

***From the Streets to the States:  
Asylum Claims from Guatemalan and Honduran Street Children***

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**Table of Contents**

Introduction	page 3
Part I: Background information	page 5
Guatemala	
General Economic and Human Rights Conditions	page 5
Street Children	page 6
Police Brutality and the Lack of an Effective Judicial System	page 8
Honduras	
General Economic and Human Rights Conditions	page 14
Street Children	page 16
Police Brutality and the Lack of an Effective Judicial System	page 17
Part II: The Law	page 22
Guatemalan and Honduran Street Children: A Particular Social Group?	page 23
Persecution versus prosecution	page 29
Internal flight alternative/countrywide persecution	page 31
Lack of effective protection	page 34
Conclusion	page 36
Endnotes	page 37

## ❖ Introduction

Shamefully, persecution—including the persecution of children—occurs throughout the world. Everyday, children are forced into prostitution, military service, adult detention centers and underage labor. This paper explores the viability of asylum claims from Guatemalan and Honduran street children. An estimated 100 million abandoned street children exist in the world, with 40 million in Latin America alone.<sup>1</sup> Human Rights Watch offers a working definition of the term “street children”: “Street children are those for whom the street...more than their family has become their real home, a situation in which there is no protection, supervision or direction from responsible adults”.<sup>2</sup> The existence of street children stems from a variety of economic and social reasons, including “poverty, high birth rates, government repression, urbanization, lack of education, lack of economic opportunity and dysfunctional families”.<sup>3</sup> Fortunately, a non-governmental organization is available to assist many of these street children with reintegration into society. Casa Alianza is the first organization to provide legal services to Central American street children. The organization opened a legal aid office in Guatemala about ten years ago and also operates in Honduras.<sup>4</sup> Casa Alianza is the source of much of the information with regard to both Guatemalan and Honduran street children.

Part I of this paper provides background information on various aspects of the conditions in the two countries. Such aspects include relevant historical events, economic conditions, specific problems facing street children, prevalence of police brutality and the lack of effective judicial systems. Part II examines the legal issues likely to be involved in an asylum claim from a Guatemalan or Honduran street child. In particular, an examination of

the viability of street children as a particular social group and of the potential problems courts may have distinguishing between prosecution and persecution will be provided. Part II will also discuss the consideration of internal flight alternatives and the issue of the availability of effective protection as possible bars to relief. The facts from the 1999 Board of Immigration Appeals (BIA) case *Matter of Juan* serve as one model for analysis.<sup>5</sup> Other hypothetical facts based on country conditions will be used as a tool to explore the broad range of possibilities regarding street child asylum claims.

## **Part I: Background information**

### **➤ Guatemala**

#### **▪ GENERAL ECONOMIC AND HUMAN RIGHTS CONDITIONS**

Guatemala's recent history is marked by a 35 year civil war during which the country's population faced the notorious wrath of corrupt police and military personnel.<sup>6</sup> The genocide targeting Guatemala's indigenous population in particular has attracted international criticism.<sup>7</sup> On February 25, 1999, the Historical Clarification Commission (CEH) published its report on the internal conflict, in which it found government forces responsible for 93 percent of human rights abuses during the conflict.<sup>8</sup> Peace accords were signed in 1996, signaling an opportunity for a rupture from the country's dishonorable problems but current reports indicate the absence of genuine change.<sup>9</sup> Judging from reports since the signing of the Peace Accords, the government seems unable to confront the authoritarian legacy of its 35 year internal conflict.<sup>10</sup> According to the 1999 US State Department Country Report on Human Rights, recently replaced president Alvaro Arzu Irigoyen did little during his term to implement the conditions required by the Peace Accords.<sup>11</sup> Arzu came into power as a result of the runoff election held in January 1996.<sup>12</sup>

As with many nations in Central America, there exists a marked disparity in income distribution in Guatemala.<sup>13</sup> Economic hardship is pervasive, with approximately 83% of the population living in poverty.<sup>14</sup> The annual per capita income in Guatemala in 1999 was \$1,570.<sup>15</sup> The destruction caused by Hurricane Mitch in October 1998, although not as devastating as in Honduras, contributed to Guatemala's floundering economic conditions. Hurricane Mitch caused approximately 250 deaths and damage to infrastructure and crops with losses totaling an estimated \$550 million.<sup>16</sup>

Notwithstanding, Guatemala has made noticeable improvements since the time of the civil conflict.<sup>17</sup> However, the existence and mistreatment of street children, incidences of police brutality and a flawed judicial system continue to retard the country's progress towards a democracy respectful of all human rights.

- **STREET CHILDREN**

Between 5,000 and 6,000 street children live in Guatemala.<sup>18</sup> The majority are concentrated in Guatemala City—named the third most violent city in Latin America by the Inter-American Development bank<sup>19</sup>—with the majority being between 7 and 14 years old.<sup>20</sup> Girls constitute between 20 and 30 percent of the entire street youth population.<sup>21</sup> Lee Tucker of Human Rights Watch provides additional statistics regarding the street children of Guatemala:

Sixty-five percent of Guatemala City's street children are between the ages of 10 and 17. The majority live in the downtown area of Guatemala City and more than 60 percent are from Guatemala City itself. Approximately 10 to 15 percent have migrated to Guatemala from neighboring Central American countries, especially Honduras and El Salvador. The remaining 25 percent are from other areas of Guatemala, both urban and rural.<sup>22</sup>

Many street children run away because of abuse and the unpleasant environment they encounter living with their families. However, life on the streets exposes them to more poverty, accidents, rapes, injuries, illnesses and murder. The children must survive by begging, robbing and prostitution; only a few work sporadically and they often must depend on group solidarity to obtain food.<sup>23</sup> Another serious problem for street children is sniffing glue to combat cold, hunger and boredom. Seventy-five percent of Guatemalan street

children themselves told Casa Alianza that they were frequent inhalant users or addicts.<sup>24</sup>

Abuse of these vulnerable children remains a relentless problem.

Indeed, the majority of the children interviewed by Casa Alianza fear that they will actually be killed.<sup>25</sup> Investigators report that it is probable that many children have already seen an assassination.<sup>26</sup> They identified the persons whom they fear: “the police, the rapists, the thieves”.<sup>27</sup> In addition to abuse at the hands of current and former state officials, Guatemalan society at large persists in its failure to protect children.<sup>28</sup> The combination of official action and Guatemalan society’s inaction has created a volatile situation for Guatemalan street children.

Nevertheless, Guatemala was one of the first countries to show its commitment to the protection of children’s human rights by signing without reservation the UN Convention on the Rights of the Child on January 26, 1990.<sup>29</sup> The Convention entered into force shortly thereafter on February 9, 1990.<sup>30</sup> Although legally Guatemala is bound to protect its children<sup>31</sup>, Guatemalan street children continue to face the brutality of the National Police and private security guards who are under the jurisdiction of the Interior Ministry.<sup>32</sup>

Criminals--reported to include private security guards and corrupt police or military personnel--often recruit street children into thievery or prostitution rings.<sup>33</sup> According to Casa Alianza, drugs, prostitution, and gangs posed the greatest danger to this vulnerable group during 1999.<sup>34</sup> In contrast to previous years, most violence against street children was committed by individuals, private security guards, and other street children, not by police or other government forces. The trend seems to be one of “privatized” violence, although there were two reports of abuse of street children by PNC (National Civilian Police) officers.<sup>35</sup> The government and a number of non-governmental organizations operate youth centers, but the financial resources devoted to them are not adequate to

improve the problem.<sup>36</sup> The government created a Permanent Commission for Children and Youth in 1996 to investigate cases of mistreatment.<sup>37</sup> Implementation of the new Minors' Code, which would offer greater legal protection to children, was deferred until March 1, 2000, due to strong political opposition from certain sectors.<sup>38</sup> Opponents, including religious leaders, argued that the code derogated parental rights and threatened the integrity of the family.<sup>39</sup> However, in the case of street children, the integrity of the family has already been threatened by abusive behavior, neglect and abandonment.

- **POLICE BRUTALITY AND THE LACK OF AN EFFECTIVE JUDICIAL SYSTEM**

Police brutality, especially that violence which involves street children, is widespread in Guatemala. In theory, the National Civilian Police (PNC), created as part of the 1997 Peace Accords, is supposed to have total responsibility for internal security.<sup>40</sup> However, members of the infamously corrupt and abusive National Police (PN) remained on duty in 1999.<sup>41</sup> Also, in both 1998 and 1999, former President Arzu ordered the army, also infamously corrupt and abusive, to support police temporarily in response to nationwide wave of violent crime.<sup>42</sup> Although the measure was popular politically due to the public's concern with crime and security, it seemed to allow for renewed military involvement in internal security and police functions, a role that is prohibited by the Peace Accords.<sup>43</sup> There were reports that some members of police and security forces committed human rights abuses in 1999, as in other recent years.<sup>44</sup>

While new cases of general human rights abuses by police are admittedly declining in Guatemala, problems remain in certain areas such as extra-judicial killings, mistreatment of suspects and detainees, arbitrary arrest and detention<sup>45</sup> and habitual thefts and assaults of

street children.<sup>46</sup> Interviews of Guatemalan street children conducted by Human Rights Watch indicate that beatings at the hands of police and others are commonplace.<sup>47</sup> Beto, a 15 year-old who had been living on the street since the age of 10, told Human Rights Watch that:

The police treat us badly. They hit us. Not for any particular reason. . . just because they feel like it. They've hit me lots of times. They hit with their rifles, or with sticks, on our backs and stomachs. And sometimes they just punch us in the stomach with their hands. They also take paint thinner and pour it over our heads. They've done that to me five times. It's awful, it hurts really bad. It gets in your eyes and burns; for half an hour you can't see anything.<sup>48</sup>

An interview with the staff physician at Casa Alianza, along with several other testimonials from Guatemalan street children confirm Beto's story: burst bladders and intestines, broken ribs, bruises and contusions, and health problems resulting from being forced to swallow bags of glue, mostly at the hands of police, have been common ailments faced by many young patients visiting Dr. Zamora at Casa Alianza.<sup>49</sup>

Abuse of street children is often carried out pursuant to the policy of "social cleansing", a phenomenon which targets street children as well as other perceived criminal elements of society.<sup>50</sup> Socially undesirable people have been the victims of murders, several perpetrated by a well-organized, trained and armed group that had circulated a list of intended victims.<sup>51</sup> Unfortunately, these cases are rarely investigated by authorities, especially if they are not widely publicized.<sup>52</sup> Crimes against street children in general are a low priority for police investigators, particularly when a fellow officer is implicated.<sup>53</sup> The practice of social cleansing has been denounced repeatedly by the UN Human Rights Mission to Guatemala (MINUGUA) and by domestic human rights organizations.<sup>54</sup> Perhaps as a result of negative publicity, unlike in previous years, there were no reports of alleged social cleansing

operations in 1999.<sup>55</sup> However, according to Casa Alianza, street children continue to face a high risk of abuse due to the persisting goals behind social cleansing.

Prolonged incarceration, often in the same facilities as adult criminals, is yet another form of mistreatment which Guatemalan street children must endure. Detention by police of juveniles living on the streets is often the result of vague charges related to economic status and status as a minor, such as “unruly behavior”, “vagrancy”, “public disorder”, homelessness and running away—offenses that would not be crimes if committed by an adult.<sup>56</sup> Furthermore, even as compared to other children, justice is applied unequally to poor children living on the streets. For example, many street children face detention for being a “public scandal” [*escándalo en la vía pública*]. According to a nineteen year-old street youth named Maritza,

At the station they charged me with “public scandal” [*escándalo en la vía pública*]. But I wasn’t doing anything, I wasn’t drunk, I wasn’t even high. That’s just what they charge you with if they don’t have any real charge to put against you.<sup>57</sup>

Once detained, street children are often incarcerated indefinitely since they lack a parent or guardian to release them. This differs from those children who have “family resources” who are able to avoid detention even when they are found guilty of a crime. Additionally, street children often endure pre-trial detentions for several months or even a year, much longer than the statutory limitation of thirty working days.<sup>58</sup> Once in detention, street children are subsequently the victims of additional abuse at the hands of older prisoners and are forced to tolerate the substandard physical conditions of the detention centers.<sup>59</sup> Circumstances would likely be different if the Guatemalan security forces did not wrongfully

apprehend street children for such “crimes” as malnourishment, physical disability and victimization resulting from rape.<sup>60</sup>

Nevertheless, Casa Alianza reported that, although the number of incidents of abuse of street children in 1999 was roughly equal to 1998 levels, far fewer incidents allegedly were committed by members of the security forces.<sup>61</sup> Casa Alianza alleges only two cases of abuse of street children by PNC officers in 1999: one case of mistreatment and one of rape, which was still being investigated at year's end.<sup>62</sup> However, it is important to note that police abuses continue to occur, made all the more serious by lack of effective internal disciplinary mechanisms, and that virtually all PNC officers have been recycled from the unprofessional National Police, Treasury Police or the army, with only a 3-month training course.<sup>63</sup> Still, Casa Alianza notes that overall, now assassins are “private security forces, ex-police and ex-military; looking to punish the children for their petty theft, precarious condition and drug addiction”.<sup>64</sup> Indeed, most acts of violence against street children were committed by individuals, by private security guards, or in gang- and drug-related violence among street children.<sup>65</sup> Street children continue to be the victims of vigilante justice and violence, conduct that receives indirect support from some sectors of the population.<sup>66</sup> Additionally, as Human Rights Watch points out:

The law governing private security agencies requires that such agencies and their guards be approved by the Interior Ministry, in a process that also requires approval by the National Police, the Public Ministry, and the president of Guatemala. The Private Police Law provides in detail for close government control over private guards, including their licensing, the training and hiring of individual officers, the weapons issued to them, periodic review of their conduct, and sanctions to be applied in the case of misconduct or criminal action.<sup>67</sup>

Although this system of governmental supervision of private guards is protective and fair in theory, this prescribed oversight does not occur in practice, resulting in “notoriously unsupervised” private guards.<sup>68</sup> Thus, the combination of continuing police brutality, the unstable condition of life on the streets and abuse and neglect of street children by private citizens and Guatemalan society at large amounts to injustice that should be remedied via the country’s legal system.

However, both the US State Department and non-governmental human rights organizations have noted with disdain the problems with Guatemala’s judicial system. As the State Department notes, “the judiciary is independent, but suffers from inefficiency, intimidation and corruption”.<sup>69</sup> Human Rights Watch observes that “the justice system has yet to recover from the ills that plagued it during the armed conflict, including corruption, influence peddling, lack of resources, and threats and intimidation to lawyers and judges”.<sup>70</sup> The judicial system in general is often unable to ensure fair trials and due process. Lynchings, mob attacks and unsolved killings have continued and the government is frequently unable to prosecute the perpetrators of these crimes.<sup>71</sup>

Due to the scarcity of law enforcement resources and the weakness of the Guatemalan prosecutorial and judicial system, the government has been prevented from adequately investigating many killings and other crimes.<sup>72</sup> Prosecutors routinely get harassed and become targets of threats and other acts of intimidation.<sup>73</sup> Witnesses are also the victims of intimidation and murder in Guatemala, and threats to human rights organizations are regular occurrences.<sup>74</sup> Also, the military has been known to engage in destroying incriminating documents.<sup>75</sup>

Impunity is a major problem in Guatemala: those responsible for crimes against street children are effectively exempt from punishment. That Casa Alianza has 328 pending penal

processes in the judicial system of Guatemala but only 15 have progressed illustrates this fact.<sup>76</sup> As another glaring example, a judicial file containing the entire history of the murder case of a Guatemalan street child by a member of the country's Treasury Police has been "lost" by the Guatemalan judicial authorities. The file contains sworn declarations by witnesses to the murder. The absence of the file jeopardizes the process of bringing the killer to justice.<sup>77</sup>

The inability of Guatemala's justice system to effectively punish those guilty of human rights abuses has been recognized by the international community. For example, the Inter-American Court on Human Rights ruled on December 3, 1999 that Guatemala had violated seven articles of the American Convention on Human Rights and condemned the country for clearing of wrongdoing national police officers implicated in the torturing and murdering of five street youths in 1990.<sup>78</sup> Thus, although Guatemala has taken some strides to improve its human rights record since the signing of the 1996 Peace Accords, the human rights of street children remain largely ignored.

➤ **Honduras**

▪ **GENERAL ECONOMIC AND HUMAN RIGHTS CONDITIONS**

Honduras is one of the most economically disadvantaged countries in the western hemisphere, with an economy primarily dependent on coffee and bananas.<sup>79</sup> The country has a poorly developed infrastructure and is extremely dependent on foreign aid.<sup>80</sup> Honduras has been historically dependent on the United States in particular.<sup>81</sup> Its annual per capita income is approximately \$800 and about two-thirds of the country's households live in poverty.<sup>82</sup>

In 1982, Honduras elected Roberto Suazo Cordoba, the country's first civilian president after a decade of military rule.<sup>83</sup> Since the late 1960s, armed forces have evolved as a principal political force, either by governing directly, influencing general policy, or controlling national security affairs.<sup>84</sup> The country's National Police was just transferred to civilian control in 1997 yet members of the police continued to commit human rights abuses in 1999.<sup>85</sup> Also, throughout the 1980s, Honduras' involvement in Central American politics deepened as the country expanded military ties with the United States through increased levels of military aid, modification and construction of airfields, the establishment of a regional training center, and a series of large military exercises.<sup>86</sup> As conflicts in the neighboring countries of El Salvador and Nicaragua intensified, Honduras' strategic location served as both a haven for refugees and a device for US intervention in Cold War politics.<sup>87</sup>

More recently, in 1998, Hurricane Mitch devastated Honduras, causing deaths, homelessness for hundreds of thousands and over three billion dollars worth of damage to the country's infrastructure, and a 10% increase in the number of street children in the

capital city of Tegucigalpa.<sup>88</sup> The president also ordered the temporary suspension of certain civil liberties as a result of the hurricane.<sup>89</sup> The US State Department reports that:

[i]nternational humanitarian assistance saved many lives and met basic needs, but substantial additional foreign aid is needed to help rebuild infrastructure and productive economic capacity. The economic growth rate declined in 1999, and the budget deficit and unemployment both rose significantly.<sup>90</sup>

Also active in Honduras, Casa Alianza has observed that the country is out of step with the rest of Central America in efforts to reduce the age of criminal responsibility for children.<sup>91</sup> Honduras had been trying to change the age of criminal responsibility from 18 years old to 14 years old, even though minors do NOT commit 54.5% of the crimes in the country and do NOT commit 99.8% of homicides.<sup>92</sup>

Like Guatemala, Honduras has signed the UN Convention on the Rights of the Child (CRC). The convention was signed on May 31, 1990 and entered into force a few months later on September 9, 1990.<sup>93</sup> As noted by UNICEF, the CRC “states frequently that States need to identify the most vulnerable and disadvantaged children within their borders and take affirmative action to ensure that the rights of these children are realized and protected”.<sup>94</sup> The guiding principles include non-discrimination, best interests of the child, maximum survival and development and participation of children.<sup>95</sup> Keeping in mind these principles and obligations imposed on Honduras by the CRC, the sections of this paper that follow illustrate Honduras’ treatment of street children, the persistence of police brutality and the ineffectiveness of the country’s judicial system.

## ▪ **STREET CHILDREN**

As in Guatemala, street children in Honduras face bleak living conditions. According to Casa Alianza, the street children of Honduras are particularly “very dirty, generally do not wear shoes[,] ... have leftovers of glue in their bodies, show malnutrition [and] evidence of skin diseases, ... problems with their respiratory system and suffer venereal diseases”.<sup>96</sup> The US State Department has noted that the Honduran government has been unable to prevent the abuse of street children and human rights groups have repeatedly implicated members of the security forces in a number of killings of street children.<sup>97</sup> Also, due to a general lack of juvenile detention centers, street children in detention were often housed in adult prisons where they were routinely abused.<sup>98</sup>

The presence of street children in Honduras is becoming more widespread. According to Casa Alianza, one new child in the capital city of Tegucigalpa is forced to go to the streets everyday.<sup>99</sup> The Honduran government recently raised its estimate of the number of street children to 8,000, only half of whom have shelter on any given day.<sup>100</sup> The plight of these children looks strikingly similar to that of Guatemalan street children. Many street children have been molested sexually and about 40% regularly engage in prostitution.<sup>101</sup> Additionally, approximately 30% of street children in Tegucigalpa and San Pedro Sula, the principal urban centers in Honduras, were HIV positive.<sup>102</sup> Frequent inhalant use by children is also a problem: at least 40% of Honduran street children are addicted to sniffing glue.<sup>103</sup> Similar to the situation in Guatemala, more than 75% of Honduran street children found their way to the streets because of severe family problems; 30% simply were abandoned.<sup>104</sup>

To exacerbate the situation, the number of children on the street increased substantially as a result of Hurricane Mitch.<sup>105</sup> It was predicted that the population of street children in

Honduras would double in the three months following the wrath of Hurricane Mitch.<sup>106</sup> Indeed, Casa Alianza's own Crisis Centre was left unusable by the natural disaster.<sup>107</sup> As in Guatemala, both the Honduran police ("death squads")<sup>108</sup> and members of the general population who participated in vigilante groups engaged in violence against street children.<sup>109</sup> The State Department notes that "human rights groups implicated out-of-uniform security force personnel, vigilantes, and business leaders in some juvenile deaths".<sup>110</sup> As will be illustrated in the following section, the prevalence of police brutality presents a crisis for street children in Honduras.

- **POLICE BRUTALITY AND THE LACK OF AN EFFECTIVE JUDICIAL SYSTEM**

Control of the National Police in Honduras was only recently transferred to civilians in 1997 and although reports of human rights abuses have declined since the police were separated from the military forces, members of the police continue to commit abuses.<sup>111</sup> Reports from 1999 indicate that security force personnel committed acts of torture and otherwise abused detainees and others, including street children.<sup>112</sup> Indeed, in June of 1999, the Attorney General of Honduras "acknowledged that security force personnel continue to commit acts of torture, due in part to poor training and lack of knowledge regarding human rights obligations".<sup>113</sup> Additionally, human rights organizations have alleged that current and former members of the security forces, acting as vigilante "security squadrons," committed extra-judicial killings during recent years.<sup>114</sup> According to Andrés Pavón, president of the nongovernmental Committee for the Defense of Human Rights in Honduras, death squads have ties to the Honduran government and are financed by businesses "obsessed with eliminating alleged criminals".<sup>115</sup>

Similar to circumstances in Guatemala, dramatic increases in violent crime fueled the continued growth in the number of private, often unlicensed, guard services, and of volunteer groups who patrolled their neighborhoods or municipalities to deter crime.<sup>116</sup> As the US State Department notes, “the continued proliferation of private security forces made it more difficult to differentiate among homicides that may have been perpetrated by government security personnel, private vigilantes, or common criminals”.<sup>117</sup> Widespread frustration at the inability of the security forces to prevent and control crime, along with an accurate perception that corrupt security personnel were complicit in the high crime rate, led to considerable public support for vigilante justice.<sup>118</sup> During the past few years, vigilante justice led to killings of street children and criminals. In October 1999, the US State Department asserts, a vigilante group in Cortes department reportedly beat and killed a young man with no known criminal connections.<sup>119</sup> In 1998, with congressional support, the president deployed 600 army troops in the country’s four major cities to assist the National Police in curtailing rising street crime, despite the official separation of the military from the police forces.<sup>120</sup> Once again in March 1999, President Flores ordered the military to reinforce the National Police and conduct joint patrols throughout Honduras, in an effort to reduce crime during the Easter holiday season.<sup>121</sup>

As can be surmised from the preceding paragraphs, the social cleansing trend exists in Honduras just as it does in Guatemala.<sup>122</sup> Between 100 and 150 youths associated with criminal gangs were killed execution-style in 1999.<sup>123</sup> In such cases, renegade elements of the security forces, or civilian (including vigilante) groups working with such elements, allegedly used unjustifiable deadly force against supposed habitual criminals.<sup>124</sup> The Honduran government did not effectively act to try, convict, or punish anyone for these offenses.<sup>125</sup>

Although there are laws against torture, arbitrary detention and arbitrary arrest, authorities occasionally do not observe these legal requirements in practice.<sup>126</sup> One striking example of Honduran governmental authorities acting outside the boundaries of law occurred on January 21, 2000 in the community of San Antonio, municipality of San Jeronimo, Camayagua.<sup>127</sup> On that date, a police officer shot and killed at point blank range a handcuffed and unarmed 17-year-old Edy Nahum Donaire Ortega who had escaped illegal detention at a police station.<sup>128</sup> International law allows for the use of mortal force by a police officer only when the officer's life is in imminent danger.<sup>129</sup> As Bruce Harris of Casa Alianza points out, "shooting a minor at point blank range is obviously a violation of these norms".<sup>130</sup> Unfortunately, as will be demonstrated, Honduras is not equipped with a legal system that is both willing and able to bring to justice those who commit crimes against street children.

Although the Honduran government respects constitutional provisions in principle, implementation has been weak and uneven in practice.<sup>131</sup> As in Guatemala, the judiciary in Honduras is independent, but often ineffective and subject to outside influence.<sup>132</sup> Members of the economic and official elite in Honduras enjoy a great deal of impunity, aggravated by a weak, underfunded and sometimes corrupt judicial system.<sup>133</sup> This contributes to the country's problems respecting human rights. Although civilian courts increasingly considered allegations of human rights violations or common crimes perpetrated by armed forces personnel and some cases went to trial, there were relatively few convictions.<sup>134</sup> In fact, amnesty is often granted to military officials.<sup>135</sup> Notwithstanding, the Attorney General and human rights groups have noted a decrease in reported human rights abuses over the past 2 years.<sup>136</sup> To be sure, the US State Department notes:

The Office of Professional Responsibility (OPR) within the National Police investigates allegations of torture and abuse and can recommend sanctions against police agents found guilty of such mistreatment. However, neither the police commander nor the OPR is empowered to punish wrongdoers; only the immediate superior of the accused agent has the authority to do so. The Public Ministry and human rights groups criticized the OPR for being unresponsive to their requests for impartial investigations of police officers accused of abuses. In 1996 the Public Ministry created the office of Human Rights Inspector within the DGIC [Departamento General de Investigación Criminal/General Criminal Investigation Department] to monitor the behavior of its agents; the inspector reports to the head of the human rights section of the Public Ministry and to the Attorney General. Both the DGIC and the preventive police dismissed or suspended dozens of agents and officials for abuse of authority.<sup>137</sup>

However, elements of the armed forces withheld their cooperation from official efforts to locate military officers sought after in connection with alleged human rights abuses dating back to the 1980s.<sup>138</sup> In addition, the judiciary and Public Ministry suffer from insufficient funding and low wages, making law enforcement officials vulnerable to bribery and powerful special interests.<sup>139</sup> As in previous years, in 1999, the judicial system continued to deny swift and impartial justice to prisoners awaiting trial.<sup>140</sup> Also, although positive steps were taken to investigate human rights abuses, abuse of power, fraud and diversion of public funds by former ranking government officials and by military officers, none of the accused were tried or convicted.<sup>141</sup> Indeed, cases are often dismissed for lack of evidence.

The Honduran Constitution bans discrimination on the basis of class but in fact, the political, military and social elites generally enjoyed impunity before the legal system.<sup>142</sup> The Constitution also prohibits torture and provides for the right to a fair trial and an independent judiciary, but reality does not conform to these provisions either.<sup>143</sup> As a result, the effects of the combination of police brutality and an ineffective judicial system override these beneficial intentions of the Constitution. Asylum in the United States provides one

possible form of relief from these forms of persecution, as will be discussed in the section that follows.

## **Part II: The Law:**

There are two primary mechanisms for a person fleeing persecution to be granted permission to stay in the United States: discretionary asylum, which leads to permanent legal status, and mandatory restriction on removal, which prevents the return of an individual to the country where his or her life of freedom is at risk.<sup>144</sup> The two mechanisms have different standards to be met, yet both are effective ways to obtain legal status in the United States.<sup>145</sup> This paper will focus on applications for asylum since the standard used is less restrictive than that which is used for restriction on removal.<sup>146</sup>

Under the 1980 Refugee Act, the Attorney General has the discretion to grant asylum to a person who is determined to have a well-founded fear<sup>147</sup> of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>148</sup> Therefore, a Guatemalan or Honduran street child would be required to provide evidence of his or her well-founded fear of persecution on the basis of one of the five enumerated grounds. The child must also be deemed to be credible<sup>149</sup> by the adjudicator and the facts must demonstrate a lack effective protection within the child's home country by presenting evidence that the home country is either unwilling or unable to control the persecutors.

Many important issues arise in determining the viability of asylum claims from Guatemalan and Honduran street children. However, a comprehensive analysis of every issue lies beyond the scope of this paper. The most potentially problematic issues, which will be discussed in this paper, are (1) the existence of a cognizable particular social group, (2) the distinction between prosecution and persecution, (3) the opportunity for internal flight and (4) the lack of effective protection against persecution in the country of origin.

With these requirements in mind, a Guatemalan or Honduran street child would potentially confront the issues that follow.

### **Guatemalan and Honduran Street Children:**

#### **A Particular Social Group?**

As indicated, an asylum applicant has the burden to prove persecution on account of one of the five enumerated grounds listed in the refugee definition. The particular social group ground would probably be the most likely category into which a Guatemalan or Honduran street child would fit, since street children are prosecuted *and* persecuted on impermissible “status” related grounds.<sup>150</sup> The particular social group ground has been described as a flexible tool that allows for victims of unanticipated or unenumerated grounds for persecution to obtain relief.<sup>151</sup> However, the particular social group depiction cannot be overbroad because courts have been hesitant to expand the definition for fear of opening the floodgates for those who are merely less fortunate than the average American.<sup>152</sup>

Guy Goodwin-Gill defines a particular social group as a group of people having a certain degree of familiarity. He goes on to state: “also highly relevant are the attitude to the putative social group of other groups in the same society and, in particular, the treatment accorded to it by State authorities”.<sup>153</sup> Guatemalan and Honduran street children certainly have a degree of familiarity by virtue of leading similar lifestyles on the streets. Additionally, other more privileged groups in Guatemalan and Honduran society share common negative attitudes towards street children. Furthermore, as was illustrated in Part I, government authorities in both countries treat street children substantially worse than they treat other more privileged members of society.

Similarly, the UNHCR Handbook classifies a particular social group as consisting of “persons of similar background, habits or social status. . . membership of such a particular social group may be at the root of persecution because. . . the very existence of the social group as such, is held to be an obstacle to the Government’s policies”.<sup>154</sup> This description of a particular social group seems especially applicable to Guatemalan and Honduran street children, since the very existence of street children is perceived to be an obstacle to the governmental policies of eliminating crime and poverty. One method for the governments of Guatemala and Honduras to deal with the problems presented by the existence of street children is unfortunately to eliminate them through unwarranted detention and violence. Additionally, most street children seem to be of similar background in that they have been abandoned by their parents or have fled abusive homes. They also share the same despised socio-economic status and the same habits of surviving on the streets mostly in urban areas by begging, working sporadically, engaging in petty crimes and seeking protection from abuse by police officers and private security forces.

In *Matter of Acosta*, the Board held that particular social groups are comprised of:

persons...[who] share a common, immutable characteristic, i.e., a characteristic that either is beyond the power of the individual members of the group to change or is so fundamental to their identities or consciences that it ought not be required to be changed. . . . The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership. The particular kind of group characteristic that will qualify under this construction remains to be determined on a case-by-case basis.<sup>155</sup>

More recently, in *Hernandez-Montiel v. I.N.S.*, the Ninth Circuit held that a “‘particular social group’ is one united by a voluntary association, including a former association, or by

an innate characteristic that is so fundamental to the identities or consciences of its members that members either cannot or should not be required to change it.”<sup>156</sup>

Arguably, street children are not in any position to change the unfortunate characteristics for which they are persecuted: homelessness, poverty and a lack of familial support. As minors without resources or non-abusive kinship ties, street children are essentially powerless to improve their situation. Furthermore, as was shown in Part I, Guatemalan and Honduran street children applying for asylum have the shared past experience of being targeted by proponents of social cleansing, of being addicted to inhalants and of being generally exploited by adults who should know better than to take advantage of children who have been forced out of their homes into dismal lives on the streets. Although *Acosta* requires determination of particular social group viability on a case-by-case basis, a typical asylum claim from a Guatemalan or Honduran street child could feasibly contain a permissible particular social group construction.<sup>157</sup>

Notwithstanding, courts have been reluctant to expand the flexible particular social group category to include new particular social groups, especially those which are perceived to be overbroad. For example, in *Sanchez-Trujillo v. I.N.S.*, the Ninth Circuit refused to recognize a particular social group consisting of “young, urban, working class males of military age who had never served in the military or otherwise expressed support for the government of El Salvador” because the group constituted such a large division of the population.<sup>158</sup> In that case, the court determined that such a group consists of a “sweeping demographic division [which] naturally manifest[s] a plethora of different lifestyles, varying interests, diverse cultures, and contrary political leanings”.<sup>159</sup>

The particular social group claim asserted in *Sanchez-Trujillo* can be distinguished from a claim from a Guatemalan or Honduran street child. However, rather than characterizing the

social group for a street child from Guatemala or Honduras as “poor children in Central America”, the depiction of the social group must be confined to a more specific well-defined group. For example, in *Matter of Juan*, the BIA characterized the social group of Juan as being “minors without resources who have been abused by a custodial parent/guardian”.<sup>160</sup> Later in the opinion, the Board acknowledges that if Juan “were to return to Honduras he would become a street child because he could not return to his parent’s home” and would face persecution both at the hands of his step-father who had abused him and at the hands of government officials who routinely target street children for unauthorized abuse.<sup>161</sup>

In a future case, the street child related particular social group might be confined to a particular city such as Guatemala City or Tegucigalpa, or may take into consideration an addiction to sniffing glue. The social group may also be described to include prior abuse by police officers or security forces or the witnessing of such abuse and other relevant factors, such as length of time living on the streets.

Unlike the asylum applicant in *Sanchez-Trujillo*, a street child from Guatemala or Honduras as described in Part I would not be just a member of a “sweeping demographic division [which] naturally manifest[s] a plethora of different lifestyles, varying interests, diverse cultures, and contrary political leanings”. By nature, street children share the same lifestyle, interests, culture and political leanings (to the degree deemed possible for minors). Thus, a street child’s case would likely be much more analogous to *In re Kasinga*.<sup>162</sup> In that case, the BIA granted asylum to Fauziya Kasinga on the basis of her persecution for membership in the social group of young female members of the Tchamba-Kunsuntu Tribe who have not had FGM (female genital mutilation) as practiced by that tribe and who oppose the practice.<sup>163</sup> The degree of specificity present in Kasinga’s social group categorization could be feasibly replicated in a claim from a Guatemalan or Honduran street child.

The court in *Sanchez-Trujillo* established a four pronged test for accepting a claim based on membership in a particular social group.<sup>164</sup> First, the cognizability of the particular social group must be recognized. Second, the applicant must qualify as a member of the particular social group. Third, the applicant must demonstrate that he or she is targeted for persecution on account of membership in the particular social group. Lastly, the applicant must show that special circumstances beyond mere membership in the particular social group exist which warrant a discretionary grant of asylum.<sup>165</sup>

Persuading a court to acknowledge the cognizability of a new particular social group is often the toughest hurdle to overcome in presenting an asylum claim based on persecution for membership in a particular social group. The difficulties in introducing a new social group into refugee law stem from fears of opening the floodgates and of granting asylum to immigrants who do not deserve the benefits that accompany such status.<sup>166</sup> Asylum, argue those aiming to limit the allowable scope of the social group category, was not intended for those simply seeking better economic opportunities than those available elsewhere and courts must prevent the perceived abuse of regulations controlling asylum procedures.<sup>167</sup> An asylum claim from a Guatemalan or Honduran street child, however, goes beyond being a mere attempt at access to better economic opportunities and could hardly be called abuse of the system. As previously discussed, convincing the court of the cognizability of a social group for Guatemalan or Honduran street children should not be an unattainable goal if the description of the group is sufficiently narrow.

The other prongs of the *Sanchez-Trujillo* test could also be met in certain asylum claims from Guatemalan or Honduran street children. The second prong requiring proof of membership in a cognizable social group would depend on the particular facts of each claim. The third prong, which requires that the applicant demonstrate persecution on account of

membership in the particular social group, would also depend on the particular facts of a case. However, given both countries' propensity towards social cleansing and the likelihood of a street child being abused by either police or private security forces as a result of both personal and societal disgust with street children, this nexus requirement should not be an insurmountable obstacle for many Guatemalan or Honduran street children seeking asylum.<sup>168</sup> Many Guatemalan and Honduran street children could also satisfy the fourth prong, which requires a showing of special circumstances beyond mere membership in the newly recognized social group. For example, if the street child can point to a specific incident or series of incidents (beatings, witnessing abuse, repeated illegal detentions), the child would have evidence beyond mere membership which would demonstrate the existence of circumstances calling for a discretionary grant of asylum.

Therefore, despite the tendency of courts to look suspiciously upon asylum requests from those asserting membership in a previously unasserted particular social group, Guatemalan and Honduran street children should be able to assert solid claims which would merit recognition of a new particular social group. The BIA has already accepted a variation of a particular social group consisting of street children in *Matter of Juan*.<sup>169</sup> However, although *Matter of Juan* is a promising victory in the realm of asylum claims from street children, the decision is unpublished and does not have precedential value. Thus, other immigration judges facing similar asylum claims may not be so understanding with regard to the seriousness of the plight of street children.

### **Persecution versus prosecution**

Although not an issue for the boy in *Matter of Juan*, a court may have a problem distinguishing between persecution and prosecution in deciding an asylum claim from a Guatemalan or Honduran street child. A child already having experience living on the streets most probably has been forced into either committing crimes or associating with those who commit crimes. Thus, the persecution versus prosecution distinction would likely be an issue considered by the presiding immigration judge if the particular facts suggest that the street child was detained or otherwise disciplined by the proper authorities.

Persecution is defined generally as “the infliction of suffering or harm upon those who differ ... in a way regarded as offensive”.<sup>170</sup> Persecution generally does not include legitimate prosecution, or punishment for common law crimes. The UNHCR Handbook reminds adjudicators that “a refugee is a victim—or potential victim—of injustice, not a fugitive from justice”.<sup>171</sup>

However, in *Fisher II* and *Abedini*, the Ninth Circuit lists the two exceptions to the general rule that prosecution does not equal persecution: pretextual prosecution and disproportionately severe punishment on account of one of the five enumerated grounds named in the Refugee Act of 1980.<sup>172</sup> In *Fisher II*, the Ninth Circuit noted that the BIA found that an Iranian woman did not have a well-founded fear of persecution based on the government’s enforcement of its dress and conduct regulations against her.<sup>173</sup> The Court observed that the regulations applied to all Iranian women and claimed that Fisher presented no evidence that the regulations were selectively enforced against her. The Court did not find that she received disproportionately severe punishment on account of one of the five enumerated grounds listed in the Refugee Act or that the regulations were merely a pretext

to persecute her for her beliefs or characteristics.<sup>174</sup> It seems that the primary flaws in Fisher's asylum claim were a lack of necessary evidence that her punishment was disproportionate, the Court's problematic analysis of nexus and the Court's focus on past persecution and neglect of fear of worse future persecution.

In *Abedini*, the Ninth Circuit declined to find that an Iranian's claims of potential prosecution for distributing western films and videos, for avoiding military conscription, and for using a false passport amounted to "persecution" on account of political or religious beliefs, since Iranian law makes the distribution of western films and videos criminal to all people in that country.<sup>175</sup> Additionally, Abedini failed to show that the laws as applied to him were especially unconscionable or were merely a pretext to persecute him for his beliefs or characteristics.<sup>176</sup> The court also found no evidence of disproportionately severe punishment, a common finding in other military conscription asylum claims as well.<sup>177</sup> Like Fisher, Abedini's main barrier to a grant of asylum appears to be a lack of necessary evidence.

Unlike the treatment of the asylum applicants in *Fisher II* and *Abedini*, the prosecution of a Guatemalan or Honduran street child as described in Part I could likely fall under one of the two exceptions to barring asylum relief based on punishment for common law crimes. For example, as mentioned in Part I, many street children are deprived of their liberty merely as a result of their economically and socially disadvantaged status as poor homeless youth lacking familial and financial support, or based upon an unsubstantiated perception of criminality. Such "status crimes" are presumably designed as a pretext to remove, or "socially cleanse", the youth from the streets rather than to punish them for a crime that has actually been committed. Policies that enforce the goals of "social cleansing" are merely a pretext to persecute street children for characteristics they possess.

Even in cases in which street children have indeed committed petty crimes such as theft, the punishment they receive is often disproportionately severe. In addition to the initial police-instigated beatings and muggings which so often accompany the “questioning” of street children, pre-trial detention for up to a year with convicted adult criminals is a common form of unreasonably severe punishment. This abuse of power by police is shockingly disturbing even in the context of adult prosecutions, nevermind the mistreatment of children. Thus, a court should find physical abuse of street children to be an unconscionable application of the law. Additionally, as shown in Part I, it has been well documented in both Guatemala and Honduras that police specifically target for punishment poor children living on the streets without parental support.

As noted in Part I, street children are more frequently being accosted by private security forces who arguably are not authorized to “prosecute” alleged criminals themselves. In these cases of vigilante justice, the prosecution versus persecution issue should not even surface since the “prosecution” by private security forces is not legitimate prosecution for common law crimes.

### **Internal flight alternative/countrywide persecution**

Another potential bar to asylum status is the existence of an internal flight alternative due to the lack of countrywide persecution. However, according to the UNHCR Handbook, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so.<sup>178</sup> Continuing in that vein, the Ninth Circuit held in *Singh v. Ilchert* that where the persecutor is governmental, the presumption arises that the risk of persecution is countrywide.<sup>179</sup> Thus, there is no burden on the applicant to show that his past experience reflected conditions nationwide.<sup>180</sup>

In the case of a Guatemalan or Honduran street child who has been beaten by police, then, the child would not need to provide evidence of countrywide persecution according to the Ninth Circuit. However, a street child may initially have more difficulty if his or her persecutor is a member of a private security force or vigilante group. In the case of private security forces, though, an asylum applicant should still be able to prove state action, at least in the case of Guatemalan security forces who are regulated by and under the jurisdiction of the government. If the child's persecutor is a member of a private vigilante group, the *Singh v. Ilchert* presumption exempting proof of countrywide persecution is not triggered because a private vigilante group is usually not governmental.<sup>181</sup> Thus, if the street child cannot provide evidence that his or her persecutor is governmental, the street child must show countrywide persecution. However, the court will likely take into account the age of the child and the feasibility of internal relocation.<sup>182</sup>

Notwithstanding, the BIA has used standards different from those of the Ninth Circuit with regard to countrywide persecution. In *Matter of Acosta*, the BIA required an asylum applicant "to do more than show a threat of persecution in a particular place or abode within a country – he must show that the threat of persecution exists for him country-wide".<sup>183</sup> This principle was reiterated by the Third Circuit in *Etugh v. I.N.S.*, where the court denied asylum to a Nigerian who "failed to allege he would be persecuted beyond the local vicinity of his hometown".<sup>184</sup>

Indeed, the existence of an internal flight alternative was a significant issue in *Matter of Juan*, but Juan was able to overcome this difficulty. Juan lived in a rural area largely lacking in a transportation network.<sup>185</sup> Additionally, he was a minor who did not have other family members upon whom he could rely or the resources to travel elsewhere in the country and start life anew. Also, Juan's step-father had powerful connections allowing him to easily

locate Juan if he were returned to Honduras.<sup>186</sup> Moreover, the Board recognized the widespread abuse of street children by police in Honduras.<sup>187</sup> It is also important to note that Honduras is a small country, slightly larger than Tennessee.<sup>188</sup> Therefore, the BIA concluded that Juan would be persecuted regardless of where he moved within Honduras, even if he had the means to do so.<sup>189</sup> This analysis by the BIA should also be adopted by Circuit Courts.

In another potential street child claim with different facts, the outcome may be different with regard to an internal flight alternative. In *Matter of Juan*, the BIA emphasized the isolated rural location of Juan's hometown and the lack of a transportation network.<sup>190</sup> In the case of an urban street child, there would likely be greater access to transportation, which would create a greater likelihood of an internal flight alternative. Similarly, if a street child no longer has contact with his or her abusive parents or if those parents do not have connections and power that would enable them to locate their child, a court may be more prone to finding that countrywide persecution does not exist. However, even in such cases of greater access to transportation and a lesser possibility of being abused at the hands of parents, a court would still be expected to consider the age and resources of the child, along with the small size of the country.<sup>191</sup> Additionally, even with access to transportation, a street child may not necessarily obtain protection elsewhere in the country.

Therefore, although most adjudicators would probably consider whether countrywide persecution exists in an asylum claim from a street child, concerns regarding the age and limited resources of the child may trump the negative effects of an internal flight alternative inquiry. Regardless, the street child still must show that he or she lacks effective protection through his or her home government. The following section explores this issue.

### **Lack of effective protection**

Even if an asylum applicant is able to meet all other requirements previously discussed, the applicant must be “unable or, owing to such fear, is unwilling to avail himself of the protection of [the country of his nationality]”.<sup>192</sup> The requirement that a refugee must lack effective protection is likely to be an important issue in the case of a Guatemalan or Honduran street child applying for asylum. The I.N.S. would likely call attention to the improvements in Guatemala and Honduras, invariably mentioning the transition from military to civilian control of the police forces and the decline in reports of human rights abuses. These facts point to the presence of effective protection for street children.

According to the 9<sup>th</sup> Circuit in *Estrada-Posada*, a person must demonstrate a fear of persecution by the government or by a group which the government is unable to control in order to meet the refugee definition.<sup>193</sup> Although the applicant in *Estrada-Posada* failed to convince the court that she lacked effective protection from the Guatemalan government, the Honduran boy in *Matter of Juan* provided sufficient evidence that the Honduran “authorities are not really interested in taking care of the problem that causes children to turn to the street but, rather, are more interested in taking care of children who they see as being the problem by abusing and even killing them”.<sup>194</sup> A Guatemalan or Honduran street child bringing an asylum claim today could likely demonstrate the same. As stated in Part I, both governments may officially seek to protect street children by signing treaties such as the UN Convention on the Rights of the Child and by attempting systematic change, but the reality for street children is hardly one that includes the government as their protector. Both countries suffer from an infamously corrupt and brutal military legacy accustomed to violently repressing the less fortunate. The pattern of violence by the military and police

officers has been evidently slow to change. As shown in Part I, both non-governmental organizations and the US State Department have reported the failure of the Guatemalan and Honduran governments to effectively provide protection to those who need it most: street children.

Ironically, the existence of organizations like Casa Alianza, which provide services to street children in Guatemala and Honduras, may actually be an obstacle to obtaining a grant of asylum in the United States. The I.N.S. could plausibly argue that Casa Alianza has provided effective protection for street children. However, Casa Alianza cannot adequately do the job fully, nor is Casa Alianza ultimately responsible for the protection of street children—the governments of Guatemala and Honduras are. Even those children who obtain help from Casa Alianza continue to face the wrath of abusers. The governments of Guatemala and Honduras have the ultimate power, and the ultimate responsibility under international law, to punish the persecutors, who are often state actors, and to reform the penal system to prevent the abuse of street children. Furthermore, the governments are responsible for the inefficient and corrupt judicial systems in effect in their countries. Thus, Guatemalan and Honduran street children could credibly maintain that their governments are unwilling—due to public perceptions of street children as a problem and the influence of business interests—or unable—as a result of unstable economies and a powerful history of corruption—to provide effective protection from their persecutors.

## **Conclusion**

Both the spirit and the language of the 1980 Refugee Act undoubtedly mandate the alleviation of hardships such as those faced by so many Guatemalan and Honduran street children if such persons should find themselves in the United States. Given the economic background and historical foundations of these countries, perhaps it is not so surprising that street children suffer from a stigmatized existence in Guatemala and Honduras. However, Guatemalan and Honduran street children should not be made to suffer even more once in the United States as a result of a hesitancy to recognize them as belonging to a particular social group or a failure to distinguish between legitimate prosecution and persecution. Likewise, an adjudicator should realize the impossibility for many Guatemalan and Honduran street children to safely relocate within their home countries and the absence of effective protection by their governments from persecution. With an effective advocate and an understanding adjudicator who recognizes the potential and obligations inherent in U.S. asylum law and jurisprudence, Guatemalan and Honduran street children can successfully pursue asylum claims in the United States.

## ENDNOTES

<sup>1</sup> Marc D. Seitles, *Effect of the Convention on the Rights of the Child upon Street Children in Latin America: A Study of Brazil, Colombia and Guatemala*, 16 In Pub. Interest 159 (1997).

<sup>2</sup> Lee Tucker, *Guatemala's Forgotten Children: Police Violence and Abuses in Detention*. Human Rights Watch/Americas: Human Rights Watch Children's Rights Project (1997) (visited Feb. 28, 2000) <<http://www.hrw.org/hrw/reports/1997//guat1/index.htm>>, Section III. (No publication page references available for document).

<sup>3</sup> Seitles, *supra* note 1, Section IA.

<sup>4</sup> Ann Birch, *Human Rights Court Holds Guatemala Liable* (visited Feb. 14, 2000) <[http://www.americas.org/News/Features/199912\\_Street\\_Youths/street\\_youths.htm](http://www.americas.org/News/Features/199912_Street_Youths/street_youths.htm)>. (No publication page references available for document).

<sup>5</sup> *Matter of Juan*, unpublished Board of Immigration Appeals decision, decided January 20, 1999. Panel members: Lory D. Rosenberg, Fred W. Vacca and Gus Villageliu. Affirmed decision by Margaret Burkhart, Immigration Judge, decided July 1, 1997. (No case or page numbers available for document).

<sup>6</sup> Human Rights Watch, *Guatemala: Human Rights Developments* (visited Feb. 28, 2000) <<http://www.hrw.org/hrw/wr2k/americas-05.htm>>. (No publication pages available for document).

<sup>7</sup> See Walter LaFeber, *Inevitable Revolutions: The United States in Central America* (1984); Rigoberta Menchú, *I, Rigoberta Menchú: An Indian Woman in Guatemala* (Elisabeth Burgos-Debray ed. & Ann Wright trans., Verso 1984).

<sup>8</sup> *1999 Country Reports on Human Rights Practices [Guatemala]*. Released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, February 25, 2000. As viewed on <[http://www.state.gov/www/global/human\\_rights/1999\\_hrp\\_report/guatemala.html](http://www.state.gov/www/global/human_rights/1999_hrp_report/guatemala.html)> (visited Apr. 1, 2000). (No publication page references available for document).

<sup>9</sup> Human Rights Watch, *supra* note 6. Effective law enforcement is lacking, the military has been engaged in destroying incriminating documents, corruption, intimidation and a lack of resources abound in the justice system, and police abuses continue to occur.

<sup>10</sup> *Id.*

<sup>11</sup> *1999 Country Reports on Human Rights Practices [Guatemala]*, *supra* note 8, introduction.

<sup>12</sup> *Background Notes: Guatemala*. Released by U.S. Department of State, May 2000 Bureau of Western Hemisphere Affairs As viewed on <[http://www.state.gov/www/background\\_notes/guatemala\\_0500\\_bgn.html](http://www.state.gov/www/background_notes/guatemala_0500_bgn.html)> (visited February 25, 2001). (No publication page references available for document).

<sup>13</sup> *1999 Country Reports on Human Rights Practices [Guatemala]*, *supra* note 8, introduction.

<sup>14</sup> *Id.*

<sup>15</sup> *Background Notes: Guatemala*, *supra* note 12.

<sup>16</sup> *1999 Country Reports on Human Rights Practices [Guatemala]*, *supra* note 8, introduction.

<sup>17</sup> See Amnesty International Annual Report 2000: *Guatemala*. (Visited on September 21, 2000).

<<http://www.web.amnesty.org/web/ar2000web.nsf/0802089d6921b057802568f50061b998/2705a82bd42c4cd8802568f200552928?OpenDocument>>. (No publication page references available for this document).

For example, the armed opposition was largely demobilized and the overall rate of abuses declined substantially, and some provisions of the Peace Accords related to the military and indigenous women were implemented.

<sup>18</sup> *1999 Country Reports on Human Rights Practices [Guatemala]*, *supra* note 8, Section 5.

<sup>19</sup> Human Rights Watch, *supra* note 6.

<sup>20</sup> *Casa Alianza: Street Children in Guatemala City* (visited Feb. 14, 2000) <<http://www.casa-alianza.org/EN/about/offices/guatemala/children.shtml>>. (No publication page references available for this document).

<sup>21</sup> Tucker, *supra* note 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Casa Alianza: Street Children in Guatemala City*, *supra* note 20.

<sup>24</sup> Tucker, *supra* note 2.

<sup>25</sup> *Casa Alianza: Street Children in Guatemala City*, *supra* note 20.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *1999 Country Reports on Human Rights Practices [Guatemala]*, *supra* note 8, Introduction.

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<sup>29</sup> United Nations High Commissioner for Human Rights, *Treaty Bodies Database* (visited Feb. 28, 2000) <<http://www.unhchr.ch/tbs/doc.nsf>>. (No publication page numbers available for document).

<sup>30</sup> *Id.*

<sup>31</sup> There are several articles of the Convention on the Rights of the Child that are relevant to street children. For example, Article 3 requires that “in all actions concerning children...the best interests of the child shall be a primary consideration”. Article 6 recognizes “that every child has the inherent right to life”. Article 15 allows for peaceable assembly. Article 20 is especially on point, stating that “a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State”. Article 34 mandates State Parties to protect children from all forms of sexual exploitation and sexual abuse. Finally, Article 36 requires State Parties to protect children “against all other forms of exploitation prejudicial to any aspects of the child’s welfare”. See *U.N. Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989)*.

<sup>32</sup> Tucker, *supra* note 2, Section 1.

<sup>33</sup> *Casa Alianza: Street Children in Guatemala City, supra* note 20.

<sup>34</sup> *1999 Country Reports on Human Rights Practices [Guatemala], supra* note 8, Section 5.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *1999 Country Reports on Human Rights Practices [Guatemala], supra* note 8, Introduction.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *1999 Country Reports on Human Rights Practices [Guatemala], supra* note 8, Section 1c.

<sup>44</sup> *1999 Country Reports on Human Rights Practices [Guatemala], supra* note 8, Introduction.

<sup>45</sup> *Id.*

<sup>46</sup> Tucker, *supra* note 2, Section 3.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* Social cleansing is a phenomenon of violence that targets street children as well as other perceived criminal elements of society.

<sup>51</sup> *1999 Country Reports on Human Rights Practices [Guatemala], supra* note 8, Section 1a.

<sup>52</sup> Tucker, *supra* note 2, Section 3.

<sup>53</sup> Tucker, *supra* note 2, Section 1.

<sup>54</sup> Tucker, *supra* note 2, Section 3.

<sup>55</sup> *1999 Country Reports on Human Rights Practices [Guatemala], supra* note 8, Section 1a.

<sup>56</sup> Tucker, *supra* note 2, Section 4.

<sup>57</sup> Tucker, *supra* note 2, Section 3.

<sup>58</sup> Tucker, *supra* note 2, Section 4.

<sup>59</sup> *Id.*

<sup>60</sup> See Tucker, *supra* note 2, Section 4, for examples. For instance, according to Tucker, a researcher from Columbia University met a deaf-mute boy, approximately seventeen years old, who was being held indefinitely in the Gaviotas detention center. A psychologist at Gaviotas told the researcher that the boy had not committed any crimes. He had been detained by the police when found “wandering the streets,” and was subsequently brought to Gaviotas, where he spent his days working in the kitchen.

<sup>61</sup> *1999 Country Reports on Human Rights Practices [Guatemala], supra* note 8, Section 5.

<sup>62</sup> *Id.*

<sup>63</sup> Human Rights Watch, *supra* note 6.

<sup>64</sup> *Casa Alianza: Street Children in Guatemala City, supra* note 20.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Tucker, *supra*, note 2, Section 3.

<sup>68</sup> *Id.*

<sup>69</sup> *1999 Country Reports on Human Rights Practices [Guatemala], supra* note 8, introduction.

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- <sup>70</sup> Human Rights Watch, *supra* note 6.
- <sup>71</sup> 1999 Country Reports on Human Rights Practices [Guatemala], *supra* note 8, introduction.
- <sup>72</sup> 1999 Country Reports on Human Rights Practices [Guatemala], *supra* note 8, Section 1.
- <sup>73</sup> *Id.*
- <sup>74</sup> Human Rights Watch, *supra* note 6.
- <sup>75</sup> *Id.*
- <sup>76</sup> Casa Alianza: Street Children in Guatemala City, *supra* note 20.
- <sup>77</sup> Casa Alianza – Human Rights – Last Minute News: 1999/11/23 – Judicial file of Guatemalan Child Murderer “LOST” (visited Feb. 14, 2000) <<http://www.casa-alianza.org/EN/lmn/docs/19990301.00243.htm>>. (No publication pages available for document).
- <sup>78</sup> Birch, *supra* note 4, and Amnesty International Annual Report 2000: Guatemala, *supra* note 17. The five street youths “disappeared” from Guatemala City and were abused without regard for detention procedures specified in Guatemalan legislation. The Court found that the Guatemala failed to meet its obligation to protect the victims and investigate their deaths.
- <sup>79</sup> Library of Congress /Federal Research Division/Country Studies/Area Handbook Series. (visited April 16, 2000) <[http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+hn0007\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+hn0007))>. (No publication pages available for document).
- <sup>80</sup> *Id.*
- <sup>81</sup> LaFeber, *supra* note 7.
- <sup>82</sup> 1999 Country Reports on Human Rights Practices – [Honduras]. Released by the Bureau of Democracy, Human Rights, and Labor U.S. Department of State, February 25, 2000. As viewed on <[http://www.state.gov/www/global/human\\_rights/1999\\_hrp\\_report/honduras.html](http://www.state.gov/www/global/human_rights/1999_hrp_report/honduras.html)> (viewed on April 3, 2000). (No publication pages available for document).
- <sup>83</sup> U.S. State Department Country Background Notes [http://www.state.gov/www/background\\_notes/honduras\\_1099\\_bgn.html](http://www.state.gov/www/background_notes/honduras_1099_bgn.html) (viewed October 2, 2000) (No publication pages available for document).
- <sup>84</sup> Library of Congress/Federal Research Division/Country Studies/Area Handbook Series. (visited April 16, 2000) <[http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+hn0009\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+hn0009))>. (No publication pages available for document).
- <sup>85</sup> 1999 Country Reports on Human Rights Practices – [Honduras], *supra* note 82, Introduction.
- <sup>86</sup> Library of Congress, *supra* note 84.
- <sup>87</sup> Library of Congress/Federal Research Division/Country Studies/Area Handbook Series. (visited April 16, 2000) <[http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+hn0033\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+hn0033))>. (No publication pages available for document).
- <sup>88</sup> 1999 Country Reports on Human Rights Practices – [Honduras], *supra* note 82, Introduction.
- <sup>89</sup> *Id.*
- <sup>90</sup> *Id.*
- <sup>91</sup> 2000/02/03 – State of Honduras Out of Step With Central America in Efforts to Reduce Age of Criminal Responsibility for Children. (visited February 28, 2000) <<http://www.casa-alianza.org/EN/lmn/docs/20000203.00374.htm>>. (No publication pages available for document).
- <sup>92</sup> *Id.* Honduras has since abandoned this idea. See Honduras Drops Idea of Reducing Criminal Age for Children. (visited February 14, 2001) <<http://www.casa-alianza.org/EN/lmn/docs/20000303.00379.htm>>. (No publication pages available for document).
- <sup>93</sup> United Nations High Commissioner for Human Rights, *supra* note 29.
- <sup>94</sup> UNICEF – Convention on the Rights of the Child. (visited February 28, 2000) <<http://www.unicef.org/crc/crc.htm>>. (No publication page numbers available for document).
- <sup>95</sup> *Id.*
- <sup>96</sup> Casa Alianza Honduras: Street Children in Honduras. (visited Feb. 14, 2000) <<http://www.casa-alianza.org/EN/about/offices/honduras/children.shtml>>. (No publication page references available for this document).
- <sup>97</sup> 1999 Country Reports on Human Rights Practices – [Honduras], *supra* note 82, Section 1a.
- <sup>98</sup> *Id.* at Section 1c.
- <sup>99</sup> Casa Alianza Honduras: Street Children in Honduras, *supra* note 96.
- <sup>100</sup> 1999 Country Reports on Human Rights Practices – [Honduras], *supra* note 82, Section 5.
- <sup>101</sup> *Id.*
- <sup>102</sup> *Id.*

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> 1998/11/10 – *Street Child Population in Honduras Will Double in the Next Three Months in the Wake of Hurricane Mitch.* (visited February 14, 2000) <<http://www.casa-alianza.org/EN/lmn/docs/19981110.00207.htm>>. (No publication pages available for document).

<sup>107</sup> *Id.*

<sup>108</sup> Death squads refer to non-state agents operating with “at least tacit government approval under an unofficial policy of widespread repression—a so-called ‘dirty war,’ in which both state and non-state agents carry out disappearances, torture, and arbitrary executions against actual and perceived members of the popular opposition movement”. See Jennifer Moore, *From Nation State to Failed State: International Protection from Human Rights Abuses by Non-State Agents*, Columbia Human Rights Law Review, Volume 31 Number 1 (Fall 1999) at 83-84.

<sup>109</sup> 1999 *Country Reports on Human Rights Practices – [Honduras]*, *supra* note 82, Section 5.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at Introduction.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at Section 1c.

<sup>114</sup> *Id.* at Section 1a.

<sup>115</sup> Resource Center of the Americas, *Death Squad Link Charged.* (visited February 14, 2000) <[http://www.americas.org/news/nir/20000106\\_death\\_squad\\_link\\_charged.asp](http://www.americas.org/news/nir/20000106_death_squad_link_charged.asp)>. (No publication pages available for document).

<sup>116</sup> 1999 *Country Reports on Human Rights Practices – [Honduras]*, *supra* note 82, Section 1a.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at Section 1c.

<sup>119</sup> *Id.* at Section 1a.

<sup>120</sup> *Id.* at Section 1c.

<sup>121</sup> *Id.*

<sup>122</sup> See note 50.

<sup>123</sup> 1999 *Country Reports on Human Rights Practices – [Honduras]*, *supra* note 82 at Section 1a.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at Section 1c and 1d. See U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Annex G.A.Res. 46 (XXXIX 1984), 23 I.L.M. 1027 (1984), as modified, 24 I.L.M. 535 (1985).

<sup>127</sup> Casa Alianza – *Human Rights – Last Minute News: 2000/01/28 – Police Officer Kills Handcuffed Youth in Honduras with “Warning” Shot* (visited February 28, 2000) <<http://www.casa-alianza.org/EN?lmn/docs/20000128.00372.htm>>. (No publication page references available for document).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* See U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

<sup>130</sup> *Id.*

<sup>131</sup> 1999 *Country Reports on Human Rights Practices – [Honduras]*, *supra* note 82, Section 1e.

<sup>132</sup> *Id.* at Introduction.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at Section 1c.

<sup>136</sup> *Id.* at Introduction.

<sup>137</sup> *Id.* at Section 1c.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 1e.

<sup>140</sup> *Id.* at Introduction.

<sup>141</sup> *Id.* at Section 1e.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at Section 1c, 1e.

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<sup>144</sup> Immigration and Naturalization Act §§208 (a) and 241. See Karen Musalo, Jennifer Moore and Richard A. Boswell, *Refugee Law and Policy: Cases and Materials* (1997) at 84.

<sup>145</sup> *Id.*

<sup>146</sup> In order to qualify for mandatory restriction on removal (previously known as “withholding of deportation”), a person is required to establish that his or her life or freedom would be threatened. According to *I.N.S. v. Stevic*, the “would be threatened” requirement for restriction on removal means that an applicant must show that there is a “clear probability of persecution” on account of one of the five enumerated grounds. In other words, the applicant must present evidence that it is “more likely than not that the alien would be subject to persecution on one of the five specified grounds” *I.N.S. v. Stevic*, 467 U.S. 407, (1984).

<sup>147</sup> *Cardoza-Fonseca* explains the meaning of the “well-founded fear” standard used in asylum claims, which is more subjective and less restrictive than the standard for mandatory restriction on removal. *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 42 (1987) The US Supreme Court ruled in *Cardoza-Fonseca* that an applicant need not prove that it is more likely than not that he or she will be persecuted.

<sup>148</sup> 1980 Refugee Act, INA §101(a)(42)(A), 8 U.S.C. §1101(a)(42); This Act was passed in order to comply with Article 1 A (2) of the 1951 UN Convention relating to the Status of Refugees which states that the term “refugee” shall apply to any person who:

“As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

<sup>149</sup> A credibility determination for a street child should not likely be much of an issue according to ProBar, the Texas public interest firm which represented the Honduran boy in *Matter of Juan*. See Terry Coonan’s *Tolerating No Margin for Error: The Admissibility of Statements by Alien Minors in Deportation Proceedings*, 29 Tex. Tech L. Rev. 75. Coonan notes that the “alien minor’s fears, ignorance of the law, and unfamiliarity with the English language may render them at a distinct disadvantage. . . [Furthermore,] a minor under sixteen [years old] lacks sufficient maturity to appreciate the significance of an interrogation by an INS official and lacks the capacity to evaluate the foreseeable consequences of any response provided”. *Id.* at 77-78.

<sup>150</sup> A street child may also attempt to assert a claim based on political opinion, although an adjudicator would likely consider with some skepticism the age at which one is capable of having a political opinion. The political opinion claim might deal with the child’s opposition to social cleansing policy, police brutality or illegal detention in adult prisons. In the alternative, the political opinion may instead be an imputed political opinion in which the persecutors attribute such political opinions to the street child without knowing in fact what the victim’s beliefs are.

<sup>151</sup> Musalo, et al, *supra* note 144, at 550.

<sup>152</sup> *Id.*

<sup>153</sup> Musalo, et al., *supra* note 144, at 552, 554.

<sup>154</sup> Musalo, et al., *supra* note 144.

<sup>155</sup> *Matter of Acosta*, 19 I. & N. Dec. at 212, 233 (BIA 1985).

<sup>156</sup> *Hernandez-Montiel v. I.N.S.*, 225 F.3d at 1093 (9<sup>th</sup> Cir. 2000).

<sup>157</sup> *Matter of Acosta*, *supra* note 155.

<sup>158</sup> *Sanchez-Trujillo v. I.N.S.*, 801 F.2d 1571 (9<sup>th</sup> Cir. 1986). However, the argument in this case was that membership alone in the particular social group was grounds for asylum. Thus, the special circumstances are what make mere membership sufficient.

<sup>159</sup> *Id.* at 1577.

<sup>160</sup> *Matter of Juan*, *supra* note 5.

<sup>161</sup> *Id.*

<sup>162</sup> *In re Kasinga*, Interim Dec. 3278 (BIA 1996).

<sup>163</sup> *Id.*

<sup>164</sup> *Sanchez-Trujillo*, *supra* note 158.

<sup>165</sup> Musalo et al., *supra* note 144, at 564.

<sup>166</sup> *Id.* at 550.

<sup>167</sup> See Joan Fitzpatrick, *Flight from Asylum: Trends Toward Temporary ‘Refuge’ and Local Responses to Forced Migrations*, 33 VA.J.Int’l L. 13, 26-31 (1994).

<sup>168</sup> This is especially true in the Second and Ninth Circuits where “persecutory conduct may have more than one motive, and so long as one motive is one of the statutorily enumerated grounds, the requirements [for

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asylum] have been satisfied” *Singh v. Ilchert*, 63 F. 3d 1501, 1509-10 (9<sup>th</sup> Cir. 1995). See also *Osorio v. I.N.S.*, 18 F.3d 1017, 1028 (2d Cir. 1994).

<sup>169</sup> *Matter of Juan*, *supra* note 5.

<sup>170</sup> See *Ghaly*, 58 F.3d at 1431, *quoting Prasad*, 47 F.3d at 339.

<sup>171</sup> *United Nations High Commissioner for Refugees (UNHCR) Handbook*, ¶56.

<sup>172</sup> *Fisher v. I.N.S.*, 79 F.3d 955 (9<sup>th</sup> Cir. 1996) [*Fisher II*] and *Abedini v. I.N.S.*, 971 F.2d 188 (9<sup>th</sup> Cir. 1992).

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Abedini*, *supra* note 172.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *UNHCR Handbook*, ¶91.

<sup>179</sup> *Singh v. Ilchert*, 63 F.3d 1501 (9<sup>th</sup> Cir. 1995).

<sup>180</sup> *Id.* at 1510.

<sup>181</sup> Is it reasonable for a street child know exactly who his or her persecutor is (whether the persecutor is a state actor or a private individual and in what capacity that person is acting when persecuting)? Does this standard encourage misconduct on the part of government officials? (e.g. police officers or private security guards still abusing street children but without wearing their uniforms/other identification of governmental status)

<sup>182</sup> However, if the government is unwilling to protect against non-state persecution, the threat is not necessarily countrywide.

<sup>183</sup> *Matter of Acosta*, *supra* note 155.

<sup>184</sup> *Etugh v. I.N.S.*, 921 F.2d 36, 39 (3d Cir. 1990)

<sup>185</sup> *Matter of Juan*, *supra* note 5.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *CIA - The World Factbook 1999 – Honduras*. (visited February 22, 2000)

<<http://www.odci.gov/cia/publications/factbook/ho.html>>. (No publication pages available for document).

<sup>189</sup> *Matter of Juan*, *supra* note 5.

<sup>190</sup> *Id.*

<sup>191</sup> Guatemala is even smaller than Honduras—slightly smaller than Tennessee. *CIA -- World Factbook 1999 – Guatemala*. (visited February 22, 2000) <<http://www.odci.gov/cia/publications/factbook/gt.html>>. (No publication pages available for document).

<sup>192</sup> 1951 UN Convention relating to the Status of Refugees, *supra* note 148.

<sup>193</sup> *Estrada-Posada v. I.N.S.*, 924 F.2d 916 (9<sup>th</sup> Cir. 1991); also *McMullen v. I.N.S.*, 658 F.2d 1312, 1315 & n.2 (9<sup>th</sup> Cir. 1981).

<sup>194</sup> *Matter of Juan*, *supra* note 5.