

2001

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Recommended Citation

Reeves, Teresa Young. "Harvest of Danger: The Child Farmworker in the United States." Human Rights Brief 8, no. 2 (2001): 12-14.

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Harvest of Danger: The Child Farmworker in the United States

by Teresa Young Reeves*

On June 17, 1999, at the 87th annual International Labour Conference (Conference) in Geneva, Switzerland, the 174 Member States of the International Labour Organization (ILO) unanimously voted for the adoption of the ILO's newest child labor instrument, Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention 182). At the Conference, former U.S. president Bill Clinton pledged U.S. support for Convention 182 and declared that the United States would not tolerate young children risking their health in hazardous and dangerous working conditions for unconscionably long hours. Upon his return from Geneva, Clinton successfully pushed for ratification of the Convention in the U.S. Senate; on December 2, 2000, Convention 182 officially entered into force in the United States. Although Convention 182 is non-self-executing—meaning its provisions are enforceable as a matter of law only after Congress has implemented domestic legislation essentially mirroring Convention 182's terms—the United States contends its domestic laws already duplicate the provisions of the convention; therefore, congressional action is unnecessary. Despite this assertion, the United States has not fulfilled its obligation under the convention to eliminate the worst forms of child labor, namely in the field of agriculture. The U.S. government has failed to properly categorize farmwork as a hazardous form of labor that Convention 182 expressly prohibits. Moreover—and even assuming the failure of the prior argument—the factual situation of the child farmworker in America provides ample evidence that U.S. laws regarding children in agriculture are deficient, as they do not adequately protect children from hazardous, dangerous, or otherwise abusive labor conditions. Thus, even where U.S. law purports to be in conformity with the terms of Convention 182, ineffective enforcement of child labor laws indicate that the United States has violated the convention by not acting with urgency to secure the prohibition and elimination of the worst forms of child labor.

ILO Child Labour Convention 182

Convention 182 represents the first effort by the international community to define the specific types of labor to which children under the age of 18 should not be subjected as a matter of law. The purpose of Convention 182 is to protect children from employment in degrading, illegal, or otherwise harmful or injurious work. As a “matter of urgency,” States that have ratified the convention are obligated to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour” (Article 1). In addition to banning child slavery, the forced recruitment of children for armed conflict, child prostitution, and the use of children in drug trafficking (Article 3(a)-(c)), Convention 182 also prohibits its Member States from permitting children to perform labor “likely to harm [their] health, safety or morals” (Article 3(d)). Although it is within the State's discretion to determine exactly what type of work will likely harm a child's health, safety, or morals, Convention 182 urges the States to consider “relevant international standards” (Article 4(1))—specifically those set forth in the accompanying ILO Recommendation No. 190 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Recommendation).

The ILO conference adopted the Recommendation at the same time as Convention 182. This non-binding document characterizes the type of work prohibited by the language of Article 3(d) of Convention 182 as “Hazardous work” (Section II). Pursuant to the Recommendation, hazardous labor includes: work

with dangerous equipment and tools; work at dangerous heights; work in an unhealthy environment which may expose children to hazardous substances; and work under “particularly difficult conditions such as work for long hours or during the night” (Section II(3)). Employment on a farm or in an orchard requires the use of sharp knives and other dangerous equipment, climbing of ladders, handling of toxic pesticides, and working outdoors, often at extreme temperatures for long hours. Using the standards set forth in the Recommendation, it is possible to construe farmwork as one of the worst forms of child labor. According to the U.S. government's interpretation of the convention, however, farmwork as a general category is not considered to be hazardous. This interpretation is erroneous.



U.S. Misinterpretation of the Hazardous Labor Prohibition

Before ratifying Convention 182, the United States had to ensure that its domestic laws were in compliance with the provisions set forth therein. Accordingly, the Tripartite Advisory Panel on International Labor Standards (TAPILS) prepared the “Report of the Tripartite Advisory Panel on International Labor Standards to the President's Committee on the International Labor Organization Regarding No. 182 on the Worst Forms of Child Labor,” dated July 28, 1999, which president Clinton relied upon before sending his recommendation of ratification to the Senate. TAPILS is the federal advisory committee mandated to determine whether conflicts exist between Convention 182's requirements and current domestic law and practice. The findings of the TAPILS report state that, with two exceptions, existing U.S. law and practice adequately addresses and adheres to each provision of Convention 182. The relevant TAPILS report exception concerns the convention's definition of “Hazardous” labor as it relates to a hazardous work provision carved out of the federal U.S. statute governing domestic labor and employment laws, the Fair Labor Standards Act of 1938 (Labor Act).

Although children in the United States are expressly prohibited from working in mining, considered the foremost dangerous occupation in the U.S., children in agriculture are not afforded similar protection under the law, despite statistics showing that juvenile farmworkers account for 40 percent of all work-related fatalities occurring among minors in the United States. Although Section 212(c) of the Labor Act prohibits “oppressive child labor,” Section 213 provides that children employed in agriculture are explicitly exempt from this prohibition. Furthermore, while the Labor Act sets the minimum employment age for most industries at 16 and limits the number of hours of employment for a child attending school, there is neither a minimum age requirement nor a limited hours standard in the case of agricultural work. Children may begin working on a farm at any age. Those under the age of 14, however, are required to first obtain parental consent. In fact, the sole protection provided for farmworking children under the Labor Act derives from Section 213(c)(2), which states that

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children younger than 16 may not be employed in any occupation the Secretary of Labor has found to be “particularly hazardous.”

Whereas Article 3(d) of Convention 182 prohibits the employment of children in hazardous labor, the U.S. Labor Act bans children younger than 16 from working in a specific number of activities declared “particularly hazardous” by the Secretary of Labor (Section 213(c)(2)). In Title 29 of the Code of Federal Regulations, the Secretary of Labor has declared that operation of a corn picker, cotton picker, grain combine, forage harvester, potato digger, or mobile pea viner, and the handling of toxic agricultural chemicals constitute “particularly hazardous” types of work. Children in the United States working on farms owned or operated by their parents, or “by a person standing in the place of [their] parent[s],” however, are exempt from the “particularly hazardous” labor exception (Section 213(c)(2)). Therefore, the law permits an eight-year old child who works on a family farm, for example, to operate hazardous equipment, such as a grain combine. Owing to this latter exemption (which the TAPILS report duly noted as constituting an exception to the terms of the ILO Convention), the United States adopted an “understanding” to accompany the ratification of Convention 182. The understanding states: “Article 3(d) of Convention 182 does not encompass situations in which children are employed by a parent or by a person standing in place of a parent on a farm owned or operated by such parent or person.” It is possible to argue that the understanding represents an explicit rejection of Article 3(d) of Convention 182. Regardless, the fact that the United States only addressed the exemption created for the family farm worker reflects the U.S. belief that its domestic laws fully encompass the terms of the Convention. In other words, upon ratification of ILO Convention 182, the United States manifested its belief that the Labor Act’s “particularly hazardous” work restriction fully provides for, and is substantively equal to, the convention’s “Hazardous work” clause. The intentions of the two provisions, however, clearly diverge.

On the one hand, Convention 182 cautions States from allowing children to be employed in work deemed hazardous because the work will “likely” harm the child’s health, safety, and morals (Article 1). Convention 182 outlaws hazardous work because of the potential danger such employment will expose children to a wide range of dangerous activities—including working with dangerous machinery, hazardous substances, or at dangerous heights, and work requiring long hours or working during the night. The Labor Act’s “particularly hazardous” section, on the other hand, deals specifically with a limited number of activities which the Secretary of Labor deemed especially hazardous because a child working in such an activity will inevitably encounter some degree of harm. Not only does the potentially hazardous activity threshold differ between the two clauses, but the Labor Act’s provision also fails to take into account, for example, that children in agriculture often work 18 hour days during harvest time, and that many juvenile farmworkers begin their day of labor in the middle of the night. Therefore, the Labor Act’s prohibition on hazardous labor significantly narrows the number of activities deemed hazardous, as compared to the wide consideration of activities the “Hazardous work” ban enumerates in Article 3(d) of Convention 182.

In sum, the TAPILS report failed to adequately address the definition of hazardous labor as contemplated in Convention

182. As a result, the U.S. statement that its domestic laws comply with the convention is inaccurate. Domestic laws governing children in the agricultural industry violate Convention 182 by expressly permitting the employment of children in work that is hazardous pursuant to the language of the Recommendation. Even if one accepts the U.S. argument that farmwork is not a form of hazardous labor, the factual situation of the labor conditions child farmworkers face in the United States supports the contention that the United States has failed to comply with the terms of Convention 182.

Failure to Enforce Existing U.S. Law Constitutes a Violation of Convention 182

Upon ratification of ILO Convention 182, the United States undertook an obligation to eliminate the worst forms of child labor. Article 1 of the convention requires the United States to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.” In ratifying the convention, the United States supported its belief that child farmwork did not constitute a hazardous form of child labor by arguing that regulatory agencies and laws were in place to monitor the safety and health risks associated with agricultural work. By failing to adequately enforce these laws and regulations, however, the United States has failed to fulfill its obligation under Convention 182.

The United States has fallen short of complying with the terms of Convention 182 and therefore stands in violation of it.

Pesticides

Although reports vary, the United Farm Workers Union estimates there are currently 800,000 children work-

ing in agriculture in the United States each year. According to a report issued in June 2000 by Human Rights Watch (HRW), farmworking juveniles are “routinely exposed to dangerous pesticides, sometimes working in fields wet with poison, often given no opportunity to wash their hands before eating lunch.” Short-term effects of pesticide exposure can include rashes, headaches, dizziness, nausea, and vomiting. Long-term consequences of pesticide poisoning include cancer, brain damage, and learning and memory problems. Domestic law permits children to work with pesticides, an activity the Secretary of Labor characterizes as “particularly hazardous,” starting at the age of 16. According to the ILO Recommendation, however, States may only authorize the employment of children older than 16 in hazardous labor, “on condition. . . that the children have received adequate specific instruction or vocational training in the relevant branch of activity” (Section II(4)). Despite this conditional authorization by the Recommendation and the dangers inherent in exposure to pesticides, none of the teenage farmworkers interviewed for the HRW report had received any training regarding the hazards of pesticides, safe usage, preventative measures, or necessary actions to take in the event of pesticide exposure. By failing to address the issue of non-compliance by its growers to provide pesticide exposure instruction to teenage farmworkers, the United States has violated Article 1 of Convention 182, which requires its Member States to act “as a matter of urgency” to ensure compliance with the convention.

Even if employers were to provide employees with the required training regarding pesticide handling and exposure, the HRW report argues the required safety measures are inadequate. In 1975, the federal Court of Appeals for the District of Columbia

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ruled in *Organized Migrants in Community Action, Inc. v. Brennan*, that Congress intended the Environmental Protection Agency (EPA), and not the Occupational Safety and Health Administration (OSHA), to have jurisdiction over regulation of farmworker exposure to pesticides. Accordingly, the EPA established a Worker Protection Standard in 1992, designed to protect agricultural workers from the hazards posed by the handling and use of pesticides. Lee Tucker, author of the HRW report, argues that the EPA pesticide exposure guidelines summarily deny children adequate protection from the hazards of pesticide poisoning. Tucker cites the EPA standard regulating farmworkers' re-entry time into a field after a pesticide spraying as an example. The EPA standard, Tucker contends, fails to protect child farmworkers from pesticide exposure because the EPA guidelines are formulated using the model of a 154 pound adult male. Because a person's size, weight, and age may be determinative factors in calculating the maximum levels of chemical exposure a human body may safely endure, EPA regulations failing to account for a child's physiology are therefore categorically deficient.

In fact, in the 1980 case, *Washington Farm Bureau v. Marshall*, the EPA warned the Department of Labor that its standards could not be safely applied to children. The warning stated that EPA re-entry times "do not take children into account. . . . [The EPA] cannot say what is or is not a safe standard for children simply because there is no data on which to base such an estimation and the factors involved are much more complex than for an adult." The EPA's comments on this matter focused primarily on its inability to provide safety measures to children less than 12 years old. According to the Labor Act, employers cannot hire children younger than 12 in the agricultural industry unless the employer has obtained a waiver from the Secretary of Labor. Following the EPA's admission that its pesticide safety standards were inadequate, the Department of Labor adopted a rule providing the Secretary of Labor with the authority to issue waivers to growers only if the grower did not use pesticides, or to those growers who provided sufficient data regarding safe re-entry times for children younger than 12. Although the requirement of such waivers appears to provide an appropriate mechanism by which to protect young children from pesticide exposure, the HRW report indicates otherwise. The numerous stories recounting death and hospitalization of child farmworkers for illnesses attributed to pesticide exposure show that such measures are not adequate to protect the "health, safety, or morals" of child farmworkers as required by Article 3(d) of Convention 182. Ultimately, the report provides first-hand evidence that adequate safety and health measures for child farmworkers do not exist.

Other Hazards

In addition to the dangers inherent in working with hazardous pesticides, many farm owners do not comply with the health and safety regulations adopted by OSHA, the federal agency designed to develop and enforce health and safety standards for various occupations, including agriculture. As HRW reports, many child farmworkers are forced by employers to forego the minimum sanitation requirements imposed on farms by OSHA: access to toilet and handwashing facilities, and an adequate supply of drinking water. The absence of handwashing

facilities contributes to the incidents of pesticide poisoning and bacterial infections suffered by juvenile farmworkers. Furthermore, because agricultural work necessarily requires people to work outdoors in fields where the temperature often rises above 100 degrees Fahrenheit, lack of an adequate drinking water supply often leads to dehydration and aggravated heat illnesses. Although regulatory agencies and laws are in place to provide the safety standards necessary to adequately protect children from the dangers of farmwork, the ineffective enforcement of the OSHA regulations creates a further requirement the United States must meet in order to comply with Convention 182. Article 1 of the child labor Convention requires its member states to act immediately and "as a matter of urgency" in order to "secure the prohibition and elimination of the worst forms of child labor." Contrary to these requirements, there seems to be no response on the part of the United States to address the lack of domestic legal compliance. Therefore, the United States has violated Article 1 of Convention 182.

The HRW report further indicates that juvenile farmworkers—ranging in age from 4 to 17 years old—often begin their workdays in the middle of the night. Twelve-hour workdays are routine. During harvest time, the normal working week stretches to 18-hour days, seven days a week. Because most children employed in the agricultural industry work full-time, many drop out of school for extended periods. Only 55 percent of child farmworkers in the United States complete high school. According to a 1991 study by the U.S. Department of Education, the impact of the farmworker lifestyle on education showed 80 percent of adult migrant farmworkers function at a fifth grade literacy level or less. In addition to exhausting and physically demanding working conditions, farmwork is low-paid. The HRW report found that farmworker youth "face persistent wage exploitation and fraud." One-third of the juveniles interviewed for the report cited earnings as low as two or three dollars an hour—figures that fall significantly short of minimum wage. Farmwork subjects U.S. children to hazardous, dangerous, and grueling labor conditions. It is not merely "likely" that farmwork will result in harm to a child's health, safety, or morals—that outcome is a certainty.

Conclusion

Children in the U.S. today are subject to hazardous and grueling labor conditions detrimental to their health and safety. Because current U.S. law exempts farmworking children from many protections otherwise given to children under the law, the U.S. government has failed to meet the standards required by Convention 182. Noncompliance with the Convention is cause for the utmost concern. Hazardous child labor will continue to persist until the U.S. government takes effective steps to amend the federal Fair Labor Standards Act of 1938, and to vigorously enforce the guidelines set forth by its regulatory bodies, such as the Environmental Protection Agency and the Occupational Safety and Health Administration. Until the United States amends and enforces domestic laws, the United States will remain in default of its obligations under the Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. 🌐

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