

# CHILDREN'S RIGHTS IN CUBA

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS  
OF THE  
COMMITTEE ON  
INTERNATIONAL RELATIONS  
HOUSE OF REPRESENTATIVES  
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THURSDAY, APRIL 13, 2000

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL  
OPERATIONS AND HUMAN RIGHTS,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:08 p.m., in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith (Chairman of the Subcommittee) presiding.

Mr. SMITH. The Subcommittee will come to order. Good afternoon.

The tragic plight of 6-year-old Elian Gonzalez has focused the attention of the American public on two dramatically different views of what life might be like for children in Cuba, and in particular, of what would happen to a child who was returned to Cuba after managing to escape to the United States.

The picture presented by the Clinton administration and by many in the news media, especially here in the United States, might have been drawn by Norman Rockwell. The child is welcomed by a loving family, by his classmates and teachers, and life soon returns to normal. The only cloud on the horizon is that the family is poor, which in this version of events is caused by the U.S. trade embargo rather than by the policies of the Castro regime. But on the whole everyone is happy except a few people in Miami, who in this view are the ones who caused the whole problem in the first place.

In the other picture it is the child himself who is unhappy, and he is likely to be very unhappy for the rest of his life. Upon his return to Cuba, the child is greeted by mass demonstrations ordered by the government. There are banners announcing that "the Cuban people have reclaimed their son" who was "kidnapped" by the enemies of the revolution.

A government official announces that the child is a "possession" of the Cuban state. Arrangements are made for a public appearance with Castro himself, provided that measures can be taken to guarantee that the child will not spoil the occasion by showing fear or some other inappropriate emotion in the presence of the dictator.

But in this version of events the homecoming is only the beginning. For the rest of his life, the child will be in the effective custody not of his father but of the Cuban Government. His education will consist mostly of political indoctrination, and when he is 11 he will be taken to a work camp for weeks or months of forced labor and even more intense indoctrination.

The child and his family are watched every day and hour of their lives by government agents. If these agents see anything suspicious, any signs of independent thought or action as the child grows older, there will be a stern warning from the security forces and from the local government enforcers. If he should ever dare to speak his mind, he can be arrested and imprisoned for a crime called "dangerousness." And he will never, never be allowed to leave.

Today's hearing is an attempt to learn which of these views is more consistent with the facts. We will hear from experts on Cuban law, who will describe the respective roles assigned to the family and to the government in raising children. We will also hear the testimony of witnesses who have firsthand experience with the Cuban education system, the law enforcement system, the Committees for the Defense of the Revolution, and other agencies of the government and of the Communist party with which the child will come in contact. I hope these witnesses will address not only the way the Cuban Government treats ordinary children, but also any special treatment it might be expected to give a child who had come to its special attention.

Finally, we will hear testimony on the extent to which the United States legal system should take account of the facts about Cuba, or for that matter about any other country, in deciding whether to return a child, whether in the context of an asylum application or any other immigration proceeding.

I want to make clear at the outset that I find the Elian Gonzalez deeply troubling. On the one hand, in determining what is in the best interest of the child, I firmly believe there should be a strong presumption that the child's best interest is to be with his natural parents or parent.

But there are exceptions to this rule, however rare, and what troubles me the most about this case is that there has never been a judicial or administrative hearing to take evidence and find facts in an attempt to consider carefully and objectively whether this case falls within one of those rare exceptions. Instead, the Attorney General seems to have substituted her own intuitive judgment, based solely on an interview by an INS official in Cuba with the father.

This informal factfinding process seems to have dramatically underestimated the extent to which the boy's father's actions may have been dictated by fear of the Cuban Government, as well as the extent to which the child's own life will be controlled by the government, rather than by his father, if he returns. Sending a child, or anyone else for that matter, back to Cuba is not the same as sending him to Mexico or France.

For example, here is what the United States State Department's 1999 Country Reports on Human Rights Practices have to say about arbitrary interference with privacy, the family, home, and correspondence. This the U.S. State Department speaking:

"Although the Constitution provides for the inviolability of a citizen's home and correspondence, official surveillance of private and family affairs by government-controlled mass organizations, such as the Committees for the Defense of the Revolution, remains one of the most pervasive and repressive features of Cuban life. The

State has assumed the right to interfere in the lives of citizens, even those who do not actively oppose the Government and its practices. The mass organizations' ostensible purpose is to 'improve the citizenry,' but in fact their goal is to discover and to discourage nonconformity. Education is grounded in Marxist ideology. State organizations and schools are charged with the 'integral formation of children and youth.'"

The report goes on to say, and again this is the U.S. Department of State speaking, "The authorities utilize a wide range of social controls. The Interior Ministry employs an intricate system of informants and block committees, the CDRs, to monitor and control public opinion. While less capable than in the past, CDRs continue to report on suspicious activity, including conspicuous consumption; unauthorized meetings, including those with foreigners; and defiant attitudes toward the Government and the revolution."

State control over the lives of children in Cuba is perhaps even more pervasive than over the lives of other citizens. For example, Article 5 of the Children and Youth Code of the Republic of Cuba requires all persons who come in contact with children and youth "to be an example to the formation of the communist personality." Article 11 requires that teachers show, "a high mission"—the highest mission—"to the development of a communist personality in children." Article 23 limits eligibility for higher education to children who demonstrate "proper political attitude and social conduct." And there are many more.

Maybe I am wrong about what all this means for the future of Elian Gonzalez. Maybe an impartial hearing would determine that Elian's father is acting out of his own free will, and that the Cuban Government will leave him in peace to raise his son. But we will never know until we have such a hearing.

The proceedings that are currently going on in Federal court do not address the merits of these questions. Instead, they are limited to a narrow procedural question, and that is whether it was in the Attorney General's discretion to deny a hearing by letting Elian's father withdraw his asylum claim.

The government is arguing that the Attorney General's discretion is so broad that she can either grant or deny a hearing, either keep Elian here or send him back, whichever she chooses. This may be correct. The lower court agreed that her discretion under the immigration laws is so broad that she can send Elian back to Cuba without due process. But even if it is correct, it is absolutely not right.

I look forward to hearing our very distinguished witnesses, and at this point I would like to yield to my colleague, Cynthia McKinney, the Ranking Democrat.

Ms. MCKINNEY. Thank you, Mr. Chairman.

We are here today because, as Members of the House International Relations Committee, International Operations and Human Rights Subcommittee, we realize the profound importance the Elian Gonzalez case has had on all of us. You could say the whole world is watching us right now. Issues regarding the rule of law, immigration, and foreign policy have risen to the forefront, fueling heated debate from all sides of the political spectrum.

Today our discussion focuses on the rights of the child in Cuba. There is no doubt that in the course of this hearing you will hear horror stories about the problems within Cuban society. But, as in any society, a list of problems doesn't paint the entire picture. Right now, any unarmed black man in America ought to be afraid to go to New York City. I know I am afraid to let my son go there because he might come back to me in a body bag. But does that paint the entire picture of black life in America?

We can't deny that there are human rights violations within Cuba, and we cannot deny that people lack certain freedoms in Cuba that we enjoy in our own country. The question is, what is life really like in Cuba, and how do we measure the quality of life in a nation?

First, let me just state for the record, I believe in America. I believe in the America that puts the health and welfare of children first, the America that believes in the sanctity of family, the America that believes in the bond between a father and his child. But, like many other Americans, I am forced to confront the stark contrasts between our rhetoric and our policies.

Here in Washington, DC, and in other cities across America, Latino children struggle to survive. They struggle against prejudice and discrimination. They struggle to stay out of prison. They struggle to enjoy what white American children take for granted: neighborhood schools full of equipment, happy teachers and high expectations; thriving neighborhoods with sidewalks and street lights; open spaces in parks; neighborhood sports programs paid for by their volunteer parents; college.

Instead, most Latino children in this country have a much different experience, where their ability to speak the Spanish language outside of their home is assaulted by policymakers, and their ability to learn English is defunded by those same politicians. And if they happen to live in the vicinity of Viejecas, then they could even get bombed dead by live fire from the U.S. military.

American children have easy access to video games whose objectives are to score as many kills as possible, and unfortunately our children bring those video games to life, and too often die at the hands of other children who take deadly aim at their schoolmates and neighbors with handguns and other weapons. In our own country, children simply have too much access to guns. They bring them into the schools, and unfortunately we know the rest.

Yesterday President Clinton highlighted again the need for America to tighten its gun laws and to close the gun show loophole. We can't get that through Congress. In the meantime, however, every day our children walk into school concerned about their personal security. This simply doesn't happen in Cuba. Children don't have access to guns.

Cuba is no paradise, but neither is Cuba a place where the health and welfare of children is ignored. Just as we use health, education, and family life statistics to assess life in America, we too can use them to help us tell about life in Cuba.

Cuba is one of the privileged nations of the world that has virtually 100 percent literacy. By every standard and in every reference work, literacy in Cuba is as high as it is in the United States. In Cuba, university is fully funded by the government, and

students don't face obstacles based on race or socioeconomic status, unlike in the United States, where affirmative action programs that embrace opportunity for America's minorities are being wiped out by political decisionmakers. Unfortunately, in the United States today Latino children are still far less likely to go to college than their white counterparts.

A recent report by UNESCO concluded that the public education system in Cuba is the best in Latin America. In the case of Elian, straight from Cuba's educational system, he was so advanced for a 6-year-old that his Miami school promoted him to the first grade. Despite the debilitating effects of the U.S. embargo, Cuba has tightened its belt in other areas to ensure that Cuban children receive a quality education.

In our own country we have over 40 million Americans uninsured and millions more who are underinsured. We have a health care system in this country that provides excellent care for the rich, but too many Americans have health care options that are limited.

In Cuba, however, there is free and universal health care for all citizens. There is no need for an insurance card or lengthy phone calls over whether your HMO will pay for a certain procedure. Instead, Cuba has to deal with the thorny issue of health care tourists who go to Cuba to get medical attention that they can't get in their own country.

The Cuban Government takes full responsibility for the health of its people. The population receives free preventive and rehabilitative services which range from primary care, routine medical attention and dentistry, to hospital care requiring the use of highly sophisticated medical technology. In addition, all necessary diagnostic testing and drugs are provided free of charge to pregnant women. Perhaps this is why Cuba has a lower infant mortality than we have right here in Washington, D.C.

Because of the family doctor program, every Cuban neighborhood has a physician and a clinic. There are almost 3 doctors for every 500 Cuban citizens. In the United States, our rate is just over 1 doctor for every 500 U.S. citizens, and we know the areas that are likely to go underserved. The preponderance of those doctors are in the swanky suburbs, not in our central cities or in our rural areas.

Now, because the Cuban Government prioritizes education and health care for its citizens, it has produced for them solid, recognizable results. However, the Cuban health care system does experience a lack of medicine, medicine that is desperately needed to ensure the health of Cuban children, medicine that United States policy restricts from reaching the Cuban shores.

Pay attention to the policy. We are currently sending medicine to Vietnam, China, North Korea, and Iraq. Vietnam is a Communist country with a government that we went to war against. China is a Communist country with a deplorable human rights record, and now with stolen military secrets that threaten our national security. North Korea is a Communist country that will get two nuclear reactors from us. And Iraq, our former ally, is now an enemy that we are in a state of war against. They all receive medicine from the United States.

If we are truly concerned about the status of children in Cuba, the first thing we should do is allow medicine into the country. We should today devote ourselves to making the lives of all Cuban children better. Representatives Jose Serrano and Charlie Rangel have introduced bills that will allow food, medicine and supplies from the United States to enter Cuba. We should support them.

The second thing we should do is lift the embargo. The economic embargo of Cuba has not produced the desired result. Now, it might serve as a salve on the consciences of those who have problems with the current government, but it certainly hasn't produced the results that they or we want. In addition, the embargo has been condemned by Pope John Paul II as oppressive economic measures that are unjust and ethically unacceptable. Congressman Ron Paul, a Republican, has introduced a bill to lift the embargo, and we should support it.

Mr. Chairman, to merely denounce the human rights record of Cuba in order to justify the hard line approach of United States policy is insufficient. If we are serious about making a positive impact on human rights in Cuba, we need to reexamine our policies. And, by the way, if the law is changed to allow Elian to stay in the United States, then all of the children from Chiapas, Mexico, Kosovo, Yugoslavia, Beijing, China, and Iraq, need to be included in that law. And certainly you wouldn't leave out the Rwandan orphans who lost their parents in the genocide that Madeleine Albright and President Clinton wouldn't stop.

And let's make sure that we go and find that 16-year-old Chinese girl who was shackled and crying as she was sent back to China. Let's go get the 408 Haitians and Dominicans who entered the United States on New Year's Day and were promptly sent back. Let's go out and get the children of the indigenous people who are negatively impacted by our insatiable thirst for oil, uranium and diamonds. But let's go further back and find all the children who tried to enter our country during the days of Latin America's U.S.-supported despots.

Finally, Mr. Chairman, I am concerned about the rule of law. Do some people in this country think they are above the law? Doris Meissner, Commissioner of the Immigration and Naturalization Service, stated in a press statement on January 5th that this decision has been based on the facts and the law. Attorney General Janet Reno has shown tremendous restraint, grace and courage in the face of mob intransigence. Today is April 13th, and still the child is not with his father.

Let me conclude this way. As a mother, I grieve for Elian's mother, who gave her own life to try and bring Elian to America. And had she lived, this would be a different story, but she did not. And now we are left with a child, a little boy, separated from his father by a series of tragic events.

We must not lose sight of the facts, however. Elian's father also had custody of Elian in Cuba. Elian's mother took Elian away from his father and illegally left Cuba's shores for America. Elian belongs with his loving father, who wants him.

Think what will happen if we don't return the boy to his father. How many American children have been snatched by one parent and are now in foreign countries? Don't we fight to get our own

children back? Don't all parents have rights recognized by international law? And the last time I checked, fathers are parents, too.

False principle destroys all credibility and wisdom, and at the end of the day, the arguments that favor keeping Elian here in America, away from his father, are all built on an incredibly transparent false principle that destroys all credibility and wisdom in their position.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you very much, Ms. McKinney.

Just let me clarify the order in which we will proceed. Committee rules stipulate that Members who are here at the gavel, in order of seniority, will make their opening statements, followed by other Members who were here at the gavel, and then Committee Members who came in later at the time of their arrival. So I would like to recognize at this point the gentleman from American Samoa, Eni Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and I want to certainly commend you for your leadership in being a champion of human rights, as a Member of this Committee and over the years, the privilege I have had in working with you, and your fortitude and courage in trying to bring out to light some of these issues that are very important not only to our American community but throughout the world.

I would like to first also express my association with some of the comments that were made earlier by the gentlelady from Georgia, very keen observation of some of the contradictions and the problems that we put the finger on other countries of the world and their problems. Sometimes we tend to forget that we have our own problems, and tend to kind of push it aside, not making it as a matter of reality to confront these problems courageously and to find solutions to them.

Mr. Chairman, the issue that is before us, I don't need to say how much the media has played this, not only in the sense of our national norm, where every American parent, every American all over the country has seen through and between and below and above, and everything that we have seen about this child named Elian Gonzalez. Elian Gonzalez to me is not a Cuban, he is a child, and I am sure that every parent here in America would have a sense of compassion and understanding of what this child is going through.

And sincerely, Mr. Chairman, I hope we don't politicize this hearing to the extent of making it an emotional issue, but to the extent that hopefully, if the witnesses that are before us are going to shed more light and understanding and appreciation of what is happening, not only with Fidel Castro's administration and his own ruling there in Cuba, but also for us to understand more forcefully what we have to do. And I can say at this point in time that I don't envy what our Attorney General has had to go through in trying to make those decisions, not necessarily popular, not necessarily right, if there is a rightness in this issue.

We can all claim laurels and beliefs, and everything that we believe, what this Nation is all about. But the bottom line here is that we talk about human rights of everybody else, but we never

have a sense of appreciation if there are human rights also for children.

And I sincerely hope, Mr. Chairman, that when we hear from our witnesses, and the dialogue and the questions, I do have several questions of my own that I want to proceed with this hearing, but I hope that our hearing will be one of construction and not of divisiveness, and hopefully that it will provide a better bearing, not only for Elian's sake, but certainly as a Nation we need to reflect deeply about the serious social and political implication of what this case has brought to the Nation by the media.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you very much, Mr. Faleomavaega. Just let me say, before yielding to Mr. Diaz-Balart, that it is worth noting at this juncture that if we were to conduct such an exercise as this in Cuba, unless we agreed with the government, we would be thrown in jail, or at least arrested or interrogated. The Country Reports on Human Rights Practices make it very clear that the estimation is that there are between 350 to 400 political prisoners in human jails.

I yield to Lincoln Diaz-Balart.

Mr. DIAZ-BALART. Thank you, Mr. Chairman, and I thank the Committee for its courtesy in permitting me, as a Member of the Rules Committee, to be here today and express my thoughts.

I think that in the just 4½ months since the Elian Gonzalez matter has brought to international attention the issue of Cuba, it is important to point out the abuses against children in Cuba that highlight the lack of parental and children's rights under the totalitarian state there.

I have some examples that I would like to mention, just a few that have come to my attention due to the courageous, very courageous work of independent journalists on the island who have managed to send out to the international community despite a law that Castro's public parliament passed just a few months ago threatening up to 30 years imprisonment for "crimes" such as reporting on human rights abuses.

On January 14th of this year, the independent journalist Victor Rolando Arroyo was sentenced to 6 months in prison for purchasing toys to give to needy children in Cuba to commemorate Three Kings Day, which is in the Hispanic world the day in which Christmas is commemorated for children. During his trial, Mr. Arroyo stated, "I think public opinion," international public opinion, "needs to meditate on what has occurred and evaluate that in Cuba you are not allowed to give toys to needy children. The government mobilizes thousands to claim a child, while thousands are denied a simple toy which might bring them a smile."

January 22nd of this year, in the town of Betancourt in Matanzas, the family of Miguel Sigler Amaya, an activist of the Movimiento Opcion Alterantiva, was brutally beaten by the branch of Castro's state security forces known as Brigades of Fast Response. The four children of Mr. Sigler Amaya, who range in ages between 2 and 14, after the brutal beatings, were arrested along with their mother, who was also arrested in a semi-conscious state due to the attack by Castro's agents.

January 24th of this year in Lat Tunas, a 9-year-old girl, Alva Riveron Fuentes, was expelled from school for not participating in the activities of the Young of Young Communist Pioneers.

The 14-year-old daughter of the dissident Leida Miranda, on January 25th in Cienfuegos, was reported missing to police. The police informed Ms. Miranda, the dissident, that they “did not have gasoline in their vehicles to search for her daughter.” Ms. Miranda further denounced the Cuba Press that the police had expressly refused to post missing posters of her daughter.

March 13th in Caibarien, Villa Clara, Duniesky Rodriguez, age 17, was beaten by the police of Santi Espiritu because of his friendship with members of the dissident movement. A Cuban state security agent named Jorge Luis, last name unknown, told the 17-year-old that he has 30 days to leave Caibarien.

March 14th of this year, it was reported from Havana by Hector Maseda that 10th and 11th graders from the vocational school Lenin were being obligated to participate in daily demonstrations. The students are taken daily to political activities after completing their class days. One student stated, “We are exhausted due to these countless demonstrations and the lack of proper nutrition in our school. We are awakened at 6. Many times we don’t get to our room until 1 in the morning due to these forced demonstrations.”

April 3rd in Las Tunas, dissident Aida Perez, the grandmother of 12-year-old Isidro Quinones Perez, who has been missing for 4 months, denounced that the National Police refuse to search for her grandson. Matter of fact, they told her, “Look for him, and when you find him, turn him over so we can place him in a correctional school.”

April 4th this year, this month, in Camaguey, Jorge Ribes was sentenced to 7 months in prison for not permitting his 4th grade son to participate in the Union of Young Communist Pioneers or participate in political activities during school hours. The school principal, her name is Maritza Varon, denounced Mr. Ribes to the police. He was charged with “an act against the normal development of a child.”

April 5th, this month, 76 elementary school children in the school Arquimedes Colina were denied a weekend pass to see their parents because they had refused to see the television programs, which are daily now, called “tribuna abierta,” where Castro discusses the Elian affair.

April 10th, reported from Havana—that is just 3 days ago—that all the middle schools in the city have required the children to answer a question at the end of their math exams: What is your opinion on the Elian Gonzalez case? The children are graded on their responses. A parent interviewed by Cuba-Verdad press stated, “At first I did not understand. I thought I was not listening correctly, then I thought my child had confused the subject area, and later I was totally shocked to find out that this is true.” Another parent stated, “My child asked me, what did mathematics have to do with Elian?” I did not know the answer. I was completely dumbfounded.

Day before yesterday, El Nuevo Herald of Miami reported that Hans Dominguez, who is 15, not only was harassed but threatened with expulsion because his father is a member of the “30 de Noviembre Frank Pais” opposition party.

It is going on now. It is not theory, Mr. Chairman.

I am always curious as to how it is that it seems that for some people it is not all right for black dictators in Nigeria, for example, like Abacha, to oppress people, or Sereras in Haiti. I know that I certainly was in the front row of all our efforts to oppose those dictatorships. And yet it is all right for white dictator, son of a Spanish soldier who went to Cuba to fight the insurrection, the Cuban insurrection, a white dictator, it is all right for him to oppress a people, a majority of which are black and mulatto.

The leaders of the Cuban opposition today, people like Vladimiro Roca and Felix Bonne and Jorge Luis Garcia Perez Antunez, are black men and women, and they are going to be elected in the future as leaders of Cuba when there is a democratic Cuba. And the reality of the matter is, postponing the inevitable is not only abhorrent but it is, as I have said, making excuses for a Spaniard white dictator to oppress a people that is majority mixed race.

Mr. SMITH. Thank you very much, Mr. Diaz-Balart.

The Chair recognizes Mr. Payne.

Mr. PAYNE. Thank you very much. I was going to just pass, because of the deference to the witnesses, but I do want to clarify the issue of black dictators, Abacha, I think he was trying to say. But we have, it was myself and the Members of the Congressional Black Caucus that said we should have sanctions on Nigeria, that we should press all kinds of ways to have human rights in Nigeria.

And so I don't know where race has anything to do with the rights of children. I am a new grandfather of triplets. They are 19, 20 months old. I raised my own children, now I have triplets real close to me. And so I thought this was dealing with the rights of children, and children in Cuba.

And I think that we are already seeing people talking about, as Ms. Cynthia McKinney mentioned, the fact that there are certainly inequities in the U.S. Government system. Of course, the law was passed and people have taken advantage of the law, but in this country we have found that African Americans who have been here since 1492 are still trying to get laws, trying to get Confederate flags taken down, trying to get equal opportunity.

And so I think that this whole question is becoming broader and it is starting to take a face that I think is not healthy for the residents of Florida, in particular in Miami. I have heard statements recently that I have never heard before. We are a country of laws, and when you don't like the law, you don't defy the law. You don't take the law into your own hands. You don't say that you are not going to comply. You don't have elected officials say we are going to restrain our police officers from doing their job.

I have been pretty silent on this case, but I see that it is taking some different—it is moving in other directions, and I think that it is unhealthy, and I think that it is stimulating some of us who have sat back to become very involved and very forceful and very vocal in this whole matter. So I will yield back the balance of my time.

Mr. SMITH. Thank you very much, Mr. Payne.

The Chair recognizes Ileana Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you so much. I would like to thank the Chairman of this Subcommittee, my friend and dear colleague,

Congressman Chris Smith, for his commitment to human rights throughout the world and for his ongoing leadership and for the cooperation in holding this very important hearing today.

When Patrick Henry said, "Give me liberty or give me death," little did he know that he would inspire future generations of Cuban freedom seekers who risk life and limb to fight and to escape Castro's gulag. Little did he know that his words would resonate loudly in the heart and mind of Elizabeth Brotons, Elian Gonzalez's mother. Her voice is never listened to very much, but she drowned praying for her little boy to survive and reach our great country, the land of liberty, the United States, that has given refuge to Mr. Diaz-Balart and to myself.

Stop a moment and think how horrific must living conditions be under oppressive totalitarian dictatorship, how fearful must Elizabeth Brotons have been for her little boy's future, that she would take such desperate measures. Only those who have personally experienced communism, who have had liberty taken away from them, could fully understand how heinous the Castro regime is to its people and especially to its children.

The case of Elian Gonzalez has received much media attention, but despite our best efforts to counter the Castro propaganda machine, the truth about conditions for children in Cuba, the facts about a communist dictatorship's sense of family and its treatment of children, the reality which awaits Elian if he is deported to Cuba, these facts have yet to receive the attention they merit.

First, let us address the fallacy that Elian would be returned to his father. Castro officials themselves last week stated clearly and publicly that Elian is indeed the property of the Cuban state. This country went to war to eradicate such abhorred treatment of persons, as if they were subhuman or treated as property, yet we should tolerate such conditions and such treatment for Elian Gonzalez? No, not for Elian, and not for any child.

This disregard for the value of children as human beings, and for the essence of the family, is pervasive throughout the so-called laws which guide the Cuban communist regime. Custody, according to the Cuban Code of the Family, *Codigo de la Ninez y de la Juventud*, can be denied to parents if they engage in behavior which runs contrary to communist teachings. It is not me saying it, it is not Lincoln saying it. They publish it. They are proud of it.

This is further illustrated in Articles 5 and 8 of the Code of the Child, which underscores that the society and the state work for the efficient protection of youth against all influence contrary to their communist formation. And it further states that the society and the state watch to ascertain that all persons who come in contact with the child constitute an example for the development of his communist personality. Those are quotes.

To ascertain whether these dictums are acted upon, all that one needs to do is ask hundreds of children, children who have been left orphaned by the regime as their parents, Cuban rights activists and dissidents and political prisoners, languish in squalid jail cells, isolated from their sons and daughters.

This is the case of Noemi, the 9-year-old daughter of Milagros Cruz-Cano, who was deprived of her mother because Cuban State

Security continued to arrest Milagros for her “antisocial” and “dangerous” behavior. Those are Castro’s charges for those who call for human rights, for civil liberties, for democracy. That is a crime in Castro’s Cuba.

Milagros was forced into exile by the Castro regime, forced to board a plane last October. Castro’s thugs, however, refused to let her take her daughter, who is now essentially a hostage of the regime. All photographs and letters from her mother are seized. Her every move is monitored. She is followed by State Security. Noemi is chastised and subjected to psychological torture because of her mother’s political views.

This is not fiction. This is not a made-for-TV movie. This is reality, right now. I have had the honor of spending a lot of time with Milagros, who is on a hunger strike in Little Havana. I have seen her sorrow and her anguish. I have heard her frustration in her voice, and her astonishment at the willingness of so many to believe and promote Castro’s facade about family and the need to reunite Elian with his father.

I have seen and heard this same anguish in Jose Cohen, one of the witnesses who will be testifying today, who has been struggling for over 4 years for the Castro regime to release his three children.

However, the pain that Jose and Milagros feel cannot compare to the unbearable loss experienced by mothers, by fathers, by grandparents of the children who were murdered by the Castro regime on July 13, 1994, just a few years ago. These infants, toddlers and teenagers joined their families in the tugboat that was named “13th of March” for a voyage that would, they say they hoped, they prayed, bring them to the land of liberty, the United States.

However, the Cuban Coast Guard quickly turned water cannons on them, and when that did not succeed in drowning them all, they proceeded to ram the Coast Guard vessels into their tiny tugboat until it was destroyed. Yes, they heard the cries of the children calling out for their parents as they gasped for air. Yes, they saw their frail little hands reaching out from beyond the waves. Yes, they felt the presence of death as their tiny bodies floated into the abyss. But Castro’s thugs did not care.

Another one of today’s witnesses, Jorge Andres Garcia, knows firsthand about this terrible crime, this gruesome example of the Castro dictatorship’s abuse against Cuban children. He will describe the attack which resulted in the death of 14 out of 17 of his relatives, including his little grandson. He will elaborate upon the tactics used by the regime to manipulate him into endorsing the official version of events.

Mr. Garcia will explain how the very same Ramirez Estenoz whom we now see at the side of Juan Miguel Gonzalez, Elian’s father is the one who was tasked to defend the attack on the “13th of March” tugboat. The Castro regime had violated the most fundamental right endowed to man by the Creator, the right to life. Yet it would denounce the children and their parents in order to justify its actions.

When looking at children’s rights in Cuba, and also *Codigo de la Familia*, another one of their proud statements about the rights of children, we must look at the indoctrination, the psychological and physical torture, the destruction of the child’s psyche and the sense

of right and wrong. We must pause and look at the evidence, such as the one displayed in that photograph of that poster, mandatory physical education in Castro's Cuba, a photograph taken just a few months ago.

Children who are 5, 6, 7 years old, holding rifles above their heads as part of their mandated physical education class. However, these are not mere exercises. This photograph illustrates the requirements that are clearly outlined in their very proud articles of the Cuban Code of the Child, which states, "Children and youth must prepare themselves for the defense of the country through military education, acquisition of military knowledge and training."

So this is everyday, and the state reinforces this requirement through books such as this one. And this is an actual photocopy of a book, a normal, regular text that is used in Castro's Cuba, where they are given letters, and how will they learn the letters? "F" for "fusil," a rifle. And how do they learn the "G" word? Well, they learn the "G" word, the "gu" by guerrilla, and they have a picture here of a guerrilla. And Che, right here, pictured front and center, the heroes of the revolution. And how will they learn how groups are formed? Well, here they have a proud militia, because that is the "M" word, "M" for militia.

And that is how they learn education in Cuba. Could anyone argue that this is an example of a healthy environment for children, to be subjected to this type of indoctrination since the age of 4? Is this the kind of rights that children enjoy in Cuba?

And this is the issue also of child slave labor. Article 44 of the Cuban Code of the Child underscores how "the combination of study and work is one of the fundamentals on which revolutionary education is based." "This principle," it states, "is applied from infancy through simple labor activities; in primary education through farming, and pioneer activities in the modes of production; in middle education, through farm labor camps."

Indoctrination, torture, forced labor, combat training, murder, these are but just a few, a microcosm really of the gross violations of children's rights committed by the Castro regime, not in the past, right now, the very same communist totalitarian dictatorship which calls for Elian's return to Cuba.

Do not be fooled. Open your eyes, open your hearts. Let them guide you to the truth about children's rights in Cuba, to the grim reality of Castro's tyranny, right now. Right now, under our watch.

Thank you, Mr. Chairman.

Mr. SMITH. Ms. Ros-Lehtinen, thank you very much.

The Chair recognizes Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman.

The Cuban Government is oppressive to adults and to children. That will be well documented by these hearings, as has already been documented before this Subcommittee in many other hearings that you have had, that we have had on human rights in Cuba and other countries.

But Cuba is not the only oppressive government. Sudan, Iraq, Iran, Afghanistan, North Korea, the list goes on. We need a rule of law to determine how we will deal with distasteful situations that arise when there are politically charged incidents involving op-

pressive regimes; a rule of law, established principles that are applied to all similar cases, regardless of politics.

Now, in Cuba they don't need the rule of law, or at least their government doesn't follow it. There, if a political advantage, a need of the dictator arises, that is what decides the case, rather than the application of principles. But we in America, we need to follow the rule of law, and we need to establish rules that we are willing to see followed in case after case.

And this is not the only case where a child is here in America and that child's parents are planning to take the child back to an oppressive regime. In fact, that is an occurrence that happens hundreds or thousands of times every year, and we need to adopt a rule of law that applies in all similar circumstances. Only in Cuba would they dispense, or only in an oppressive government would they dispense with applicable principles and do whatever seems called for in a case where a child is at the center of a political controversy, or where a little boy has become internationally famous.

Now, what should our rule of law be? Our rule of law has been, I think in all circumstances, that a parent, or both parents speaking together, speaking freely and, unless there is proof that that parent or those parents are abusive, that that parent decides where a child will live and decides many other things about the child, as well.

What has been suggested, as a result of Elian Gonzalez's difficult plight, is that we adopt a new rule, a rule that says that where there is a competition for custody between a loving and freedom-loving American family on the one hand, and a parent or two parents on the other, parents that want to take the child back to an oppressive regime, that we should favor not the parent but the loving and freedom-loving American family. But what would this mean?

This would mean that when the U.N. Ambassador from Afghanistan or Sudan or North Korea plans to go home, that we stop them at the airport and take their children away, and put those children with any freedom-loving American couple that wishes to adopt them. Yes, Elian's tragedy grips at our hearts, and the death of Elian's mother touches us all, but does Elian need freedom any less than the children of the North Korean ambassador to the United Nations, or the Sudanese Ambassador to the United Nations? Those children will be flying out of this country in a year or two or three, leaving our jurisdiction and going to oppressive regimes.

In each case we must look at two values, the values of the parents' duty and obligation and rights to raise their children, versus our natural desire to see all children raised in freedom. And if we decide that freedom trumps parenthood, that politics exceeds the connection between a father and a child, then we had better be prepared to apply that when a little baby girl or boy is born in the home of the Ambassador or a traveler from any oppressive regime. And I don't think we are ready to do that, Mr. Chairman.

So we must follow the rule of law, and it is a difficult and a harsh rule, but for a variety of reasons, children and adults leave our country every day, sometimes voluntarily, sometimes deported. Sometimes the children wish to leave; sometimes the children do not. Sometimes the children are infants and have no opinion on the

matter at all. And we must be prepared to apply the same standards.

In this case for a while we wondered whether Elian's father was speaking freely, and those who are opponents and the most vocal opponents of the Cuban regime said, "Let him bring his new wife and his baby child here to the United States, so we know that he is speaking freely." That condition has been met, and we ought to prove to the world that even in the most politically charged circumstance, we follow the rule of law and not the rule of politics. At the same time, we ought to be doing everything possible to end the circumstance where millions of people live under an oppressive regime just 90 miles south of our own State of Florida.

And that concludes my remarks.

Mr. SMITH. Thank you, Mr. Sherman.

Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman.

I have another engagement, so I am going to have to excuse myself. In fact, I had doubts as to whether I would even be able to attend this particular hearing, and I had some reservations as to whether I wanted to make any statement whatsoever. I think Ms. McKinney's remarks, and Mr. Sherman's, reflect my own sentiments.

But I was particularly disturbed listening today to an account that a videotape had been made of young Elian for dissemination over the public airways, indicating that he made a statement, before seeing his father, that he did not want to return to Cuba. I think that motivated me to come here today. I think it was a disservice to that young child.

I am not going to make a statement, but what I am going to do is to read an opinion piece authored by a gentleman here in the U.S. House of Representatives who commands great respect on both sides of the aisle, and his name is Steve Largent, a Republican from Oklahoma. This is dated April 5, 2000, and it was published in the New York Times. I am going to take the time to read it as opposed to submit it into the record, and I am quoting. These are his words. These are not my words, let me be clear.

Politics is keeping Elian Gonzalez from his father, and it is time that he is returned. It has already been too long. The tortuous 4-month-old custody battle over the boy rescued at sea last November continues to play out in the courts and in Washington, and now the political brawl has taken an ugly turn.

Elian's relatives in Miami, who have temporary custody of him and are seeking to block his return to Cuba, stooped to criticizing the boy's father, Juan Miguel Gonzalez, attempting to whip up public sentiment for their cause. The relatives have suggested that the father is somehow unfit to care for his son. How do they know? Why are they only now raising this question? And what gives them or the court the right to decide such a thing? Do we really want the government sitting in judgment of every father when there is no apparent cause of action? How would the United States react if its role and Cuba's were reversed?

After leveling these charges against Elian's father earlier this week, a lawyer representing the boy's American relatives acknowledged on television they had no proof. "We are sure he loves his own son," admitted the lawyer, Linda Osberg-Braun, "and we know Elian loves his father."

Making political hay over a 6-year-old's tragedy of losing a mother may only compound his misery, experts say. Ken Dachman, a child psychologist in Chicago, said he worried that Elian's Miami relatives are shaping this child "so that I don't think that he will ever be able to recover fully." Mr. Dachman, who is familiar with the case, warned that the little boy would be shadowed for a long time by feelings of distress. Elizabeth Loftus, a psychology professor at the University of Washington

and a leading expert on memory in children, said any child as young as Elian would be particularly susceptible to suggestions that could alter his memory of his father.

Sadly, Elian's well-being seems to have little effect on the poisonous political rhetoric coming from Miami and Washington. Some conservatives see this case as a long-sought opportunity to stick a finger in the eye of Fidel Castro.

Let me say unequivocally that I am second to none in my dislike for Mr. Castro's totalitarian regime, but let's be reasonable. Elian is a little boy who has lost his mother and desperately needs his father. This is a family issue, first and foremost. To forget that and allow our hatred for the Cuban regime to keep us from doing what is best for the child is shameful. It is already a tragedy that the child lost his mother. It would be a travesty for our government to come between him and his father.

I came to Washington with the deep-seated belief that the family is sovereign. You can't be for family values and at the same time advocate that governments be allowed to come between a father and a child. What a tragic mistake it would be for society to allow the State or Federal Government to determine what is best for our children. But that is exactly what is happening in this tug of war over Elian Gonzalez.

As a father of four, including three sons, I know how important daddies are to 6-year-old boys. The question then becomes, is it better for Elian to live in our great country without his father, or to live with his father in Cuba. No contest. I say reunite Elian with his daddy today.

Elian's father and five other Cubans now have their visas for travel to the United States. "I'm willing to leave tomorrow," his father said in a prepared statement, "and I do not want to talk to any kidnapper nor accept any condition or take part in any show or publicity over the handover of Elian." So what are we waiting for?

That concludes the opinion piece by Representative Steve Largent from Oklahoma. I yield back.

Mr. SMITH. Thank you, Mr. Delahunt.

Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman. As a Member of the full Committee, I appreciate the opportunity to be with you and the Ranking Democrat on the Subcommittee today.

You call this hearing at a time in which I believe that certain communities and the Nation's raw nerves are exposed. They are exposed because of a variety of views and a variety of issues. Elian is only the focus of the moment, but those issues far surpass Elian.

I do regret the language that is being used by some of my colleagues, and I think that in the days ahead they will regret the language that is being used. I have tried throughout this whole process to be balanced and restrained in terms of the language I have used, because I know of some of the pain of different communities in this country that I have shared with and stood by on each and every occasion that I have been called upon to do so.

But I think it is abhorrent to speak of a community in such a way as we have heard the Cuban American community spoken of in this country. When I hear the words "mob intransigence," when I hear "wackos," when I hear this type of terminology, it begins a slippery slope in which we will paint other communities who feel very passionately about their issues, to be characterized in the same way.

I am an admirer of Mahatma Gandhi, and I am an admirer of Dr. King. And their civil disobedience efforts, which I am sure were characterized in words just as punishing at the time, are now used today against a community who has shown nothing to date but restraint, has shown nothing today except for abiding by the rule of law, and has shown nothing but the possibility of engaging in the very same acts that Americans of every stripe and color in this country engage in when they believe that fundamentally the law is

wrong. The civil disobedience that takes place in the streets of a city when people believe that a law or the enforcement of the law is morally and ethically wrong is not characterized in the ways that I have heard this community characterized.

I have sought to believe that the rule of law must be upheld at all costs, but the rule of law also means the right of American citizens to seek redress in the courts, to seek appeals when they believe that the court has ruled inappropriately. The reason that we have appellate courts is because they strike down the rulings of lower courts.

No citizen in this country is told that their rights must be accelerated and/or abrogated, and we rebel as Americans when we hear that any citizen's rights have to be abrogated or should be abrogated. Yet, Cuban Americans, and particularly this family that has sought access to the courts for peaceful resolution of the dispute of the issues, are told, "You must accelerate your rights." No other citizen, when they have to file an appeal, is told "You must accelerate your rights." Notwithstanding that, this group of American citizens has sought to go ahead and accelerate their rights, which in some way abrogates their rights.

You know, I have sought to be consistent on this issue, whether it is in my opposition to Most Favored Nation trading status in China, in my support for sanctions in Nigeria, or in my support in sanctions against the Castro regime. I have joined with my friends and colleagues to create greater uniformity and fairness in the law, the immigration laws of this country. And I really, really am distressed to hear that while Cuban Americans are not above the law, they are certainly not beneath the law.

Let me just briefly talk about the real reason I came here today, which is to talk about the rights of Cuban children or the lack thereof. The Castro regime—and I think it is propitious in one sense that the U.N. Commission on Human Rights is hearing, in Geneva, testimony about these issues—considers children to be wards of the state. The state is actually charged with the integral formation of children and youth. In fact, Article 39 of the Cuban socialist constitution says that "the education of children and youth in the communist spirit is the duty of a society as a whole."

To ensure that children are properly indoctrinated, the Cuban educational system maintains a dossier for each child. The record reflects whether the family is religious, the extent of the ideological integration of a child's parents, what party organizations the parents participate in, whether the child has participated in political and ideological activities, and the child's progress in the areas of ideological, political, and moral education. As Americans, we would rebel against such a dossier being kept on our children.

Children are also compelled by the state to participate in the Union of Communist Pioneers, where they are further indoctrinated in communist ideology and required to participate in political and military readiness activities. At age 10 children must attend agricultural work camps for 3 months every year, and this happens regardless of whether or not their parents want to give them up. The children are taken from their parents mandatorily. At the escuela al campo they engage in military games in which they learn how to hold bridges from enemy troops, find land mines,

learn how to throw grenades through windows, and participate in other war or combat simulation games.

Indoctrination aside, the future for Cuban children is not very bright. Past the age of 7, children no longer receive milk rations in a country that, when the Soviet Union existed, used to get \$6 billion a year, and we did not put more food on the plates of Cuban families when the Soviet Union was pumping in \$6 billion every year. No, we used it for military adventurism in Latin America and in Africa.

According to the State Department's latest Human Rights Report, the government employs forced labor, including that by children. Now, sometimes my colleagues seek to refer to the State Department's Human Rights Reports when they find it propitious and ignore them when they do not find it to be propitious. I do not think we can do that.

The regime claims to prohibit forced and bonded labor by children, but the State Department reports that the government requires children to work without compensation. All students over age 11 are expected to devote 30 to 45 days of their summer vacation to farm work, laboring up to 8 hours per day.

Now, I just simply want to say there are many other rights that are violated. I ask unanimous consent to have the full statement entered into the record so I won't take up any more time. But I would hope—and I respect the different views that my colleagues hold about our policy—that we would watch the language that we apply to a community.

And I would hope that the same passion would be exercised on behalf of Mr. Cohen, who is here before us today, whose children are separated from him by the Castro regime, which refuses to give them an exit visa as a punishment for his political activities. And I would hope that we would hear voices on behalf of Milagros Cruz-Cano, an Afro Cuban whose children—or whose child, I should say—Noemi, is denied her simply as a punishment for her activities inside of Cuba. Then there would be a greater sense of fairness. Then there would be a greater sense of equality. Then maybe we could move forward.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Menendez appears in the appendix.]

Mr. SMITH. Mr. Menendez, thank you very much.

Let me now recognize Ms. Jackson-Lee.

Ms. JACKSON-LEE. First of all, let me thank the Chairman of this Committee and the Ranking Member for their extreme kindness in allowing me to both fit in and to listen. Allow me to give an initial apology that I may be in and out with hearings that I am now in the midst of.

I left a hearing that my Committee on Immigration and Claims was holding, dealing with justice for victims and terrorism, and I left that because this is an important day. There are no two more stronger advocates for human rights than both Chairman Smith and Ranking Member McKinney, so this is an important day for us to begin unfolding and understanding the human rights issues for children around the country and around the world.

Interestingly enough, might I say to you that I look forward to the Immigration and Claims Subcommittee holding hearings on the inequitable ways children are treated under immigration laws. I am willing to listen and to determine how we can do better.

But I think it is important, since I glean from this hearing that the focus of the hearing happens to be in conjunction with the actions that are going on now, and I would simply like to raise some of the issues that I think are held by a large number of people with a great concern for human rights, and that is that we do believe that there is merit to the existence of a living and natural father who has not shown any evidence, in the instance of Elian Gonzalez in particular, to have been abusive or unfit as a father.

So we can begin to look at the entire question of human rights for children, in this instance in the country of Cuba, but we can look for countries around the world. And we can begin to look as well for the treatment of children who are unaccompanied or come in a particular manner to this country, and how the INS may or may not treat them. I look forward to doing that.

In this instance, however, might I share just a few simple points. We understand just recently that the State court has indicated in Florida that they have no jurisdiction and that this is not a custody case. This is, in fact, as we deal with it by the Department of Justice and the INS, a case of seeking asylum.

And the only very narrow issue that we have here—and we understand the difference of opinion. I have always said I respect the views of Cuban Americans and their right to civil disobedience. I am a product of that. I have engaged in that, and I respect it. But this is a question of whether or not a natural parent, not accused of unfitness or abuse, at least with no documentation, can be allowed to make the determination as to whether or not the minor child should have asylum. This is all we ask, that Elian and his father be united. And, Ms. Torres—excuse me, Mr. Cohen—I would ask no less for you.

And so I would hope that as we look to learn today and we look to understand today, we will look at the larger and broader picture of how we treat our children. Might I just add, because I have worked a lot in children's issues, I have served as a municipal court judge, I have engaged in advocacy for children, as many of us have, and I would only say and ask in a public plea, even in this hearing, that we have an opportunity or that we focus on the opportunity for Elian, in this instance, and his father to be reunited, and might I say that the two families be reunited.

And, finally, that we might focus on the difficulty for a 6-year-old to be utilized in any manner that would cause him to be on public display of words that we may not be aware or may not have any basis upon whether he has actually said these words, in a public video. I would ask that, whatever position we may have, that we not utilize those tactics, and that human rights be our priority for all people, and that we certainly review the status of human rights for our children.

This is a very important hearing today, and I am very gratified for the opportunity to have been allowed to make a few remarks. I yield back. Thank you.

Mr. SMITH. Ms. Jackson-Lee, thank you very much.

I would like to now present our very distinguished panel of seven witnesses, in the order that they will present their testimonies. Without objection, all of your full statements will be made a part of the record, but you can proceed however you like.

Dr. Maria Dominguez is an attorney and the executive director of the St. Thomas University Human Rights Institute. A published specialist in immigration and refugee law, Dr. Dominguez has served on the U.S. delegation to the U.N. Human Rights Commission in Geneva, and has appeared as a witness before several congressional committees and subcommittees. Among her other activities, she was a founding co-chair of the Guantanamo Refugee Assimilation and Self-Sufficiency Project.

The Reverend Lucius Walker, Jr., is the executive director of the Interreligious Foundation for Community Organization, the founder of Pastors for Peace, and the founding pastor of Salvation Baptist Church in Brooklyn, New York. A long-time protester of the United States policy toward Cuba, Reverend Walker is the recipient of the Order of Friendship and the Carlos Finley Award conferred on him by the Government of Cuba.

Ileana Fuentes is a feminist author and critic living in Miami. She originally arrived here from Cuba as 1 of the 14,000 Operation Pedro Pan refugee children whose parents sent them unaccompanied to this country in the hope that they would find a better life in the United States.

Jorge Garcia lost 14 members of his family in the Cuban Government's attack on the "13th of March" refugee tugboat, including his son and grandson. A Doctor of Education in Cuba, he served as the director of several schools and education centers in Cuba. After directing an extensive investigation into the "13th of March" killings, Mr. Garcia testified before the U.N. Human Rights Commission about that very tragic and despicable incident.

Neri Torres, a native Cuban, is the founder and artistic director of IFE/ILE, an artistic organization specializing in Afro-Cuban dance. A graduate of the National School of Arts in Havana, Ms. Torres is an accomplished dancer and choreographer, and has worked closely with artists such as Gloria Estefan. During her life in Cuba, Ms. Torres was also a victim of forced child labor.

Jose Cohen served as an intelligence officer in Cuba for 6 years. In 1994 he escaped Cuba on a raft and fled to freedom in the United States. In 1996 his parents, wife and three children were granted U.S. exit visas. However, during the past 4 years the Castro regime has refused to authorize their exit, holding the family in Cuba against their will.

Daniel Shanfield is a staff attorney with the Lawyers Committee for Human Rights, where he oversees the Asylum Program. Prior to joining the Lawyers Committee, Mr. Shanfield served as a trial attorney for the U.S. Immigration and Naturalization Service, as well as a research assistant for the United Nations High Commissioner for Refugees in Geneva. He will be addressing the rule of law issues, and Members might want to stay on, who have expressed concerns about that, for his testimony.

Doctor.

**STATEMENT OF MARIA DOMINGUEZ, EXECUTIVE DIRECTOR,  
ST. THOMAS UNIVERSITY HUMAN RIGHTS INSTITUTE**

Ms. DOMINGUEZ. Mr. Chairman, distinguished Members of Congress, I thank you for the opportunity to address you on this very sensitive and important topic. I would like to particularly recognize the Representatives from Florida, Congresswoman Ileana Ros-Lehtinen and Congressman Lincoln Diaz-Balart. A special salute, too, to Congressman Bob Menendez from New Jersey.

I have prepared a written statement but would like the opportunity to submit a more extensive written testimony for inclusion in the record.

Mr. SMITH. Doctor, without objection, your full statement and that of all of our other distinguished witnesses will be made a part of the record.

Ms. DOMINGUEZ. Thank you, Mr. Chairman.

I teach human rights and the law at St. Thomas University in Florida, and my students have recently studied both the Declaration and the Convention on the Rights of the Child. They were surprised to learn that the United States had not ratified the Convention, but they are also learning that the implementation process is very difficult and complex.

I have just returned from Geneva, where I attended part of the annual meeting of the Commission on Human Rights. Some of your concerns are also the concerns of other countries. I am hopeful that hearings such as this advance efforts in making human rights a reality for each and every child in the world.

Today, however, I will specifically highlight certain Cuban documents that delineate and set parameters on the civic, political, economic, social, and cultural rights of Cuban children in the island. I shall start with the 1992 Cuban Constitution, then cover very briefly the Cuban Code of Childhood and Youth, as well as relevant articles in the Cuban Family Code.

The Cuban Constitution, as amended in 1992, sets forth the goals for the Cuban State and its society. Article 1 of Chapter I states that Cuba is a socialist state of workers. Article 5 further states that the Communist Party of Cuba, described as Marxist-Leninist and as the organized vanguard of the Cuban nation, is the superior leading force of the society and state, organizing and guiding the common efforts aimed at the highest goals of the construction of socialism and the advancement toward the communist society.

Article 6 describes the Union of Young Communists as an entity having the preeminent function of promoting the active participation of the young masses in the task of socialist construction. Under Chapter IV, called "The Family," Article 38 declares that Cuban parents have the duty to contribute actively in their children's integral development as, "useful, well-prepared citizens for life in a socialist society."

Chapter V, entitled "Education and Culture," starts with Article 39, which states that "the State guides, fosters, and promoted education and sciences, in all their manifestations." It lists 10 principles for its educational and cultural policies. I will only highlight two relevant principles within Article 39.

The first one is that the state bases its educational and cultural policies on Marxist ideology. Second, that the state promotes the patriotic education and communist training for the new generations, and the preparation of children, young people and adults for socialist life.

To implement these principles, education is combined with work and participation in political, social, and military training activities. The state also promotes the participation of its citizens through the country's mass and social organizations in the implementation of its educational and cultural policies.

Finally, under Chapter VII, the Cuban Constitution describes fundamental rights and duties. Article 62 leaves no doubt as to the major principle laid out throughout the text. It reads, "None of the freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and the law, or contrary to the existence and objectives of the socialist state, or contrary to the decision of the Cuban people to build socialism and communism. Violation of this principle can be punished by law."

The second document I would like to bring to your attention is the Code of Childhood and Youth, Law No. 16, enacted on June 6, 1978, which is a legally binding document on all minors, parents and teachers in Cuba. I have identified at least 15 articles which should be cause for concern, and I strongly recommend that you read it and analyze it carefully to gain a wider perspective on how the State controls children's functions, education and upbringing in Cuba, above and beyond the parents.

I especially would like to highlight Articles 3, 5, 7 through 10, 18, 20, 23, 33, 40, 68, 83, 90, and 101. All these articles call for the communist formation of the young generations and the fostering of the ideological values of communism in the youth. I highlight Article 18 in particular because it states that educators have the elevated mission in the formation of the communist personality. Article 20 again postulates that the school is the basic educational institution contributing decisively in the communist formation. The Code highlights the State entities relationship with mass organizations and the Union of Communist Youth for the purpose of sustaining a coordinated effort in the development of children and youth.

These Articles lead me to believe and conclude that parental decisions are certainly subservient to the state, and that parents, or anyone else for that matter, will be punished if found to disagree with the state's principle to develop the communist personality in children and youth. In other words, parents are not free to choose any alternative lifestyle for their children. Article 62 under the Constitution makes it very clear.

Furthermore, the Cuban Family Code stipulates under Title II, Chapter II, entitled "Relationship between Parents and Children," Section 1, "Patria Potestas and its Exercise," (which means parental custody) Article No. 85, subsections 2 and 3, that the concept of Patria Potestas entails the duty of the parent to inculcate the spirit of internationalism and socialist morality. The socialist concept of the family does not accept the idea of the family as a private contractual union. The primary role of the family in socialist Cuba is to contribute to the development and upbringing of chil-

dren in accordance with socialist values. Any dissent or attempt to deviate from this role may be punishable under the law. The Family Code therefore underscores the supremacy of the State's principles over the parents' own beliefs and individual decisionmaking processes.

In practice, all of these legal norms and laws are implemented through a very rigid and controlled environment. For example, the child is obligated to carry an identity card that lists all addresses, schools attended, and political attitude, such as the child's participation in the Communist Pioneers Association. This ID card serves the State's purpose in controlling the child throughout his formative years.

The Cuban State realizes that the early formative years in a child's life are crucial for his personality development. Therefore, parents and the extended family cannot participate in the child's education or extracurricular activities which are contrary to the State's principles. Another method in implementing the State's principles is to transport children throughout the cities and towns to participate in political activities, and without obtaining parental consent.

The State also controls children once they are of school age through another document called a "Student Cumulative Dossier." The child's academic, political, and religious behavior is recorded by the teacher. It also records the parents' behavior toward religion, their political opinion, their economic standing, the family relations, and much more.

This document also notes the child's participation in the so-called voluntary work. Children who are 10 years or older are required by the State to perform agricultural work at camps in the country for 3 months every year. Parents have no say in this. Promiscuity is reported to be rampant at these countryside schools.

I have heard numerous accounts and testimony from parents who come to live in the United States out of desperation and concern for the lack of control they have over their children's lives. I know this because I am an attorney who specializes in U.S. immigration law. In rendering free legal services to the poor, I have encountered many recently arrived Cubans who need help in filling out their asylum applications. I have learned from them that there is much desperation to leave the Island because they feel very controlled and do not wish the same fate on their children. What they hope for their children is to have freedom in their decisionmaking processes that until their arrival in the United States had eluded them while in Cuba.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Dominguez appears in the appendix.]

Mr. SMITH. Thank you very much, Doctor. I would just like to note, we just got an Associated Press off the wire, and I will read it very briefly. It says, "A Federal appeals court issued a temporary stay today that keeps Elian Gonzalez in the United States while the Government and his relatives fight over whether he will be returned to his father and sent home to Cuba. The order came barely an hour after the passing of a Government deadline for the boy's Miami relatives to hand him over."

I would like to recognize Reverend Walker.

**STATEMENT OF THE REVEREND LUCIUS WALKER, JR., EXECUTIVE DIRECTOR, INTERRELIGIOUS FOUNDATION FOR COMMUNITY ORGANIZATION**

Rev. WALKER. Mr. Chairman, I appreciate this opportunity to testify before this distinguished Subcommittee.

I was born and raised in the great State of New Jersey, where I now reside. And, as you are all aware, I am the executive director of the Interreligious Foundation for Community Organization, a 33-year-old ecumenical agency which, among other things, has worked for reconciliation in the area of United States-Cuba relations since 1991. I am also the pastor of the Salvation Baptist Church in Brooklyn, and have been serving recently as the co-chair of the National Committee for the Return of Elian Gonzalez to His Father in Cuba.

The issue of rights of children generally, and of course in Cuba, is an issue about which I am deeply concerned in all aspects of my work as a pastor, as a certified social worker and a former instructor in social work at the University of Wisconsin, and as a community organizer, as well as a general advocate in the United States and in poor nations around the world for the rights of children. I am, as a minister of the gospel of Jesus Christ, particularly concerned with family values, for they are profoundly important to me and are the cornerstone of any stable society.

I am also very much shaped and formed by some of the tenets of scripture, and I shall mention two or three of those in the course of my comments. One I should mention now, and that is the teaching by the prophets, and I quote from Isaiah particularly, that we should come now and reason together, the purpose being to resolve any differences among us.

I recognize that this Subcommittee's interest today is founded in part on the question of Cuba's capacity to serve in the healing process for Elian Gonzalez after he returns home. With that in mind, let me share with you our perspective both at the Interreligious Foundation and through the National Committee for the Return of Elian, our perspective on the rights of the child in Cuban society.

This perspective has been formed by extensive time in Cuba, more than 40 visits to Cuba, the first in 1981 and most of them in the recent or in the last 10 years. We have worked and worshiped with the Cuban church community. We have visited families. We have talked extensively with the old and the young, persons in all aspects of Cuba's life, rural and urban, and in the course of our delivery of more than 2,000 tons of humanitarian aid to Cuba.

We engage, or we attempt to engage in the work we do in relationship to Cuba, at the urgent and repeated requests of particularly Protestant church leaders whom we have come to know over the years who, knowing of our work in relationship to suffering communities in Africa and Central and South America and the Caribbean, other parts of the Caribbean, requested that we assist them in addressing the sufferings of their members due to the effects of the United States blockade.

We are very much moved by Jesus's teaching in Matthew 25 that the ultimate test of Christian discipleship is whether or not one gives a cup of cold water to the thirsty, food to the hungry, clothes to the naked, and we are also instructed in our own church teachings that the service according to this mandate from our Lord is not to be determined by whether the persons who are the recipient of that humanitarian and spiritual response should themselves be of the same either political or ideological or social or denominational persuasion as the giver. Jesus suggested that we ought to be equal in our sharing with all persons, no matter what their own outlook, no matter what their own political formation, no matter which political party they belong to, and therefore we are to respect others whether they are Democrats or Republicans.

Our perspective is also informed by the declarations of the Cuban Constitution, some of which has been referred to on several occasions today, and by the legal codes as well as by public policy and practices which we have been privileged to observe in the course of our relations and visits and time in Cuba. First, a word about the Cuban Constitution, adopted in 1976 and amended by the Cuban National Assembly in 1992. It is very explicit on the subjects of family, children, youth, education, culture, and other matters as well.

Article 35 of the Cuban Constitution states that the state recognizes the family as the fundamental cell of society, and attributes to it essential responsibilities and functions in the education and formation of new generations. Article 37 affirms the equal rights of all children, regardless of the circumstances of their birth.

Article 38 states parents have the duty to feed their children, to assist in the defense of their legitimate interests and in the realization of their just aspirations, as well as to contribute actively to their education—as well as to contribute actively to their education, the education of their children—and their integral formation as youthful citizens.

Article 40 says children and youth enjoy particular protection on the part of the state and the society. The church, the school, state institutions, and mass and social organizations have the duty to give special attention to the integral formation of children and youth.

Another source which gives insight into Cuba's understanding of the rights of the child is the Family Code of 1975. In Articles 82 through 85 of Law 1289, it is asserted that children are under the *Patria Potestas*, the parental rights of their parents; that parental rights correspond jointly to both parents and accrue to the surviving parent when one parent dies; that children are obligated to respect, to show consideration for and help their parents, and to obey them while under their *Patria Potestas*.

These parental rights also entail the following rights and duties of parents: to keep their children under their guardianship and care, making every possible effort to provide them with a stable home and adequate nutrition, caring for their health and personal hygiene; to see to the education of their children; to train their children to be useful citizens; to administer and care for their children's property; and to represent their children at every judicial action.

At no point does the Cuban Constitution state that children are the property of either the state or the parents. It is my understanding, from the reading of these Cuban documents, from talking with people at all levels and in a variety of professional capacities in Cuba, that children are not considered property, but rather the terms that are consistently used in the Constitution, in the Codes, and in the practices through the courts, are "priority of," children are the priority of the state and the family; they are the responsibility of the state and the parents; and that children enjoy particular protection, yes, from the state, but also that protection is primarily the responsibility of the parents.

It has been my observation that Cuban children, growing up in a society that is far from perfect, a society that has a long way to go to even achieve its own objectives of what an ideal society ought to be, that that society has performed and exercised its responsibilities to its children in such an effective way that children in Cuba are a wonderful combination of self-awareness, self-esteem, respect for adults, love of country, knowledge of culture, and understanding of international geography and history which I wish were equally true in every part of the world.

I am an observer of human behavior, and as I have observed the relationships between parents and children, the dignity, the sense of calm and self-respect and pride with which children are able to relate to adults in the Cuban society, I am deeply moved. I am deeply moved as I have witnessed, as this whole Nation has, the strength in young Elian Gonzalez. Where did he get that strength? He certainly did not get it within the last 4 months. The strength, the dignity, the calm, the power of this young child must at least in major part be attributed to his first 6 years of life in Cuba under this system of education to which we are now referring. I have traveled extensively, and in no other country have I ever seen more healthy children, as well as self-confident, more secure and well-behaved children, as I have seen in Cuba.

The source of this unique regard for children predates the Cuban Revolution. It traces back for more than 100 years to the founding father of Cuba, that everyone in Cuba refers to, Jose Marti, the founding father of modern Cuba, who said, "The children of Cuba are our future. Children are the hope of the world."

There is, of course, an obvious shortage of consumer goods in Cuba, and we as citizens of the United States must take responsibility in considerable measure for those shortages because of our embargo. The values that underlie the response to this shortage in Cuba is that things are not essential, consumer items are not essential to life, health and education, not so much as are love, nurturing, social responsibility and family values.

Mr. SMITH. Reverend Walker, excuse me for interrupting. We are asking everyone to keep it around 10 minutes. It is about 13 now. If you could just sum up, we do want to hear what you have to say, but if you could just—

Rev. WALKER. I thank you.

Mr. SMITH. Thank you.

Ms. MCKINNEY. Mr. Chairman? Mr. Chairman, you selected six of the witnesses, and I got to select Reverend Walker, and I would love for him to be able to complete his statement and to have his

say. He came all the way from New York City to be here, and I would hate for you to cut him off.

Mr. SMITH. Let me just say to the gentlelady from Georgia, nobody is seeking to cutoff Reverend Walker.

Reverend Walker, how much more time do you need?

Rev. WALKER. Three minutes.

Mr. SMITH. That would be fine.

Rev. WALKER. It is my observation that in Cuba, education and health care are considered basic human rights. In the Helsinki Accords, human rights are outlined in political and then in economic, social or cultural categories. I think Cuba has a long way to go in refining its human rights and its work in the area of the political aspect of human rights. In the area of social, economic, cultural rights, it excels, and we should recognize that. And it is in this area, as well as the strivings that it openly and publicly seeks to make in the political and the other aspects of its life, as it refines its own electoral system, for example, that young Elian would be nurtured and developed.

Remember that Cuba came into and inherited from a dictatorship which our own country had supported, it inherited a situation in which 60 births out of 1,000 were dead births. The infant mortality rate was 60 per 1,000. It has reduced that to an amount equal to the United States. It is higher in this category than any other country in this region of the world.

It has created more hospitals, it produces more doctors, it cares for the health of its children in such a profoundly significant way, that we see that health reflected in Elian and we see it reflected in the children of Cuba. I have never seen an unhealthy child in Cuba. I have never seen a child in Cuba that was the prototypical Third World child.

Cuba has something to teach us, and it offers the gift of its care for its children to Elian as well as to all of its children; not only to its own children, but someone referred to internationalism. Cuba produces more doctors than it needs in order that it might export medical care to the rest of the world. When the revolution in Cuba triumphed, there were 3,000 doctors. Now there are 66,000, 1 for every 170 residents, and it is the only country in the world which is shipping doctors by the thousands to the Third World to assist in the development of health indices in those countries.

And so it is into this context that we would send young Elian. It is into this context, in which there is a vibrant church, in which there are people of active faith, in which there are people with concern for the continued development of all aspects of democracy and well-being, that young Elian would be going.

We have also heard rumors that Cuban children are being taken from their families at the tender age of 8 or 11 and shipped off to mandatory labor camps with harsh working conditions. I would like to offer a more accurate picture of current reality. Cuban children in junior high school and high school do spend a month of their school year in the countryside. During this time they attend school for half of the day and help bring in the harvest for the other half.

Richard Nuchio, former Cuban Advisor to President Clinton and to Senator Torricelli, describes this program as a sort of national service corps, AmeriCorps, volunteer brigade, something like in

some communities the Boy Scout programs in the United States. Interestingly, the need for this assistance with farm labor has arisen in part because on the one hand of the level of education and the high level of professionalism in Cuba, and because of the negative impact of our own blockade of Cuba.

Mr. Chairman, I would propose that we consider several directions for resolving the problems and the concerns we have about the climate and the context in which Elian would be returned. First of all, I would urge that we recognize the right of this child's father under Cuban law, under United States law and social welfare practice, to be the guardian of the child.

Second, I would urge that we not politicize this issue, but we see the great human tragedy that has been perpetrated upon this child. And that which we might do in our political discourse to help this child in his tragedy would be to work assiduously, seriously for the normalization of relations, in order that all of the differences we have with Cuba, all of the criticisms which have been and will be lodged here today can be discussed in a mutually respectful bilateral relationship, rather than throwing of darts across the waters, talking past each other, and using rhetoric which will exacerbate the problem for the time to come, rather than resolve the problem and heal the breach between our two countries.

Thank you.

Mr. SMITH. Reverend Walker, thank you very much.

Mr. Garcia.

**STATEMENT OF JORGE GARCIA, FORMER DOCTOR OF EDUCATION IN CUBA, LOST 14 MEMBERS OF HIS FAMILY IN THE ATTACK ON THE "13 DE MARZO" REFUGEE TUGBOAT**

Mr. GARCIA [speaking through an interpreter]. Thank you, Mr. Chairman. Thank you to the distinguished Congresspersons who are sitting here in this Committee.

Today is a very sad day for me. Today it has been, it is the anniversary, 69 months have elapsed today since the sinking of the "13th of March" tugboat back in 1997, if I am not mistaken. Each day of this month my family pays tribute to this memory. We went to the sea, we went out to sea to throw flowers in the ocean in memory of our dead. I believe that my presence here today is a way of honoring their memory, as well, and I thank God for having given me the opportunity to be here with you today so that I may share with you my experience.

I lost 14 family members in the sinking of the "13th of March" tugboat. I come from a family of teachers. My wife and I both are teachers. We are not an antisocial element, as we were classified by the Cuban Government. The first news released by the Cuban Government about this incident said a ship, a boat, capsized in Cuban waters, carrying antisocial elements of our society. Can there be children who are an antisocial element?

I investigated at length the details of this event. The theory of the government was and is that this had been an accident. In reality, this was a crime. The government, through Lieutenant Colonel Aspide, who headed the government's investigating team, blamed an excess of weight on the tugboat for its sinking, for its going down; the age of the tugboat, how old it was.

I don't want to go into too many details or too much depth with this, but I only want to appeal to your understanding of this situation. Can the "13th of March" tugboat, could it have been, could the "13th of March" tugboat been more fragile than the little boat "Granma" used by Fidel Castro at the beginning of the revolution to land in Cuba?

The "Granma" boat traveled thousands of kilometers carrying 82 men on board before it got—to get to Cuban shores. It carried weapons, munitions and supplies. It navigated for 6 days and it reached its target, it reached its destination. The "13th of March" tugboat barely traveled 7 miles. Its journey lasted 50 minutes, and it was sunk.

What followed the sinking of the "13th of March" tugboat for my family was truly a tragedy. Lieutenant Colonel Aspide proposed to us that we accept a luxurious residence in the plush neighborhood of Seewoney in Havana because the family would be more tranquil, more at peace in such a neighborhood. It also offered us a car and medical services. This was a proposal that Lieutenant Colonel Aspide made personally to me, and what I really wanted was the return of the 14 corpses. I did not accept the house, and I never got the bodies either. That is why I have affirmed that Castro is a kidnapper of corpses.

I want to go on reflecting on our experience, my experience and my wife's experience as teachers. We have always worked in the teaching profession. Nobody who has not lived in Cuba can really speak about Cuban reality. Cuban reality has to be experienced from within, not just on periodic visits.

And I would like to assure you that Cuban education is spartan in nature, and I can affirm that from all the years of experience as an educator. An official saying sums it all up: "To study, to work, and to carry a rifle." We could call this a subtle way of child abuse.

Instead of continuing to talk about these issues, I am willing to answer any questions that you may have. I have researched the "13th of March" tugboat sinking extensively, and I am here to answer any questions that you may have later. Thank you.

[The prepared statement of Mr. Garcia appears in the appendix.]

Mr. SMITH. Mr. Garcia, thank you very, very much.

Ms. Fuentes.

**STATEMENT OF ILEANA FUENTES, FEMINIST AUTHOR AND CRITIC, MIAMI, FLORIDA, SURVIVOR OF "OPERACION PEDRO PAN"**

Ms. FUENTES. Mr. Chairman, distinguished Members of Congress, I thank you also for the opportunity to address you on the sensitive and urgent issue of children in Cuba. I would like to recognize particularly the Representatives from Florida, Congresswoman Ileana Ros-Lehtinen and Congressman Lincoln Diaz-Balart, as well as my former Representative from New Jersey, Congressman Robert Menendez.

I would like to echo, parenthetically, the distress expressed by Congressman Menendez. As a constituent, as an American citizen, and as one who has come to this hearing to help educate this Committee on the issue of Cuban children, it has belittled and insulted

us, the five individuals sitting at this table who are Cuban Americans, to have been encapsuled in the term "mob intransigence." I would like to request that every Member of this Subcommittee return our generosity in being here with an equal measure of respect, and I thank you in advance for that.

I have prepared a statement from which I will read.

First and foremost, a child born in Cuba enters this world in a society where his or her fundamental human rights, as guaranteed by the Universal Declaration of Human Rights and by three United Nations Conventions on the Rights of the Child, are denied by all existing legal instruments, namely the Constitution of the Republic of Cuba, the Children and Youth Code, the Cuban Family Code, and the Cuban Penal Code.

Having said this, let me say that while a child is born in Cuba, he joins a family living in state-sponsored poverty. The greater majority of Cuban families are poor even by Third World standards. The average salary of a Cuban worker is equivalent to \$100 to \$120 dollars, in an economy that was "dollarized" back in 1993 when Fidel Castro himself decriminalized the tenure of American currency. In comparison, the average salary in Bangladesh is equivalent to \$250.

Thus, a child's arrival throws a family into chaos, for this new mouth further aggravates a severely rationed food basket. He or she shall encounter shortages in every aspect and stage of life from the onset. In fact, women across Cuba made sure that lack of baby and infant needs be a priority on the agenda in last March's Federal of Cuban Women's Congress. Infant and postpartum mothers' unmet needs were on the agenda, second only to the total absence of sanitary napkins from the people's market.

These hardships are perhaps one reason why so many women in Cuba resort to abortions. That, and the practice of persuading women to terminate potentially troublesome pregnancies early on, could explain why 40 percent of all pregnancies end in an abortion in the island.

No one should be fooled by Cuba's statistics on infant mortality rate. Those statistics are improved, a priori, by the elimination of difficult pregnancies and childbirth. In light of this manipulation, Cuba's infant mortality rate, which is between 9 and 11, depending whether it is boys or girls, in 100,000 births, doesn't fare so well if compared to countries where no such manipulation occurs, such as Costa Rica, Chile and Uruguay, where the rate is 12, 13 and 17 respectively.

A child born in Cuba has a life expectancy of 75 to 78, depending on its sex, but it is about the same, it is even better in some, in countries like Costa Rica, Chile, Uruguay and Argentina.

Cuban children have fewer opportunities to be given religious upbringing or to be baptized. The Cuban Constitution and the Penal Code both call for sanctions, including prison terms, against individuals who put their religious beliefs before duty to communism. There are no vibrant churches of any denomination in Cuba, not Catholic, not Protestant, not Jewish, not Abacoir, not Santeria.

Between the ages of 1 and 7, the average Cuban child will have a poor diet, lack appropriate shoes and clothing, and will be at want for basic medications against such common childhood ail-

ments, ear and throat infections, head lice, and skin conditions such as scabies and impetigo. If a child is an asthma sufferer or needs antibiotic treatment, the prescriptions needed are not available in the people's pharmacy. They can be purchased, however, at dollar-only stores reserved for foreign personnel and tourists.

Do not be fooled by those who insist that food and medicine are lacking in Cuba because of the United States embargo. Cuba is a natural producer of just about everything in the food chain except wheat, which it used to import from the United States prior to 1959, and from the Soviet Bloc countries until recently. Communist Cuba fails to feed its people because four decades of Castro-designed economics have destroyed Cuban agriculture and industry.

As for medicines, Cuba's pharmaceutical industry is an exporting and revenue-producing enterprise. Its clientele is mostly Third World countries like Jamaica and Nicaragua. Cuba can, and has, purchased medical supplies and drugs at much cheaper prices in Central America, Canada and Europe, if it had any purchasing power at all. The United States pharmaceutical market is not even cost effective for us, who are its captive clientele.

When a child reaches 7, the age of reason, two very unreasonable things happen to him or to her. One, the milk quota is suspended. Two, the Organization of Cuban Pioneers kicks in as the first mass organization to control the life of the individual. What are the Young Pioneers? According to the Children and Family Code, Article 102, it is "a volunteer organization that coordinates tasks and activities to complement the formation of the communist personality."

A Young Pioneer must wear a red scarf around his neck, or her neck; declare that Fidel, and not God, is the father of all Cuban children; and repeat at every paramilitary meeting, "Pioneers of communism, we vow to be like Che."

This is the first identity and personality crisis a Cuban child-person must confront, for to be like Che, a white, non-Cuban, genocidal male, must surely pose an identity crisis for little black boys, whose role model should be the great 19th century liberator, General Antonio Maceo, or Martin Morua Delgado, another illustrious black Cuban man, elected first president of the Cuban Senate in 1905.

And what of little girls, black or white, who are told to be like a white man in fatigues? What kind of gender identity violation is this, to have as national role models a roster of white, Eurocentric, war-mongering males?

Black Cuban children also hope to have what the white children of the white government elite have, and what some white Cuban children with access to United States dollars also have.

In school, the child learns to read with an alphabet that enshrines that roster. "F" is for Fidel, also for fusil, rifle. "C" is for Che. "Gu" is for guerrilla. "M" is for Marx, "L" is for Lenin, "S" is for socialism, "P" is for patria, which spells fatherland.

This child's progress will be charted in a personal file that will follow him or her throughout his or her life. In that file will be recorded not only his young revolutionary zeal, but that of the parents as well. Only good Communists will advance in the educational ladder. Only they will pursue the career of their choice.

The file accompanies the child to junior high school, la escuela al campo, the farm schools.

Between the ages of 12 and 14, children are removed from the custody of parents and sent to study and work in farm schools designed to give a child an education while extolling hundreds of unpaid child-labor hours in return. Parents can visit on the weekend, if they find transportation, of course. Children go home every 4 to 6 weeks. This is the time Cuban children officially pass into state custody, as these farm schools are mandatory.

Parents and children who violate this mandate forfeit their right to higher education, for the famous file will reflect, "deviant ideological behavior unbecoming a good Cuban revolutionary." The university, Fidel Castro said years ago, is only for revolutionaries. The Federation of University Students, a mass organization, upheld the dictum on April 10th, just a few days ago, at their sixth Congress.

After the Pioneers are outgrown, two other organizations become the obligatory course: the Federation of Intermediate School Students, and the Federation of University Students I just mentioned. Then there is the Committees for the Defense of the Revolution, the Federation of Cuban Women, the National Association of Small Farmers. For a Cuban to have any life at all, he or she must belong to at least one of these. It is an obligation for children and young adults to be militants of the Cuban Government, and that includes compulsory volunteer work while a student.

Do not be fooled by those who insist that health care and education are free in Communist Cuba. Cubans pay for these social services through hundreds of unpaid man and woman-hours of forced volunteer labor in the fields, in the territorial militia, in national guard duty, in community-based services.

For boys, the 15th birthday can be traumatic. That is the age they are set aside for the draft. Although women can join the armed forces, and in fact do, only boys are subject to the draft. On their 16th birthday, boys must report to duty. From age 16 to 19, young men cannot leave Cuba. The military stakes its claim on his life and allegiance. Thousands of male Cuban teenagers have gone to jail for violating this requirement. They are marked for a life of ostracism in a system rigged for loyal revolutionaries only.

A word about young women, and I am almost through. I regret that I must end on an even more tragic note. For teenage girls, life in Cuba is a double jeopardy. In spite of education, without U.S. dollars, no family can make ends meet in the island. The reported \$800 million that the exile community contributes to the livelihood of relatives in Cuba touches, at best, 10 percent of the population. I should add, the white population, for the exile community around the world is mostly white-European. So must be their relatives in the island. But the island's population of 12 million people is believed to be about 60 percent Afro Cuban.

Conditions in Cuba therefore translate into three realities that are gender-specific, in that they affect the life choices of young Cuban women and girls. Three points.

Women marry earlier in Cuba than in any other country in the hemisphere, age 19½, but they delay motherhood to avoid the struggle of feeding another mouth. This means women must resort to birth control, and in many cases to multiple abortions, in order

to remain childless. Women bear the burden of birth control in Cuba, for Cuban men are traditionally reluctant to condoms, much less to vasectomies. The health implications, therefore, are a woman's issue in Cuba.

Suicide, No. 2, is the third cause of death for Cuban female teenagers ages 15 to 19, usually related to early pregnancy or motherhood. In the global context, let me add that the rate of suicide among Cuban women in the island is the highest in the world, one woman for every many who commits suicide.

In order to alleviate poverty, the third and final point, Cuban women as young as 13 and 14 choose to engage in prostitution with a foreign clientele in order to generate United States dollars. This has resulted in a rise of sexually transmitted diseases in female teenagers. The practice of abortions on girls as young as 12 and 13 was reported last fall by the Young Communist Union in Cuba, weekly paper, *Juventud Rebelde*.

This testimony, to close, could fill reams of paper, not only with academic and legal analysis of the literature but with interviews and personal accounts from children and young adults who have lived through and escaped the fate that awaits Elian Gonzalez, a fate that a brave young woman named Elizabeth Brotons wanted her son to avoid. Unfortunately for all of us, it looks like she may not succeed.

Thank you.

[The prepared statement of Ms. Fuentes appears in the appendix.]

Mr. SMITH. Ms. Fuentes, thank you very much for your testimony.

I regret to say there are two votes on the floor of the House that will require us to have a very brief recess. We will return and reconvene the hearing and then get to questioning. I thank you for your patience. The fact that there were so many Members here, especially at the outset, shows, I think, the heightened sense of concern.

I know that in my own research for this hearing, while I had heard tangentially in the Country Reports about the Cuban Code of the Child and other kinds of documents, I had not known its full implications until this hearing and until I began doing some research earlier in the week. Hopefully, many Americans will be educated that there is such a thing. When we are talking about parental rights or lack thereof, this kind of document would be an absolute non-starter in the United States. It is antithetical to everything that we believe to be parental rights, and we will get into that when we reconvene.

Thank you.

[Recess.]

Mr. SMITH. I want to apologize for the interruption with the votes. The Subcommittee will resume its sitting, and at this point I would like to welcome Mr. Cohen, if he would make his presentation to the Subcommittee.

Ms. FUENTES. I am going to translate for him, if that is OK.

**STATEMENT OF JOSE COHEN, FORMER CUBAN INTELLIGENCE OFFICER, WHOSE FAMILY ARE HOSTAGES IN CUBA**

Mr. COHEN [speaking through an interpreter]. Thank you, Mr. Chairman. I thank God that I can thank God, after 30 years of living in a virtual prison. I have been living in this country for 6 years, and I thank God every day for having given me the opportunity to be a free man, something that was only a dream to me for many, many years in Cuba.

The person who addresses you today is not a Cuban expert quoted often by journalists, academicians and experts who do a lot of research and come up with a lot of official statistics. That is not who I am. Of course, when they deal with official data and statistics, they are the statistics given by the Cuban Government. Anyone who tries to explain Cuban reality based on the information that the Cuban Government itself releases is truly wrong. It is truly not accurate.

I was born in the year 1964, 5 years after the triumph of the revolution. At 4 years of age, I too said, "Pioneers for communism, we shall be like Che." I was proud of that red scarf, not knowing what communism really was about. I received military training when I was 12 years old, and they taught us the ways of the guerrilla warfare. That is Cuban reality.

A little while ago Mr. Garcia said something similar, that in order to talk about Cuban reality, one really had to know it. If you really want to know what happens to a person that decides to speak about Cuban reality, if you really want to understand what would happen to Elian's father if he were to decide to stay in the United States, then you have to see my case.

The only thing I have done is, I made a decision to live according to the dictates of my conscience, to denounce what I was a victim of for 30 years. Sometimes people say, "So-and-so expresses himself this way, so-and-so expresses himself the other way. They are probably bad people." And I said, "No, they are not bad people. They are Americans who live in freedom, with false information. They are not bad people. If they knew what I know, they would not say what they say or think the way they think." That is why I respect everyone's opinion.

And I am impressed, really taken by how in this chamber or in a university or in a symposium, people can do what nobody can do in Cuba. I say that I thank God that we can thank God. I also thank God that all of you were born and were able to live in this freedom. If we lived in Cuba, many of us would be in prison. It doesn't matter what you think. If you dare to speak freely, one would be in prison. If I had not left Cuba on a raft, I would be in prison or I would be dead. That is Cuban reality.

I managed to escape as the only option to save my life, because I saw and I was a witness more than once, how people who had believed truly in the Cuban Revolution dared to speak their truth one day and were disappeared on the next day. The Cuban Government not only betrays its own ministers, its own dignitaries or its generals, the Cuban Government not only shoots its generals, the Cuban Government, make no mistake about it, would betray any collaborator, any person who would speak freely.

The price I have had to pay for this honesty, for this talking my truth, has been a 6-year separation from my family. I have never engaged in any military action against Cuba or prepared any terrorist activity against Cuba. The only thing I have ever done, I ever did, was to come to this country, decide to come to this country so that my children would have a better life, and so that my children would not suffer what I had to suffer.

I came to this country motivated by the things that I could observe when I started to work in the Cuban Intelligence Section. When I started to, when I learned what really happened, what the reality was with foreign investors, with tourists, with foreigners in Cuba, or when I saw how Pastors for Peace, for instance, would go to Cuba, could go to Cuba, defying United States law, I said my children have to be able to enjoy such freedom.

And when investors came to Cuba with good intentions, believing in Cuba, believing in the Revolution, and they used to be invited out for a night of partying at, for example, Tropicana Night Club, and they would take their information. I was witness to that reality. I didn't know how to explain to my children in the future, "Daddy, didn't you realize this whole thing, the reality of this?" My conscience was burdened with such a predicament.

But I have had to pay a very high price for all of this. My wife, my parents, my three little children, we are talking about three children, one woman, and two elderly Cubans, they are in effect prisoners in Cuba. Yes, they are prisoners because they are at home, without an ability to work, subjected to government harassment, without the press ever knowing about it, nobody knowing about it.

When the government threw my daughter out of school, expelled my daughter from school; or when the mass demonstrations started in Cuba and the littlest, the youngest daughter was forced to go to the rallies in favor of Elian's return; when my wife receives threatening letters or a threatening note, and my 6-year-old picks them up and reads them; honestly, can anybody believe that the Castro Government is really interested in the fate of any child? Can anyone think or believe that the government of Fidel Castro is interested in the Cuban family?

Elian is a symbol, and I can assure you that Fidel Castro is very, very interested in destroying that symbol. If Elian returns to Cuba, if his rights to tell his story and his case in court are denied him, believe me, from the bottom of my heart, that Elian will suffer exactly what I suffered. He will return to Cuba without a mother, without a father, to the hands of a tyrant.

I am here so that you can get a glimpse at what can happen in Cuba, what could happen to your own children, to your family, to your wife, when you decide to speak your truth. I lived 30 years in Cuba. At 18, God was Castro. That is why I thank God for being in this country. And I hope, and I thank you in advance, I thank all of you, any one of you in advance for anything that you can do on behalf of Elian, and on behalf of my family, that they may also reach freedom.

Thank you.

[The prepared statement of Mr. Cohen appears in the appendix.]

Mr. SMITH. Thank you very much for that very heartbreaking story. I can assure you we will do everything we can, with what limited resources we have available. And I would hope, and I mean this very sincerely, that those people who do have access to Castro, would avail themselves not just of helping your family but also other families who have been hurt so severely by Fidel Castro. I am very much moved by your statement, and Mr. Garcia, by your earlier testimony as well.

I would like to ask Ms. Torres to begin, if she would.

**STATEMENT OF NERI TORRES, DANCER AND CHOREOGRAPHER, FORMER VICTIM OF FORCED CHILD LABOR IN CUBA**

Ms. TORRES. Thank you, Congressman Smith, for having me here. It is an honor. My specialty is not talking, it is dancing, but I will do my best to express what the conditions were like when I lived in Cuba.

Like I say, my name is Neri Torres. I am a choreographer. I left Cuba in 1990 via Italy, due to the fact that Cuban Security found out that I was leaving and kidnapped me. They put me in a psychiatric institution for 4 days, and I received all kinds of tortures from the Italian manager, who said that I had to be grateful to the Revolution for the things that I had.

And there is an old Congo saying. I mention Congo because we in Cuba have many ethnic African groups that are part of our ancestors. They say, "Seeing is believing," and if you don't live in Cuba, like they say, there is no way that you will experience it and it is hard to convince people about it.

I grew up in a very active environment with intellectuals and politicals. In my home, it was the headquarters of the equivalent here of the Black Panthers. My sister was part of the group, and many other people were too. Some of them live in Miami. Some others now live in Cuba, and they had to be removed of that, and they were really active.

They were trying to create a new system for the black people, a new government for the black people. I experienced all that while I grew up. They were shot, and taken through Social Services. The people in Social Services tried to give them a lot of work for them to forget that they were doing something against the government, and not to call the attention that they were black people trying to do a new government.

And in any case it just came to my attention because I am seeing a lot of African-Americans that are maybe dazzled by the Cuban system and politics, about black Cubans, and I have seen the black Cubans earn their place in Cuban society by fighting many years of war in the 19th century to expel the Spanish colonization. I am proud of how somebody in my family was part of that army, and it is still in my veins, that spirit. And the stories through all of the elderlies, elderlies in my family have told me of stories about betrayal and racism that Cuba couldn't escape because we are also part of the universe and race is part of the universe, the universe or culture we have now.

Anyway, let me go back to the point. I came to talk about my personal experience about child labor in Cuba, during the days

when we were not aware of the many dangers and pressures in our young lives. Our teacher and system made us feel that we were being part of a party. However, our parents were desperate to obtain medical papers, since only a chronic disease could stop you from going to the fields.

There are no written laws. We in Cuba all followed or feared something that was everywhere and yet nowhere, like that famous, when he was the director, movie called "The Exterminator Angel." Paranoia is very deep inside Cubans for half a century. The hospitality and warmth of Cuban idiosyncrasy has been manipulated against Cubans themselves.

Our parents tried to protect us the best they can, but the system has used the customary network of neighbors to make each other's life miserable and unbearable. People spy on you. They report if you didn't go to the fields or to a meeting, to the Plaza de la Revolucion, etc. Later on this will have repercussions in your life as a grownup, when you aspire for a career or a job, or which is the biggest privilege, travel abroad.

My neighbor, Julia Joya, now deceased, happened to be part of this incidence I lived. Julia ironically deceased due to the complication of somebody stepping on her foot at a meeting with Castro at the Plaza de la Revolucion. She would follow me everywhere for a long period of time. This was after my sister and brother abandoned Cuba through Mariel.

I lived in continuous fear, up to a point that I had to confront her. I told her that she knew I wasn't a criminal. She saw me growing up and my family was very decent, only that my parents never belonged to the CDR, "Comité de defensa de la revolucion," Defense Committee of the Revolution, and that was a bad spot in your life. Her reply was, "If the State wants to follow you, I follow you." I said, "But you are not the State." And then things stopped, to be more calm.

She had to put many people in jail before. Faustino, a rebel teenager, was one of them, only because he was black and he wouldn't go to school. His mother had a heart attack and died because of the incident.

Education and health in Cuba is a Machiavellian manipulation that holds captive Cuban citizens under the name of gratefulness. What is Escuela al Campo? It starts at age 11 to 12, and it doesn't stop until college. You have to go and serve for 45 days, work in the fields.

And the inexperience of teenagers and the lack of proper supervision would be the source of several accidents, such as death due to falls in unsecured wells, the most common. The boys would escape to visit the girls' camp and run in the dark for several kilometers, and in Cuba the wells are not properly covered so there were many deaths of teenagers running and escaping through the fields.

There is danger on the crops where we travel in trucks. We had to achieve a certain goal of filling boxes of potatoes, tomatoes, or in the many harvests they would figure out what they wanted us to do. Later on it would be working in the cane fields with machetes, when we were to the age of college, "preuniversitario."

Our parents would visit us only on Sundays to bring us clean clothes, food, supplies, and their love to soften our homesickness, but before arriving they had to struggle to get several buses in time, waking up in the wee hours of the morning.

I passed out, like many other children, in certain works. The sun was very hot, the food was not good, and the health conditions were not ideal. It took me a long time to decide to do my basis, the first time that I went there. I for sure was comparing my sanitary toilet at home with that smelly hole in the floor, surrounded by all kinds of bugs. Cold showers were the prize of the day.

Moreover, I developed allergies, and children were sick often but many times the teachers wouldn't take us too seriously. Moreover, there were cases of pregnancy that was kept quiet to the system convenience, quiet. The case I witnessed was that of my next door neighbor that was like me, 14 years old at that time, who had to marry her physics teacher from who she was pregnant.

Many parents tried to get a doctor's dismissal, which is the only valid reason to stop their sons from going to the fields. Unluckily, this wasn't possible for all.

The sugar cane cutting, the macheteros voluntarios, we would call it obligontario, which is the term for obligatory, involuntary. So we created obligonataro.

When you go to the college, then you go to an even harder work, "trabajo productivo." This work happened at any time, and the people who plan to leave Cuba are fired from their jobs and sent to the sugar cane or coffee fields. I remember my mother going crazy with us five minors at home when my father's work, they took him to be a machetero, a cane cutter, for several months. The money was not coming in time.

Escuela al Campo became "Escuela en el Campo," so it was school in the country fields, a permanent state where work-study was combined. The idea was to strengthen the spirit of the teenager, and also repay the free education that the government provides. As you may know, teenagers are not too good for work, and I remember that we were "majaseando," like being lazy and trying to figure out how to avoid to work in the fields. Still, we had to work. At some point we had to work because there were supervision in the fields.

The government created a dismemberment of the family nucleus in Cuba soon after Fidel Castro took over. Divide and conquer seemed to be the source of power of the Cuban Revolution. An example of Operation Peter Pan, where parents send their children on long-term flight to another country was transforming in.

Also there were parents that were forced to leave without their children. These children were won over by the Revolution. They made them "pioneros por el comunismo," pioneers. Thus, the children decided not to join their parents in America and the government would take them from their parents. They became Hijos de la Patria, sons of the fatherland.

Then from outrageous despoilment of the Patria Potestas, parental jurisdiction, I know the case of Anna Maria Barerres, my sister's friend, who was always a dysfunctional adult due to the trauma she suffered when she realized she was not to see her father again.

Also, during Mariel there were many mothers and fathers that were sent against their will to this country, leaving behind a mountain of children. I can mention the dichotomy of many mothers when the fathers denied signing the child's permission to leave the country. They had to choose between leaving the children behind or staying.

Children have been manipulated like anything else in Castro government. The image that Cuban Government wants to create is totally different from reality. I can only pray that all the Cuban children can enjoy a brighter future, like all children in the world. And like me, when I look through my little piece of sky in the window of my bedroom, they are able to see beyond the blue and make their dreams come true. Most important, I wish they were able to establish and determine their dreams, at least find their lives in their own manner, find them the right to self-determination.

Thank you very much.

Mr. SMITH. Thank you very much, Ms. Torres. We appreciate your testimony.

I will ask our next witness if he would proceed.

**STATEMENT OF DANIEL SHANFIELD, STAFF ATTORNEY, LAWYERS COMMITTEE FOR HUMAN RIGHTS, IN CHARGE OF THE ASYLUM PROGRAM**

Mr. SHANFIELD. Chairman Smith and Members of the Subcommittee, thank you for convening this hearing and for inviting us to share our views about this important and complex issue. We are deeply appreciative to you for your steadfast attention to human rights issues, in particular your concern for the plight of refugees, and for your continued efforts to highlight these concerns in Congress.

The Lawyers Committee for Human Rights is a nonprofit, non-governmental organization. A substantial focus of our work over the years has been the protection of refugees. The Lawyers Committee has represented many hundreds of refugees, including children.

Since the pilgrims first landed almost 400 years ago, the United States has served as a refuge for those fleeing persecution and oppression. After World War II, when the United States and so many other nations failed to protect many refugees from Nazi persecution, the United States led the effort to establish a structure of universally recognized human rights norms, beginning with the Universal Declaration of Human Rights.

Article 14 of the Universal Declaration of Human Rights provides that everyone has the right to seek and enjoy asylum in other countries from persecution. Building on the recognition of this right as universal, the United States then worked to establish international standards for the protection of refugees. More than 30 years ago, the United States formally bound itself to these standards by acceding to the protocol of the 1951 Refugee Convention.

The central obligation undertaken by the United States and other state parties to the treaty was to refrain from returning any refugee to a place where his life or freedom would be threatened. This obligation was codified into U.S. law by the 1980 Refugee Act,

which also set out a framework for the independent adjudication, free from political considerations, of claims for refugee status.

Although not everyone who seeks protection is entitled to asylum, international legal obligations require states at minimum to provide fair and effective procedures to determine who is a refugee. The United States has repeatedly reaffirmed its commitment to this principle, although recent changes to U.S. asylum law, such as expedited removal, place the United States out of step with its tradition of fairness and compassion toward refugees.

Fair legal procedures and access to legal remedies serve as the foundation for many international legal instruments to which the United States is a party, such as the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, as well as our own domestic jurisprudence. Moreover, for these rights to be effective, adequate procedures must be available to permit their enjoyment.

The Refugee Act of 1980 reflected Congress' concern for providing access to a fair procedure by explicitly providing that any alien physically present in the United States may apply for asylum. This right to seek asylum has subsequently been subjected to very limited and statutorily defined exceptions, but importantly, Congress has never deprived children of the right to seek asylum.

Like their adult counterparts, child asylum seekers flee their homelands to escape war, persecution, and political instability. The United Nations High Commissioner for Refugees estimates that children make up more than half the world's refugee and internally displaced population, accounting for a population of 20 million children. The situation is acute. Out of this population, an estimated 250,000 of these refugee children are separated from their parents. Although only a small fraction of this group seeks refuge in the United States, the need to ensure adequate protection in our laws for this vulnerable group is paramount.

Unfortunately, the factors that turn children into refugees are more prevalent and diverse now than at any time since World War II. Where child refugees were once bystanders in adult conflicts, this is increasingly not the case. As witnessed in China, Kosovo and Sierra Leone, and so many other countries around the world, children are the deliberate targets of human rights abuses, including infanticide, conscription, ritual genital mutilation, slave labor, and sexual servitude.

As so eloquently described in the excellent article by Jacqueline Bhabha and Wendy Young entitled, "Through A Child's Eyes: Protecting the Most Vulnerable Asylum Seekers," unaccompanied children who must make their way to safety without the assistance of their parents are most at risk. I would ask that a copy of this article be entered into the record of this hearing.

Mr. SMITH. Without objection, Mr. Shanfield, that will be made a part of the record.

Mr. SHANFIELD. Particularly problematic are cases where parents are incapable of protecting their children from persecution, or worse, where parents are complicit in that persecution. For instance, female genital mutilation is generally conducted at the behest of a young girl's parents. In a number of traditional societies, girls are targeted as the victims of honor killings for opposing their

subjugation to demeaning social roles. To illustrate, one of our clients was held captive in her father's home and regularly beaten just for resisting his authority to marry her off against her will.

Children asylum seekers who have friends or relatives in the United States to guide them through our byzantine asylum system are surely the fortunate ones. However, many are not so lucky, and in the case of an unaccompanied child asylum seeker, their protection from persecution demands a vigilant and pro-active approach.

Many children are simply unable to articulate their need for protection, given their youth, lack of sophistication, and unfamiliarity with our culture. Identification of child asylum seekers is therefore a key responsibility. Once identified, these children must be provided with assistance to effectuate their rights to refugee protection.

Parents' rights are fundamental, but they are not absolute. We have seen many instances where parents of child refugees are either incapable, because of intense pressure or fear of retaliation by their own government, of protecting their young, or active participants in their children's persecution. In such cases, a parent's opposition to a child's need for protection cannot be the last word.

In contemplating this matter, we must uphold the important principle that children are part of the human family and have an independent right to protection from harm and the enjoyment of fundamental rights. Where the wishes of a parent are at odds with the child's need for protection, those wishes may have to yield. The Attorney General, and ultimately the courts, must ensure that where there is conflict of interest, a child who needs protection will receive it.

I would like to thank this Committee again for the opportunity to present the views of the Lawyers Committee. We are grateful for your attention to this matter, and look forward to continuing to work with you. I would like to thank the Committee for your excellent and dedicated work to ensure that the United States will continue to serve as a beacon for the oppressed, whatever their homeland, and regardless of their age.

[The prepared statement of Mr. Shanfield appears in the appendix.]

Mr. SMITH. Thank you very much, Mr. Shanfield. I yield to the gentlewoman.

Ms. MCKINNEY. Thank you, Mr. Chairman.

Mr. Shanfield, do you have that document with you?

Mr. SHANFIELD. I'm sorry. Which document are you referring to?

Ms. MCKINNEY. The one that you asked to be submitted to the record.

Mr. SHANFIELD. Yes, I do.

Ms. MCKINNEY. Could you make it available?

Mr. SHANFIELD. Shall I bring it up?

Ms. MCKINNEY. Yes, please. Thank you.

Mr. SMITH. I want to thank our very distinguished panel for their excellent testimony, and ask you a couple of questions and then yield to my colleagues.

I understand, Mr. Garcia, you are under very tight time constraints. Ms. Fuentes spoke earlier about the farm schools or the involuntary, forced labor that young people are required to under-

go, as the time when children passed into state custody. Can you speak to that issue?

I mean, many of us are very concerned in the United States, and it is a global concern, about parental rights and state intrusion into those parental rights. It would seem the fact that Fidel Castro, through the Elian Gonzalez case, has put on it is that somehow parents are supreme, rather than subordinate to the state.

And frankly I was, as I stated earlier before we broke for those votes, surprised by the Cuban Code of the Child, which we have the Spanish version of and a number of the articles translated into English. I would, without objection, ask that this be made a part of the record. If you could speak to the issue of this indoctrination. For example, if Elian were to go back, would he be forced to become a Marxist?

Ms. FUENTES. Are you asking me, Mr. Chairman, or do you want me to—

Mr. SMITH. Mr. Garcia has to leave, I understand. But then, Ms. Fuentes, I would like to ask you that question as well.

Mr. GARCIA [speaking through an interpreter]. If Elian returns to Cuba, he will be destined to live a life almost in captivity. In other words, he will be obligated to comply. It is possible that the slogan of the Pioneers might be changed. In the present it is "Pioneers for Communism, we vow to be like Che." Maybe now the slogan will become "Pioneers for Communism, we vow to be like Elian."

Elian will not see his old neighborhood again. Elian will be protected from the rest of the community in an exclusive neighborhood in Miramar, in the Miramar neighborhood, a neighborhood in Havana that because of its strategic location is under constant surveillance by Cuban Intelligence. That is where Elian will live with his father.

Ms. FUENTES. In other words, the press—the foreign press is what he means, foreign press—will not have access to Elian ever again, in his opinion.

Mr. GARCIA. Elian will be made a national—Elian's father will be made a national hero and maybe will be moved into a seat in the National Assembly. Because, in my opinion, Elian's father's lack of courage or perceived lack of courage has provided Castro with a victory, a political victory against the United States. Which in the ultimate analysis is what Castro is concerned about, is interested in, a political victory, and not necessarily the welfare of Elian or of any other Cuban child.

If Castro were concerned about the welfare and justice for children, he would have made sure that the 10 bodies, the children's bodies that are in the ocean from the "13th of March" tugboat capsizing, sinking, would have been properly rescued. If Castro were interested in the welfare of children, he would have made sure that a judicial process was started to bring to justice those responsible for the massacre. However, the officers responsible for this mass assassination walk the streets of Havana freely, with absolutely no punishment.

Mr. SMITH. Ms. Fuentes, you wanted to respond to that?

Ms. FUENTES. Both the Cuban family, the Children and Youth Code of Cuba, the Constitution of Cuba, call for the obligatory for-

mation and the responsibility of everyone involved with the upbringing of a child to work toward the formation, the shaping of the Communist—and it says so, I don't have it in front of me but it is almost as if I were quoting it—the Communist formation of the personality and of the individual. Anyone who comes in contact with a child is obligated, whether it be parents, teachers, counselors, recreation coordinators, anyone who comes in contact with that child's educational process, socialization process, is obligated under Cuban law to make of that child, be it a girl or a boy, a good Communist.

So the answer to the question, "Will Elian be forced to be a good Communist, or a Communist, if he is returned to Cuba," the answer is, in violation of every single assured right of the individual, according to the Declaration of Human Rights, yes, that child will be forced to become a Communist.

It is just not me saying it. These are the legal instruments of the society to which Elian will be returned. There are no options. Being a Communist is not an option, being a Pioneer is not an option, in a society where if a child or the parents of a child withhold his participation in the Pioneers organization, that child automatically is stigmatized as someone coming from a family ideologically deviant, and this is exactly the terminology that is used, ideological deviance.

Mr. SMITH. Dr. Dominguez, you mentioned that this would be punishable under law. Can you tell us what would be meted out to an individual, a young person or parents, who stood up to being forced to become a Communist?

Ms. DOMINGUEZ. Well, initially it depends on the age of when this will occur. Obviously, there are many things that could happen to a child, one of them being the prevention of having the ability to enroll in higher education, in choosing the career that he so desires, he or she so desires. So that would be the most obvious one, if the child should elect to go into a higher education field.

It could be many other subtle ways. It could be harassing in every which way that they could. They do it all the time to people with dissenting opinions. And in fact under the Penal Code it is also endorsed and envisioned. The Constitution itself calls for it. Article 62 very clearly states that is punishable under the law. It doesn't go into the detail of what the punishment is under the Constitution, but they have a Penal Code and they have many other ways of harassing and actually sanctioning the people who do not agree with their system.

Mr. SMITH. Let me ask, Ms. Fuentes, you mentioned that the state, when it puts out these rousing numbers, which are very often repeated by UNICEF and others, that indicate that infant mortality and child survival are relatively high for Cuba, and yet in very few studies do I see a point that you made, namely that they terminate potentially troublesome children, I think is the way you put it.

We had a 1998 joint staff report by the Senate Foreign Relations Committee and the House International Relations Committee, which noted that the Cuban regime coerces abortions for so-called "social risk pregnancies." According to the report, the "social risk category" is extremely broad and encompasses women over 35, girls

under 20, women who have had three children, women from poor or rural families, and women with genetically determined illnesses, including things such as diabetes and hypertension.

You know, I have heard this argument for so long about how great the medical care is in Cuba, but it ignores the rest of the picture. I mean, China can also show a very low infant mortality rate. Several years ago they initiated a draconian eugenic policy where handicapped children are singled out, girls, too, but handicapped children are singled out and killed, so you don't have handicapped kids because they are being killed by abortion.

And now we see, and we have seen for some time now, the doctors in Cuba who bring this practice to light, and this is noted in our Country Report on Human Rights Practices, are thrown into jail, are beaten. So the whistleblowers find themselves persecuted when they speak out for women who are being coerced and for children, and handicapped kids. Our country made a gargantuan step in the right direction when we passed the Americans with Disabilities Act, which finally through law enfranchised handicapped individuals. Now, we see in Cuba, and we certainly see it in China as well, the handicapped people are selectively left out of humanity.

If you could speak to that, because you did mention it in your testimony.

Ms. FUENTES. Mr. Chairman, that, precisely that enforcement, that forced coercion into abortion of anything that could spell trouble at the time of childbirth, is the reason why Dr. Ilda Molina—who is Cuba's and probably Latin America's most prominent neurosurgeon, founder of the Institute for Neurological Studies in Cuba, a member, by the way, a former member of the Cuban National Assembly, one of Fidel Castro's pride and joy, a woman who is now in her early forties, so we could say a product of the educational system of the Revolution—that is precisely the reason why she resigned as a Congresswoman, as an assemblywoman, because the connection between the coercion into abortion and the biomedical production of placenta products, in other words, placentas from those abortions as raw material, so to speak, I mean for lack of a better term, for all kinds of pharmaceutical products and beauty products, especially the cosmetic products, forced her to, I mean in conscience, to resign her position.

And in resigning her position as an assemblywoman, as a member of the Cuban National Assembly, she was ousted from her position as director of the Institute of Neurological Studies, and not only that, but she is in effect one of those adults who is virtually kidnapped by the Cuban Government. The Cuban Government will not allow her to leave the country, not even for a visit with her son and grandchildren who live in Argentina, precisely because, according to the government, her medical information, her scientific knowledge, is an issue of national security for Cuba.

So there is ample evidence. There are many doctors. The day that the Committee decides or sees it fit, necessary to conduct some hearings on the medical, on the real state of medicine in Cuba, and the violations of human rights that are really rampant in the medical field, anyone could parade through here dozens and dozens and dozens of doctors, of Cuban researchers and physicians who have

even served jail terms for, as you call it, whistle-blowing on these abuses.

So there is ample evidence, with again reams of paper, with that. If I may, Mr. Chairman, I would like to suggest that perhaps this panel can introduce into the record at least the sections of the Cuban Penal Code, of the Constitution, the Family and Children's Code, that are germane to what we have discussed here today, so that the Committee and other Members of Congress can avail themselves from the record.

Mr. SMITH. Ms. Fuentes, without objection, we will do that, and I think it is extremely important. This is the beginning of a learning curve. Many of us who thought that we knew something about Cuba, have held hearings before. I actually tried to get into Cuba, and was not allowed. But let me say that we will make every effort to get the information that is coming out in this hearing and in subsequent hearings out.

I mean, I find it outrageous that, in a poll-parroting way, people will repeat these tremendous statistics and state—with all due respect, Reverend Walker—that they never saw anybody that was sick in Cuba. Well, at least the newly borns and the young people are being aborted.

Reverend Walker, I do have a question for you. You mentioned, and you cited my favorite scripture, Matthew 25: "When I was hungry, you gave me to eat; thirsty, you gave me to drink," and you might recall our Lord said, "When I was in prison, you visited me." You also talked about the need for reconciliation, which I couldn't agree more with, but part of my problem is, reconciliation without justice is accommodation, it is not reconciliation.

And the concern that I have is, in Cuba you have a dictatorship that continues—like those of Lenin, Nicolae Ceaucescu, Mao Tse-tung, or even right now in China, Jiang Zemin—to commit violations each and every day. The Country Reports on Human Rights Practices cites 350 to 400 political prisoners, men and women. Everybody at this table potentially could be thrown into prison if this hearing were being held in Havana, every one. I would be, Cynthia would be, all of us would run the risk, and certainly based on what Ms. Fuentes and others have said, you would be going. You would be getting a very long jail sentence for speaking so courageously on behalf of the oppressed.

So reconciliation is important, but without justice, it is one-sided. I mean, whether it be on El Salvador or South Africa, truth commissions talk about reconciliation, looking back; but they also demand that, going forward, that there be human rights observance. Otherwise, it is a sham.

And, you know, I am not sure if you have read the Country Reports on Human Rights Practices, but you should. I mean, do you agree with its contents, where it says that the human rights record is poor, that the regime systematically violates civil and political rights of its citizens, the authorities harass, threaten, arbitrarily arrest, detain, imprison, and defame human rights advocates and members of independent professional associations, including journalists, economists, doctors and lawyers, often with the goal of coercing them into leaving the country? This is the State Department speaking. They also point out that the government infringes on citi-

zens' privacy rights, denying freedom of speech, press, assembly and association.

And my point is, do you agree with that assessment from the State Department? And, second, again pursuant to Matthew 25, have you yourself gone in and visited with these political prisoners who have been subjected to torture and all kinds of horrific mistreatment?

Rev. WALKER. Mr. Chairman, since you have asked me about five or six questions, it will take a little time to answer them all.

On the matter of reconciliation and, in your view, the necessity to hold out as a precondition of some discussions toward understanding, mutual understanding and reconciliation, justice, is certainly not biblical in the sense that if we have a standard that is our standard, and we indicate that I would not discuss with you how we can reach understanding, how we can resolve our differences, unless you agree with my standard of justice, there is no basis for communication.

Mr. SMITH. Could you yield on that one point, very briefly?

Rev. WALKER. Yes.

Mr. SMITH. The Cuban Government, Fidel Castro in particular, has agreed to the myriad of human rights documents, starting with the Universal Declaration of Human Rights and a host of other documents. The problem has been no followup, no adherence to those documents. And this isn't just a U.S. Congressman or a U.S. Government official speaking. I mean, the U.N. sent delegates there some years ago. Those who came forward and spoke out were retaliated against, so severe is the repression. So when you talk reconciliation, he has got all the guns.

Rev. WALKER. Let me complete my statement, if you don't mind. What I am suggesting is that there must be mutual respect, and there must be willingness to sit down and discuss together mutually—respecting the sovereignty, each side respecting the sovereignty of another—differences, charges, problems that exist. And to my understanding, that has not happened.

I think, second, that your matter of visiting those in prison, yes, I have, and I have talked with ex-prisoners, and I think it is important for you to know that I have been able to do some reconciling, to be an intermediary in some cases. I think it is also important for you to know that while we may not like it, or while the kind of, I think to a large extent wishful thinking and this sort of psychological obsession with Fidel Castro which is reflected here, bars our clarity, I think the fact is—

Mr. SMITH. With all due respect, you are suggesting that I am psychologically unbalanced. But I have been reading from the State Department's very, very well considered and well documented Country Reports on Human Rights Practices. The fact that there is one man at the helm of that repression doesn't make me or anyone else who singles him out obsessed—it is the same way that we would single out Lenin or Stalin or anybody else who was at the head of a repressive regime.

Rev. WALKER. My view, and it is consistent, although from a different perspective, with that which has been said by at least two Members of the House, of the Committee is that we ought to be careful about our language. Some of our language has suggested

that we are not focusing on this basic right of a parent to be with his child. We are not basically talking about what is in the interest of a child. We have politicized the issue, and there are those who are attempting to make it an issue of what we think about Fidel Castro, what we think about the Cuban Government.

My point is that to a certain extent those views are irrelevant. Let me give you an example out of my own personal experience. I am old enough that I grew up during the Depression. There were those for whom my parents worked, who wanted to take me and raise me. These were very well-heeled economically people, you know, an officer in Exxon Corporation. My parents made the very clear decision that they had the right and the responsibility to raise their children. They were incensed that their rich friends for whom they worked would even think that they would give up the custody of their children.

We grew up in poverty. We grew up learning the values that I talked about today, the values that have shaped me. I assure you that there were many, many efforts in my own education to shape my personality, to teach me to be a capitalist, to teach me to favor free market enterprise, etcetera. That is the function of any government.

I think it would be irresponsible of the Cuban Government to claim to be, as it does in its Constitution, a socialist state, and not teach what that means to its people. We should not deny that to Cuba. We should allow the parents, who may not have as much as the distant relatives here in the United States would have, to raise in this case his, his own child. That is the issue. The issue for me is the welfare of this child in the custody of his father, not what Fidel Castro thinks, not all of these issues which need to be addressed in due course and in proper context.

This was not what I was invited to discuss, and I think that we have reached far beyond, in my view, the bounds of the specific description of the subject of this hearing. We are now engaging in a certain degree of prophesy. For example, how can we sit here and predict that young Elian will be forced to be a Marxist? I think this is sort of outlandish and irresponsible. I think there are those who think that, and they may speak their view. But to declare categorically, this is what is going to happen, I suggest is not responsible discourse, and I feel that very seriously.

I know many people in Cuba who are not Marxists, who are critical of Marxism, at least some aspects of it, and who are patriotic in their country, who are faithful in their family responsibilities, who are good, upstanding, outstanding citizens. And I think that we ought to recognize that people can be of a different ideological or religious, political persuasion, and be quality human beings, can be people of respect and people of integrity, and that we should be able to—

Mr. SMITH. You have sparked some comments from the other panelists, so—

Rev. WALKER [continuing]. And that we should be able to communicate with them and resolve any differences.

Mr. SMITH. Doctor.

Ms. DOMINGUEZ. I wanted to respond to that because it is in the Cuban Constitution under Article 39, and I read it before and I

need to go back to it, because it is not me who is saying it. It is their own Cuban Constitution.

Article 5 starts saying that the Communist Party of Cuba, described as Marxist-Leninist, is the organized vanguard of the Cuban nation and is the superior leading force of the society and the State organizes everything that goes on. And then in Article 39 it goes into how the State bases its educational and cultural policies on Marxist ideology, and it promotes the patriotic education and Communist training for the new generations.

It is right there in the Cuban Constitution. It addresses that very topic and that very issue.

Mr. SMITH. Ms. Fuentes, or Mr. Cohen?

Ms. FUENTES. I will translate for him, and then I would like to make a comment, if I may.

Mr. COHEN [speaking through an interpreter]. It is very important to know that anyone who intends to study, who wants to study in Cuba, for example to finish a university career, first has to have a political file approved by the school or the educational institution. In the case of my daughter, for instance, who was expelled from school not because she was saying what she thought, speaking her mind, but because of what her father thinks, and because in order to free her, I tried to get a visa, automatically that disqualifies her to continue her higher education.

I studied at the university. I graduated with a degree in mathematics. What does mathematics have to do with communism? During the 5 years I had to pass a subject matter titled "Scientific Communism." If you don't pass that subject matter, you cannot become a mathematician or a physicist or an engineer—

Ms. TORRES. Or an artist.

Mr. COHEN [continuing]. Or Ms. Torres is adding on, an artist or anything else.

Reverend Walker was saying before that he knows people in Cuba who are not Communists. Probably that is what they tell him, because that is how the political system works. I was a witness to how the system worked. The person that is addressing you and telling you this is someone who was there and was a witness of how this system works. That is why I am here. That is why I broke with the government. One of the things that I hated most was how honest people were utilized, people who lived in freedom like the Reverend.

There were three categories in the Intelligence Service. One is to be an agent. The agent is the one that is placed outside in a foreign country and provides information to Cuba about the activities in that country.

The second person, the second level is a confidence person, but for that there is a category that is referred to as a worthwhile contact. Those are people who come to Cuba. They are studied, they are actually studied, and they get them to collaborate in some way with the government, but they have no secret information. They simply become like spokespersons of the government. The worthwhile contact people know that they are, in effect, providing a service to the Cuban Government.

There is a third category, which is the friendly relation, the friendly contact. This person never knows that he is, in effect,

working for the government. They are used without their knowledge, really. They are used. They show them the apparent successes of the Revolution. They are taken to hospitals, they are taken to biotechnology centers. Anybody would be impressed, because you never really get to know the other truth.

That person gets a file opened. A file is opened for that person in Cuba. If tomorrow any one of you goes to Cuba, you will have a file opened. It doesn't matter who you are. Every single person that goes to Cuba has a file. You can't possibly know that reality, but I am a witness of that reality.

This is a time-consuming activity, but it is done with plenty of time. The person is studied, their motivations, their weaknesses, their resentments, if they are black, if they are white, and the system grinds that information into usable information. I am a witness to that, which is why I broke with the regime, because there are a lot of honest people, illustrious people who are very good people, who live in a world of disinformation, and that Castro actually mocks them. Believe me, that is the truth, and I am a witness of that. Thank you.

Mr. SMITH. I would like to yield to Cynthia McKinney, and if time permits, we would like to have a second round of questions, but if anybody does have to leave, I certainly understand it. It is getting very late.

Ms. McKinney.

Ms. MCKINNEY. Thank you, Mr. Chairman. I want to, I guess, thank you for calling this hearing, because I have to say that it has been educational for me as well, and I believe that in due course we will have more hearings and we will explore the issue of Cuba even more.

I do want to hear from Mr. Cohen a little more, but I want to yield to my colleague so that she can go ahead of me.

Ms. LEE. Thank you, and I would like to thank my colleague for yielding, and also would like to thank the Chair for allowing me to sit in on this Subcommittee hearing. I serve on the International Relations Committee Subcommittee on Africa, but this is an issue that is very important to me. Human rights of children anywhere in the world are critical in terms of just the future of the world.

Oftentimes when I travel, and now I am not talking about to Cuba but I am talking about throughout the world, I am asked as an African American with regard to what is going on with our children here in America in terms of the millions of children living in poverty, in terms of the millions of children who are homeless, and the disproportionate number of young African American men in jail for nonviolent offenses. So other countries and other leaders in countries ask me very similar questions that we are asking today, and so human rights, of course, for children anywhere in the world are very important.

Let me say that I have visited Cuba on several occasions. I wanted to form my own opinions about the realities of Cuba. Unfortunately, this 40-year embargo has prevented American citizens from freely traveling, to be able to see and to form their own opinions. We have a right to travel, and we have not been able as American citizens to have that right to travel to Cuba for a variety of reasons, unless we jump through a lot of hoops.

So I go so I can come back and try to engage in objective discussion with regard to United States-Cuba policy. And I think this dialogue must take place, so I am pleased that this hearing is taking place today, because this gets us at least to the dialogue stage.

Now, it is no secret—and one of the reasons I came over here, Mr. Chairman, is I was sitting in my office watching the videotape of Elian, and I said I am going to have to come over to this hearing because I don't know what to do. Quite frankly, I have to make this statement.

It is no secret that I have supported the return of Elian to his father. I think that that is the only right thing to do, that parental custody, the bond between a parent and child, supersedes any kind of issue with regard to any government in the world. And so I had the opportunity to visit Mr. Gonzalez in Cuba and here in Maryland, and I have no reason to believe that he is not a fit parent. He loves his child, and he should be returned.

Today when I saw this videotape, and I wanted to ask members of the panel what they thought about this, because to me this videotape has crossed the line, Mr. Chairman. This videotape, when I saw young Elian on this tape, it reminded me of oftentimes when we see members of our armed services and U.S. citizens captured abroad and then put on television and asked to say questions, and then the tapes are put out to the media. We as Americans feel incensed that that kind of propaganda can go out, and here we have a 6-year-old child who was on television earlier. It just brought back memories of times when we have to deal with this as American people.

I wanted to see if the panel, any of you felt that that crossed the line at all in terms of Elian Gonzalez and his human rights, or if that is something that we think is the right thing to do to convince the American people that he should stay in America? I am curious about that.

Mr. SMITH. First of all, let me respond, since you are asking the panel, the witnesses. I happen to believe that this is unlike the POWs. As a matter of fact, I was on the POW-MIA Task Force for Vietnam, and made trips over there, and I remember going through the footage. We were originally talking about live sightings and then unfortunately it became just a matter of trying to repatriate remains.

But in looking at all of those old clippings, there were men under duress, who were tortured day in and day out. Witness Jeremiah Denton, Sam Johnson, both of whom have written books, and many, many others who were being coerced and tortured if they didn't say exactly what they were told to say—matter of fact, Jeremiah Denton, while he was giving his testimony, false, about how great things were, was actually blinking "torture" in Morse code. He had the presence of mind to do that during that horrific ordeal.

I have met many, many people who have lived in captivity, such as Armando Valladares, one of the greatest leaders of democracy, who was actually Reagan's Ambassador to Geneva, the Geneva Convention on Human Rights. I have read his book, "Against All Hope," and then talked to him extensively about the torture that he had to endure, day in and day out, in Castro's prisons. That may be putting a name on it. They are Castro's prisons, like it or

not, just like they were Stalin's gulags, and then they became Khrushchev's and other people's in the former Soviet Union.

Here we have a young child who has bonded very closely to a young lady, and I have met with this young lady, the cousin. I have met with other members of the family. He seems to love her and has substituted the love that he loved so deeply for his own mother, for this other caregiver, this surrogate mother, call her whatever you would like, Marisleysis. And you have a situation where the family deeply loves this child, and they put out a video. I don't think that crosses the line.

And to make the comparison to men in combat or any other prison-like situation where they have been tortured, goes over the line, I say with all due respect to my friend. Because I watched that video this morning, and it comported with everything else that has been said. I happen to argue, and I argued again this morning when we opened up this hearing, I would hope that a court of competence would look at the best interests of the child.

And we have seen, while Reverend Walker would disagree that we can't have prophetic views whether or not he will become a Marxist, you know, past is prologue. The clear, unmistakable record of the Communist dictatorship in Cuba, and there are supporting documents, witnesses to that repression, year in and year out, have come forward to assert that in that system of education there will be a very aggressive attempt to mold this individual in a Marxist-Leninist perspective. That is just based on all of the documentation.

Ms. LEE. Would the Chairman yield?

Mr. SMITH. Let me just conclude. So I happen to think that, whether it was right or wrong, that was up to the family, but it certainly, absolutely does not compare in any way to men who have been coerced under pain of being kicked when they return to their jail cells in Vietnam, or in Iraq when our fliers were paraded by Saddam Hussein, absolutely not.

Ms. LEE. Would the Chairman yield?

Mr. SMITH. I will be happy to yield.

Ms. LEE. Mr. Chairman, no, I think you made the point. What my point is, is given what you just said, is this an appropriate mechanism or tactic to use—

Mr. SMITH. Well, as I said, I think it is appropriate, and I thank the gentlelady for yielding. I also know the Cuban Government was very outraged when a major network personality interviewed Elian. What is being left out of this, in my view, is best interests of the child. We will shortly vote on The Hague Convention on Adoption, and peppered throughout that document is that phrase, "best interests of the child." And maybe it is to return with his father. I would hope that his father, if given the opportunity, could make a case for staying here.

But we are talking about a situation where we have not heard at all. I am learning things myself today, and I have been following Cuba for years, about this code that is forced upon young children. Now, we would never settle for that. And I think the more time we have as this goes forward, I will make a major case on the floor about this robbing of parents of their rights, including Elian's dad.

You know, when his child, Elian, goes, if he does go back to Cuba, when he is now handed off for the final molding by the government, where are we going to be? You know, we will have lost that child. Maybe he will come back. Maybe he will resist it. People do resist it. But he will be molded. And I think we have got to think of his future. That is not prophetic. That is based on all of the available evidence that reasonable men and women can possibly have.

Ms. MCKINNEY. Mr. Chairman? Mr. Chairman, would you just yield?

Mr. SMITH. Yes.

Ms. MCKINNEY. Is it not the case that Elian is being molded now? I have got a report here that says that he fell in love with chocolate milk, and when his relatives give him chocolate milk, they tell him Fidel Castro won't let his grandma make that for him in Cuba. Is he not being molded now? And could that have some bearing on—

Mr. SMITH. Let me just say, since—

Ms. MCKINNEY [continuing]. The content of that video? I have not seen the videotape, so I don't know it, but it certainly appears to me that there is some molding going on right here.

Mr. SMITH. Yes, Mr. Diaz-Balart.

Mr. DIAZ-BALART. I know we have a vote, and I want to first thank you, Mr. Chairman, again for this opportunity, and I just want to make sure that I have this opportunity to thank all the panel. Ileana, I know you are leaving, thank you. Thank you.

And I have felt very proud of all the Cuban and Cuban-American members of the panel, and you, sir, from the Lawyers Committee, for standing up for children's rights. Children have rights. They have a right to seek political asylum, and it is in the regs, and I have read the regs. Any alien means any person, including a child, and I am glad that you all picked up on that.

I just want to say this. I have had a chance to meet Elian. Elian is a human being, and he is a brilliant 6-year-old. The fact that people may be bothered because he likes freedom, he likes to be in the United States and he doesn't like to go back to oppression, is no excuse for saying that he is not speaking the truth when he tells Sister Jean, changes her mind; when he tells Diane Sawyer, changes her mind; when he tells a psychiatrist that Diane Sawyer brought, changes his mind; and now he tells the world—I haven't seen that video—but everybody who talks to him, he knows apparently, since this administration is not following its own precedents and procedure, that he has got to act as his own lawyer, and that is the sad case.

That is the reality of Elian Gonzalez. So he doesn't want to go back to oppression. He is 6 years old, and he is convinced of that. And I remember when I was 6 years old, I knew what was going on in Cuba, and I wouldn't have wanted to go back to oppression when I was 6 years old.

And I just want to ask one question of Mr. Cohen, if I may, if I can ask you a question.

Ms. FUENTES. I have got to go.

Mr. DIAZ-BALART. Do you really believe, do you believe that after Elian fades as a human interest story, do you think that Castro

will take the risk of letting Elian and his father exist? (Repeated in Spanish.)

Mr. COHEN. Never. (Remarks in Spanish.)

Rev. WALKER. May we have a translation? Somebody?

Ms. DOMINGUEZ. I could do it.

Mr. COHEN. You better, because I don't want to make any mistake in this.

Mr. DIAZ-BALART. Dr. Dominguez will translate.

Mr. COHEN. Who, you?

Ms. DOMINGUEZ. I will.

Mr. COHEN. OK. Anybody. [Speaking through an interpreter.] Here is the reality. Where is Rowina? Where is Aldana?

[Ms. Fuentes resumes as the interpreter.] The answer is no. We know how the system works. And if you want to know what has happened in the past, don't look at this humble family. You can look at the example of the best and most prominent government officials. The most recent one is Rowina, who was the Foreign Minister, a public figure who had traveled the entire world, with contacts in every foreign office in the world. The question is, has anyone seen Rowina again? Has any journalist, has any foreign journalist been able to interview Mr. Rowina again? Where is Mr. Rowina?

But before Rowina there was Mr. Aldana, and all the previous VIPs that Fidel has vanished. So you are really able to answer this question on your own. Would Castro allow this child, in another 2 years, or the grandmothers, or his father, to stand before the foreign press and say, "Well, perhaps we made a mistake." Things are already happening. Elian's father can't even get together with his own family. The grandmothers were not allowed to meet with their own family. And if I wanted to go to Bethesda now and speak to Elian's father, to ask him to intercede for my own family, you could witness if you came with me that I would not be allowed to do that either, because it is a risk that Fidel Castro will not take. Thank you.

Mr. DIAZ-BALART [presiding]. I fully agree with you, and I think that anyone who understands the reality of Cuba would agree with you, and that is why it is so monstrous to see that they are turning this child back to what is inevitably, inevitably a situation where, after he ceases to be a human interest story, after he can perhaps be visited at that mansion that Mr. Garcia talked about before, that he will probably be placed in, after that passes, Castro will simply not take the risk that 2 years from now or 3 years from now, any member of that family can show up and say things were different to as they were being portrayed by Castro and the Clinton administration. So that shows how monstrous that situation is.

I want to also thank, in addition to all the panelists, Neri Torres—

Ms. TORRES. Thank you.

Mr. DIAZ-BALART [continuing]. For pointing out the truth about Cuba. The history of your family, by the way, people of color in the history of Cuba have had a disproportionate, had a disproportionate, extraordinarily disproportionate role in the liberation of Cuba.

Ms. TORRES. Cuba is always being outstanding, we are in the right to be part of the country, and—

Mr. DIAZ-BALART. Not only that, not only the right to be part of the—

Ms. TORRES [continuing]. Of everything that happens in the country.

Mr. DIAZ-BALART [continuing]. But that, as I said before, the great source of strength that Castro had from the beginning was racism. He was always viewed as—

Ms. TORRES. The opponent of Batista, who was a colored man.

Mr. DIAZ-BALART. And remember that there was the phrase (Spanish phrase). That is just an aside.

Ms. TORRES. Well, they wanted the devil to come, and they have it.

Mr. DIAZ-BALART. But what is interesting, what is interesting, how interesting it is that—

Ms. TORRES. Well, let me tell you something—

Mr. DIAZ-BALART [continuing]. In the context, in the context of Cuban history—

Rev. WALKER. Do we deserve a translation or not? Please.

Mr. DIAZ-BALART. What language am I speaking in?

Rev. WALKER. Can someone translate? You spoke Spanish which was not translated.

Ms. FUENTES. (Spanish phrase) Meaning, that was the popular word out, let the black—

Mr. DIAZ-BALART. The rich bourgeoisie—

Ms. FUENTES. For the rich class, mostly, "Let the black man get out of power," Batista, who was a black, a mulatto, "Let the black man go, even if what comes after is chaos." And that is very true.

Ms. TORRES. Can I point out something? During Castro, we always live in fear, that they tell us not to go to America, "No, don't travel to America because the KKK is going to take you, the dogs are there, black is treated like hell," and it has always been a very hard issue for black people to leave Cuba.

First of all, it was the economical lack of power for Cubans, because first in the 1950's who left the country were the white people who were in power, because they were the rich people. Then the black people had to stay, and when finally we decided to leave, it was too late and people were feared that there was something happening here with the black people. So it wasn't until the 1980's that black people took conscious that we were able to leave too, because we had even the right to be against the government too. I mean, it is not that we have to bow to everything that happens in the country.

Mr. DIAZ-BALART. Mr. Chairman, I have to leave. I want to again thank you, Neri, thank all of the panelists. I know Mr. Walker is leaving. I wanted to ask you one question. You said you visited political prisoners. Can you give us some names?

Rev. WALKER. I have an appointment and I am running late, but I would be glad to talk to you anytime.

Mr. DIAZ-BALART. Well, if you could just provide some names of political prisoners you visited, it would be very enlightening.

I think his exit is most enlightening, at this point.

Thank you, Mr. Chairman, and thank you for pointing out so many of the unfortunate realities of today's Cuba and what would face Elian if the Clinton administration gets its way. Thank you.

Mr. SMITH [presiding]. Thank you, Mr. Diaz-Balart.

Let me ask Mr. Cohen, I understand that you went to the National Council of Churches to ask that they intervene on your family's behalf. Can you tell us about this?

Mr. COHEN [speaking through an interpreter]. My family has gone to all the government agencies and departments, including all the religious institutions in Cuba, all the religious denominations, and among the groups that my family went to visit was the National Council of Churches chapter in Cuba.

I personally sent a fax letter to Ms. Campbell, to Reverend Campbell. My family also sent the information directly to the National Council of Churches office in Havana, in Cuba. I have yet to receive an answer from the U.S. office of the National Council of Churches. My wife was called in Cuba, was called to Oto Marachal's office, from the National Council of Churches in Cuba, but basically the message was, "We can only do what Fidel Castro allows us to do."

That is exactly what happened with the Jewish community. I am of Jewish origin. My family approached Dr. Jose Miller, who is the president of the Jewish Congregation in Cuba, who made—he participated in one of those open forums in favor of the return of Elian to Cuba. Miller hasn't even called my family. What we have realized is that all these institutions in Cuba can only do what Fidel Castro allows them to do.

That is the sad reality of my family. Thank you.

Mr. SMITH. Thank you very much, Mr. Cohen.

I would like to yield to our chief counsel and staff director, Grover Joseph Rees.

Mr. REES. Mr. Shanfield, I take it from the Lawyers Committee testimony that you do recognize that where there is an apparent conflict or the possibility of a conflict, that the child's interest isn't exactly the same as the parent's, then some other person should be allowed to file an asylum application for the child and there should be some kind of a proceeding to determine whether it is appropriate for that to go forward.

Now, what do you say to the argument that has been made here earlier, that if you allow somebody other than the parent—where there is a parent living, even if that parent is in the country that it is alleged will cause the persecution of the child—that if you allow other people to file asylum applications, every child who happens to be in the United States, the child of an ambassador from a terrible country, or rather a country with a terrible government, or some visitor, that we would simply have lots and lots of children in this situation who would not ever be able to be with their parents after that? How would you limit this in order to make sure that wasn't what was going on?

Mr. SHANFIELD. Well, what is at stake here is that every child should have access to a fair adjudication of an asylum claim; that any child, with support or without support, has an opportunity to receive protection from the United States.

It is difficult to speak to the specifics of this circumstance, but what has happened in this case seems to run contrary to permitting access to children. What we have at stake here is a decision by the Attorney General, supported by the District Court, where the Attorney General has been basically granted unfettered discretion to determine what "any alien" means. If the Attorney General can say that Elian Gonzalez does not fall under the rubric of "any alien," I am uncomfortable about what is going to happen to future children where there may be conflict between that child, a parent or a guardian.

Mr. SMITH. Ms. McKinney.

Ms. MCKINNEY. Sure. I don't know, Mr. Chairman, if you asked the question about whether the U.S. Government had helped Mr. Cohen with his particular situation, so why don't we start off with that?

Ms. FUENTES. Is that your question?

Ms. MCKINNEY. Yes.

Mr. COHEN [speaking through an interpreter]. I met personally with Charles Shapiro with the State Department. He saw me in his office. He explained to me that he had full knowledge of my situation, of my case. He said that every 6 months they give a report, a 6-month report to the Cuban Government, asking for reparation on the violation of the treaty and presenting cases where the treaties are being violated. But the Cuban Government, according to Mr. Shapiro, the Cuban Government has never given him an answer, given the State Department an answer.

I know that Congresswoman Ros-Lehtinen and Congressman Lincoln Diaz-Balart have also done their bit on my behalf, and I also think Congressman Serrano has taken up my case, who did not know of my case until about 2 weeks ago. He learned about my case in a television program where he was a speaker, a guest speaker with Oliver North. Michele from his office was here with us just now, and she said to me that they wanted to show me what Congressman Serrano's office was doing for the case. I truly believe that someone like Congressman Serrano or someone like Reverend Lucius Walker, because of a more friendly relationship with Castro, if they interceded my family would probably be released immediately, and I hope that this happens. Thank you.

Ms. MCKINNEY. Could you talk to me a little bit about what your responsibilities were with the Intelligence Service?

Mr. COHEN. In Cuba?

Ms. MCKINNEY. Yes.

Mr. COHEN. OK. [Speaking through an interpreter.] I specifically worked taking care of, in other words, giving personal attention to foreign investment in Cuba. I worked for a department the M-6 Department, whose charge, whose mandate was to study, to do a profile on any foreign, potential foreign investor from any foreign country who were coming to, you know, explore investing.

I also worked for a time, a while, in other departments. In one of those departments, I worked in another department whose objective was to, in effect, steal technological information from the United States. For example, there was a case where there was someone, the case of a microprocessor, the technology of that that the Cuban Government wanted to have, even though this tech-

nology cannot be used in Cuba because there is just no way of using it. But the Cuban Government would then send that information, release that information to governments like the Iraqi Government, sometimes like China.

That is why sometimes I say to friends, people that I know, that I am friends with in this country, that Fidel Castro is not just the enemy of the Cuban family or of the Cuban people. He is an enemy of all of us, yourself included, yourselves included.

But in order for me to explain this, a lot of people say to me I am betraying Fidel Castro. And my answer is, Fidel Castro has betrayed the Cuban people. And the people I don't want to betray are my people, is my people, because I was forced, I had no choice, really. That is my reality, and I am branded by that past. That is a result of having had no choice, up to a point.

Ms. MCKINNEY. You mentioned that the Cuban Government keeps a file—

Mr. COHEN. The Cuban Government?

Ms. MCKINNEY [continuing]. Yes, keeps a file on people who travel there. And we have recently learned that the U.S. Government itself might be keeping files, as well, similar kinds of files. Recent revelations about a particular program of the National Security Agency called "Echelon" that monitors all telephone calls, all e-mails, all faxes, all communication that I would conduct with my colleague, any communication that I would conduct with friends that I have abroad, it is my understanding, and we are just finding this out, that all of that communication has the potential of being intercepted by the U.S. Government.

Now, when I went to China, I was told that one of the bad things about China was that they listen to the e-mails and the communications of people in China, and so I am a bit shocked to discover that my own government does the same thing. But I shouldn't be very much surprised because my father's name was mentioned as one who was under surveillance by the government, whatever, local or Federal Government, because of his civil rights activities in this country.

So I don't know that—I guess the point I am trying to make is that perhaps, maybe it is just the nature of government, period, that our private, innermost thoughts are intercepted or can be intercepted by people that we trust.

Ms. FUENTES. He says first of all he doesn't really know the extent to which things are operant in this country.

Mr. COHEN [speaking through an interpreter]. But I want to say that there is a great difference, and I will explain. If there are files that the U.S. Government has available or has opened, it is because the United States is protecting its own Nation, its own interests. The President of the United States is democratically elected, and I feel that all the strength of government and all the efforts are rightfully praised in preserving the security and the survival of this country, of this system, of this Nation.

The difference that I see when comparing it to Cuba, that in Cuba the only interests that are being advocated for or defended are the interests of one person, of one ego, not the interests of the whole nation. The interests of the people are really not the ones that are being advocated.

And the saddest thing I see is that in Cuba someone like you could not possibly say what you have just said in a country where there is freedom. No one can go up to the National Congress, the National Assembly, with a different idea or with a criticism of some sort.

Which is why I respect this country and I admire it, because I am a witness. I have seen that freedom, those rights, but that freedom that we enjoy here, that the society enjoys, is unfortunately used by the Cuban Government, by governments like the Cuban Government. I truly, from the bottom of my heart, respect your points of view, and I have a lot of things to learn from a person like you.

But you have a photograph of Elian on your lapel, and you are advocating for his return to Cuba. That is freedom. But to think that in Cuba anybody could have a photograph on their lapel of my family, do you really think that anyone in Cuba can say on the street that they are in favor of the reunification of this family? This is what I think makes up the difference, and every day I thank God for allowing me to see all this and be here. Thank you.

Ms. MCKINNEY. Thank you.

I would just like to remind the Chairman that we do have victims of our own government, U.S. Government excesses in the COINTEL program, the counterintelligence program, where African American and minority leaders were targeted and in some cases eliminated because of their advocacy for freedom for black people and minorities in this country.

I have other information that I would like to submit for the record, Mr. Chairman. I have got a letter from Congressman Ney and some information from Congressman Ciro Rodriguez, who would like to have their information entered into the record.

Mr. SMITH. Without objection, those additions will be made a part of the record.

Ms. MCKINNEY. Finally, Mr. Chairman, if I can be indulged just two questions more, one on Amnesty International reports that, of 27,000 people interviewed, they only found 10 who had claims of political persecution. Do the panelists think that this is reflective of the reason why people leave Cuba?

Mr. COHEN [speaking through an interpreter]. Twenty-seven thousand Cubans, interviewed by Amnesty International—

Ms. MCKINNEY. Yes.

Mr. COHEN [continuing]. In Cuba?

Ms. MCKINNEY. No. These are people who had left, and I believe that, yes, they were in Guantanamo Bay, I believe. I can find out.

Ms. DOMINGUEZ. Ms. McKinney, I would like to answer that, please. Actually, I was very involved in Guantanamo, and I can answer that.

One of the reasons that perhaps Amnesty International was not able to find as many people interested in applying for asylum is because we do have the Cuban Adjustment Act, and many people would not—the asylum process is very difficult. It is hardly understood by people who come in from systems that are repressive. They do not understand what the procedure is all about.

I do conduct a class on a weekly basis to people who are seeking asylum, because I think it is our duty to inform them about the

procedure. It is very difficult to understand, and I am talking about Chinese, I am talking about Haitians, I am talking about Colombians, I am talking about Cubans. And I find that it is my duty to explain the process because many people might have a case, and yet they are not able to elaborate or to explain it to the satisfaction of the asylum officer, and that could have happened to anyone who might not have been able to hear it explain, the procedure beforehand.

One of the things that we are finding now in Cuba is that unfortunately we have the in-country refugee processing program, and unlike many other countries, Cuba does not allow NGO's or a "VOLAG," (what we call a "VOLAG") to go in and act as a mediator or as a facilitator between the United States Government officer and the Cuban Government. And that is why a lot of people who then reach the U.S. Interest Section cannot qualify, because they do not know.

I do have now a program that gets aired to Cuba every Wednesday, where I explain precisely the immigration rules and regulations, because we do want to actually encourage the orderly process in immigration, under immigration laws. And I don't think that the interviews are really reflective, in answer to your question. I think this just basically reflects the overall response of anyone who comes out of the country and they don't know what to say because they don't know what is important.

Besides, they are in fact very fearful when you have an officer interviewing them, and Amnesty International people might have come across as maybe people who might have been representing a government agenda. And that, it happens to me too. I always have to clarify, I do not represent the government. I have to first establish myself as an NGO before they can even confide in me. It is very difficult.

And again I wanted to touch also on a point that somebody asked about Mr. Cohen's situation. I think he is not unique. There are many, many things that happen to people who actually ask for asylum here in the United States. They are granted asylum, and yet their family members are really sanctioned in Cuba. The United States Government does not disclose this information but yet, because of the procedural processes that exist there, because of the in-country refugee processing program, the Government of Cuba does punish the family members and they do retaliate by avoiding or denying the exit visas to those people.

And I would suggest something else to this Subcommittee. There are migration talks every 6 months between Cuba and the State Department and INS. It would be very interesting and very useful for many of you to actually try to find out what goes on during those migration talks. There are certain, I am sure, understandings and agreements that might even be impacting the situation that we have today.

I can tell you that from my experience, people in his [Mr. Cohen's] situation, this has been going on forever. I mean, this is not new. We have a long list of cases. The United States has stepped in many times to try to resolve this issue. We haven't yet come to any, you know, conclusive solution to this. But I just wanted to let you know that this has been going on for a while.

Mr. SMITH. Would my friend from Georgia yield to Joseph Rees?  
Ms. MCKINNEY. Sure.

Mr. SMITH. Joseph Rees used to be the general counsel of the INS before becoming chief counsel and staff director of the International Operations and Human Rights Subcommittee.

Mr. REES. I just wanted to comment that that statistic, 10 out of 27,000, I assume that you knew that that wasn't that Amnesty thought there were only 10 legitimate refugees out of 27,000. That was the number that INS found out of 27,000 people who managed to escape on rafts and were picked up on the high seas.

And that statistic is eerily reminiscent of the number of Haitians that we found when we were doing that for about 10 years between 1981 and 1991. Out of 22,000 people interviewed, we only found 11 people who were deemed to be refugees. Well, once we started doing it right in 1991, we found 30 percent to at least have a credible case of being refugees.

So a lot of it just depends on how close a look you take, and I think the Chairman will probably take Professor Dominguez up on the suggestion that we need to take a closer look both at the in-country refugee processing, at the interviews for the people who come on rafts, and at what impact those migration talks have.

Ms. MCKINNEY. Thank you. My final question would be about U.S. policy to overthrow Castro. There have been assassination attempts and other kinds of biological terrorism that has been used, invasion on at least one occasion, to try and overthrow Castro, and nothing has worked. Why?

Mr. COHEN [speaking through a translator]. My personal opinion, so many of these things happened long before I was born, that I don't think there really was a serious attempt on the part of this country to kill Fidel Castro. This is my personal opinion. Why do I feel this way? I also do not have evidence, and I don't think any of us here have evidence of everything that Fidel Castro says or claims that has been done as attempts on his life. I think there is a CIA document to the effect, that addresses this issue, but I personally don't think that there was ever a serious, a real serious, concerted attempt.

Neither would I want to advocate in favor or to opine in favor of such attempts. What I can say to you, the demoralization, the breakdown of authority, of degradation, of humiliation, of lost values of the Cuban intelligence system or the counterintelligence system would not allow—no, "allow" is not the word—would not withstand a real serious attempt.

In other words, a few months ago a member of Castro's personal bodyguard defected. His name was Lazaro Betancourt, more or less my age, whose family is in Cuba, of course as a hostage. And I told him, "Are you the only one who feels this way?" "No, I'm the only one who dared to defect, because not everyone is willing to have their family be retained as a hostage and be harassed."

Truly, and Castro knows this, all of that, all of this system, this entire thing will end with his life. When his life ends, all of this will come to an end. Not that we are betting on this or that you are betting on it, or that we are projecting or prophesying or anything like that. Cuba will be free.

And he knows, Castro knows, that no one is going to really attempt to end his life, not in Cuba, because there are no conditions that would enable such an attempt, because there is over a 2,000-man security force around him, with 33,000 men, and you can't get weapons in Cuba freely. So whatever attempts might have occurred in the past, I don't really think they were motivated truly or seriously, and of course for Castro that becomes, he turns it into some sort of victory. Thank you.

Ms. MCKINNEY. Mr. Chairman, I would like to put additional information into the record about those assassination attempts.

Mr. SMITH. Mr. Cohen, thank you. I just have one final question, and I think, Mr. Cohen, you might be the right one to direct it to.

When the grandmothers came to the United States and met with Sister Jean and Elian, there were reports that Cuba's or Castro's agents accompanied them. Is that the same today? Is that true, in your opinion?

And, second, Mr. Gonzalez, who is obviously here in the United States right now, are agents also accompanying him, both in-country or people who have come with him? And, in your view, and I know this is speculation—but is he operating on a script? I mean, if he steps off and says something out of balance, is there a possibility of retaliation?

Mr. COHEN [speaking through a translator]. The first public appearance that Mr. Gonzalez made was to look for the—to show the video—oh, there is a video of that presentation, of that first public appearance. The person immediately to his right, is Felix Wilson. He is an officer of the B-1 Intelligence Department. M-1, I'm sorry, "M" as in Mary, 1. He knows me; I know him.

The M-1 Department, their task, their mandate is to operate, to guide operations against the United States. There are various departments, sub-departments within that department. There is Department M-1, Section 1. That is where Felix Wilson works, and his task, his responsibilities are emphatically, in other words, on the U.S. Government. That is his task.

The target of this gentleman is the United States, so his task is to develop relationships with, for example, university professors, with scholars, to do a review, to do a profile on them, to inform, to try to influence lobbying in Congress, with a structured methodology that takes 75 percent of propaganda, or in other words, untruth, and 25 percent of truth. And this, according to Mr. Cohen, is a methodology of preparing information.

Elian's father is here, and he has to answer, he has to act according to that libretto, to that script. He cannot speak freely, he cannot speak openly, and he cannot contact his family here, his American family. And the reason why he cannot contact the family, he will discover the actual truth of what his potential life could be in this country. In other words, he will have access to information that is withheld from him by the Cuban Government.

That doesn't mean that if he contacts his family, he will automatically make a decision to stay in the United States, because the grandmothers are there, in other words, his mother. There is a lot of family pressures and people left behind. But he will discover an alternative reality, the reality that we have here, and that is a great risk for Fidel Castro's balanced scheme.

Mr. SMITH. Thank you very much for that answer and for the insight it provides us. I would like to thank our very distinguished witnesses. If they have anything further they would like to convey to the Subcommittee?

On behalf of my Ranking Member, Ms. McKinney from Georgia, the other Members of the Committee, we thank you so very much. We will be getting back to you probably with some additional questions, and this will be the first in a series of hearings, so I look forward to building on this record and as widely as possible disseminating the information. So we do thank you so very much.

Mr. COHEN. Thank you. Thank you very much.

Ms. DOMINGUEZ. Thank you.

Ms. FUENTES. Thank you.

[Whereupon, at 6:40 p.m., the Subcommittee was adjourned.]

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**A P P E N D I X**

APRIL 13, 2000

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**Statement of Representative Chris Smith**  
**Chairman, Subcommittee on International Operations**  
**and Human Rights**

The tragic plight of six-year-old Elian Gonzalez has focused the attention of the American public on two dramatically different views of what life might be like for children in Cuba—and, in particular, of what would happen to a child who was returned to Cuba after managing to escape to the United States.

The picture presented by the Clinton Administration and by many in the U.S. news media might have been drawn by Norman Rockwell. The child is welcomed by a loving family, by his classmates and teachers, and life soon returns to normal. The only cloud on the horizon is that the family is poor — which in this version of events is caused by the U.S. trade embargo rather than by the policies of the Castro government — but on the whole everyone is happy except a few people in Miami who, in this view, are the ones who caused the whole problem in the first place.

In the other picture, it is the child himself who is unhappy, and he is likely to be very unhappy for the rest of his life. Upon his return to Cuba the child is greeted by mass demonstrations ordered by the government. There are banners announcing that "the Cuban people have reclaimed their son" who was "kidnapped" by enemies of the Revolution. A government official announces that the child is a "possession" of the Cuban state. Arrangements are made for a public appearance with Castro himself, provided that measures can be taken to guarantee that the child will not spoil the occasion by showing fear or some other inappropriate emotion in the presence of the dictator.

But in this version of events, the homecoming is only the beginning. For the rest of his life, the child will be in the effective custody not of his father but of the Cuban government. His education will consist mostly of political indoctrination, and when he is eleven he will be taken to a work camp for weeks or months of forced labor and even more intense indoctrination. The child and his family are watched every day and hour of their lives by government agents. If these agents see anything suspicious — any signs of independent thought or action as the child grows older — there will be stern warnings from the security forces and from local Communist enforcers. If he should ever dare to speak his mind, he can

be arrested and imprisoned for a crime called "dangerousness". And he will never, never be allowed to leave.

Today's hearing is an attempt to learn which of these two views is more consistent with the facts. We will hear from experts on Cuban law, who will describe the respective roles assigned to the family and to the government in raising children. We will also hear the testimony of witnesses who have first hand experience with the Cuban education system, the law enforcement system, the Committees for the Defense of the Revolution, and the other agencies of the government and of the Communist party with which the child will come in contact. I hope these witnesses will address not only the way the Cuban government treats ordinary children, but also any special treatment it might be expected to give a child who had come to its special attention. Finally, we will hear testimony on the extent to which the United States legal system should take account of these facts about Cuba -- or, for that matter, about any other country -- in deciding whether to return a child there in the context of an asylum application or any other immigration proceeding.

I want to make clear at the outset that I find the Elian Gonzalez case deeply troubling. On the one hand, in determining what is in the best interest of a child I firmly believe there should be a strong presumption that the child's best interest is to be with his natural parent or parents. But there are exceptions to this rule, however rare, and what troubles me the most about this case is that there has never been a judicial or administrative hearing to take evidence and find facts in an attempt to consider carefully and objectively whether this case falls within one of those rare exceptions. Instead the Attorney General seems to have substituted her own intuitive judgment, based solely on an interview by an INS official in Cuba with the father.

This informal fact-finding process seems to have drastically underestimated the extent to which the boy's father's actions may have been dictated by fear of the Cuban government, as well as the extent to which the child's own life will be controlled by the government -- rather than by his father -- if he returns. Sending a child, or anybody else for that matter, back to Cuba is not the same as sending him to Mexico or France. For instance, here is what the U.S. State Department's 1999 Country Reports on Human Rights Practices have to say about "arbitrary interference with privacy, the family, home, [and] correspondence" in Cuba:

Although the Constitution provides for the inviolability of a citizen's home and correspondence, official surveillance of private and family affairs by government-controlled mass organizations, such as the [Committees for the Defense of the Revolution, or "CDRs"], remains one of the most pervasive and repressive features of Cuban life. The State has assumed the right to interfere in the lives of citizens, even those who do not actively oppose the Government and its practices. The mass organizations' ostensible purpose is to "improve the citizenry," but in fact their goal is to discover and discourage nonconformity. . .

Education is grounded in Marxist ideology. State organizations and schools are charged with the 'integral formation of children and youth.'

The authorities utilize a wide range of social controls. The Interior Ministry employs an intricate system of informants and block committees (the CDR's) to monitor and control public opinion. While less capable than in the past, CDR's continue to report on suspicious activity, including conspicuous consumption; unauthorized meetings, including those with foreigners; and defiant attitudes toward the Government and the revolution.

State control over the lives of children in Cuba is perhaps even more pervasive than over the lives of other citizens. For instance, Article 5 of the Children and Youth Code of the Republic of Cuba requires all persons who come in contact with children and youth "to be an example to the formation of the communist personality." Article 11 requires that teachers show "a high mission to the development of a communist personality in children." And Article 23 limits eligibility for higher education to children who demonstrate "proper political attitude and social conduct."

Maybe I am wrong about what all this means for the future of Elian Gonzales. Maybe an impartial hearing would determine that Elian's father is acting out of his own free will and that the Cuban government will leave him in peace to raise his son. But we will never know until we have such a hearing. The proceedings that are currently going on in federal court do not address the merits of these questions. Instead, they are limited to the narrow procedural question whether it was in the Attorney General's discretion to deny a hearing by letting Elian's father withdraw his asylum claim. The government is arguing that the Attorney General's discretion is so broad that she can either grant or deny a hearing, either keep Elian here or send him back, whichever she chooses. This may be correct — the lower court agreed that her discretion under the immigration laws is so broad that she can send Elian back to Cuba without due process of law — but even if it is correct, it is not right.

I look forward to hearing from our distinguished witnesses.

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**Statement by Hon. Ileana Ros-Lehtinen**  
**for Hearing on:**  
**"Children's Rights in Cuba"**  
**Subcommittee on International Operations and Human Rights**  
**Thursday, April 13, 2000**

I would like to thank the Chairman of this Subcommittee, my friend and colleague, Chris Smith, for his commitment to human rights throughout the world, for his ongoing leadership, and for his cooperation in holding this very important hearing today.

When Patrick Henry said: "Give me liberty or give me death" little did he know that he would inspire future generations of Cuban freedom seekers who risk life and limb to escape Castro's gulag. Little did he know that his words would resonate loudly in the heart and mind of Elizabet Broton, Elian Gonzalez' mother, who drowned praying for her little boy to survive and reach our great country -- the land of liberty -- the United States.

Stop a moment and think. How horrific must living under an oppressive totalitarian dictatorship be? How fearful must Elizabet Broton have been for her little boy's future that she would take such desperate measures? Only those who have personally experienced Communism; who have had liberty taken away from them, could fully understand how heinous the Castro regime is to its people -- to its children.

The case of Elian Gonzalez has received much media attention but, despite our best efforts to counter the Castro propaganda machine, the truth about conditions for children in Cuba; the facts about the Communist dictatorship's sense of family and treatment of children; and the reality which awaits Elian if returned to Cuba has yet to receive the attention they merit.

First, let us address the fallacy that Elian would be returned to his father. Castro officials themselves, last week, stated clearly and publicly that: "Elian is the property of the Cuban state." This country went to war to eradicate such abhorrent treatment of persons as subhuman and as property. We should not tolerate such treatment for Elian nor for any Cuban child.

This disregard for the value of children as human beings and for the essence of the family is pervasive throughout the so-called laws which guide the Cuban Communist regime.

Custody, according to the Cuban Code of the Family, can be denied to parents if they engage in behavior which runs contrary to Communist teachings. This is further illustrated in Articles 5 and 8 of the Code of the Child which underscore that: "The society and the State work for the efficient protection of youth against all influence contrary to their communist formation." They further state that "The society and the State watch to ascertain that all persons who come in contact with the child ...constitute an example for the development of his Communist personality."

To ascertain whether these dictums are acted upon, all one needs to do is ask hundreds of children left orphaned by the regime, as their parents, Cuba's human rights dissidents and political prisoners, languish in squalid jail cells, isolated from their sons and daughters.

This was the case of Noemi, the 9-year-old daughter of Milagros Cruz Cano, who spent many days without her mother because Cuban State Security continued to arrest Milagros for her "antisocial" and "dangerous" behavior -- Castro's charges for those who call for human rights, civil liberties, and democracy in Cuba.

Milagros was forced into exile by the Castro regime last October. Castro's thugs, however, refused to let her take her daughter, Noemi, who is now essentially a hostage of the regime. All photographs and letters from her mother are seized. Her every move is monitored. She is followed by state security. Noemi is chastised and subjected to psychological tortured because of her mother's political views.

This is not fiction or a made for TV movie. This is reality. I have had the honor of spending time with Milagros and look into her eyes. I have seen her sorrow and her anguish. I have heard the frustration in her voice and her astonishment at the willingness of so many to believe and promote Castro's facade about family and the need to reunite Elian with his father.

I have seen and heard this same anguish in Jose Cohen, one of our witnesses today, who has been struggling for over 4 years for the Castro regime to release his three children.

However, the pain that Jose and Milagros feel cannot compare to the unbearable loss experienced by the mothers, fathers, and grandparents of the children who were murdered by the Castro regime on July 13, 1994. These infants, toddlers, and teenagers joined their families on the "13th of march" tugboat for a voyage that would bring them to the land of liberty -- the United States. However, the Cuban Coast Guard quickly turned the water cannons on them and, when that did not succeed in drowning them all, they proceeded to ram the Cuban Coast Guard vessels against the tiny tugboat until it was destroyed.

Yes, they heard the cries of children calling out to their parents as they gasped for air. Yes, they saw their frail little hands reaching out from beyond the waves. Yes, they felt the presence of death as the tiny bodies floated into the abyss. But Castro's thugs did not care.

Another of today's witnesses, Jorge Andres Garcia, knows first hand about this heinous crime -- this most gruesome example of the Castro dictatorship's abuse against Cuban children. He will describe the attack which resulted in the death of 14 out of 17 of his relatives, including his little grandson. He will elaborate upon the tactics used by the regime to manipulate him into endorsing the "official" version of events.

Mr. Garcia will explain how the very same Ramirez Estenez whom we now see at the side of Juan Miguel Gonzalez, Elian's father, is one who was tasked to defend the attack on the "13 de marzo" tugboat. The Castro regime had violated the most fundamental right endowed to Man by the Creator -- the right to life. Yet, it would denounce the children and their parents in order to justify its actions.

When looking at children's rights in Cuba, we must also look at the indoctrination; the psychological or physical torture; the destruction of a child's psyche and sense of right and wrong. We must pause and look at evidence such as that displayed in this photograph.

Here we have children who are 6 or 7 years-old holding rifles above their heads as part of their physical education classes. However, these are not mere exercises. This photograph illustrates the requirements clearly outlined in Article 68 of the Cuban Code of the Child which states that: "Children and youth must prepare themselves for the defense of the country through military education, the acquisition of military knowledge and training." The State reinforces this requirement through books such as these which teach Cuban children that "G" is for "Guerrilla"; "F" for "Fusil" (or rifle); that "a rifle in good hands is good."

Could anyone argue that this is an example of a healthy environment for children? To be subjected to this type of indoctrination since the age of four -- is this the kind of rights children enjoy in Cuba?

Then there is the issue of child slave labor. Article 44 of the Cuban Code of the Child underscores how "the combination of study and work ...is one of the fundamentals on which revolutionary education is based." "This principle," it states, "is applied from infancy through simple labor activities; in primary education through farming...and pioneer activities in the modes of production; in middle education, through farm labor camps."

Indoctrination, torture, forced labor, combat training, murder. These are but a microcosm of the gross violations of children's rights committed by the Castro regime -- the very same Communist totalitarian dictatorship which calls for Elian's return to Cuba.

Do not be fooled. Open your eyes. Open your hearts. Let them guide you to the truth about children's rights in Cuba -- to the grim reality Castro's tyranny.

Known Recent Violations of Children's Rights in Cuba  
Statement by Congressman Lincoln Diaz-Balart  
April 13, 2000

Just in the four and one half months that Elian Gonzalez has been in the United States there have been a series of abuses against children in Cuba that dramatically highlight the lack of parental and children's rights in Castro's Cuba. I would like to mention a few of these cases that we have become aware of thanks to CubaNet and the courageous work of independent journalists on the island:

On January 14 in Havana the independent journalist Victor Rolando Arroyo was sentenced to six months in prison for purchasing toys to give to needy children in Cuba to commemorate Three Kings Day. During his trial Arroyo stated, "I think public opinion needs to meditate on what has occurred and evaluate that in Cuba you are not allowed to give toys to needy children. The government mobilizes thousands to claim a child, while thousands of children are denied a simple toy which might bring them a smile".

On January 22 in the town of Pedro Betancourt, Matanzas the family of Miguel Sigler Amaya, an activist of the "Movimiento Opcion Alternativa", was brutally beaten by the branch of Castro's state security forces known as the "Brigades of Fast Response". The four children of Mr. Sigler Amaya, who range in ages between 2 and 14, after the brutal beatings, were arrested along with their mother who was also arrested in a semi-conscious state due to the attack by Castro's agents.

On January 24 in Las Tunas, a 9 year-old girl, Alva Riveron Fuentes, was expelled from school for not participating in activities sponsored by the Union of Young Communist Pioneers.

The 14 year-old daughter of dissident Leida Miranda on January 25th, in Cienfuegos, was reported missing to police. Police informed Ms. Miranda that they "did not have gasoline in their vehicles to search for her daughter". Ms. Miranda further denounced to Cuba Press that the Cuban police had expressly refused to post missing posters of her daughter.

On March 13 in Caibarien, Villa Clara, Duniesky Rodriguez Romez, 17 years-old, was beaten by the police of Santi Espiritu because of his friendship with members of Cuba's dissident movement. A Cuban state security agent named Jorge Luis told the 17 year-old that he had 30 days to leave his hometown of Caibarien.

Page two

On March 14 it was reported from Havana by Hector Maseda that 10th and 11th graders from the vocational school "Lenin" were being obligated to participate in daily demonstrations that the Cuban government organized. The students are taken daily to these political activities after completing 10 period class days. One student stated, "We are exhausted due to the countless demonstrations and the lack of proper nutrition in the school. We are awoken at 6 am and many times we do not return to our room until 1 in the morning due to these forced demonstrations. We get very little sleep".

April 3rd in Las Tunas, dissident Aida Perez, the grandmother of 12 year-old Isidro Quinones Perez, who has been missing for four months, denounced that the Cuban National Police refuse to search for her grandson. The Municipal Unit Police told her, "You look for him and when you find him hand him over so we can place him in a correctional school."

On April 4 in Camaguey, Jorge Ribes Pea was sentenced to 7 months in prison for not permitting his fourth grade son to join the Union of Young Communist Pioneers or participate in political activities during school hours. The school principle Maritza Varon denounced Mr. Ribes Pea to the police and he was charged with "an act against the normal development of a child".

On April 5th in Havana, 76 interned elementary school children between the ages of 6 and 12 in the school of "Arquimedes Colina" were denied a weekend pass to see their parents because they had refused to see the television programs known as "tribuna abierta", where Castro discusses nightly the case of Elian Gonzalez.

April 10th it was reported from Havana that all the middle schools in that city have required children to answer a question at the end of their math exams on what is their opinion of the Elian Gonzalez case. The children are graded on their responses. A parent interviewed by Cuba-Verdad press stated, "At first I did not understand, I thought I was not listening correctly, then I thought my child had confused the subject area and later I was totally shocked to find that this is true." Another parent stated, "My child asked me, what did mathematics have to do with Elian Gonzalez? I did not know what to answer, I was completely dumbfounded."

April 11 El Nuevo Herald reported that Hans Dominguez Gonzalez, who is 15 years old, was harassed and threatened with expulsion because his father is an activist with the "Partido Democratico 30 de Noviembre Frank Pais" opposition party.

ROBERT MENENDEZ  
13TH DISTRICT, NEW JERSEY  
VICE CHAIR OF THE DEMOCRATIC CAUCUS



**Congress of the United States**  
**House of Representatives**  
**Washington, DC**

**FOR IMMEDIATE RELEASE**  
April 13, 2000

Contact: Andrew Kauders (202) 225-0591

WASHINGTON, DC – Rep. Bob Menendez (D-NJ) made the following statement during the Subcommittee on International Operations and Human Rights hearing on *Children's Rights in Cuba*:

“As we consider the possibility that Elián Gonzalez may be returned to Cuba, I think it is timely to consider how the Castro regime treats children, what rights children have in Cuba, and what the future holds for a child, like Elián, in Cuba.

“The Castro regime considers children to be wards of the state. The State is actually charged with the ‘integral formation of children and youth.’ In fact, Article 39 of the Cuban Socialist Constitution says that the ‘The education of children and youths in the communist spirit is the duty of society as a whole.’

“To ensure that children are properly indoctrinated, the Cuban educational system maintains a dossier for each child. The record reflects whether the family is religious, the extent of the ideological integration of a child’s parents, what party organizations the parents participate in, whether the child has participated in political and ideological activities, and the child’s progress in the areas of ideological, political and moral education.

“Children are also compelled by the state to participate in Union of Communist Pioneers where they are further indoctrinated in communist ideology, and required to participate in political and military readiness activities. At age 10, children must attend agricultural work camps for three months every year. At the Escuela del Campo they engage in military games in which they learn how to hold bridges from enemy troops, find landmines, learn how to throw grenades through windows and participate in other war or combat simulation games.

“Indoctrination aside, the future for Cuban children is not very bright. Past the age of seven, children no longer receive milk rations, and according to the State Department’s latest human rights report, ‘The Government employs forced labor, including that by children.’ While the regime claims to prohibit forced and bonded labor by children; the State Department reports that ‘the Government requires children to work without compensation. All students over age 11 are expected to devote 30 to 45 days of their summer vacation to farm work, laboring up to 8 hours per day. The Ministry of Agriculture uses ‘voluntary labor’ by student work brigades extensively in the farming sector.’

(more)

“As if indoctrination and forced labor aren’t enough, child prostitution – supposedly illegal – is widely practiced in Cuba. Today, Cuba is one of the prime destinations in the world for cheap sex tourism. Boys and girls, as young as 9 and 10 are engaging in prostitution to help their families get by.

“At the same time that Cuban children are prostituting themselves for hard currency, Castro has maintained a large and well-armed military. According to the State Department, in 1990 Cuba's air force had about 150 Soviet-supplied fighters, including advanced MiG-23 Floggers and MiG-29 Fulcrums and was probably the best equipped in Latin America. In 1994, Cuba's armed forces were estimated to have 235,000 active duty personnel.

“Castro has also dumped millions of dollars into tourist hotels, beaches and medical tourism facilities – facilities that are inaccessible to the average Cuban. But, despite the obvious failure of communism, Castro insists on pursuing his maligned social experiment – to the detriment of eleven million people.

“The antiquated social and political policies of Fidel Castro not only compromise the basic human and civil rights guaranteed to all Cubans by the Universal Declaration of Human Rights, they deny every Cuban -- men, women, and children – the opportunity to live a better life.”

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Testimony of

**MARIA R. DOMINGUEZ,**  
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**St. Thomas University Human**  
**Rights Institute**

For Hearing On:

“Children’s Rights in Cuba”

Subcommittee on International Operations  
and Human Rights  
Committee on International Relations  
U.S. House of Representatives

Thursday, April 13, 2000

Mr. Chairman, distinguished members of Congress, I thank you for the opportunity to address you on this very sensitive and important topic; I would like to particularly recognize the representatives from Florida, Congresswoman Ileana Ros Lehtinen and Congressman Lincoln Diaz-Balart. I have prepared a written statement but would like the opportunity to submit a more extensive written testimony for inclusion in the record.

I teach "Human Rights and the Law" at St. Thomas University in Florida, and my students have recently studied both the Declaration and the Convention on the Rights of the Child. They were surprised to learn that the USA had not ratified the Convention, but they are also learning that the implementation process is very difficult and complex. I have just returned from Geneva where I attended part of the annual meeting of the Commission on Human Rights. Some of your concerns are also the concerns of other countries. I am hopeful that hearings such as this advance efforts in making human rights a reality for each and every child in the world. More concretely, I will specifically highlight certain Cuban documents that delineate and set parameters on the civic, political economic, social and cultural rights of Cuban children in the Island.

I shall start with the 1992 Cuban Constitution, then cover very briefly the Cuban Code of Childhood and Youth as well as relevant articles in the Cuban Family Code.

The Cuban Constitution as amended in 1992, sets forth the goals for the Cuban State and its Society. Article 1 of Chapter One states that Cuba is a socialist State of Workers. Art. 5 further states that the Communist Party of Cuba, described as Marxist-Leninist and as the organized vanguard of the Cuban nation, is the superior leading force of the Society and State, organizing and guiding the common efforts aimed at the highest goals of the construction of socialism and the advancement toward the communist society. Art. 6 describes the Union of Young Communists as an entity having the preeminent function of promoting the active participation of the young masses in the task of socialist construction. Under Chapter IV, called "The Family," Art. 38 declares that Cuban parents have a duty to contribute actively in their children's integral development as "useful, well-prepared citizens for life in a socialist society." Chapter V, entitled "Education and Culture" starts with Art. 39, which states that "the State guides, fosters, and promotes education and sciences, in all their manifestations." It lists 10 principles for its educational and cultural policies. I will only highlight 2 relevant principles within Art. 39:

- 1.- The State bases its educational and cultural policies on Marxist ideology.
- 2.- The State promotes the patriotic education and communist training for the new generations and the preparation of children, young people, and adults for social life.

To implement these principles, education is combined with work and participation in political, social, and military training activities. The State also promotes the participation of its citizens through the country's mass and social organizations in the implementation of its educational and cultural policies.

Finally, under Chapter VII, the Cuban Constitution describes fundamental rights and duties. Article 62 leaves no doubt as to the major principle laid out throughout the text. It reads and I quote:

"None of the Freedoms which are recognized for citizens can be exercised contrary to what is established in the Constitution and the law, or contrary to the existence and objectives of the Socialist State, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law." ( End of quote).

The second document I would like to bring to your attention is the "Code of Childhood and Youth," Law no. 16, enacted on June 6, 1978, which is a legally binding document on all minors, parents and teachers in Cuba. I have identified at least 15 articles which should be cause for concern, and I strongly recommend that you read it and analyze it carefully to gain a wider perspective on how the State controls children's functions, education, and upbringing in Cuba. I especially would like to highlight articles 3, 5, 7 thru 10, 18, 20, 23, 33, 40, 68, 83, 90 and 101. All these articles call for the communist formation of the young generations and the fostering of the ideological values of communism in the youth. I highlight Art. 18 in particular because it states that educators have the elevated mission in the formation of the communist personality, and Art. 20 again postulates that the school is the basic educational institution contributing decisively in the communist formation. The Code highlights the State's entities relationship with mass organizations and the Union of Communist Youth for the purpose of sustaining a coordinated effort in the development of children and youth.

These articles lead me to believe and conclude that parental decisions are certainly subservient to the State and the law, and that parents—or anyone else for that matter—will be punished if found to disagree with the State's principles to develop the communist personality in children and youth. In other words, parents are not free to choose any alternative lifestyle for their children. Art. 62 under the Constitution makes it very clear.

Furthermore, the Cuban Family Code stipulates under Title II, Chapter II, entitled "Relationship between Parents and Children", Section One, "Patria Potestas and its Exercise," in Art. 85, subsections 2 and 3, that the concept of Patria Potestas entails the duty of the parent to inculcate the spirit of internationalism, and socialist morality. The socialist concept of the family does not accept the idea of the family as a private contractual union. The primary role of the family in socialist Cuba is to contribute to the development and upbringing of children in accordance with socialist values. Any dissent or attempt to deviate from this role may be punishable under the law. The Family Code therefore underscores the supremacy of the State's principles over the parents' own beliefs and individual decision-making processes.

In practice, all of these legal norms and laws are implemented through a very rigid and controlled environment. For example, the child is obligated to carry an identity card that lists all addresses, schools attended and political attitude (i.e., the child's participation in the Communist Pioneers association). This ID card serves the State's purpose in controlling the child throughout his formative years. The Cuban State realizes that the early formative years in a child's life are crucial for his personality development; therefore, parents and the extended family cannot participate in the child's education or extra-curricular activities which are contrary to the State's principles. Another method in implementing the State's principles is to transport children throughout the cities and towns to participate in political activities and without obtaining parental consent. The State also controls children once they are of school age through another document

called a "Student Cumulative Dossier." The child's academic, political, and religious behavior is recorded by the teacher. It also records the parents' behavior toward religion, their political opinion, economic standing, family relations, and much more. This document also notes the child's participation in the so called "voluntary" work; children who are 10 years or older are required by the State to perform agricultural work at camps in the country for 3 months every year. Parents have no say in this. Promiscuity is reported to be rampant at these countryside schools.

I have heard numerous accounts and testimony from parents who come to live in the USA out of desperation and concern for the lack of control they have over their children's lives. I know this because I am an attorney who also specializes in US immigration law. In rendering free legal services to the poor, I have encountered many recently arrived Cubans who need help in filling out their asylum applications. I have learned from them that there's much desperation to leave the Island because they feel very controlled and do not wish the same fate on their children. What they hope for their children is to have freedom in their decision-making processes that until their arrival in the USA, had eluded them while in Cuba.

Testimony of

**JORGE A. GARCIA**

For Hearing On:

“Children’s Rights in Cuba”

Subcommittee on International Operations and Human Rights

Committee on International Relations

U.S. House of Representatives

**Informe  
al  
Congreso de Estados Unidos**

**Jorge A. García  
13 de abril del 2000**

De nada sirve a la Marina su avance material sino viene acompañado del progreso moral de sus hombres.

Con el hundimiento del remolcador 13 de marzo, la nobleza, la lealtad y la caballerosidad del hombre de mar, quedan barridas por el filibusterismo inusitado.

Hagamos un examen de conciencia sincera sobre los pormenores del hecho y reconozcamos que quienes acatan la decisión de abordar la embarcación en el mar, no sólo cumplen deberes muy amargos y nocivos a la tradición del navegante, se enfrentan a una catástrofe cuya magnitud deja un saldo de horror entre una multitud inocente que suplica de su auxilio y salvamento.

La marinería, en este caso, divorció sus legítimos códigos de ética para plegarse a la razón de la fuerza en vez de acatar la fuerza de la razón.

En realidad nadie gana esta batalla, porque los que intervienen en ella, quedan destrozados unos, y muy quebrantados otros. Nadie gana, mucho menos la paz.

Mas si los odios y el desorden soslayan hoy el honor marinerio, la paz de los océanos recibe un tiro de gracia, y un lúgubre porvenir acecha a la vuelta del derrotero.

Que sirva de lección este episodio, que arruina tantas vidas y el crédito de una flota.

El trágico desenlace ocurre a siete millas del Malecón habanero durante la madrugada del miércoles 13 de julio de 1994. Deja un saldo incalculable de víctimas y abre una brecha de tristeza, amargura y dolor en el corazón de todos los cubanos.

Presumiblemente viajaban a bordo poco más de setenta personas; un puñado de niños figuran entre éstos. Apenas sobrevive un reducido número; la mayoría parece ahogada en las profundidades de un mar oscuro.

Hasta donde puedo conocer, porque las probabilidades de cifras exactas de desaparecidos son escaso del tiempo, algunos sucumben atrapados en medio de una maraña de hierros

retorcidos dentro de los camarotes y cuarto de máquinas. Otros, en cubierta, son arrancados de entre los brazos maternos por los proyectiles de agua, cuando enarbolados a todo lo alto sirven como símbolo de clemencia frente a los ojos de sus agresores. Peor suerte corren aquellos, que habiendo ganado el agua les falta aliento para dar unas pocas brazadas que los saque a flote. El torbellino rapaz horadado, a propósito, en la superficie del mar los devora para siempre.

Los captores taponan sus oídos para no escuchar los gritos agonizantes de los niños ni el llanto de las madres aterrorizadas suplicando auxilio para sus hijos. El genocidio devuelve las naves vacías a sus respectivos espigones sin llevar encima víctimas socorridas. Atrás queda un escenario calamitoso de sangre, luto y lágrimas.

Sólo un milagro de Dios impide que se apaguen todas las voces. Enseguida, su fuerte clarinada se abre paso denunciando la verdad por todos los rincones del mundo.

Ahora, quién sabe donde yacen los cuerpos sin vida de los inocentes incluidos dentro de la fatídica nómina. Tal vez son arrastrados por las corrientes o reposan lapidados en su lecho marino. Quizá se entariman en lingadas dentro de una fosa común; pero estén donde estén, sus almas ya cruzan las barreras del firmamento y ahora permanecen junto a la Corte de príncipes encantados al regazo de la Providencia.

¡Jamás serán olvidados!. ¡Ni por su familia... ni por la Patria que ha hecho suyos estos hijos!

Junto al dolor, la misericordia y el desconsuelo, también se conserva la imagen viva de cuando parten en su último adiós. Por eso cuesta trabajo aceptar que hayan muerto; por eso los esperamos cada nueva aurora.

Señores Congressistas, aquí les dejo con lealtad y amargo desempeño mi intento por abrir un espacio a estos niños, a los jóvenes; a todos los hombres y mujeres desaparecidos en el

remolcador 13 de marzo, cuyos nombres figuran dentro de la extensa lista de mártires cubanos.

Todavía aletea a mis oídos, la frase susurrada por mi nieto para sellar una promesa conmigo antes de irse:

*—Papa te voy a traer un pescao bien grande pa'que te lo comas.*

Y sin dejar suelta la expresión alza su bracito izquierdo empuñando la primitiva varita de pescar como garante a su palabra. Mantiene un rato esa posición a la espera de mi alabanza acostumbrada. Tú siempre tan amable —digo y lo beso en la mejilla. Entonces, sus ojos destellan un brillo deslumbrante y a sonrisa llena repite:

*—Tú siempre tan amable.*

El corazoncito se le quiere salir. Los deseos de disfrutar un día de asueto palpitan fuertemente en lo más hondo de su alma; merecida recompensa para un fin de curso con buenas notas y pase al sexto grado.

Todos los niños ignoran su auténtico destino. La verdad, como píldora amarga que se traga, queda guardada piadosamente en el corazón de las madres. Sin embargo, el fatal desenlace sorprende a unos y a otros.

La paradoja los mantiene escépticos hasta el mismo instante en que desaparecen por los caminos del cielo. Se fueron sin poder corretear por los remansos parajes de la campiña criolla. A la vista de sus miraditas finales queda grabado para el silencio, la imagen de un lóbrego mar por donde salen verdugos lanzando agua picante que lastima sus pechitos. Cruel martirio como pago al denuedo que ensangrentó pañoletas; las mismas que, a diario y en solemnidades, anudaron sus cuellos para custodiar sufragios y contagiar de alegría las guardias pioneriles.

El desenfreno hizo rипios estos simbólicos atuendos y ahora sólo sirven como parches que cubren agujeros sobre la púrpura manta del ángel de las tinieblas.

**Niños desaparecidos.**

Diez niños conforman el triste elenco. Sus edades oscilan entre los cinco meses y doce años.

Relación nominal y edades	Sitios donde viajaban en <u>el momento del infortunio</u>	
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1-Hellen Martínez Enríquez	5 meses	Camarotes
2-Xiedy Rodríguez Fernández	2 años	Camarotes
3-Angel René Abreu Ruiz	3 años	Camarotes
4-José Carlos Nicle Anaya	3 años	Camarotes
5-Giselle Borges Alvarez	4 años	Camarotes
6-Caridad Leyva Tacoronte	5 años	Camarotes
7-Juan M. Gutiérrez García	10 años	Cubierta
8-Yasser Perodín Almanza	11 años	Cubierta
9-Yousell E. Pérez Tacoronte	11 años	Camarotes
10-Eliecer Suárez Plasencia	12 años	Camarotes

**Jóvenes desaparecidos.**

Siguiendo el mismo orden anterior, este espacio recoge los nombres de los jóvenes desaparecidos en el hundimiento del remolcador 13 de marzo cuyas edades oscilan entre los diecisiete y treinta y cinco.

<u>Relación nominal y edades</u>	<u>Sitios donde viajaban</u>
1-Mayulís Méndez Tacoronte, 17 años	Camarotes
2-Miladys Sanabria Cabrera, 19 años	Camarotes
3-Joel García Suárez, 20 años	C. de Máquinas
4-Odalys Muñoz García, 21 años	Camarotes
5-Yaltamira Anaya Carrasco, 22 años	Camarotes
6-Yuliana Enríquez Carrazana, 22 años	Camarotes
7-Lissett María Álvarez Guerra, 24 años	Camarotes
8-Jorge Gregorio Balmaseda Castillo, 24 años	C. de Máquinas
9-Ernesto Alfonso Loureiro, 25 años	C. de Máquinas
10-María Miralis Fernández Rodríguez, 27 años	Camarotes
11-Jorge Arquímedes Levrígido Flores, 28 años	C. de Máquinas
12-Leonardo Notario Góngora, 28 años	C. de Máquinas
13-Pilar Almanza Romero, 31 años	Cubierta
14-Rigoberto Feu González, 31 años	C. de Máquinas
15-Omar Rodríguez Suárez, 33 años	C. de Máquinas
16-Lázaro Enrique Borges Briel, 34 años	C. de Máquinas
17-Martha Caridad Tacoronte Vega, 35 años	Camarotes
18-Julia Caridad Ruiz Blanco, 35 años	Camarotes

Otros desaparecidos

Esta parte contiene los nombres de los adultos desaparecidos, cuyas edades oscilan entre los treinta y seis y los sesenta años.

<u>Relación nominal y edades.</u>	<u>Sitios donde viajaban</u>
1-Eduardo Suárez Esquivel,38 años	C. de Máquinas
2-Martha M.Carrasco Sanabria,45 años	C. de Máquinas
3-Augusto Guillermo Guerra Martínez, 45 años	Camarotes
4-Rosa María Alcalde Puig,47 años	Cubierta
5-Estrella Suárez Esquivel,48 años	Camarotes
6-Reynaldo Joaquín Marrero Alamo,48 años	C. de Máquinas
7-Amado González Raíces,50 años	C. de Máquinas
8-Fidencio Ramel Prieto Hernández, 51 años	Cubierta (chorros)
9-Manuel Cayol	C. de Máquinas

Resumen estadístico de los desaparecidosPromedio de edades

Niños:	6 años
Jóvenes:	26 años
Mayores:	47 años
Promedio General:	26 años

Estatus social

Estudiantes:	5
Trabajadores:	21
Desocupados:	5 (Ama de casa:4 Jubilados: 1)
Total:	31

Nota: no se reflejan los 6 niños menores de 5 años (2 en Círculos 4 en hogares).

Desaparecidos por municipios de residencia

Municipios	Niños	Jóvenes	Mayores	Total
Cotorro	4 2h	7 6h	1	12 8h
Guanabacoa	2 1h	4 1h	2	8 2h
La Lisa	2 1h	2 1h	2 1h	6 3h
H.Vieja	1	1 1h	2 2h	4 3h
Arroyo	1	2 1h	-	3 1h
H.del Este	-	2	1	3
San Miguel	-	-	1	1
General	10 4h	18 10h	9 3h	37 17h

Desaparecidos por edad y sexos

Marcos de edad	Masculino	Femenino	Total
Menores 5 años	2	4	6
De 5-16 años	4		4
Jóvenes 17-35 años	8	10	18
Mayores de 35 años	6	3	9
Totales:	20	17	37
Sin identificar: 4 personas			

Escolaridad

Escolaridad	Hasta 6to	SOC/FOC	Técnicos	Universitarios	Tot
Niños	4				4
Jóvenes		4	14		18
Mayores		4	4	1	9
Total:	4	8	18	1	31
Nota: Faltan 6 niños que no tienen edad escolar.					

Estado civil

Marco de edad	Casados	Solteros	Otros vínculos
Jóvenes	14	4	
Mayores de 35 años	3	1	5
Totales:	17	5	5

Trayectoria política

Marcos de edad	Pioneros	Militantes	Condecorados	Otros
Niños	4			
Jóvenes		4		14
Mayores de 35 años		2	3	3
Totales:	4	6	3	17

Otros : Méritos estudiantiles; Campaña de Alfabetización; Trabajador Vanguardia o Avanzada.

Antecedentes penales

Marcos de edad	Expedientados	Delincuentes	Ex-Presos
Jóvenes	0	0	0
Mayores 35 años	0	0	1

Ex-Priso: Augusto Guillermo Guerra Martínez

Delito: Fuga del Servicio Militar Obligatorio. Sanción: 20 días de privación de libertad.

Vicios

Marco de edad	Drogadicción	Alcoholismo	Prostitución	Otros
Jóvenes	0	0	0	2
Mayores 35 años	0	0	0	3
Totales:				5

Otros : fumadores de cigarrillos.

Titulos técnicos de los desaparecidos

Especialidad	cantidad de personas
Ingeniero en Cibernética	1

Técnico en Electricidad	3
Técnico en Explotación Transporte	1
Técnico en Contabilidad y Planificación	2
Técnico en Enfermería	1
Técnico de Laboratorio	1
Técnico en Prótesis dental	1
Técnico en Mecánica Automotriz	1
Técnico en Tornería	1
Técnico en Administración	1
Técnico en Gastronomía	1
Técnico en Audio	1
Técnico en Computación	1
Técnico en Peluquería	1
Técnico en Construcción Naval	1
Técnico en Casco	1
Maquinista Naval	1
Corte y Costura	1
Arte y Cultura	1
Idiomas	1
Totales: 20 especialidades	23 especialistas

Perfil ocupacional de los responsables de la Expedición:

Eduardo Suárez Esquivel. Ingeniero en Cibernética.

Fidencio Ramel Prieto Hernández. Técnico en: Construcción Naval

Maquinista Naval

Especialista en Casco

Raúl Muñoz García, patrón del 13 de marzo. Graduado como Patrón de Altura de la Academia Naval de la Marina de Guerra Revolucionaria.

**Relación nominal de sobrevivientes al suceso****Permanecen en Cuba**

1- Mylena Labrada Tacoronte.	3 años
2- Yandí Gustavo Martínez Hidalgo.	10 años
3- Reynaldo Marrero Carrazana.	16 años
4- Daniel Erick Herrera Díaz	21 años
5- Jorge Luis Cuba Suárez	23 años
6- Raúl Muñoz García	25 años (Patrón del 13 de marzo)
7- Jusanny Tuero Sierra	29 años
8- Mayda Tacoronte Vega	30 años
9- Gustavo Guillermo Martínez Gutiérrez	37 años

**Emigraron hacia Estados Unidos**

1-Dadney Estévez Martínez.	3 años
2-Sergio Perodín Almanza.	8 años
3- Susana Rojas Martínez.	10 años
4-José Fabián Valdés Colón.	16 años
5- Janet Hernández Gutiérrez	21 años
6- Frank González Vázquez	22 años
7- Dariel Prieto Suárez	23 años
8- Daisy Martínez Fundora	27 años
9- Iván Prieto Suárez	27 años
10-Modesto Almanza Romero	28 años
11- Eugenio Fuentes Díaz	29 años

12- María Victoria García Suárez	30 años
13- Román Lugo Martínez	30 años
14- Julio César Domínguez Alcalde	30 años
15- Pedro Francisco Crespo Galego	31 años
16- Juan Fidel González Salinas	35 años
17- Sergio Perodín Pérez	39 años
18- Armando Morales Piloto	39 años
19- Juan Gustavo Bárzaga del Pino	39 años
20- Jorge Alberto Hernández Avila	-
21- Juan Bernardo Varela Amaro	- (Fallecido)
22- Arquímedes Levrígido Gamboa	52 años
<b>Total: 31 sobrevivientes</b>	

***Lista de los desaparecidos***

1. Hellen Martínez Enríquez 5 meses
2. Xicdy Rodríguez Fernández 2 años
3. Angel René Abreu Ruiz 3 años
4. José Carlos Nicle Anaya 3 años
5. Giselle Borges Alvarez 4 años
6. Caridad Leyva Tacoronte 5 años
7. Juan M. Gutiérrez García 10 años
8. Yasser Perodín Almanza 11 años
9. Yousell E. Pérez Tacoronte 11 años
10. Eliecer Suárez Plasencia 12 años
11. Mayulis Méndez Tacoronte, 17 años
12. Miladys Sanabria Cabrera, 19 años
13. Joel García Suárez, 20 años
14. Odalys Muñoz García, 21 años
15. Yaltamira Anaya Carrasco, 22 años
16. Yuliana Enríquez Carrazana, 22 años
17. Lissett María Alvarez Guerra, 24 años
18. Jorge Gregorio Balmaseda Castillo, 24 años
19. Ernesto Alfonso Loureiro, 25 años
20. María Miralis Fernández Rodríguez, 27 años
21. Jorge Arquímedes Levrígido Flores, 28 años
22. Leonardo Notario Góngora, 28 años

23. Pilar Almanza Romero,	31 años
24. Rigoberto Feu González,	31 años
25. Omar Rodríguez Suárez	33 años
26. Lázaro Enrique Borges Briel,	34 años
27. Martha Caridad Tacoronte Vega,	35 años
28. Julia Caridad Ruiz Blanco,	35 años
29. Eduardo Suárez Esquivel	38 años
30. Martha M.Carrasco Sanabria,	45 años
31. Augusto Guillermo Guerra Martínez,	45 años
32. Rosa María Alcalde Puig,	47 años
33. Estrella Suárez Esquivel,	48 años
34. Reynaldo Joaquín Marrero Alamo,	48 años
35. Amado González Raíces,	50 años
36. Fidencio Ramel Prieto Hernández,	51 años
37 Manuel Cayol	58 años





**Testimony of**

**Ileana Fuentes**

**For Hearing On:**

**“Children’s Rights in Cuba”**

**Thursday, April 12<sup>th</sup>, 2000**

**Subcommittee on International Operations and Human Rights**

**Committee on International Relations**

**U.S. House of Representatives**

**Mister Chairman, distinguished members of Congress: I thank you, also, for the opportunity to address you on the sensitive and urgent issue of children in Cuba. I would like to recognize particularly the representatives from Florida, Congresswoman Ileana Ros-Lehtinen, and Congressman Lincoln Diaz-Balart, as well as my former representative from New Jersey, Congressman Robert Menendez.**

**I have prepared a statement from which I will extract for the purpose of this hearing. I would like to submit copies of the full testimony, for the record. The subject is children.**

**First and foremost, a child born in Cuba enters this world in a society where his or her fundamental human rights, as guaranteed by the Universal Declaration of Human Rights, and by three United Nations' Conventions on the Rights of the Child, are denied by all existing legal instruments, namely the Constitution of the Republic of Cuba, the Children and Youth Code, the Cuban Family Code, and Cuban Penal Code.**

**A child is born.**

**Having said this, let me say that when a child is born in Cuba, he joins a family living in state-sponsored poverty. The greater majority of Cuban families are poor even by Third World standards. The average salary of a Cuban worker is equivalent to \$100 to \$120 US dollars, in an economy that was "dollarized" back in 1993 when Fidel Castro himself decriminalized the tenure of American currency. In comparison, the average salary in Bangladesh is equivalent to \$250 US dollars.**

**Thus a child's arrival throws a family into chaos, for this new mouth further aggravates a severely rationed food basket. He or she shall encounter shortages in every aspect and stage of life, from the onset. In fact, women across Cuba made sure that lack of baby and infant needs to meet demand be a priority on the agenda at the recent Federation of Cuban Women's Congress. Infant and *post-partum* mothers' unmet needs were on the agenda, second only to the total absence of sanitary napkins from the people's market.**

**These hardships are perhaps one reason why so many women resort to abortions in socialist Cuba. That, and the practice of persuading**

women to terminate potentially troublesome pregnancies early on could explain why 40% of all pregnancies end in an abortion in the island.

No one should be fooled by Cuba's statistics on infant mortality rate. Those statistics are improved *a priori* by the elimination of difficult pregnancies and childbirth. In light of this manipulation, Cuba's infant mortality rate (9 - 11 in 100,000 births) doesn't fare so well if compared to countries where no such manipulation occurs, like Costa Rica, Chile and Uruguay, where the rate is 12, 13 and 17 respectively.

A child born in Cuba has a life expectancy of 75 – 78 years. But it's about the same – or better - in Costa Rica, Chile, Uruguay and Argentina.

Cuban children have fewer opportunities to be given religious upbringing, or to be baptized. The Cuban Constitution and the Penal Code both call for sanctions, including prison terms, against individuals who put their religious beliefs before duty to communism.

#### Ages one to seven.

Between the ages of one and seven, the average Cuban child will have a poor diet, lack appropriate shoes and clothing, and will be at want for basic medications against such common childhood ailments as diarrhea, ear and throat infections, head lice, and skin conditions such as scabies and impetigo. If a child is an asthma sufferer, or needs antibiotic treatment, the prescriptions needed are not available in the people's pharmacies. They can be purchased, however, at dollar-only stores reserved for foreign personnel and tourists.

Do not be fooled by those who insist that food and medicine are lacking in Cuba because of the U.S. embargo. Cuba is a natural producer of just about everything on the food chain, except wheat, which it used to import from the US prior to 1959, and from the Soviet bloc countries until recently. Communist Cuba fails to feed its people because four decades of Castro-designed economics have destroyed Cuban agriculture and industry.

**As for medicines: Cuba's pharmaceutical industry is an exporting and revenue-producing enterprise. Its clientele is mostly Third World countries like Jamaica and Nicaragua. Cuba can – and has - purchase medical supplies and drugs at much cheaper prices in Central America, Canada and Europe, if it had any purchasing power at all. The United States pharmaceutical market is not cost effective, not even for us, its captive consumers!**

**When a child reaches seven – the age of reason – two very unreasonable things happen to him or her:**

- 1. the milk quota is suspended;**
- 2. the Organization of Cuban Pioneers kicks in as the first mass organization to control the life of the individual.**

**What are the Young Pioneers? According to the Children and Family Code, Article 102, it is “a volunteer organization that coordinates tasks and activities to complement the formation of the communist personality.”**

**A young pioneer must wear a red scarf around his or her neck; declare that Fidel – and not God – is “the father of all Cuban children”; and repeat at every para-military meeting: “Pioneers of communism, we vow to be like Che”.**

**This is the first identity and personality crisis a Cuban child-person must confront. For to be like Che –a white, non-Cuban, genocidal male– must surely pose an identity crisis for little Black boys, whose role model should be the great 19<sup>th</sup> Century liberator, General Antonio Maceo, or Martin Morua Delgado, another illustrious Black man, elected first president of the Cuban Senate in the early 1900's.**

**And what of little girls, Black or White, who are told to be like a white man in fatigues? What kind of gender-identity violation is this, to have as national role models a roster of white, Eurocentric, war-mongering males?**

In school, the child learns to read with an alphabet that enshrines that roster:

- F is for Fidel, also for *fusil* (rifle)
- C is for Che
- Gu for *guerrilla*
- M is for Marx
- L is for Lenin
- S is for Socialism
- P is for Patria/Fatherland

This child's progress will be charted in a personal file that will follow him or her through life. In that file will be recorded not only his young revolutionary zeal, but that of the parents as well. Only good communists will advance in the educational ladder. Only they will pursue the career of their choice. The file accompanies the child to Junior High School – *la escuela al campo* – the farm schools.

#### Farm schools.

Between the ages of 12 and 14, children are removed from the custody and authority of their parents, and sent to study and work in farm schools designed to give a child an education while extolling hundreds of unpaid child-labor hours in return. Parents can visit on the weekend, if they find transportation, of course. Children go home every 4 to 6 weeks. This is the time Cuban children officially passes to State custody, as these farm schools are mandatory.

Parents and children who violate this mandate forfeit their right to higher education, for the famous file will reflect “deviant ideological behavior unbecoming a good Cuban revolutionary.” The University, Fidel Castro said years ago, is only for revolutionaries. The Federation of University Students – a mass organization - upheld the dictum on April 10<sup>th</sup> at their Sixth Congress.

After the Pioneers are outgrown, two other organizations become the obligatory course: the Federation of Intermediate School Students, and the Federation of University Students. Then there is the Committees for the Defense of the Revolution; the Federation of Cuban Women; and the National Association of Small Farmers. For a Cuban to have any life at all, he or she must belong to at least one of these. It is an

obligation for children and young adults to be militants of the Cuban government. And that includes compulsory “volunteer” work while a student.

Do not be fooled by those who insist that health care and education are free in communist Cuba. Cubans pay for these social services through hundreds of unpaid man and woman hours of forced “volunteer” labor in the fields, in the territorial militias, in national guard duty, in community-based services. The propaganda apparatus insists health and education are free. But there is no free lunch in Cuba: everyone has paid up in advance while they were minors. As adults, they will continue to pay in this manner their whole lives.

#### Military conscription.

For boys, the 15th birthday can be traumatic. That is the age they are set aside for the draft. Although women can join the Armed Forces, only boys are subject to the draft. On their 16<sup>th</sup> birthday, boys must report to duty. From age 16 to 19, young men cannot leave Cuba: the military state stakes its claim on his life and allegiance. Thousands of male Cuban teenagers have gone to jail for violating this requirement. They are marked for a life of ostracism in a system rigged for loyal revolutionaries only.

#### A word about young women.

I regret that I must end on an even more tragic note. For teenage girls, life in Cuba is a double jeopardy. In spite of education, without U.S. dollars, no family can make ends meet. The reported 800 million dollars that the exile community contributes to the livelihood of relatives in Cuba, touches, at best, 10% of the population. I should add the “white population”, for the exile community around the world is mostly white-European. So most be their relatives in the island. But the island’s population of 12 millions is believed to be about 60% Afro Cuban.

Conditions in Cuba, therefore, translate into three realities that are gender specific in that they affect the life choices of young Cuban women:

1. Women marry earlier in Cuba than in any other country in the hemisphere (age 19,5 years), but they delay motherhood to avoid the struggle of feeding another mouth. This means women must resort to birth control and in many cases to multiple abortions, in order to remain childless. Women bear the burden of birth control in Cuba, for Cuban men are traditionally reluctant to condoms, much less to vasectomies. The health implications, therefore, are a woman's issue in Cuba.
2. Suicide in the third cause of death for Cuban female teenagers ages 15 to 19, usually related to early pregnancy or motherhood. In a global context, let me add that the rate of suicide among Cuban women in the island is the highest in the world: one woman for every man. (World: three men for every woman).
3. In order to alleviate poverty, Cuban women as young as 13 and 14 choose to engage in prostitution with a foreign clientele, in order to generate US dollars. This has resulted in a rise of sexually-transmitted diseases in female teenagers. The practice of abortions on girls as young as 12 and 13 years old was reported last fall by the Young Communist Union's weekly paper, *Juventud Rebelde*.

To close.

This testimony could fill reams of paper, not only with academic and legal analyses of the literature, but with interviews and personal accounts from children and young adults who have lived through – and escaped – the fate that awaits little Elian Gonzalez, a fate that a very brave young woman named Elizabeth Brotons wanted her son to avoid. Unfortunately for all us, it looks like she will not succeed.

Ileana Fuentes  
C.U.B.A.N.A.S.

(Cubanas Unidas Bajo una Agenda Nacional de Apoyo y Solidaridad /  
*Cuban Women United by a National Agenda of Support and Solidarity*)

Background Information for the  
for the Testimony of  
José Cohen

## Artículo en el New York Time

**International**

The New York Times



By **DAVID GONZALEZ**

Lazara Brito and her three children huddled over the kitchen table in their Havana apartment on a recent day and thumbed through a pile of letters and drawings. These scraps of paper have been the only physical link to Ms Brito's husband, Jose Cohen, who left Cuba on a raft in 1994 and has been waiting in vain for them to join him in Miami.

"The important thing in life is not what you know or who you know," Ms. Brito read from one letter, "but who you are."

That may be the cause of her family's plight, since her husband used to work for the Ministry of the Interior gathering intelligence on foreign investors interested in doing business in Cuba. And so the government considers him a deserter, or worse.

Although Ms. Brito and her children have had United States visas since 1998, she said the Cuban government had retaliated against her husband by not allowing them to emigrate and subjecting them to harassment and intimidation.

The Cohens are among hundreds of Cuban families stuck in a limbo of politics and bureaucracy, holding travel documents that remain useless without exit visas from the government. Many of them had become even more frustrated over the situation in recent months as they watched the daily Cuban protests demanding the return of Elián González to his father in Cuba.

"It has been almost six years since he left," Ms. Brito said of her husband. "Since then, the whole family has felt the full rancor of the officials. I see all the worry over the child Elián and I ask, where is the love for my children, because for six years my children have been paying for the rancor against my husband."

State Department officials had no exact figures on how many families were being kept apart, but they said that last year approximately 1,700 people with valid travel documents for the United States were unable to leave Cuba.

For some, like the Cohens, the delay is political. Many are held up by what foreign diplomats said were excessive Cuban fees for medical exams and administrative costs -- as much as \$1,000 a person in an economy in which the average salary is \$10 a month. Other cases languish because a noncustodial parent refuses to give permission for his child to leave the country, or because the would-be immigrant is a professional who must first fulfill a work commitment in return for education.

"It is a big aspect of this whole Cuban trauma," said Max Castro, a senior research analyst at the University of Miami. "This is a good moment to reflect on it and for the various parties to be more consistent. There is no doubt that the Cuban government in the past has not been as solicitous as it is now on the issue of family unification."

Mr. Cohen, who now lives in a suburb north of Miami and runs an Internet business, said in an interview: "The regime gives you no option but to be with them or against them. People ask me, did I not know what would happen? Yes. But I did not know the regime would have such a strong reprisal."

Since her family obtained the United States visas, Ms. Brito said, she has written direct appeals to Fidel Castro and other high-ranking officials, asking that her children not be forced to pay for their father's actions. All she has had in return, she said, are letters saying her pleas have been sent to other government agencies.

Once, several years ago, security agents roused her from bed, searched her apartment and, as her children and another relative watched, whisked her off to jail for two days. One of her daughters found a note under the front door that said: "You will never leave. Forget it."

More recently, Ms. Brito's younger daughter, Yamila, 13, was sent from her school to take part in one of the large public rallies the government organized to call for Elián's return. Her older daughter, Yanelis, who is now 16, was asked to leave school last year when administrators discovered she had a visa for the United States.

Cuban officials said they had not forced anyone to leave Cuba, so they could not be accused of splitting up families. Ricardo Alarcón, the leader of Cuba's National Assembly, said the Cohen case involved a political defector who knew what he was doing.

"I imagine he left his children here," he said. "Nobody took them away from him. He left them here."

State Department officials said the delays were a continuing topic during the regular migration talks they held with their Cuban counterparts. They are also raised in individual complaints lodged by American diplomats in Havana, who seldom receive answers.

"It can be a long time," said one State Department official familiar with several cases. "It sort of compounds the tragedy, too, because when these people go to apply for exit permits, they lose their jobs, or their kids have problems getting into college preparatory schools."

That was what Estella Natal, a language teacher in New York, discovered while waiting for her Cuban husband, Joel Prince, a doctor, to join her. She had met Dr. Prince on a trip to Cuba in 1996, and they married two years later. At the time he was working as a prison doctor.

"He was fired from that job days after we were married," Ms. Natal said. "Then he got a job doing medical surveys, then at a neighborhood clinic and then as a paramedic. The thing is, a lot of places do not want to hire him or he does not get good training because they know he is going to leave eventually. So, he gets the leftover jobs."

Ms. Natal said her husband might have to work for several more years before he would be allowed to leave. She added that recent appointments he had been given to process his documents had been postponed because workers at the immigration office had to attend the public rallies for Elián.

"This whole custody battle is hampering everything," she said. "It's not just Elián. Elián is a symbol for the rest of us. He is really a symbol of families being divided, of a lot of politics coming between families."

That symbolism was the impetus for a recently formed Miami exile group, New Generation Cuba, which includes Mr. Cohen among its founders. The group, which portrays itself as a mix of American- and Cuban-raised exiles, met with State Department officials recently to press the cases of 14 separated families.

The group's leaders said they knew of about 200 cases, but had yet to document them all. They said some other families were reluctant to have contact with the group because they feared reprisals against relatives in Cuba.

"Fidel Castro has separated families for 41 years through death and bureaucracy," said Bettina Rodríguez Aguilera, the group's president, whose own father was imprisoned in Cuba for 14 years while she was growing up in the United States. "The only person destroying families in and out of Cuba is Fidel Castro."

But some political analysts said that while family unification was an important issue, it was different from the issue in the Elián González case. In the boy's case,

they say, the issue is the rights of a surviving parent rather than the political control of immigration.

"There is a relation, but they are not identical," said Mr. Castro of the University of Miami. "There is reason to question the Cuban government on these cases and ask them to reflect and be consistent on their view of families."

But he also said that efforts like those of New Generation Cuba appeared to be hastily organized and that the group risked losing credibility if it was seen as manipulating Elián's plight for political purposes.

"They are taking a real issue and using it in a way that may be more of a disservice to the cause because it is taken as something very opportunistic," Mr. Castro said. "It should be a continuing conversation and a demand, not something that is all of a sudden deployed."

But for Mr. Cohen's family, there is a sense of hope that someone has taken up their cause. In the family's spartan apartment -- Ms. Brito started giving away their belongings in anticipation of a move -- his children practice English, just as their father asks them to in his letters.

"I am far from you now," he wrote in English to Yanelis, his oldest daughter. "But my soul is with you and you are in my heart." He added in Spanish, "Learn this."

Yanelis said, but in Spanish: "Once we are together, that will be the greatest. Here we are feeling different from all the others because we do not have the family that all human beings want. We ask, when will it reach the hearts of those men who stop us from being with our father?"

## Articulo en el Wall Street Journal

### COMMENTARY Havana's Hostages

*By James Taranto, deputy features editor of the Journal's editorial page. Bret Stephens of The Wall Street Journal Europe contributed to this article.*

MIAMI -- No aspect of the Elian Gonzalez debate is more galling than the way Fidel Castro and his U.S. supporters have posed as champions of family unity. Havana routinely divides families by preventing children in Cuba from joining their parents in America, with nary an objection from the National Council of Churches and its allies in the fight for Elian's deportation.

There are no official statistics on the number of separated families; Cuban-American leaders here offer estimates ranging from hundreds to thousands. Many stateside family members hesitate to go public for fear of retaliation against kin in Cuba. But in three weeks, a new group called Mission Elian has documented 32 such cases. In some, children in Cuba are separated from both parents in America.



*No exit: Jose Cohen's three children, (from left) Yamilia, 11, Isaac, eight, and Yanelis, 15, are trapped in Havana because Fidel Castro's government won't give them exit visas. Their story shows how little the Cuban dictator cares about family unity.*

Typical is the story of Jose Cohen, the 35-year-old owner of an e-commerce company here. He had worked in Cuba's foreign-investment office, entertaining guests from abroad. Visitors told him about the outside world and whetted his appetite for freedom. So in August 1994 he, his brother Isaac and two other men crowded into a tiny two-seat motorized raft for a three-day voyage to America. Mr. Cohen left behind his wife, Lazara Brito Cohen, and his children, stepdaughter Yanelis, now 15, daughter Yamilia, 11, and son Isaac, eight.

When Mr. Cohen became a U.S. resident in April 1996, he applied for and was granted U.S. visas for his family. Mrs. Cohen applied to the Cuban government for exit visas. Hearing nothing for a year, she began sending letters to Cuban officials, from Fidel Castro on down. Mr. Cohen produces a sheaf of photocopied responses on Cuban government letterhead, each informing his wife that her case is being referred to another agency. Mr. Cohen says even the evasive answers have stopped since Mr. Castro made Elian's case a cause célèbre.

Mrs. Cohen's experience can't be chalked up to mere bureaucratic inefficiency. When she tried to enroll Yanelis in high school in 1998, the school director told her that teens with foreign immigration visas are not permitted to study beyond junior high. Mrs. Cohen also has received menacing unsigned notes slipped under her front door. "Forget about leaving Cuba. You will never leave Cuba," one said. Declared another: "Your husband has a wife in the U.S." She once showed one of the notes to a bureaucrat at the immigration office. He read it and smiled.

Another time, a man with a government ID card appeared at Mrs. Cohen's door. "We want to help you," he said--and then tried to seduce her. She rebuffed his advances and threw him out.

"Every time we see the hope of living like every other family, it's not in the near future," Mr. Cohen says. "My wife and three children are hostages of the regime."

Bettina Rodriguez-Aguilera, a 42-year-old motivational speaker who heads Mission Elian, grew up in a family divided by Fidel Castro. She was a baby when her parents moved to the U.S. in 1959, taking her and her teen brother with them. Her father later returned to Cuba, where he wrote to her brother, who had stayed behind in America, asking him to apply for a visa waiver to speed his return to the U.S.

He mentioned in the letter that he didn't intend to join the local Communist Party cell, known as a block party. For this he was charged with "counterrevolutionary activities" and imprisoned for 14 years. Ms. Rodriguez-Aguilera didn't see him until he came back to the U.S. when she was 17. His many years as a political prisoner had broken his spirit. "Even though he was out of prison, his mind was still in prison," she says. He died in 1988.

Sometimes the Castro government boasts to families that they are being held hostage. In 1991 Maj. Orestes Lorenzo, a fighter pilot in the Cuban air force, flew his MiG-27 to the Boca Chica Naval Air Station in the Florida Keys, where he defected. He left behind his wife and two young sons. They were summoned to the office of Gen. Raul Castro, the dictator's brother, and told they would never be allowed to leave Cuba. "He has to return," Gen. Castro said. Two years later Mr. Lorenzo did just that. In a daring rescue, he flew a private plane to Cuba and landed on a road outside Havana, where his family was waiting.

Havana's practice of taking families hostage shouldn't surprise us. It is part and parcel of a totalitarian ideology enshrined in laws giving the state limitless power over the most intimate aspects of the lives of Cubans--including children. Article 5 of Cuba's Code of

the Child, enacted in 1978, stipulates that anyone who comes in contact with a child must contribute to "the development of his communist personality." Article 8 calls for "efficient protection of youth against all influences contrary to their communist formation." Many Cubans here tell stories similar to that of Miami architect Ricardo Fernandez. His cousin in Cuba was summoned to meet her daughter's teacher, who demanded to know why she was sending the girl to church.

To develop the "communist personality," Havana harnesses that most potent influence: peer pressure. Mr. Cohen says Yamila, his 11-year-old daughter, was hustled with her classmates onto a bus earlier this month for an impromptu field trip. Destination: the U.S. diplomatic mission in Havana, where the children were told to join a rally demanding Elian's return. On the phone later, Mr. Cohen asked Yamila why she had gone along with the order. "I was very nervous about what the rest of the children would say," she told him.

This is the society to which the Clinton administration is trying to repatriate Elian—a society in which the government demands ideological purity even from six-year-olds. How can this be in any child's best interest?

Havana's efforts at thought control work. The image of a mental prison recurs often in conversations with Cuban immigrants here. They talk about wearing *la máscara*--the mask--to hide their true feelings. They describe a process of self-censorship in which they don't allow themselves even to think certain things, lest a counterrevolutionary sentiment slip out in an unguarded moment. Since the government controls the economy, unemployment is among the risks for those who deviate. Mr. Cohen says his brother David, once a physician at a Havana clinic, was fired for wearing a Star of David necklace. The Cuban government has also blocked David Cohen's effort to emigrate to the Dominican Republic.

It is in this context that we must evaluate Elian's father's refusal to come to the U.S. for a reunion with his son. He may well be a hostage, wearing *la máscara* and reading a government script. Sister Jeanne O'Laughlin, the nun who oversaw last week's reunion between Elian and his grandmothers, has said she sensed at the meeting that the women were being manipulated by the Cuban government. On Thursday Sister O'Laughlin issued a statement saying the meeting had changed her mind: She now believes Elian should stay.

Gen. Rafael del Pino, who was the No. 2 man in the Cuban Defense Ministry when he defected to the U.S. in 1987, knows what it's like to have a custody dispute with the Cuban government. He escaped on a small plane and brought his wife, their two children and a teenage son by his previous marriage. His former wife later appeared on Cuban television and before the National Assembly, Cuba's one-party legislature, accusing her ex-husband of kidnapping and demanding her son's return.

But in 1995 she herself escaped on a raft. Mr. del Pino says she told him her complaints had been coerced by Havana. Reached by phone at her home in North Carolina, she refuses to say, pointing out that her mother and daughter remain in Cuba.

This story leads Mr. Lorenzo, who made his own freedom flight four years after the general's, to speculate: What if, like Mr. del Pino's ex-wife, Elian's father eventually decides to escape? "I wonder if we'll find that the father left the island with Elian, and they all died at sea," Mr. Lorenzo says. "Who are we going to blame for that?"

**TESTIMONY OF DANIEL SHANFIELD**

**STAFF ATTORNEY  
LAWYERS COMMITTEE FOR HUMAN RIGHTS**

**HEARING ON**

**"CHILDREN'S RIGHTS IN CUBA"**

**before the**

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON INTERNATIONAL RELATIONS  
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS  
AND HUMAN RIGHTS**

**I. Introduction**

Chairman Smith and members of the Sub-Committee, thank you for convening this hearing and for inviting us to share our views about this important and complex issue. We are deeply appreciative to you for your steadfast attention to human rights issues, in particular your concern for the plight of refugees, and for your continued efforts to highlight these concerns in the Congress. My name is Daniel Shanfield, and I am a Staff Attorney for the Lawyers Committee's Asylum Representation Program in New York. Prior to joining the Lawyers Committee in 1998, I served as Assistant District Counsel with the Immigration and Naturalization Service in Los Angeles, California, representing the Immigration Service before the Executive Office for Immigration Review.

The Lawyers Committee is a non-profit, non-governmental organization. Since 1978, the Committee has worked to protect and promote fundamental human rights, holding all governments — including the United States — accountable to upholding the standards set forth in the Universal Declaration on Human Rights and other international human rights instruments.

A substantial focus of our work over the years has been the protection of refugees. The Lawyers Committee operates one of the largest and most successful *pro bono* representation programs for refugees in the country. In partnership with volunteer lawyers, we have represented many hundreds of refugees, including children, during the course of this work. Our advocacy work is grounded in the extensive hands-on experience derived from dealing directly with those seeking protection in the United States, and our testimony today reflects this perspective.

**II. International Human Rights Standards Governing the Right to Seek Asylum**

Since the refugee Pilgrims first landed almost 400 years ago, the United States has served as a refuge for those fleeing persecution and oppression. After World War II, when the United States and so many other nations failed to protect many refugees from Nazi persecution, the United States led the effort to establish a structure of universally recognized human rights norms, beginning with the Universal Declaration of Human Rights. Article 14 of the Universal Declaration of Human Rights provides that "everyone has the right to seek and enjoy asylum in other countries from persecution." Building on the recognition of this right as universal, the United States then worked to establish international standards of protection for refugees. More than 30 years ago, the United States formally bound itself to these standards by acceding to the Protocol of the 1951 Convention relating to the Status of Refugees ("Refugee Convention"). The central obligation undertaken by the United States and other States Parties to the treaty was to refrain from returning any refugee to a place where his life or freedom would be threatened. This obligation was codified into U.S. law by the 1980 Refugee Act, which also set out a framework for the independent adjudication – free from political considerations – of claims for refugee status.

Although not everyone who seeks protection is entitled to asylum, international legal obligations require States at minimum to provide fair and effective procedures to determine who is a refugee. The United States has repeatedly reaffirmed its commitment to this principle, although recent changes to U.S. asylum law, such as expedited removal, place the United States out of step with its tradition of fairness and compassion towards refugees. Fair legal procedures

and access to legal remedies serve as the foundation for many international legal instruments to which the United States is a party, such as the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, as well as our own domestic jurisprudence. Moreover, for these rights to be effective, adequate procedures must be available to permit their enjoyment. The Refugee Act of 1980 reflected Congress' concern for providing access to a fair procedure by explicitly providing that *any alien* physically present in the United States may apply for asylum. This right to seek asylum has subsequently been subject to very limited and statutorily defined exceptions, such as requiring that applications be filed within a certain timeframe. But Congress has never deprived children of the right to seek asylum.

### **III. Specific Concerns Relating to Child Refugees**

Like their adult counterparts, child asylum seekers flee their homelands to escape war, persecution and political instability. UNHCR estimates that children make up more than half the world's refugee and internally displaced population, accounting for a population of 20 million children. The situation is acute. Out of this population, an estimated 250,000 of these refugee children are separated from their parents. Although only a small fraction of this group seek refuge in the United States (Human Rights Watch reports that 8,500 unaccompanied children came into INS custody in 1990, 70 percent of whom were unaccompanied), the need to ensure adequate protection in our laws for this vulnerable group is paramount.

Unfortunately, the factors that turn children into refugees are more prevalent and diverse now than at any time since World War II, and refugee children are especially vulnerable to the harmful physical and psychological effects of persecution. Where child refugees were once bystanders in adult conflicts, this is increasingly not the case. As witnessed in China, Kosovo and Sierra Leone, and so many other countries around the world, children are the deliberate targets of human rights abuses, including infanticide, conscription as a child soldier, ritual genital mutilation, bonded labor, and sexual servitude. As so eloquently described in the excellent article by Jacqueline Bhabha and Wendy Young entitled, *Through A Child's Eyes: Protecting the Most Vulnerable Asylum Seekers*, unaccompanied children who must make their way to safety without the assistance of their parents are most at risk. I would ask that a copy of this article be entered into the record of this hearing.

Separated and orphaned children are in particular need of attention. UNHCR has focused considerable attention on the plight of child refugees. UNHCR's *Guidelines on the Protection and Care of Refugee Children* cover a wide range of concerns, including education, health and nutrition, psychosocial well-being, protection and long-term, or durable, solutions.

Particularly problematic are cases where parents are incapable of protecting their children from persecution, or worse, where parents are complicit in that persecution. For instance, female genital mutilation is generally conducted at the behest of a young girl's parents. In a number of traditional societies, girls are targeted as the victims of honor killings for opposing their

subjugation to demeaning social roles. To illustrate, one of our clients was held captive in her father's home and regularly beaten for resisting his authority to marry her off against her will.

In recognition of the special vulnerability faced by child refugees, the international community has on numerous instances expressed a global consensus that children deserve special consideration. Along with the 1959 UN Declaration on the Rights of the Child, the UN Convention on the Rights of the Child calls on all nations to ensure that refugee children are guaranteed protection and affirmative humanitarian assistance under the Refugee Convention. Although the United States has not yet ratified this Convention, it certainly has endorsed the Convention's approach to refugee children through its accession to the Declaration on the Rights of the Child. In any event, given the near universal acceptance by States of the Convention, these norms arguably have achieved the status of customary international law.

Child asylum seekers who have friends or relatives in the United States able to guide them through our complicated asylum system are surely the fortunate ones. However, many are not so lucky, and in the case of unaccompanied child asylum seekers, their protection from persecution demands a vigilant and proactive approach. Many children are simply unable to articulate their need for protection, given their youth, lack of sophistication and unfamiliarity with our culture. Identification of child asylum seekers is therefore a key responsibility. Once identified, these children must be provided with assistance to effectuate their rights to refugee protection.

Parents' rights are fundamental, but they are not absolute. We have seen many instances where parents of child refugees are either incapable -- because of intense pressure or fear of retaliation by their own government -- of offering their young protection, or are active participants in their persecution. In such cases, a parent's opposition to a child's need for protection cannot be the last word, if those wishes would put the child's safety or freedom at risk. In contemplating this matter, we must uphold the important principle that children are part of the human family and have an independent right to protection from harm and the enjoyment of fundamental rights. Where the wishes of a parent are at odds with the child's need for protection, those wishes may have to yield. The Attorney General and, ultimately, the Courts must ensure that where there is conflict of interest, a child who needs protection will receive it.

**IV. CONCLUSION**

I'd like to thank this Committee again for the opportunity to present the views of the Lawyers Committee on this important issue. We are grateful for your attention to this matter and look forward to continuing to work with you, Chairman Smith, your excellent and dedicated staff, and others on the Committee to ensure that the United States will continue to serve as a beacon for the oppressed, whatever their homeland, and regardless of their age.

Thank you.

**Cuban Code of the Child**

- Article 5- “The society and the State watch to ascertain that all persons that come in contact with the child during his education process constitute an example for the development of his communist personality.”
- Article 8- “The society and the State work for the efficient protection of youth against all influence contrary to their communist formation.”
- Article 14- “The combination of study and work...is one of the fundamentals on which revolutionary education is based. This principle is applied from infancy through simple labor activities; in primary education through farming...and pioneer activities in the modes of production; in middle education, through farm labor camps.”
- Article 23- “Upon completion of primary schooling young people may continue their education...on the basis of their academic achievement, political attitude and social conduct.”
- Article 33- “The State bestows particular attention to the teaching of Marxism-Leninism, for its importance in the ideological formation and political culture of young students.”
- Article 68- “Children and youth must prepare themselves for the defense of the country through military education, the acquisition of military knowledge and training...and incorporation of the youth into active military service and later to the reserves...honoring the principles of proletariat internationalism and combat solidarity.”
- Article 101- “The State maintains appropriate relations with the Union of Communist Youth, mass organizations and other groups linked to these for the purpose of securing a coordinated action in the upbringing of youth and children...”

**Cuban Code of the Family**

- Article 95- “The courts...may deprive both parents, or one of them, of parental authority...when one or both parents...engage in behavior which is antisocial...”

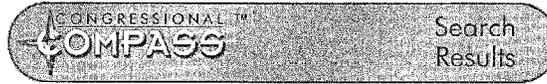
**Cuban Constitution (1972)**

- Article 54- “It is illegal and punishable to oppose the faith and religious belief in the Revolution”

Cuban Constitution (1992)

Article 5- The Communist Party of Cuba, Marxist and of Marxist-Leninist, the organized vanguard of the Cuban nation, is the superior leading force of the society and the State...”

Article 62- “None of the freedoms which are recognized for citizens can be exercised contrary to what is establish in the Constitution and the law, or contrary to the existence and objectives of the socialist State, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law.”

**Document 3 of 3.**

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April 5, 2000, Wednesday, Late Edition - Final

**SECTION:** Section A; Page 23; Column 1; Editorial Desk

**LENGTH:** 612 words

**HEADLINE:** **Elian** Needs His Dad

**BYLINE:** By Steve **Largent**; Steve **Largent** is a Republican congressman from Oklahoma.

**DATELINE:** WASHINGTON

**BODY:**

Politics is keeping **Elian** Gonzalez from his father, and it's time that he is returned.

It's already been too long. The tortuous four-month-old custody battle over the boy rescued at sea last November continues to play out in the courts and in Washington. And now, the political brawl has taken an ugly turn. **Elian**'s relatives in Miami, who have temporary custody of him and are seeking to block his return to Cuba, stooped to criticizing the boy's father, Juan Miguel Gonzalez. Attempting to whip up public sentiment for their cause, the relatives have suggested that the father is somehow unfit to care for his son.

How do they know? Why are they only now raising this question? And what gives them or the court the right to decide such a thing? Do we really want the government sitting in judgment of every father when there is no apparent cause of action? How would the United States react if its role and Cuba's were reversed?

After leveling those charges against **Elian**'s father earlier this week, a lawyer representing the boy's American relatives acknowledged on television that they had no proof.

"We're sure he loves his own son," admitted the lawyer, Linda Osberg-Braun, "and we know **Elian** loves his father."

Making political hay over a 6-year-old's tragedy of losing a mother may only compound his misery, experts say. Ken Dachman, a child psychologist in Chicago, said he worried that **Elían's** Miami relatives "are shaping this child so I don't think he will ever be able to recover fully." Mr. Dachman, who is familiar with the case, warned that the little boy would be "shadowed for a long time by feelings of distrust."

Elizabeth Loftus, a psychology professor at the University of Washington and a leading expert on memory in children, said any child as young as **Elían** would be particularly susceptible to suggestions that could alter his memory of his father.

Sadly, **Elían's** well-being seems to have little effect on the poisonous political rhetoric coming from Miami and Washington.

Some conservatives see this case as a long-sought opportunity to stick a finger in the eye of Fidel Castro. Let me say unequivocally that I am second to none in my dislike for Mr. Castro's totalitarian regime. But let's be reasonable. **Elían** is a little boy who has lost his mother and desperately needs his father.

This is a family issue, first and foremost. To forget that and allow our hatred for the Cuban regime to keep us from doing what is best for the child is shameful. It's already a tragedy that the child lost his mother; it would be a travesty for our government to come between him and his father.

I came to Washington with the deep-seated belief that the family is sovereign. You can't be for family values and at the same time advocate that governments be allowed to come between a father and his child.

What a tragic mistake it would be for society to allow the state or federal government to determine what's best for our children! But that's exactly what's happening in this tug-of-war over **Elían** Gonzalez.

As a father of four, including three sons, I know how important daddies are to 6-year-old boys. The question then becomes: is it better for **Elían** to live in our great country without his father or to live with his father in Cuba?

No contest: I say reunite **Elían** with his daddy -- today.

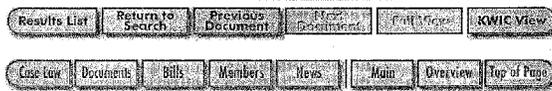
**Elían's** father and five other Cubans now have their visas for travel to the United States. "I'm willing to leave tomorrow," his father said in a prepared statement. "I do not want to talk to any kidnapper, nor accept any condition, or take part in any show or publicity over the handover of **Elían**."

So what are we waiting for?

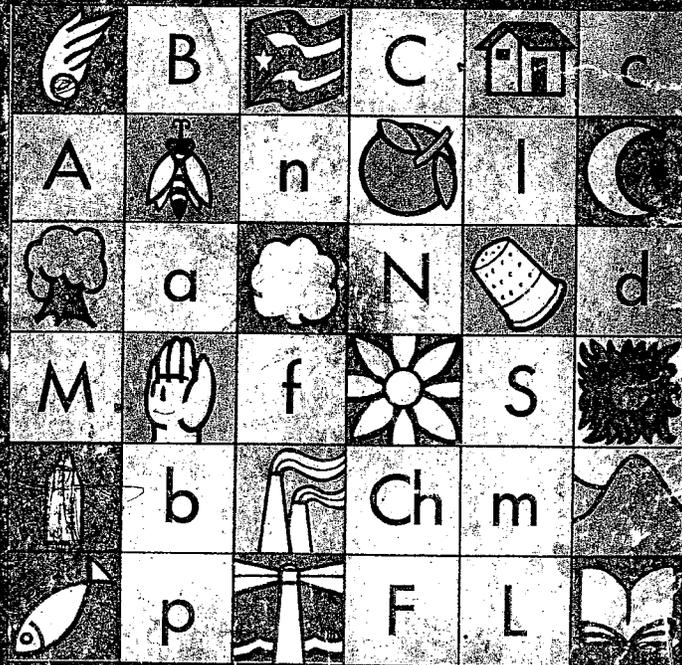
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iA leer!



# ¡A leer!

Dra. Raquel González Núñez

 Editorial  
Pueblo y Educación



ESTE LIBRO,  
EN TUS MANOS DE ESTUDIANTE,  
ES INSTRUMENTO DE TRABAJO  
PARA CONSTRUIR TU EDUCACIÓN.  
CÚDALO,  
PARA QUE SIRVA TAMBIÉN  
A LOS COMPAÑEROS QUE TE SIGAN.

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Este libro forma parte del conjunto de trabajos realizados para el Perfeccionamiento del Sistema Nacional de Educación.

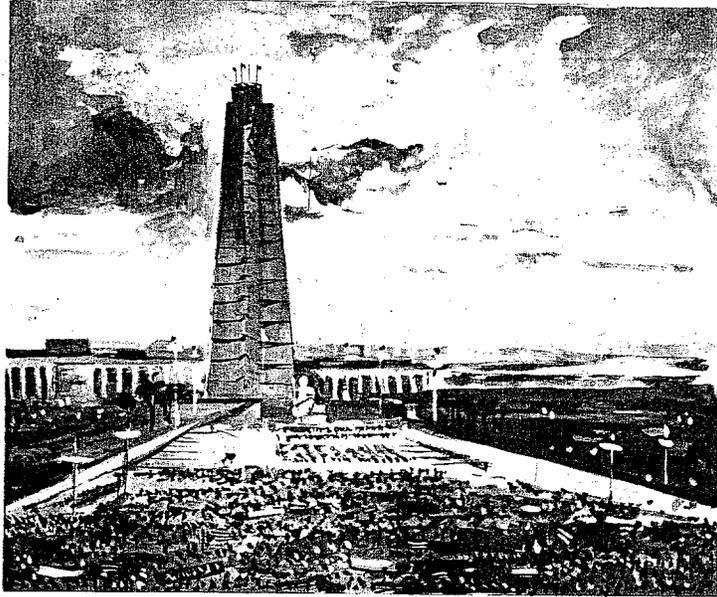
La Comisión de Español (1er. grado) ha estado integrada por Dra. Delia E. Rivero Casteleiro, Dra. Raquel González Núñez y Prof. Leticia Rodríguez Pérez, asesoras nacionales del Equipo de Español del Departamento de Elaboración del Viceministerio de Educación General y Especial; Dra. Mercedes López López, directora del Departamento de Psicología de la Subdirección Provincial de Educación de La Habana; Dra. Berta Rudnikas Katz, jefa del Departamento de Español del ISE Nacional; Dra. Delfina García Pers, asesora nacional de la Dirección General de Formación de Personal Docente; Dr. Vitelio Ruiz Hernández, lingüista de la Academia de Ciencias, Santiago de Cuba.

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¡La Plaza!  
¡El pueblo!  
Aplausos y más aplausos.

Vemos y oímos a   
¡Viva el Socialismo!

F	f
---	---

fi fo fa fe fu



filo  
sofá  
final  
familia



Fefa	Fina	Felipe	Felo
------	------	--------	------

fama	fue	feliz
feo	fui	fiel
fino	fin	flan

En manos buenas,  
un fusil es bueno.

<i>F</i>	<i>f</i>
----------	----------



vimos      fina      feliz  
fuimos      final      felices

## Los milicianos

Una vez fui a la Plaza.

Vi un 

Al final iban los milicianos.  
Sus fusiles en las manos.  
Pasaban en filas.  
En esas filas iban  
papá y mamá.  
Los vi muy bien.  
¡Fui muy feliz!

ellas	vo	trae	verdes
yates	doy	frayendo	verdad

### El yate

Yo voy a la playa.

Doy paseos en bote o en yate.

En nuestra patria tenemos un  
yate famoso.

En él vinieron:



y otros valientes a darle la  
libertad a nuestra patria.

Ya somos libres.

Todos podemos ir a las  
playas y pasear en yate.





**Yo quisiera ser como él**

(Coro cantado)                      María Álvarez Ríos

Yo quisiera ser,  
yo quisiera ser;  
como él, como él.

Yo podría ser,  
yo podría ser;  
como él, como él.

Yo tendré que ser.

Yo tendré que ser,

como él, como él.

¿Cómo quién?

¿Cómo quién?

Como el Che.

Como el Che.

Como el Che.



757-3771111

# INTERPRETER RELEASES

Report and analysis of immigration  
and nationality law



Vol. 75, No. 21 • June 1, 1998

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THROUGH A CHILD'S EYES: PROTECTING THE MOST VULNERABLE ASYLUM SEEKERS

by Jacqueline Bhabha and Wendy A. Young\*

The immigration judge enters the hearing room and sits behind the bench. To his left stands the applicant's attorney, before a microphone and podium. Seated to his right is the asylum-seeker, also before a microphone. This is not a typical asylum hearing, however. The applicant is a diminutive 11-year-old girl from India. Visibly terrified, she explains her story in halting English, unassisted by an interpreter. She is afraid of returning to her parents, who repeatedly beat her. She reveals a scar on her neck, the result of her mother pressing a hot metal iron against her skin. Her parents eventually sent her to a home for unwanted children, where she performed manual labor for two years and was frequently beaten by the staff. One day her father took her to the airport and put her on a flight to the United States in the company of a male stranger. He had sold her to the stranger, most likely for child labor. Upon her arrival in New York, the INS apprehended her. She has spent the last year in a juvenile detention center. The judge is clearly sympathetic. The case is continued due to the lack of translation, but three months later the judge grants asylum, finding that the girl has a well-founded fear of persecution. The INS has appealed the decision. Fifteen months later, her future remains uncertain.<sup>1</sup>

This young girl's story underscores a shortcoming in U.S. asylum law, which currently fails to acknowledge the unique needs of children seeking refuge from human rights violations in their homelands. Children seeking asylum must meet the same legal, evidentiary and procedural requirements as adults. This failure to recognize that children are different is actually an anomaly in U.S. law, which in the context of family law

\* Jacqueline Bhabha is the Director of the Human Rights Program, Center for International Studies at the University of Chicago. Wendy A. Young is Washington Liaison for the Women's Commission for Refugee Women and Children. The authors gratefully acknowledge the assistance of Deborah Anker, Mary Diaz, Bernardine Dohrn, Susan Gzesh, Donald Kerwin, Lyonnelle Louis-Jacques, Roy Petty, Diana Quack, Geraldine Sadoway, Susan Schmidt, Ora Schub and Annie Wilson.

<sup>1</sup> Interview with Roy Petty, American Immigration Lawyers Foundation. The Women's Commission for Refugee Women and Children monitored the above proceedings in December 1997.

## INTERPRETER RELEASES

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June 1, 1998

and juvenile justice, for example, recognizes that children should be held to different standards of proof, evidence, and culpability.

Fortunately, this may soon change. The INS is currently considering the adoption of guidelines for the adjudication of children's asylum claims that carry potentially far-reaching consequences. Clearly, the Service has learned from implementation over the past three years of its "Gender Guidelines" that a thoughtful approach to emerging asylum issues benefits not only the asylum-seeker but also the agency itself. The adoption and implementation of comprehensive policies and procedures cannot happen soon enough, the world community, including the U.S., has a special legal and moral obligation to ensure that child asylum-seekers receive adequate care and protection.

This article provides a substantive legal framework to guide the adjudication of children's asylum claims, proposes procedural and evidentiary standards for the adjudication of such claims, and offers recommendations for reform of the current U.S. asylum system to ensure that children are offered the protection and assistance they deserve.

## BACKGROUND

While there is a lack of concrete data regarding the number of refugee children, best estimates are that children represent more than half of the world's refugee and internally displaced population, for a total of approximately 20 million children. Two to five percent, or approximately a quarter of a million, are separated from their families, either as a result of displacement or because their parents have sent them away.<sup>2</sup> The number of children who reach U.S. shores, however, is relatively small, totaling approximately 8,500 each year.<sup>3</sup>

Refugee children, like their adult counterparts, flee their homelands to escape war, persecution, and political upheaval. Moreover, increasingly, children are themselves targets for human rights abuses. The 1996 Graça Machel Study, a groundbreaking United Nations report of the effects of armed conflict on children, underscored that children are no longer just innocent bystanders caught in the crossfire of armed conflict, but are subject to calculated genocide, forced military

conscription, gender-based violence, torture, and exploitation.<sup>4</sup> Other violations inflicted on children, although unrelated to armed conflict, are also widespread, including child trafficking, bonded labor, female genital mutilation (FGM), child prostitution, and child pornography. Unaccompanied children are particularly vulnerable to neglect, violence, abuse, and exploitation.<sup>5</sup>

Children are, of course, technically eligible for the same protection under international refugee law as are adults. While the 1951 Convention and 1967 Protocol Relating to the Status of Refugees do not specifically address how children should be protected, international jurisprudence on the rights of the child has advanced significantly in the past decade. The 1989 Convention on the Rights of the Child (CRC) delineates a range of rights that states are to accord to children, including those seeking asylum, and defines the distinct legal personality of the child. Perhaps most importantly, the CRC also recognizes the principle of "the best interests of the child" (discussed below).<sup>6</sup> Despite its relative newness, more countries have ratified the CRC than any other human rights treaty.<sup>7</sup> Unfortunately, the U.S. is one of only two countries that have not endorsed it.<sup>8</sup> The Convention provides important guidance by defining the rights of the child and calling for protection of refugee children whose rights have been violated, an obligation that is already binding on the U.S. under the Refugee Convention and Protocol.

Although the refugee definition finds its roots in the experience of World War II, it has slowly evolved to meet the complexity of human rights today. A good example is the growing recognition that an individual fleeing gender-based persecution deserves protection. In 1993, Canada led the world community by adopting procedural and legal guidelines to steer its Immigration and Refugee Board (IRB) in the adjudication of

<sup>2</sup> United Nations High Commissioner for Refugees (UNHCR), *The State of the World's Refugees 28* (1995).

<sup>3</sup> Human Rights Watch has reported that in 1990, the INS apprehended 8,500 undocumented children, 70 percent of whom were unaccompanied. "Slipping Through the Cracks," Human Rights Watch (1997).

<sup>4</sup> "The Impact of Armed Conflict on Children," United Nations (Nov. 1996). See also van Bueren, "Opening Pandora's Box: Protecting Children Against Torture or Cruel, Inhuman or Degrading Treatment or Punishment," 17 *Law and Policy* 377 (1995) [hereinafter *Pandora's Box*].

<sup>5</sup> See *The State of the World's Refugees*, at 28.

<sup>6</sup> The Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly, November 20, 1989, entered into force on September 2, 1990 [hereinafter CRC].

<sup>7</sup> Lutheran Immigration and Refugee Service, *Working with Refugee and Immigrant Children: Issues of Culture, Law & Development*, 2 (to be published June 1998) [hereinafter *Working With Refugee and Immigrant Children*].

<sup>8</sup> See <http://www.unicef.org/crc/status.htm>. Somalia is the other state that has not ratified the CRC.

gender-based asylum claims.<sup>9</sup> The U.S. quickly followed suit, issuing its own guidelines in 1995.<sup>10</sup> The Gender Guidelines have had a significant impact on the consideration of claims brought by women who have fled such abuses as politically motivated rape, forced marriages, domestic violence, and FGM.<sup>11</sup>

Canada again demonstrated international leadership by issuing children's guidelines to the IRB in September 1996. Entitled "Child Refugee Claimants: Procedural and Evidentiary Issues," the guidelines call for the appointment of a guardian to each child refugee claimant and outline the procedural steps the IRB should follow when processing claims presented by unaccompanied children. They also establish standards for eliciting and evaluating testimony from a child. Reflecting the advances made in the context of the CRC, the Canadian Guidelines also recognize that refugee determinations must reflect the best interests of the child.<sup>12</sup>

The United Nations High Commissioner for Refugees (UNHCR) has followed Canada's lead and issued its own model "Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum." The UNHCR Guidelines surpass the Canadian Guidelines in their scope, addressing the initial identification and interviewing of unaccompanied children, the interim care provided, the refugee status determination process, and the identification and implementation of a durable solution.<sup>13</sup> In large part, the UNHCR Guidelines are derived from the 1994 UNHCR Guidelines on the Protection and Care of Refugee Children, which focus on the needs of children in refugee camp settings.

To date, to the extent that the needs of child migrants lacking regular immigration status have been addressed in the U.S., this attention has not specifically concentrated on those seeking asylum. It has instead sought to improve the situation of detained children, both asylum-seekers and others.<sup>14</sup> In addition, children who have been deemed abused, abandoned, or neglected have also been provided some relief under the special immigrant juvenile visa program.<sup>15</sup> More needs to be done, however. Just as the U.S. has moved forward in its integration of gender concerns into asylum jurisprudence, it is crucial that it build on the efforts of Canada and the UNHCR and develop asylum policies and procedures that protect the youngest asylum-seekers.

#### DEFINITIONAL ISSUES

Before proceeding, it is necessary to clarify some of the terms that will be used throughout this article. INA § 101(b) defines a "child" differently according to the circumstances. For example, for a child to be considered a stepchild or a legitimated child, the cutoff age for formation of the underlying relationship is 18. The *Flores v. Reno* settlement agreement, which addresses the special requirements of children in detention, defines a child as an individual under 18.<sup>16</sup>

For purposes of international law, the CRC stipulates that a child is anyone below age 18 unless, under the law applicable to the child, the age of majority is attained earlier.<sup>17</sup> The UNHCR Guidelines and the Canadian Guidelines adopt 18 as the relevant age.

Throughout this article, the term "child" will therefore refer to an individual who is below age 18. It is arguable, however, that individuals between ages 18 and 21 also deserve special consideration under U.S. asylum law, as they may lack the maturity to understand the proceedings in which they have been placed. This is particularly true of individuals whose asylum claims are based on traumatic events that happened while they were under age 18.

The term "unaccompanied" is also open to interpretation. Child asylum-seekers often are alone when they enter the U.S.; Human Rights Watch has reported that approximately 70 percent of children apprehended by the INS fall into this

9 Women Refugee Claimants: Fearing Gender-Related Persecution, Guidelines issued by the Chair Pursuant to Section 65(3) of the Immigration Act (Ottawa, Mar. 9, 1993).

10 Considerations for Asylum Officers Adjudicating Asylum Claims from Women, INS Memorandum from the Office of International Affairs (May 26, 1995) [hereinafter Gender Guidelines], reported in 72 Interpreter Releases 771 (June 5, 1995). See also Kelly, "Guidelines for Women's Asylum Claims," 71 Interpreter Releases 813 (June 27, 1994).

11 See, e.g., *In re Kasinga*, Int. Dec. 3278 (BIA June 13, 1996).

12 See Statement by Nurjehan Mawani, Chair, Immigration and Refugee Board, at Canadian Bar Association Annual Meeting/Commonwealth Law Conference, 4 (Vancouver, B.C., Aug. 26, 1996) [hereinafter Mawani Statement]. See Child Refugee Claimants: Procedural and Evidentiary Issues (Ottawa, Sept. 1996) [hereinafter Canadian Guidelines].

13 UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Minors Seeking Asylum (Feb. 1997) [hereinafter UNHCR Guidelines].

14 *Flores v. Reno*, Stipulated Settlement Agreement, Case No. CV-85-4544-RJK(Dx) [hereinafter *Flores* Agreement]. See also *Los Angeles Times*, Apr. 30, 1997, at B1. This article does not address the situation of children, including those seeking asylum, held in INS detention.

15 INA § 101(a)(27)(J).

16 *Flores* Agreement, at 4.

17 CRC, Art. 1.

category. Other times, however, they are in the company of a relative, family friend, or an individual whom the family has paid to travel with the child. UNHCR, in its applicable guidelines, defines an unaccompanied minor as a person "who is separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so."

#### INTERNATIONAL RIGHTS OF THE CHILD AND THE CRC

Any framework for the adjudication of children's asylum claims must consider the provisions of international human rights instruments. These instruments have become increasingly important in interpreting the obligations of states toward their citizens and, by extension, the obligations of host states toward those individuals seeking asylum. The INS recognizes that such instruments are relevant to the evaluation of asylum claims,<sup>18</sup> and that even if the U.S. has not ratified a particular treaty, it may still be bound if the treaty has acquired the status of customary international law.<sup>19</sup>

In addition to the general body of international human rights law, such as the United Nations Declaration of Human Rights and other treaties, the provisions of the CRC are central to the consideration of children's asylum claims. This landmark treaty has rapidly revolutionized the international approach to children, turning them from family possessions into individual agents, from objects into subjects: "...the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity."<sup>20</sup> The CRC provides a new child-centered perspective on questions of rights and establishes a near-universal set of internationally endorsed and validated standards for children. The treaty's centrality as a normative frame of reference is generally recognized, including in the UNHCR Guidelines and Canadian Guidelines. Much as the INS Gender Guidelines embrace the articulation of women's rights contained in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), any Children's Guidelines should reflect the provisions of the CRC.

The CRC specifically addresses the issue of refugee children and children seeking asylum in Article 22. This provision mandates that states provide such children "appropriate protection and humanitarian assistance." It also requires states to give children for whom no family can be found "the same protection as any other child permanently or

temporarily deprived of his or her family environment for any reason."<sup>21</sup>

The CRC establishes other fundamental standards relevant to the treatment of children seeking asylum. First, Article 3 of the CRC establishes the fundamental and unifying principle of the "best interests of the child."<sup>22</sup> It states that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."<sup>23</sup> A decision concerning a child's asylum application clearly falls within the scope of Article 3, thus requiring decisionmakers to give primary consideration to the child's best interests. This not only has obvious relevance to procedural questions, but is of central importance when considering such substantive questions as defining the behavior that amounts to persecution of a child, the circumstances that give rise to a well-founded fear of persecution in a child, and the threshold that a child must meet to discharge his or her burden of proof. Properly applied, the best interests principle mandates that a child seeking asylum should always be considered a child first and an asylum-seeker second.

A second core principle of the CRC establishes that children must be given the opportunity to express their own views and have these views taken into account in decisions affecting them: "State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."<sup>24</sup> This principle imposes procedural responsibilities on those adjudicating asylum claims to provide suitable circumstances and adequate opportunities for a child to freely and fully articulate his or her views. Moreover, the principle mandates careful solicitation of and attention to the child's testimony when deciding whether he or she has been subject to abuse that constitutes persecution and whether the circumstances give rise to a well-founded fear.

Finally, the CRC articulates a wide range of children's rights and substantive obligations imposed on states to protect children. These include, among others, the obligation to ensure the "survival and development of the child" (Article 6(2)); the right of a child not to be separated from parents against his or her will (Article 9); the obligation on states to

<sup>18</sup> INS, Basic Law Manual, 11-12 (Nov. 1994) (hereinafter Basic Law Manual).

<sup>19</sup> Id. at 12-13, 24.

<sup>20</sup> CRC, Preamble.

<sup>21</sup> CRC, Art. 21.

<sup>22</sup> The "best interests of the child" principle has also been recognized in U.S. child welfare law and practices. See, e.g., The Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (Nov. 19, 1997).

<sup>23</sup> CRC, Art. 3(1).

<sup>24</sup> CRC, Art. 12(1).

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combat "the illicit transfer and non-return of children abroad" (Article 11); and the obligation to protect the child from physical or mental abuse, maltreatment or exploitation (Article 19).

## ASYLUM CLAIMS OF CHILDREN

To qualify for asylum under U.S. law, a child must, like any other applicant, establish that he or she meets the definition of refugee contained in the INA. This provision, based on the 1951 Refugee Convention, defines a refugee as a person who is unable or unwilling to return to his or her country of origin or last habitual residence because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>25</sup> The child must thus prove that either he or she has been persecuted in the past or has a well-founded fear of being persecuted in the future and that the persecution is on account of one of the five enumerated grounds. In addition, the child must show that the persecution feared is either at the hands of the government or of an agent that the government is unable or unwilling to control.

**Forms of persecution specific to children.** Many child asylum-seekers, like their adult counterparts, flee their homelands to escape politically or religiously motivated or ethnically based persecution. Most often, their claims are based on the same facts as, and may derive from, the claims of their parents. Children of refugees and asylees are entitled to the same status as their parents, in accordance with the principle of family unity articulated in the UNHCR Handbook.<sup>26</sup> Even when children seeking asylum are unaccompanied, their asylum claims may have nothing to do with their status as children.<sup>27</sup> For such children, the fact that current U.S. law makes no special provision for child asylum-seekers may present no additional substantive problems, although the procedural hurdles discussed below remain.

For some children, however, the fact that they are children is central to their asylum claim. In some cases, this arises

because the persecution alleged only applies to children, such as infanticide,<sup>28</sup> conscription as a child soldier,<sup>29</sup> child abuse,<sup>30</sup> incest,<sup>31</sup> FGM (in countries in which this practice is confined to young girls),<sup>32</sup> bonded or hazardous child labor,<sup>33</sup> child sale,<sup>34</sup> child marriage,<sup>35</sup> and religious sexual servitude.<sup>36</sup> In other cases, this arises because behavior that might not qualify as persecution when targeted at adults may rise to a well-founded fear of persecution when applied to children. The provisions of the CRC cited above identify such situations in which the fundamental human rights of children are at issue. Examples include separation from family,<sup>37</sup> deprivation of education, heightened vulnerability following

28 *The Daily Mail* (London) (Dec. 20, 1993), cited in Human Rights Watch/Asia, *Death by Default: A Policy of Fatal Neglect in China's State Orphanages*, 76 (1996).

29 See *Washington Times*, Apr. 20, 1998, at A12.

30 *In the Matter of A and Z*, A 72-190-893, A 72-793-219, (Dec. 20, 1994).

31 *In the Matter of T.C.V. (Re)*, Convention Refugee Determination Decision (C.R.D.D.) No. 5, Nos. U95-00646, U95-00647, U95-00648, decided Jan 15, 1997 (finding by Canadian IRB that a 12-year-old "young child victim of incest" had established grounds for asylum).

32 See also *Kusuga*, Int. Dec. 3278.

33 See Human Rights Watch, *The Small Hands of Slavery: Bonded Child Labor in India* (1996).

34 *Chicago Tribune*, Apr. 27, 1997, at 13-1.

35 A Canadian court has recognized that a forced polygamous marriage of a 14-year-old girl in accordance with the customary laws of kuzvatira and lobola in Zimbabwe could constitute persecution. See *In the Matter of W. (Z.D.) (Re)*, C.R.D.D. No. 3, No. U92-06668 (Feb. 19, 1993), cited in Newman and Weissbrodt, *International Human Rights: Law, Policy and Process*, 665, n.7 (1996).

36 Customary religious practices that could constitute persecution include *trokosi*, the Ghanaian religious custom in which girls as young as 10 are handed over to temples where they work as servants until they menstruate and then become the exclusive concubines of priests until they are discarded in middle age, only to be replaced by another young virgin from the same family (see *Philadelphia Inquirer*, Mar. 16, 1997, at A8), and the *Devadasi* system in India in which at least 1,000 young girls each year are dedicated to the service of a Hindu goddess in secret ceremonies and then sold to the highest bidder (see *Baltimore Sun*, Jan. 22, 1997, at 9A).

37 For example, when young children are separated from their parents during detention.

25 INA § 101(a)(42).

26 Although the UNHCR Handbook of its own force is not legally binding, the U.S. Supreme Court has characterized it as a source of useful guidance in adjudicating asylum claims. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 439 n. 22 (1987).

27 *In the Matter of Aristides Luna-Lorenzano*, C3/31/98 (where a 16-year-old Guatemalan, forcibly abducted and tortured by the military, was granted asylum as a member of the social group of " underage males forcibly recruited and illegally conscripted into the military who have been subjected to physical, social, and emotive abuse"). Press Release, Children and Family Justice Center of Northwestern University Legal Clinic.

civil upheaval,<sup>38</sup> homelessness,<sup>39</sup> prostitution,<sup>40</sup> and trafficking. The current adult-centered approach to asylum claims fails to adequately address these situations, just as the male-centered approach to asylum until recently neglected the specific gender-related claims of women asylum applicants.

**Harm that amounts to persecution.** A child asylum-seeker must first establish that the treatment received in the past or feared in the future amounts to persecution. Persecution is not defined, however, and as the UNHCR Handbook states, "various attempts to formulate such a definition have met with little success."<sup>41</sup> This open-endedness was intended to accommodate a range of situations and to generate an evolving standard which took account of prevailing norms as they received international recognition.<sup>42</sup>

Despite the absence of a universally agreed-upon definition of persecution, several general principles are well-established. Persecution requires a finding of serious harm. This includes, but is not limited to, violations of physical integrity. The following actions can also constitute persecution: (1) threats to life and freedom; (2) serious violations of basic human rights enshrined in international human rights law; (3) discriminatory practices that "lead to consequences of a substantially prejudicial nature";<sup>43</sup> and (4) a culmination of separate harms, none of which individually counts as persecution but which rise to the level of persecution when taken together.

In the absence of guidelines for the adjudication of children's claims, situations that amount to persecution when

applied to children (but not adults) are the most likely to give rise to problems for children seeking asylum, since similarly placed adults may fail to establish an asylum claim. Implicit is the notion that persecution is a relative term. What counts as serious harm will depend on the circumstances of the case, and both subjective and objective factors must be taken into account in arriving at a decision.<sup>44</sup> This relativistic perspective is of central importance when considering children's asylum claims; in each case, the child must be considered first as an individual, and second, as a member of a group that is "uniquely dependent."<sup>45</sup>

Actions that might be considered mere harassment or interference when directed at adults could amount to persecution when applied to children, for two reasons. First, persecution could arise because of the child's heightened sensitivity. The importance of the emotional dimension of persecution has been recognized in gender-based cases.<sup>46</sup> As a demographic category, children are more likely to be traumatized by hostile situations because of their age, lack of maturity, and vulnerability.<sup>47</sup> They are more likely to believe improbable threats and to be terrified by unfamiliar circumstances. For example, aggressive police questioning, threats, handcuffing, slapping, or rough handling, which may not constitute "serious harm" for an adult, may produce lasting damage or physical or psychological trauma in a child amounting to persecution, particularly if the child is young or physically frail.<sup>48</sup>

Apart from types of behavior that target children in an unmediated form, persecution may also arise from behavior that is addressed to others but impinges directly on the child's sensibility. Infliction of harm on close relatives may constitute persecution for a child;<sup>49</sup> this could certainly be true in cases of death, torture, rape, domestic abuse, detention, disappearance, forcible conscription, relocation, or "ethnic cleansing." It may also be true when close relatives are

38 See generally Sadoway, "Refugee Children Before the Immigration and Refugee Board," 35 Immigration Law Reporter (2d), 110.

39 In one case an IJ found a street child from Honduras eligible for asylum, because of a "pattern and practice" of police persecution of street children. Notes Regarding the Merits Hearing of [Name Withheld], by Steven Lang, Coordinator, Pro Bar South Texas Pro Bono Asylum Representation Project (Nov. 14, 1997). See also Human Rights Watch/Children's Rights Project and Human Rights Watch/America, Guatemala's Forgotten Children: Police Violence and Abuses in Detention (1997).

40 Department of Labor, Forced Labor: The Prostitution of Children (1996). See also Levesque, "Sexual Use, Abuse, and Exploitation of Children: Challenges in Implementing Children's Human Rights," 60 Brook. L. Rev. 959 (1994) (describing the escalation of child prostitution).

41 UNHCR Handbook, para. 51.

42 Aleinikoff, "The Meaning of 'Persecution' in United States Asylum Law," 3 Int. J. of Ref. Law 5, 11 (1991); Goodwin-Gill, *The Refugee in International Law*, 71 (1996).

43 UNHCR Handbook, para. 54.

44 UNHCR Handbook, para. 52.

45 Pandora's Box, at 379.

46 See *Lopez-Galarza v. INS*, 99 F.3d 954 (9th Cir. 1996).

47 *Kahssai v. INS*, 16 F.3d 323, 329 (9th Cir. 1994) (noting that "when a young girl loses her father, another and brother—sees her family effectively destroyed—she plainly suffers severe emotional and developmental injury").

48 See *Civil v. INS*, 140 F.3d 52 (1st Cir. 1998) (dissenting opinion) (observing that the question is not what an administrative law judge can choose to believe; the question is what a young person, "who has been forced to hide under the bed in the middle of the night, in terror of being killed, would think about her safety if she were to return home").

49 See *Kahssai v. INS*, 16 F.3d at 323.

subjected to less serious harms, which could still be so terrifying to a child that they rise to the level of persecution, including threatening behavior, physical searches, questioning, handcuffing, or rough handling of parents in the presence or knowledge of the child.<sup>50</sup>

Second, persecution could arise because of the child's heightened dependence. Children have particular needs for assistance and protection. Parental care, for example, is clearly established in the CRC as a basic human right of a child.<sup>51</sup> Forced separation from parents or other members of the family may be persecution for a child, whereas separation of an adult from his or her parents would generally not be so considered. Children abandoned and neglected by their parents or families may fall into this category either because they are unwanted or because the family is unable to provide for them and the state fails to provide adequate surrogate protection. Depriving a child of social and economic rights, such as the opportunity to attend school, or access to health care, food, or housing, may also constitute violations that rise to the level of persecution.

Under U.S. law, the persecutor may be a government agent, or a nongovernmental entity or person that the government is unable or unwilling to control.<sup>52</sup> With child persecution, as with gender-based persecution, it is clear that the agent of harm is not confined to the political or public arena; the community, the school, and indeed, the home, may be the setting in which persecution arises. A child who fears persecution by government troops seeking to inflict terror or punishment could qualify for asylum, as could a child threatened by opposition guerrilla forces, abusive parents, or violent employers. Moreover, a "punitive" or "malignant" intent on the part of the persecutor is not required for the harm to constitute persecution.<sup>53</sup> Thus, a child fearing customary initiation rites, such as FGM performed by family-appointed excisers or "sacrifice" to a religious leader by tribal chiefs or village elders, would also be eligible.

The non-state actor doctrine is based on the international legal principle that a state's obligations to protect include a duty to defend and secure the enjoyment of basic human rights, both by refraining from violations and by engaging in positive intervention and enforcement. This doctrine has particular salience for children, because of their dependence and vulnerability, the power disparity vis-à-vis their adult providers, and their lack of easy access to non-familial sources of protection. As with women, domesticity and privacy may

present great dangers to children and render them defenseless.<sup>54</sup> These particular dangers have only recently been recognized as forming part of the corpus of rights protected by the international community and have yet to be systematically addressed within the asylum adjudication context.<sup>55</sup>

When a state is implicated as responsible for persecution by omission, because of acquiescence or the absence of adequate preventive and punitive measures, the onus is on the applicant to show that the government was, or should have been, aware of the harm feared but did nothing to protect the applicant. The applicant must show that he or she sought but was denied government protection, unless seeking such protection would have been futile given the particular circumstances or the government's record, including known social evils such as child abduction, trafficking, bonded labor, or forcible conscription. In cases in which no effective steps have been taken, despite public demands for government intervention, it can be argued that children can expect little government protection.<sup>56</sup>

50 See CRC, Art. 37.

51 CRC, Art. 7.

52 *Matter of McMullen*, 19 I&N Dec. 90, 96 (BIA 1984); *Matter of Pierre*, 15 I&N Dec. 461, 462 (BIA 1975).

53 See *Kasinga*, Int. Dec. 3278.

54 See CRC, Art. 19(1) (directing states to "protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child"). Girls may be particularly vulnerable because of societal gender discrimination, which privileges the male child as heir and bearer of the family tradition and which correspondingly devalues the female child, and because of a heightened vulnerability to sexual abuse within the family.

55 For a unique and controversial Canadian decision granting asylum to the 12-year-old child with dual U.S./U.K. citizenship who was the victim of paternal incest and abuse, see *In the Matter of T.C.V. (Re)* [1997] C.R.D.D. No. 5. This case provoked a heated controversy in the Canadian press, partly because the court, contrary to the norm, found that the child applicant faced persecution in two democratic, western states: the United Kingdom (where child protection agencies had failed to protect him from the abuse by his father) and the U.S. (where the child, his mother and stepfather had moved after fleeing from the U.K. and from which the child's alien stepfather was deported without regard to the child's best interests and with the result that the child experienced serious psychological disturbances, including suicidal feelings).

56 Such an argument was successful in the case of *In Re Kasinga*, where the BIA concluded that despite widespread awareness of the practice of FGM, the Togolese government has failed to take even minimal steps to protect women. See *Kasinga*, Int. Dec. 3278, at 15.

Moreover, the requirement that government protection be sought pre-supposes an unmediated relationship between the applicant and the state. This is usually not the case for children; an evaluation of their ability to seek state protection is likely to implicate the parents or other relatives, particularly in the case of young children. In many situations of child persecution, however, there may be no competent adult able to do battle with the authorities to seek protection on the child's behalf or to obtain evidence of such attempts. In other cases, parents will fail to intervene or seek protection even when such intervention might have been possible and productive, either because of a lack of competence, confidence or interest. In such circumstances, a child should not be prejudiced by the parent's failure to seek protection.

Moreover, in some situations parents or other traditional caregivers are implicated in the persecution. They may participate directly, as when a child is sold, married, forced into hazardous work, or subjected to abuse or FGM. While standards of acceptable physical punishment for children may vary among families and cultures, international human rights norms are relevant in deciding when permissible punishment crosses over into proscribed behavior that is "cruel, inhuman, or degrading" and rises to the level of persecution.<sup>57</sup> In other cases, parents or the caregiver may acquiesce to the abuse, whether through voluntary consent or fear, as in the case of conscription into government or guerrilla armies, or physical or sexual abuse by a partner of the parent. Requiring a child to prove that he or she had sought state protection as a precondition to the grant of asylum would effectively bar such applications. It would constitute a withdrawal of surrogate protection by the asylum state from this particularly vulnerable group of claimants.

<sup>57</sup> The jurisprudence of the European Convention for the Protection of Human Rights and Fundamental Freedoms is a useful guide. Several cases have considered whether punishment of children violated Article 3 (prohibition on torture), a provision that is analogous to Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, and Article 37 of the CRC. See *Tyrer v. U.K.*, 26 Eur. Ct. H.R. (ser. A) (1978) (holding that the practice of "birching" inflicted on a 15-year-old boy violated Article 3); *Campbell and Cosans v. U.K.*, 60 Eur. Ct. H.R. (ser. A) (1982) (holding that the right to education had been violated when two children were suspended from public schools for refusing to accept the use of leather straps as punishment); *Costello-Roberts v. U.K.*, 247-C Eur. Ct. H.R. (1993) (holding that there had been no violation in the case of a seven-year-old boy attending private school who had been hit three times on the buttocks with a shoe).

#### THE GROUNDS OF PERSECUTION

To qualify for asylum under U.S. law, a child asylum-seeker must establish that the persecution he or she has suffered or fears is "on account of" one of the five enumerated grounds. As with gender, age is not included in the definition as a separate ground of persecution. Therefore, age-specific persecution has to be grounded in one of the established categories.

**Race.** Generally, a child seeking asylum from persecution on the basis of race will face similar circumstances to those facing adults. For example, an indigenous Indian child from Chiapas, Mexico may face government persecution simply because of his or her race. Racial persecution, however, may also be partly grounded in the child's age. For example, if children are seen as being responsible for civil disorder, such as through stone-throwing, sabotage, or looting, the government may target them for repression and torture. Such was the case for black children residing in the South African township of Soweto during the anti-apartheid struggle.

**Nationality.** A child facing persecution because of his or her nationality may also have an age-based component to the asylum claim. This can arise when a child is born stateless or is an alien in the country of permanent residence, is deemed ineligible to acquire the nationality of that country, and faces expulsion or persistent discrimination. One example is that of a child who is denied schooling, in circumstances that amount to persecution. Another could be that of a second-generation immigrant child who is forced to leave what is in effect his or her home country following the deportation of an alien parent to a dangerous country, forcing the child to choose between permanent separation from the parent or life in an unstable country, the language and customs of which he or she is ignorant. There may be circumstances in which the imposition of linguistic or cultural norms through an education system might amount to child-specific persecution on the basis of nationality, such as the insistence in Latvia that all schooling be conducted in Russian. Particular nationalities may also be victims of child-specific persecution when children are viewed by the government as a particular threat, such as was the case with Palestinian children in the occupied territories during the "Intifada" civil uprising.

**Religion.** A child may face persecution because of his or her religion-determined behavior, religious beliefs or refusal to hold religious beliefs. Examples include: (1) a child who refuses to participate in state-supported or -condoned religious practices which he or she considers abhorrent, such as "sati"; (2) a child who is expelled from school because of her conformity to her own religiously mandated dress codes, such as veiling; and (3) a child who faces harsh treatment for

refusing to become enslaved to a religious leader in conformity with prevailing religious custom.

**Political opinion.** Whether or not a child is capable of holding a political opinion is a question of fact, to be determined by assessing the child's maturity, intelligence and ability to articulate thoughts. Whatever may be the capacities of very young children, it is certainly the case that by the time they reach their teens, many children are capable of holding political opinions, particularly in politically polarized situations in which family members are involved in ongoing political activity. Indeed, many national liberation or protest movements are spearheaded by student activism, including school children<sup>58</sup> as well as college students. Such activists may therefore be singled out for persecution because of their age as well as their political opinions.<sup>59</sup> Children may hold and express views on issues of concern to the society at large, as in the case of the Palestinian Intifada<sup>60</sup> or the Soweto school children. They may also be politically active on issues that specifically concern the position of children. Examples include the Muslim children in France who organized protests against the state's prohibition of the veil in French schools and the Indian and Pakistani child laborers who organized to protest their working conditions, a movement that has now developed into a global network.<sup>61</sup>

Accordingly, it is inappropriate for adjudicators to hold, as they have in some cases, that a child could not have been persecuted for a political opinion simply because the persecutor would not have considered the child capable of forming such an opinion.<sup>62</sup> The political, social and cultural context must inform a decision as to whether a particular child

did have the political opinion claimed and was perceived as having it by the alleged persecutor.

In addition to persecution on account of a political opinion, a child may be persecuted because of a political opinion imputed to him or her, whether or not he or she actually held that opinion. This may arise in circumstances identical to those for adults. For example, inhabitants of particular villages; members of a given family, tribe or ethnic group; or followers of particular religions may *ipso facto* have a political opinion imputed to them. There may also exist a child-specific aspect, in which a persecutor considers a child to have a particular political opinion because of the child's family association or other involuntary affiliation (e.g., ethnic or religious group), whereas a similarly placed adult may be accorded more intellectual or political autonomy.

**Membership in a particular social group.** Unlike the other grounds of persecution, the meaning of "membership in a particular social group" has been a matter of considerable controversy and uncertainty. Following protracted litigation and debate, however, a general consensus has emerged on its meaning and scope. It is now understood as persecution directed toward an individual who is a member of a group sharing a common, immutable characteristic, immutable either because the members of the group cannot change it<sup>63</sup> or because the members of the group should not be required to change it because it is so fundamental to their being. Broad demographic characteristics such as gender or age might be sufficient characteristics for this ground.<sup>64</sup>

For children, the most frequent group membership grounding an asylum claim will be membership in their own family, clearly an immutable characteristic. This is the case for accompanied minors, whose claims very likely rest on the political opinion or social group membership of the adult asylum claimant; it is also the case for unaccompanied minors whose claims rest on persecution or fear of persecution because of their family group membership. Thus, the child or other relative of a political opponent of a regime may be eligible for asylum simply on the basis of that family group membership, since he or she is vulnerable to imprisonment, violence or other persecutory behavior irrespective of his or her own views or behavior. Persecution of family members, whether for purposes of retaliation, information extraction, threat, or punishment, is widespread against both adult and child relatives.

58 See *Civil v. INS*, 140 F.3d at 52 (dissenting opinion) (citing documentary evidence of the major role played by children and youth in President Aristide's election campaign, and of political persecution of elementary and secondary school students by the Haitian armed forces).

59 See *Canjura-Flores v. INS*, 784 F.2d 885 (9th Cir. 1985) (in which a Salvadoran asylum-seeker who fled his homeland at age 16 testified that young people were likely to be targeted for persecution in his home town, and offered supporting evidence from Amnesty International).

60 See Nassar and Heacock, eds., *Intifada: Palestine at the Crossroads*, 66, 129 (Birzeit University and Prager Publishers 1991).

61 See "Working Children's Movements of Africa, Latin America, and Asia: Activities and Discussions" at [cwc@pobox.com](http://cwc@pobox.com). See also Edmonds and Fernkes, "Biographical Sketches: Iqbal Masih," *Children's Rights: A Reference Handbook*, 65-66 (ABC-CLIO, 1996).

62 See Sadoway, at 110.

63 See *Ward v. Canada* (S. Ct. Canada) (1993) (finding that a social group can be defined by the historical permanence of the persecution).

64 See, e.g., *Fann v. INS*, 12 F.3d 1233 (3rd Cir. 1993).

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In addition, a child whose parents, relatives, or fellow villagers<sup>65</sup> have been killed, tortured or imprisoned may have a claim because of the direct persecutory effect of that behavior on the child. Here, the social group might be defined as that consisting of "children who have been traumatized by witnessing the persecution of their parent," since the persecution of a parent may, as discussed earlier, amount to direct persecution of the child.<sup>66</sup>

In some cases, the group membership of a child asylum applicant will be defined by child-specific persecution. Three broad groups of such cases can be identified: (1) the government directly participates in the abuse of the child, such as conscription as a child soldier or treatment as a "non-person" before the law for being a "second child" in violation of a government population policy mandating one child per family;<sup>67</sup> (2) the government acquiesces in cultural or social practices for which there is no persecutory intent but which nevertheless are capable of rising to the level of persecution, such as child marriage, sati, FGM, and involuntary child abandonment; and (3) the government has failed to adequately and appropriately protect children whose adult caregivers are primarily responsible for the persecutory treatment, such as in

cases of incest,<sup>68</sup> child abuse, child sale,<sup>69</sup> bonded child labor, child abandonment, or child trafficking or smuggling for prostitution or forced labor. In all three categories, the groups comprise children who risk or experience persecution because of their membership in the particular social group in question.

**Standard of proof.** Well before child-specific persecution was noted as a distinctive set of harms meriting special attention, there was international recognition of the particular evidentiary difficulties that arise in making a determination on children's asylum claims. Noting that "the same definition of a refugee applies to all individuals, regardless of their age,"<sup>70</sup> the UNHCR Handbook nevertheless comments: "When it is necessary to determine the refugee status of a minor, problems may arise due to the difficulty of applying the criteria of 'well-founded fear' in his case." The Handbook only envisages this difficulty arising in the case of unaccompanied minors. It recommends that minors accompanied by a parent or other adult should have their cases determined in accordance with the principle of family unity: if the head of the family is determined to be a refugee, the dependents are normally granted refugee status.

For unaccompanied minors, however, the Handbook states that the question of "refugee status must be determined in the first instance according to the degree [of the child's] mental development and maturity. In the case of children, it will generally be necessary to enroll the service of experts conversant with child mentality. Where a minor is no longer a child but an adolescent, it will be easier to determine refugee status as in the case of an adult, although this again will depend upon the actual degree of the adolescent's maturity." The Handbook then proposes a general distinction drawn at age

65 In one case, a Salvadoran asylum-seeker based her claim on the past persecution she suffered at age 10 when her whole village was the subject of the infamous El Mozote massacre. She lost both parents, all five siblings, and her entire extended family. The BIA did not find persecution on the basis of membership in the social group of "the children of El Mozote." The Fourth Circuit denied her petition for review, upholding the BIA's finding that the claimant's absence from the village at the time of the massacre and her unevenful 10-year residence in El Salvador after the massacre were significant. Regrettably, neither the BIA nor the Fourth Circuit acknowledged that being a child survivor of a massacre constitutes an immutable characteristic of a particular social group. *Argueta-Rodriguez v. INS*, 129 F.3d 116 (4th Cir. 1997).

66 See Sadoway, at 112-13 (reporting that the Canadian IRB has found in some child asylum cases that "persecution" of an adult member of the family only constitutes "indirect persecution" of the child, and that this indirect harm is inadequate to establish a successful claim to asylum).

67 See *Cheung v. Canada*, Court File No. A-785-91; 102 D.L.R. 4th 214 (Apr. 1, 1993) (granting asylum to a Chinese woman and her younger daughter, the latter's social group being that of second children born in contravention of China's one-child policy, who would not receive food subsidies, would receive a low-grade education, and might not be allowed to register for school).

68 In the Canadian case, *T. C. V. (Re)*, noted above, in which the child held dual U.K./U.S. citizenship, the IRB defined the particular social group as "young children who are victims of incest" with respect to the claim of persecution against the U.K. for failing to effectively enforce child protection laws and as "victims of sexual abuse who have had their supportive environment destabilized" with respect to the claim of persecution against the U.S., which had deported the child applicant's stepfather.

69 In one recent case, the court, in awarding asylum to a victim of child abuse and child trafficking following sale, distinguished between the social group of "Indian children sold or abandoned by their parents," in which the group encompasses children sold out of necessity, and the narrower and more vulnerable group of "unwanted, abused and sold children." As the court argued, the latter group are unprotected not only by the state but by their parents. *Matter of [Name Withheld]* (U. Chicago, Mar. 13, 1998).

70 UNHCR Handbook, para. 213.

16: minors of 16 or over should be assumed—subject to contrary indications—to be sufficiently mature to have a well-founded fear of persecution, whereas minors under that age, even if they experience fear of their own, may not normally be assumed to be sufficiently mature. In the case of the latter group, the applicant's subjective responses may be given less weight than objective factors. What is most important, however, is that the Handbook—recognizing the inherent difficulties in determining the well-foundedness of a minor's fear—calls for "a liberal application of the benefit of the doubt." This means that when evidence is unreliable or inadequate, the adjudicator should find in the child's favor.

What is lacking in these principles is the rights-based perspective on children articulated in the CRC. The Handbook's approach should therefore be modified to include the central requirement that "the best interests of the child" be a primary consideration in the decision-making process,<sup>71</sup> a stronger claim than liberal construal of the benefit of the doubt. Second, the child's right to express his or her views and to participate in any decision affecting his or her rights should be explicitly acknowledged.<sup>72</sup> Whereas the judgment as to the appropriateness of such participation may be obvious for adolescents and infants, expert judgment may be required for a judicious assessment of capability for the majority of children. Also lacking in the Handbook's analysis is the acknowledgment that an accompanied minor might actually have a basis for a claim to asylum that is different from that of the relative, or indeed, even based on persecution that is instigated by the caregiver. In such cases, clearly the child's claim must be considered separately.

The Handbook's call for liberal application of the benefit of the doubt, combined with the CRC's requirement that the "best interests of the child" be a primary consideration, mandate a generous approach to child persecution cases that affirms applications rather than dismisses them when the evidence is unreliable or inadequate. Such an approach does not represent a lowering of the standard of proof for refugee status but is an appropriate recognition of the special needs and vulnerabilities of this category of applicant.

**Future persecution.** To establish that a fear is well-founded, an asylum applicant must show that his or her fear is both subjectively genuine and objectively reasonable. Determining both of these elements is different in the case of a child as opposed to that of an adult. The fear must be demonstrated to be well-founded, from the perspective of a "reasonable person" in the same circumstances as the

applicant.<sup>73</sup> Determining what is objectively reasonable poses a challenge for the adult decisionmaker, who must put himself or herself in the position of a "reasonable" child of that age, experience, maturity and cultural background. As noted earlier, the subjective impact of dramatic, frightening events is likely to be far greater for a child.<sup>74</sup> It follows that events that may not give rise to a reasonable fear for an adult may nevertheless do so for a child. For example, a child sold into slavery by her parents may reasonably fear that she would be sold again if returned, whereas an adult victim of trafficking or smuggling if returned may be able to use his or her greater independence to establish a different life. Likewise, a street child may have no way to escape gang-related violence or police persecution on return.

**Past persecution.** Under U.S. law, a showing of past persecution on account of an enumerated ground establishes a rebuttable presumption that the applicant has a well-founded fear of persecution.<sup>75</sup> Even when the INS is able to show a fundamental change of circumstances, asylum may nevertheless be granted on the basis of the severity of the past persecution, the nature of the harm, or other discretionary factors. Given the special vulnerability of children, a showing of past persecution should usually suffice.

Assessing the psychological impact of traumatic events on children is relevant both to the question of whether past persecution has occurred and to whether the child has a well-founded fear of future persecution. An important difference between child and adult asylum-seekers is that children usually have not exercised any individual choice leading to their situation; children seeking asylum are typically victims of circumstance. Whether their persecution claim is based on being trafficked or smuggled, sold into slavery or prostitution,

<sup>73</sup> *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Assessing the child's subjective response requires special expertise and sensitivity. One IJ has found that a 12-year-old child's fear was subjectively genuine by relying on the testimony of a court-appointed guardian *ad litem* who credibly testified that "in twenty five years working with abused children she only once saw a child so afraid to return home." Moreover, the court found the applicant's subjectively genuine fear established because she "desperately seeks to stay in the United States, a strange place where she has little idea who will take care of her, rather than return to her parents." *Matter of [Name Withheld]* at 11 (I.J. Chicago, Mar. 13, 1998).

<sup>74</sup> *Civil v. INS*, 140 F.3d at 52 (dissenting opinion) (observing that "the terror that [the young teenager] experienced probably had a far greater and more long-lasting impact on someone of her age than it would have had on a full-grown adult").

<sup>75</sup> *In Matter of Chen*, Int. Dec. 3102 (BIA 1989).

<sup>71</sup> CRC, Art. 3 (1).  
<sup>72</sup> CRC, Art. 12.

forcibly conscripted or subjected to child labor, or it is based on being a street child, a victim of ethnic violence or child abuse, or a witness to torture or murder, there is usually no question of individual fraud or deception initiated by the child.

#### PROCEDURAL CONSIDERATIONS

Procedural gaps exist in U.S. asylum law and practice that jeopardize the ability of child asylum-seekers to successfully obtain asylum. The Canadian and UNHCR Guidelines outline useful steps to assist in the adjudication of children's asylum claims, and the U.S. should adopt similar provisions.

**Identification of child asylum-seekers.** Often, the age of children arriving in the U.S. is not readily apparent, partly due to cultural factors but also because many are in their late teens. The determination of whether an accompanying adult is the appropriate caregiver under tradition or law may be difficult as well, as asylum-seekers frequently lack the documentation necessary to verify such ties. The process used to identify children at U.S. ports of entry, however, is critical; the age determination and the classification as unaccompanied or accompanied directly affects the type of removal proceedings in which children are placed.

Soon after implementation of the expedited removal process under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the INS issued a memorandum that generally exempts unaccompanied minors from the process. The memorandum instructs INS officers instead to place unaccompanied minors in "normal" removal proceedings under INA § 240, with limited exceptions.<sup>76</sup> This directive represents an important acknowledgment by the INS that unaccompanied children lack the maturity to appreciate the gravity of the decision being made in the context of expedited removal and the wherewithal to express their fear of return to prevent their repatriation. It also means, however, that misclassification of a child as an adult or as accompanied could render a child subject to immediate removal.

The INS has not allowed outside monitoring of secondary inspection at ports of entry, the process during which an INS officer decides whether to immediately return an individual.<sup>77</sup> There is reason to question, however, whether the INS is correctly identifying children at ports of entry. Recently, there have been reported instances of young people under the age of

18 being commingled with adults in detention centers, a practice that contradicts stated INS policy.<sup>78</sup> The INS has typically misclassified these young people as adults based on dental radiograph exams.<sup>79</sup> If incorrect judgments are being made by the INS at the time of detention, it is reasonable to question whether the same errors are being made during secondary inspection.

With the lack of oversight at U.S. ports of entry and the serious consequences that expedited removal carries, these questions raise grave concerns about the possibility of children being caught up in expedited removal and returned to persecution in their homelands.

The UNHCR Guidelines outline how authorities are to determine whether children are unaccompanied and provide guidance on the implementation of an age assessment process. They call for the development of specific procedures to identify whether or not a child is unaccompanied immediately upon arrival of the child at the port of entry. They further require that a person specially trained or experienced in dealing with children assist in the identification process. Most importantly, they call for giving the benefit of the doubt to the child if the exact age is uncertain.

**Designation of a child representative.** Unlike Canadian law, U.S. asylum law does not require the appointment of a guardian *ad litem* for child applicants. The Canadian Convention Refugee Determination Division, of which the IRB is a part, is statutorily required to appoint a "designated representative" for every child refugee claimant, whether accompanied or unaccompanied.<sup>80</sup> The role of the designated representative is to act *in loco parentis* in the absence of a traditional caregiver. As such, the designated representative can bridge the gap between legal representation and

<sup>76</sup> "Unaccompanied Minors Subject to Expedited Removal," Memorandum from Office of Programs, INS (Aug. 21, 1997). See 74 Interpreter Releases 1367 (Sept. 8, 1997).

<sup>77</sup> See "Report of the First Year of Implementation of Expedited Removal," Santa Clara University, 23 (May 1998).

<sup>78</sup> See Letter to Attorney General Janet Reno from American Civil Liberties Union, American Immigration Law Foundation, Amnesty International (USA), Catholic Legal Immigration Network, Inc., Human Rights Watch, Lutheran Immigration and Refugee Service, and Women's Commission for Refugee Women and Children (May 15, 1998).

<sup>79</sup> Dental experts question the use of such exams for definitive age determinations. See Letter to Rachel Jones, Women's Commission for Refugee Women and Children, from Herbert H. Frommer, DDS, New York University College of Dentistry (Aug. 7, 1997) (stating that it is impossible to make an exact judgment whether an individual is above or below the age of 18 based on dental radiographs). The INS will also occasionally use wrist exams for purposes of age determination.

<sup>80</sup> See § 69(4), Immigration Act, as enacted by R.S.C. 1985 (4th Supp.), c. 28, § 18.

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immigration considerations and issues of child care and psycho-social well-being.

Under the Canadian system, the function of the designated representative is fundamentally different from that of an attorney. His or her main task is to ensure that decisions both on the asylum claim and the future are taken with the best interests of the child as the paramount concern. The representative's duties are: (1) to retain counsel; (2) to instruct counsel or to assist the child in instructing counsel; (3) to make other decisions with respect to the proceedings or to help the child make those decisions; (4) to inform the child about the various stages and proceedings of the claim; (5) to assist in obtaining evidence in support of the claim; (6) to provide evidence and to be a witness in the claim; and (7) to act in the best interest of the child.<sup>81</sup> The designated representative must also meet certain criteria. The Canadian Guidelines also call for consideration to be given to the linguistic and cultural background, age, gender, and other characteristics of the representative to ensure a good match with the child.<sup>82</sup>

In Canada, however, the designated representative is often an adult family member or friend. The UNHCR Guidelines actually go a step further and encourage the use of guardians who have "the necessary expertise in the field of childrearing, so as to ensure that the interests of the child are safeguarded and that his/her needs are appropriately met."<sup>83</sup> This added qualification is essential. A prominent Canadian advocate has raised concerns that family members lack sufficient understanding and appreciation of the adjudication process to adequately fill the functions of the designated representative. Moreover, in at least one case, the lack of credibility of the testimony of a child's adult relative who was acting as the designated representative actually undermined the success of the child in obtaining refugee status.<sup>84</sup>

The asylum system of the United Kingdom offers a second model for appointment of a designated representative, which better ensures the selection of an individual truly versed in

<sup>81</sup> See generally Canadian Guidelines.

<sup>82</sup> *Id.*

<sup>83</sup> UNHCR Guidelines, at 1.

<sup>84</sup> Interview with Geraldine Sadway, Parkdale Legal Services (Toronto, Ontario, Canada) (May 28, 1998). In fact, the Canadian Guidelines state, "There may be situations where the person who was designated to be the representative ceases to be an appropriate representative of the child. For example, the person may prove unwilling or unable to make themselves available for pre-hearing conferences. In these situations, the CRDD should remove the person as the designated representative and designate another representative." (emphasis added) Canadian Guidelines, at 5.

child welfare than does the Canadian system. In 1994, the U.K.'s Home Office funded the development of the Refugee Council Panel of Advisers for Unaccompanied Refugee Children. The Panel offers "independent advice, support and, where necessary, advocacy (to children) to ensure that they receive fair and equal access to the services to which they are entitled, e.g. legal representation, care and accommodation."<sup>85</sup> While government funding supports the Panel, it operates independently from the U.K. Immigration and Nationality Department. The Panel includes 30 advisers with expertise in education, social services, probation, health, and legal work.

As in Canada, advisers under the U.K. system do not act as a child's attorney, but play an active role in ensuring that the child is represented by counsel and in supporting and encouraging the child through the asylum process. The advisers also accompany children to interviews, and assist the child with health care, education, housing and other social welfare needs. Most importantly, the advisers establish trust with the child.<sup>86</sup> The work of the Panel has received strong approval from U.K. immigration authorities, legal counsel, and social services staff, by ensuring a continuity in services and helping the child to cope during his or her transition to life in the U.K.<sup>87</sup>

While U.S. asylum law is silent on the appointment of a designated representative/adviser, immigration judges (IJs) have allowed child welfare experts to fill this role on a case-by-case basis. The results have been resoundingly successful. In two recent cases involving Indian children trafficked to the U.S., including that of the young girl outlined in the introduction to this article, the designated representative played a crucial role in gaining the trust of the child and eliciting evidence to inform the child's situation. In one case, the designated representative ascertained that in fact the child did not have a strong basis for asylum and genuinely wanted to return home, where he had a loving family willing to receive him. In the case of the young girl, the designated representative was able to draw out the details of her abuse and subsequent sale to traffickers. Her testimony was critical to the IJ's decision to grant asylum.<sup>88</sup>

**Right to representation.** The appointment of a designated representative to assist in meeting the best interests of the

<sup>85</sup> Connelly, "A Report to The Refugee Council on the Panel of Advisers for Unaccompanied Refugee Children," para. 1.1 (National Institute for Social Work, Apr. 1995).

<sup>86</sup> *Id.*, at paras. 3.10-3.15.

<sup>87</sup> *Id.*, at paras. 5.3-5.5.

<sup>88</sup> Interview with Roy Petty, Executive Director, American Immigration Law Foundation, Mar. 19, 1998.

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child is in no way meant to replace legal counsel. The role of counsel is particularly crucial to the ability of a child to pursue asylum since, even more than for an adult, assembling evidence and presenting testimony and legal argument will be beyond the child's capacity.

In recent years, there has been considerable discussion regarding the appropriateness of government funding to ensure that counsel is available for immigrant legal services.<sup>89</sup> The INS Office of General Counsel has signaled that the statutory language acknowledging the alien's right to counsel "at no expense to the government" does not necessarily preclude government support for representation for those who cannot afford it, but merely means that such funding is not required.<sup>90</sup> The authors strongly support government funding for immigrant legal representation programs, and consider this particularly critical where children are concerned.

**Tracking and scheduling of asylum hearings.** Currently, the INS and the Executive Office for Immigration Review (EOIR) do not register and track children's asylum cases. Children's cases are also not given priority when calendared for a hearing. The result is that children are left in limbo for months as their cases wind through the asylum process, in much the same way as do cases presented by adult asylum-seekers. In the case of the 11-year-old Indian girl, this resulted in a delay of 15 months before the IJ issued a decision, and because the INS has appealed that decision, the child's situation continues unresolved. A teenage Guatemalan boy, who ultimately was granted asylum based on his experience as a 14-year-old child soldier, waited in detention for over a year.<sup>91</sup>

While slow processing of an asylum claim is undesirable for any asylum-seeker, it is particularly so for children. This is doubly true: if the child is in INS detention pending the outcome of the proceedings, prolonged institutionalization can seriously harm the well-being of a child, carrying a life-long impact on a child's development. Even for those children who are released from INS custody, their cases are often not followed up on, resulting in the child losing a chance to regularize his or her immigration status. U.S. child welfare law has embraced the notion of "permanency planning" for children; recent legislation has established time frames for the

timely adoption and foster care placement of children who cannot return home safely.<sup>92</sup>

While generally, expeditious processing of children's cases is a desirable goal, the timeline for a case must be balanced against the needs of the child. Priority in scheduling should not be at the expense of full exploration of the child's claim, nor should it prejudice the ability of the child's attorney to develop full documentation of the claim to asylum. Moreover, reliving traumatic events can cause harm to the child's emotional well-being. If the designated representative or adjudicator determines that moving forward with the case adjudication will cause trauma to the child, the hearing should be delayed until the child is able to proceed.

It must be emphasized that expeditious processing of children's claims is *not* the same as fast-tracking them. While obviously not an easy formula, the INS, the EOIR, the attorney, and any designated representative must work together to ensure that the best interests of the child are met and that the asylum adjudication is scheduled accordingly.

**Ensuring a child-friendly hearing.** Currently, little effort is made to establish a courtroom environment that is conducive to gaining a child's trust so that he or she is comfortable presenting testimony. The traditional environment, which in many ways is designed to inspire respect for the seriousness of the process, may intimidate children and inhibit their ability to fully participate in the hearing. Moreover, in at least one case, adult immigration detainees who were wearing prison uniforms and handcuffs were seated in the rear of the courtroom in full view of the child throughout her hearing.<sup>93</sup>

A non-adversarial environment can be achieved relatively easily. The Canadian Guidelines suggest the use of an informal interview-style room rather than a hearing room when seeking testimony from a child. Participants in the hearing, including the judge, should sit around a table rather than using a podium. Judges should also wear regular business attire rather than robes.

The Canadian Guidelines also suggest allowing an adult whom the child trusts to attend the hearing. That person may or may not be the designated representative. He or she should sit next to the child during the hearing if it helps the child feel more comfortable and should be allowed to speak to the child during the hearing.

89 See Keirwin, "Charitable Legal Immigration Programs: Can they Survive?" 74 Interpreter Releases 813 (May 19, 1997).

90 INS Office of General Counsel, "Funding of a Pilot Project for the Representation of Aliens in Immigration Proceedings" (Dec. 21, 1995).

91 15 Lutheran Immigration and Refugee Service Bulletin 1 (Spring 1998).

92 The Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (Nov. 19, 1997).

93 Hearing monitored by Jacqueline Bhabha (Sept. 1997).

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The Canadian Guidelines also recommend consulting as much as possible in conferences during the hearing to resolve issues as they arise. They urge that a hearing be completed in one sitting whenever possible, and if a case is continued, that it be resumed at the earliest possible date. If a case is continued, the same refugee claims officer (the Canadian equivalent of an INS trial attorney), interpreter, and Board member are assigned to the case, in order to alleviate the child's anxiety about the process.

## EVIDENTIARY ISSUES

Appropriate interview techniques. Questioning a child about his or her migration experience is inherently very different from questioning an adult. Children's perceptions of the world around them, their appreciation for the truth, their attention span, their susceptibility to offering the answer they assume is expected, and other factors can heavily influence the quality and extent of information they offer to an interviewer, whether an INS officer, an IJ, an attorney, or a designated representative. For children seeking asylum, there is the additional impact of the underlying traumatic experience.

Furthermore, children at different stages of development process their experiences differently. The Lutheran Immigration and Refugee Service, based on its extensive experience working with refugee children, identifies the following factors as influencing a child's developmental stage: (1) chronological age; (2) physical and emotional health; (3) physical, psychological, and emotional development; (4) societal status; (5) cultural background; (6) cognitive processes; (7) education; (8) language capability; and (9) experiential and historical background.<sup>94</sup>

Child welfare experts have divided children into three developmental stages: ages 0 to 5, ages 6 to 12, and ages 13 to 18. Each group exhibits different traits. For example, the youngest group may be able to describe an event, but not be able to interpret its broader meaning. A child in the middle group has a greater awareness of right and wrong, but an inconsistent response to the time, place and sequence of events. The oldest age group has a developing capacity for abstract and logical reasoning, but may assume that everyone shares their knowledge and understanding of an event.<sup>95</sup>

These characteristics must be understood within the context of an individual's life. Culture, gender, trauma, the absence of a caregiver, malnutrition, and physical and mental disabilities are just some of the factors that may affect a child's development.<sup>96</sup> His or her developmental stage, in turn, can

have a significant impact on the nature of the testimony. It is essential that the asylum adjudication process allow for these differences. The Canadian Guidelines offer the following example: "A child may indicate that men in uniforms came to the house but not know what type of uniforms they were wearing or a child may not know the political views of his or her family. The child may, due to age, gender, cultural background or other circumstances, be unable to present evidence concerning every fact in support of the claim."

A child, like any asylum-seeker, must have the opportunity to present oral testimony regarding his or her experience of or fear of persecution. This is a fundamental right under the CRC. The UNHCR Guidelines emphasize that the key is to ensure that professionally qualified and specially trained persons with the appropriate knowledge of the psychological, emotional, and physical development and behavior of children conduct the interview. It is also important that interpreters have the sensitivity training and skills to appropriately translate for a child.

As with adults, the more information that a child is provided about the asylum process, the more successful his or her interview is likely to be. The Canadian Guidelines require that the IRB fully inform a child throughout the hearing about the adjudication process, with appropriate consideration given to the age of the child. This includes explaining the role of the various participants, the purpose of the questioning, and the sequence of the questioning.

In addition, the Canadian Guidelines call for flexibility in deciding who will question a child.<sup>97</sup> In a hearing involving a 17-year-old Somali girl who fled her homeland at age 10, for example, the refugee claims officer and the girl's attorney agreed during a pre-hearing conference that the refugee claims officer would conduct the direct examination while the attorney would only follow up to elicit any evidence that had not yet surfaced. By proceeding in this manner, the hearing was less adversarial than it might have been in a traditional examination/cross-examination framework.<sup>98</sup> Child welfare experts report that repeated questioning or cross-examination of children has a markedly negative effect on both the reliability and the consistency of his or her responses.

The Canadian Guidelines also allow the use of videotape evidence or testimony provided by an expert to replace the direct testimony of the child in cases in which it is difficult for

<sup>94</sup> Working with Refugee and Immigrant Children, at 6.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> "Comments on Guidelines for Unaccompanied Refugee Children," Canadian Council for Refugees.

<sup>98</sup> On November 10, 1997 the Women's Commission for Refugee Women and Children monitored two hearings before the Canadian IRB involving three child refugee claimants.

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a child to testify orally in person. The U.S. criminal justice system uses this model in sensitive cases such as those involving child abuse.

It is essential that the child's legal representative be present at any interview of the child, whether by INS or EOIR. The designated representative/adviser, if any, should also be present. This includes interviews conducted by INS enforcement personnel. For example, the INS recently transferred a 14-year-old Honduran homeless child to a juvenile correctional facility in Texas and convinced him to withdraw his asylum application, without notifying his attorney.<sup>99</sup>

Credibility of a child. It is well-established under U.S. asylum law that the credibility of an applicant's testimony is determinative of whether or not he or she will be granted asylum. *Matter of Mogharrabi* established that an asylum applicant's testimony may be sufficient, without corroborative evidence, to prove a well-founded fear of persecution where that testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for his or her fear.<sup>100</sup> The lack of documentary evidence should not necessarily be fatal to the asylum claim.

Disturbingly, several decisions have denied asylum to children simply on the basis that their young age renders their stories unbelievable. These decisions not only disregard the reality that children may themselves be targets for human rights abuses, but they also imply that children are incapable of presenting testimony on their own behalf.

In fact, children may very well perceive and remember the events occurring around them. The difference may lie in how they express the events they have perceived. It is therefore crucial that a child's testimony be evaluated through a child's eyes. It is necessary to take into account the child's stage of development, his or her appreciation of the conditions in the country of origin and their relationship to the asylum process, and his or her particular vulnerability.<sup>101</sup> The Canadian Guidelines call for a pre-hearing conference to assign the designated representative, identify the issues in the claim, identify the evidence to be presented, and determine the evidence the child is able to provide and the best way to elicit that evidence. In this regard, information from the designated representative, medical personnel, social workers, teachers, and others is considered.

In addition, the *Mogharrabi* case rightly points out that documentary evidence should not be necessary to establish a

basis for asylum. In the case of children, it is sometimes necessary to take this analysis one step further and accept objective documentation on the country conditions as a basis for asylum without requiring the expression of a subjective fear on the part of the child to the extent that might be expected from an adult. Some children may not be able to articulate their fears in a manner sufficient to meet the burden of proof required. The Canadian Guidelines also acknowledge that it is sometimes necessary to weigh the objective evidence presented by a child more heavily than the subjective evidence.

It is conceivable that cases may arise in which a child is too young or too traumatized to testify on his or her own behalf and there is a deficit of documentary evidence and information on the conditions in the country of origin that provoked his or her flight. In such cases, the benefit of the doubt must be given to the child and asylum granted.

CONCLUSIONS AND RECOMMENDATIONS

The U.S. has a strong moral and political interest in defending the rights of children. It can demonstrate international leadership—much as it did by adopting the Gender Guidelines—by moving forward quickly with the adoption of children's guidelines. The INS and EOIR should be congratulated for their receptivity to such an initiative. The agencies should continue to collaborate with interested nongovernmental organizations and others with expertise in the rights of refugees and children to craft guidelines that can meaningfully advance the protection of child asylum-seekers. The CRC should serve as the central guiding framework for such guidelines, much as the provisions of CEDAW are reflected in the Gender Guidelines.

Two key components must be emphasized if the guidelines are to have an impact on the adjudication of children's claims. The appointment of a designated representative/adviser is essential. The triangle of adjudicator, applicant's attorney, and trial attorney that defines the current asylum structure does not adequately allow the voice of the child to be heard. Second, as has been shown through the experience of the Gender Guidelines, training of asylum officers, IAs, trial attorneys and other personnel is essential if the guidelines are to be fully and effectively implemented. In addition, attorneys who represent children should be sensitive to the needs of their young clients. They can also be advocates for increased attention on the part of the INS and EOIR by encouraging the agencies to take into consideration the special needs of child asylum-seekers.

It must be pointed out that the primary focus of the guidelines will most likely be on the asylum adjudication process. A holistic approach to the treatment of child asylum-seekers must still be pursued. Issues that have not been

99 Interview with Roy Petty, Executive Director, American Immigration Law Foundation, June 1, 1998.

100 19 I&N Dec. 439 (1987).

101 UNHCR Guidelines, sec. 8.6.

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addressed in this article remain critically important, including the continuing need for improvement in the treatment of unaccompanied children and family units in detention and the implementation of generous release mechanisms. To ensure a more comprehensive approach to child asylum-seekers, it is also necessary for the INS and ECIR to enhance their data collection regarding children seeking asylum. This will require a central database that includes information regarding the number of children, their age, their gender, their nationality, their case disposition and current status, their location, and their length of detention if applicable. In addition, the Resource Information Center of the asylum corps should contain comprehensive information on the rights of the child, including reports on country conditions and child-specific persecution. Specific information about the position of male and female children before the law should be collected, as should information about children's rights, children's socio-economic position, child abuse, and legal and social protection against illegitimacy. Organizations specializing in international children's rights and refugees should be invited to suggest documentary materials and provide training. This data should be made publicly available.

The world's children are truly the hope of the future. By enhancing the protection of children fleeing human rights abuses, the U.S. can send a strong message that it believes in the inherent dignity and worth of children as individuals. ■

#### 1. House Defeats Attempt to Strike Food Stamp Restoration Provisions from Agriculture Bill

As we reported in last week's Release,<sup>1</sup> the Senate, after weeks of delay, approved a measure on May 12 that would restore food stamp benefits for certain legal immigrants. The measure was included in the conference report to legislation that would fund agricultural research and guarantee crop insurance: (S. 1150), and would be financed from \$1.7 billion in savings from administrative changes in the nutrition program.<sup>2</sup>

On May 22, the House of Representatives took the first step toward consideration of the conference report by defeating a rule governing floor debate that would have allowed the food stamp restoration provision to be stripped from the bill.<sup>3</sup>

Nearly half of the House Republicans joined their Democratic colleagues in defeating the measure by a 289 to 120 vote.

The conference report would allocate \$818 million over five years to food stamp restoration for approximately 250,000 eligible legal immigrants, including elderly and disabled beneficiaries, and children under 18 who were in the U.S. when the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Act) was signed.<sup>4</sup> This figure is only about one quarter of the approximately 935,000 legal immigrants who lost their food stamp eligibility under the Welfare Act. The Clinton administration, together with various advocacy groups, had hoped to restore food stamp eligibility to a greater percentage of the immigrant population, but accepted the compromise as the first step toward full restoration of benefits.<sup>5</sup>

Specifically, the conference report to S. 1150 would restore food stamp eligibility to: (1) persons who are or become disabled and who entered the U.S. before August 22, 1996; (2) needy immigrants who were 65 years old and present in the U.S. as of August 22, 1996; (3) needy immigrant children who were in the U.S. as of August 22, 1996; (4) Hmong refugees; and (5) Jay Treaty Indians. In addition, the measure would extend the "refugee exemption" from five to seven years.<sup>6</sup>

President Clinton expressed his gratitude at the House's defeat of the food stamp-stripping provision, but also noted his "deep disappointment" that lawmakers had delayed passage of the overall bill.<sup>7</sup> He has stated his intent to veto any version of the bill that fails to include the food stamp restoration provision.

It is likely that the House will continue debating the conference report shortly. ■

#### 2. House OKs Plan to Allow Military to Patrol the Border

The House of Representatives voted on May 21 to allow members of the armed forces, under certain circumstances, to assist the INS and the Customs Service in patrolling and monitoring the U.S. borders. The provision was included in a \$270 billion defense authorization bill (H.R. 3616) for fiscal

<sup>1</sup> See 75 Interpreter Releases 723 (May 22, 1998).

<sup>2</sup> *Wall Street Journal*, Apr. 3, 1998, at A4.

<sup>3</sup> Generally, before a bill can be brought to the House floor for a vote, members must first approve a rule governing floor debate on the bill in question. Such rules are often carefully crafted by the party leadership to facilitate the desired outcome of the underlying legislation.

<sup>4</sup> See *CQ Daily Monitor*, May 13, 1998, at 2.

<sup>5</sup> Associated Press, May 23, 1998.

<sup>6</sup> Under the welfare law, refugees, asylees, and aliens whose deportation has been withheld are exempt from the bar on receipt of food stamps for the first five years after being granted their respective status.

<sup>7</sup> U.S. Newswire, May 22, 1998; Associated Press, May 23, 1998.