) in agriculture continues to exist in countries including the United States, El Salvador, and Kazakhstan. The persistence of child labor in these countries can be explained, in part, by a lack of enforcement of laws that do prohibit child labor, and a societal belief that such child labor is not actually harmful, which in turn prevents the passage of these laws. Consequently, until nations follow suit and adopt the definition of harmful child labor set out by the international community, and make efforts to change the minds of their

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society about what hazardous child labor is, it will continue to exist.