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***Ballplayer: Pelotero*—Major League Baseball, Human Rights, and the Globalization of Baseball**

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Introduction

In July 2012, a documentary entitled *Ballplayer: Pelotero* (“*Pelotero*”) focused new attention on how Major League Baseball (“MLB”) teams recruit players in the Dominican Republic.^[1] The film caused controversy because of its critical portrayal of the MLB system. This controversy connects to long-running

debates about MLB’s behavior in Latin American countries—a debate that includes concerns that MLB’s operations in these countries adversely affect the human rights of children. This *Insight* describes *Pelotero*, locates it within the relationship between MLB’s Latin American activities and human rights norms, and analyzes MLB’s latest efforts at reforming its Latin American operations.

***Ballplayer: Pelotero*—The New Documentary**

Pelotero tells the stories of two sixteen-year-old Dominican players, Miguel Angel Sanó and Jean Carlos Batista, both of whom were determined to escape poverty through baseball. As the film notes early on, the Dominican Republic is the most important foreign source of talent for MLB, supplying twenty percent of all minor and major league players.^[2] The film focuses on events from March–October 2009. The film begins with MLB teams identifying Sanó and Batista as top prospects, meaning they might command significant signing bonuses. Unlike amateur players in the United States, Canada, and Puerto Rico, who are subject to the amateur draft, prospects in Latin America are free agents who can sign with the team that offers the most money. The film portrays Sanó as one of the two best sixteen-year-old prospects, with the potential to receive a record-breaking signing bonus of \$5,000,000 or \$6,000,000.^[3]

However, things fall apart for both players. Allegations emerge that Sanó was lying about his identity and age, triggering an investigation by MLB and an agonizing process that delays his signing for months and significantly reduces his signing bonus. Sanó, his family,

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and agent believe the allegations reflect collusion between a scout for a MLB team, who wanted to sign Sanó for less money, and MLB officials in the Dominican Republic, who wanted to limit signing-bonus escalation for top Dominican prospects. Batista rejects the first offer he receives but then is suspended for a year by MLB for lying about his age. Batista eventually signed for a much-reduced bonus after the suspension expired.

Through these stories, the filmmakers expose a system rife with abuses. In the *Wall Street Journal*, Joe Morgenstern observed that the film “depicts a recruitment process that . . . [is] all about the dehumanizing power of money, and growing kids into superstars at bargain-basement prices[.]”^[4] Neil Genzlinger of the *New York Times* stated that it “shows a shady business in which scouts and the teams they represent try to manipulate teenage players, and to some extent the players do some manipulating of their own.”^[5] Kenneth Turan wrote in the *Los Angeles Times* that it is “a damning film” that exposes “a flawed, potentially exploitative system and how it is being gamed from all sides of the table—the story of the collision of youthful dreams and a cutthroat adult cartel.”^[6]

MLB criticized the film, asserting that it is inaccurate, contains misrepresentations, and does not reflect changes MLB made in the Dominican Republic after the events depicted.^[7] In the film, the filmmakers note that no one at MLB agreed to be interviewed for it,^[8] while acknowledging that MLB is changing how MLB teams recruit and sign Dominican prospects.^[9] In response to MLB’s accusation of inaccuracy, the filmmakers observe that MLB did not specifically identify any particular inaccuracy in the film.^[10]

Buying and Selling Children: *Pelotero* and Controversies Concerning MLB’s Operations in Latin America

Pelotero highlights themes that have caused controversies concerning MLB’s activities in Latin America for over a decade—the system targets children living in poverty and fosters abuses by those involved in it. *Pelotero* illustrates how MLB emphasizes signing sixteen-year-old players, stimulating efforts to begin developing prospects at even younger ages. The film estimates that over 100,000 boys train full time in baseball facilities across the Dominican Republic for the chance to sign a MLB contract.^[11] The trainers, or *buscones*, for Sanó and Batista acknowledge that the system involves buying and selling children as commodities,^[12] echoing earlier critiques about MLB’s targeting of children.^[13] By contrast, amateur players in the United States, Canada, and Puerto Rico are not eligible for the MLB draft until they complete high school,^[14] typically at age eighteen.

International human rights law recognizes that people under eighteen are children who require heightened care and protection, especially children living in poverty, who are more vulnerable to economic exploitation.^[15] From a human rights perspective, the Dominican government and MLB are responsible for adequately regulating commercial activities that focus on children. The Dominican Republic is party to the Convention on the Rights of the Child, recognizes eighteen as the age of majority, and has obligations to protect children from potentially exploitative and abusive behavior by non-state actors operating in its territory. As the governance body of a transnational, multibillion dollar business, MLB has human rights responsibilities, including demonstrating awareness of human rights issues connected with the location of its operations (e.g., developing countries), understanding how its business activities might raise human rights concerns (e.g., targeting children as sources of labor), and taking responsibility to prevent and protect against human rights problems connected with such activities.^[16]

Pelotero reveals neither the Dominican government nor MLB fulfilling their human rights duties. In the film, Sanó and his family meet with the head of the Dominican Baseball Commission, a government agency, about the problems they are experiencing with the MLB investigation. The Commissioner tells them that MLB is “a monopoly” that “govern[s] the business, and make[s] the rules of the game” and that he can only provide advice^[17] — a surprising statement for a government official to make about commercial activities affecting an estimated 100,000 children. The Commissioner explains that “[p]eople take advantage of poverty here. . . . This is happening [to Sanó] because he’s poor.”^[18] This scene reinforces long-standing criticisms that the Dominican government has failed to regulate MLB’s activities adequately pursuant to its human rights obligations.

As for MLB, critics have argued for years that its system for recruiting, signing, and training young players in Latin American countries exploits and discriminates against children. When MLB teams began recruiting in Latin America, MLB had no rules regulating the process, contrasting with the structured and regulated process by which MLB teams scouted, signed, and trained minor league players from North America and (later) Puerto Rico.

In response to criticism and high-profile incidents of abuses, MLB began to apply some rules, starting in 1984 with the rule that established sixteen as the minimum signing age.^[19] In 2000, MLB opened an office in the Dominican Republic to provide better oversight of its Latin American operations. Later, MLB adopted rules and guidelines to ensure the provision of Spanish-language versions of contracts and adequate living and playing conditions.

However, Latin America’s importance as a source of talent continued to grow, causing increased signing bonuses for top prospects. In this environment, MLB struggled with new problems, such as abuse of performance-enhancing drugs, team abuse of tryouts to hide players from other clubs, age and identity fraud, corruption by team officials, and abuses by *buscones*. *Pelotero* touches upon rules adopted to address some of these problems, including drug testing and investigations into age and identity. However, MLB’s reactive, ad hoc approach to addressing problems constitutes “aborted and timid efforts . . . to address the exploitation of young baseball talent.”^[20]

Ironically, MLB reached a similarly harsh judgment about its Dominican operations at the same time *Pelotero* was filmed. After yet more scandals, the MLB Commissioner appointed a committee in May 2009 chaired by Sandy Alderson to examine MLB’s Dominican operations and make recommendations for reform. The Alderson committee produced a report in September 2009—contemporaneously with events depicted in *Pelotero*—reflecting the depth of the problems and the need for comprehensive reform.^[21] As Alderson put it, “the system as it currently exists can’t continue;” it is time to “clean up the abuses”^[22] and put an end to “kids being manipulated and victimized.”^[23]

MLB Moves Toward Comprehensive Reform: From the Alderson Committee Report to the New Basic Agreement

The Alderson Committee Report

The Alderson committee’s report was “an ambitious reform blueprint” indicating that MLB might be “poised to end its long history of exploiting Latin Americans[.]”^[24] The report identified problems depicted in *Pelotero*, including questionable investigations by MLB and corruption involving MLB team officials.^[25] The committee emphasized that MLB might need to institute an international draft to regulate how teams access Latin American

talent.[26]

Although the report was not a human rights assessment, it highlighted weaknesses in MLB's governance of its Dominican operations and emphasized MLB's responsibility to strengthen such governance through better rules, strategies, and investments in oversight capabilities. The behavior of the Dominican government, *buscones*, and prospects contributed to the problems, but the Alderson committee accepted that MLB bore heightened responsibility. As a MLB vice president put it, "we recognize our responsibility . . . and that we have to constantly reevaluate the way we do business to make sure we are not creating perverse incentives to engage in behavior we know is wrong." [27]

The New Basic Agreement

The deadline the Alderson committee set for its reforms—July 2, 2010—passed without implementation. Alderson's departure to become General Manager of the New York Mets in October 2010 raised questions about future reform of MLB's Latin American operations. However, even more radical reform appeared in the 2012-2016 Basic Agreement finalized at the end of 2011 in collective bargaining between MLB and the Major League Baseball Players Association ("MLBPA"). [28]

The Basic Agreement creates a draft-like process—called the "Signing Bonus Pool" mechanism—to regulate signing international amateur players, [29] the vast majority of which come from Latin America. Although MLB and MLBPA continue to discuss a formal international draft, the Basic Agreement functions like a draft in limiting signing bonuses and increasing competitive balance by giving teams with losing records in the prior season more opportunities to attract the best international prospects. [30]

In addition, the Basic Agreement created an International Talent Committee tasked with negotiating whether MLB adopts an international draft and addressing problems related to MLB's Latin American operations. [31] For example, the International Talent Committee will discuss the minimum age for teams to sign international amateurs—indicating potential willingness to depart from the pervasive but much-criticized "younger is better" mentality, which *Pelotero* highlights. [32] The Basic Agreement also established an Education Committee, tasked with assisting "international players who are not drafted, or are released prior to reaching the Major Leagues, with their transition to educational/vocational programs or the workforce." [33]

The first application of the "Signing Bonus Pool" mechanism to Latin American prospects occurred in July 2012, and, as of this writing, little is publicly known about how it functioned. In addition, the mechanism contains features that raise questions about whether it will change how MLB teams recruit and sign Latin American prospects. For example, the Basic Agreement allows teams to sign an unlimited number of international amateurs for bonuses of \$7,500 or less in the 2012-2013/2013-2014 seasons and \$10,000 or less in the 2014-2015/2015-2016 seasons. [34] Thus, signing bonuses for most Latin American prospects are unlikely to exceed these exempted amounts during the life of the Basic Agreement. In other words, MLB has found another way to allow teams to sign many Latin American players cheaply. *Pelotero's* focus on two top prospects did not illuminate problems the vast majority of Dominican prospects encounter, but, from a human rights perspective, these problems are equally important to address in reforms.

Combined with the signing bonus limits for top prospects, the "Latin players on the cheap" [35] strategy underscores that MLB's primary interest is to lower costs for accessing

Latin talent. In addition, the Basic Agreement does not address many problems the Alderson committee identified, other than to have the International Talent Committee discuss a limited number of them. Again, as of this writing, what the International Talent Committee has agreed, if anything, is not publicly known.[36]

Conclusion

The changes in the Basic Agreement constitute the most radical reforms MLB has ever made to its operations in Latin America, and the International Talent Committee might supplement these reforms with more changes, including potentially imposing regulations on *buscones*, increasing the age of signing eligibility, and adopting an international draft. Assessing whether these reforms move MLB away from what *Pelotero* depicts and closer to fulfilling its human rights responsibilities requires more information than is presently available.

In addition, MLB faces opposition in the Dominican Republic to these changes, especially the idea of an international draft. Those opposed include representatives of the Dominican government,[37] which potentially puts the two entities with human rights responsibilities in this context directly at odds—not a scenario conducive to fulfilling these responsibilities under the increased scrutiny *Pelotero* has created.

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Endnotes:

[1] *Ballplayer: Pelotero* (July 13, 2012). Makuhari Media in association with Guagua Productions and Endeavor Films. Directed and produced by Ross Finkel, Jon Paley, and Trevor Martin. Bobby Valentine, manager of the Boston Red Sox, was an executive producer of the documentary.

[2] *Id.*

[3] In this regard, *Pelotero's* focus on top Dominican prospects did not illuminate what happens to players MLB teams do not consider premium prospects, but these players make up the bulk of Dominicans signed to MLB contracts.

[4] Joe Morgenstern, *Ballplayer: Pelotero*, *Wall St. J.* (July 12, 2012), <http://online.wsj.com/article/SB10001424052702303740704577521240098800540.html>.

[5] Neil Genzlinger, *Baseball Dreams and Schemes: "Ballplayer: Pelotero," Baseball Scouting in the Dominican Republic*, *N. Y. Times* (July 12, 2012), <http://movies.nytimes.com/2012/07/13/movies/ballplayer-pelotero-baseball-scouting-in-the-dominican-republic.html>.

[6] Kenneth Turan, *"Ballplayer: Pelotero" Takes a Damning Look at System*, *L.A. Times* (July 12, 2012), <http://www.latimes.com/entertainment/movies/moviesnow/la-et-mn-ballplayer-pelotero-20120713,0,7544531.story>.

[7] See Nick Carfado, *MLB Officials React to Bobby Valentine Documentary*, *Boston Globe* (July 10, 2012), <http://www.bostonglobe.com/sports/2012/07/10/mlb-officials-react-bobby-valentine->

documentary/wbcZmtSDPKzLs92dS0RwFK/discuss.html?sort=asc.

[8] *Ballplayer: Pelotero*, *supra* note 1 (“MLB declined our requests to be interviewed for this film.”).

[9] *Id.* (“MLB has passed new rules for the Dominican system, which will limit signing bonuses. They hope to institute an international draft.”). On these new rules, see note 28 *infra* and accompanying text.

[10] Ronald Blum, *Selig Critical of Film Produced by BoSox’ Valentine*, Assoc. Press (July 10, 2012), <http://www.theglobeandmail.com/sports/baseball/selig-critical-of-film-produced-by-bosox-valentine/article4404864/> (reporting on the film directors’ reaffirmation of the film’s accuracy and inviting MLB to identify specific inaccuracies in it).

[11] *Ballplayer: Pelotero*, *supra* note 1.

[12] Vasilio “Moreno” Tejeda, Sanó’s *buscon*, stated: “That is what Dominican baseball is all about: You have to get some 13- and 14-year olds and work them hard even though they are only kids.” Astín Jacobo, Batista’s *buscon*, observed: “When you deal in baseball, [you’re dealing in] young kids—it’s like when you go and harvest the land. You put the seed in the land, and then you put water on it, you clear it, you do all of this and then, when it grows, you sell it. It’s just the way it is.” *Id.*

[13] See, e.g., Angel Vargas, *The Globalization of Baseball: A Latin American Perspective*, 8 Ind. J. Global Legal Stud. 21 (2000).

[14] Major League Baseball, *First-Year Player Draft: Official Rules*, available at <http://mlb.mlb.com/mlb/draftday/rules.jsp>.

[15] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

[16] On human rights responsibilities of multinational corporations, see U.N. Human Rights Council, 8th Sess., Agenda Item 3, Protect, Respect and Remedy: A Framework for Business and Human Rights—Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008); U.N. Human Rights Council, 17th Sess., Agenda Item 3, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises—Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, U.N. Doc./A/HRC/17/31 (Mar. 21, 2011).

[17] *Ballplayer: Pelotero*, *supra* note 1.

[18] *Id.*

[19] See Melissa Segura, *Drafted at 13, How One Player Changed International Signing Rules*, Sports Illustrated.com (July 2, 2012), http://sportsillustrated.cnn.com/2012/writers/melissa_segura/07/02/jimmy-kelly/index.html.

[20] Rob Ruck, *Baseball’s Recruitment Abuses*, America’s Q. (Summer 2011), available at <http://americasquarterly.org/node/2745>. See also Jeff Passan, *Alderson Addresses Dominican Corruption*, Yahoo!Sports (Apr. 22, 2010), <http://sports.yahoo.com/mlb/news?slug=jp-dominican042210> (“Baseball in the Dominican Republic is a wasteland of crime and drugs. Big money turned one of the game’s richest and proudest cultures into a festering pond of sleaze. For years, hustlers and pimps have taken advantage of impoverished and undereducated children while Major League Baseball allowed the entire racket to continue. Corruption metastasized. No one tried to stop it.”).

[21] Sandy Alderson, Memorandum to Commissioner Selig and Bob DuPuy concerning the Dominican Republic Committee, Sept. 23, 2009 [hereinafter Alderson Committee Report].

[22] Quoted in Passan, *supra* note 20.

[23] Quoted in Jesse Sanchez, *Venezuela Next Target for Clean-Up: MLB Pushing for Guidelines to be Followed in Latin America*, MLB.com (May 13, 2010), http://mlb.mlb.com/news/article.jsp?ymd=10100513&content_id=10017300.

[24] Jonathan Mahler, *From Jackie Robinson to Dead Silence*, N.Y. Times, June 18, 2011, at D1.

[25] Alderson Committee Report, *supra* note 21.

[26] *Id.*

[27] Quoted in ESPN, *MLB Addresses Identity Fraud Problem*, Outside the Lines (Mar. 8, 2012), <http://search.espn.go.com/outside-the-lines/videos/6>.

[28] Basic Agreement 2012-2016, Dec. 12, 2011, between Major League Baseball and the Major League Baseball Players Association, Attachment 46: International Amateur Talent, at 265-276 [hereinafter Basic Agreement].

[29] *Id.* at 268-275.

[30] Major League Baseball, Memorandum from Robert D. Manfred, Jr. to All Club Owners, Presidents, Chief Executive Officers and General Managers concerning the 2012-16 Basic Agreement (Nov. 22, 2011).

[31] Basic Agreement, *supra* note 28, at 265-68.

[32] Interestingly, SportsIllustrated.com found that older Dominican players were more likely to make the major leagues than players signed at sixteen years of age: "SI.com examined the signings of 3,099 Dominican amateurs from 2003 to 2010 and found that 18-year-old players were twice as likely to appear in the majors as 16-year-olds, and at a fraction of the price. Of the 321 16-year-olds signed, six appeared have made major league appearances. Over the same period, 27 of 914 18-year-olds debuted." Segura, *supra* note 19.

[33] Basic Agreement, *supra* note 28, at 275-276.

[34] *Id.* at 268.

[35] The phrase "Latin players on the cheap" comes from Samuel O. Regalado, "*Latin Players on the Cheap*": *Professional Baseball Recruitment in Latin American and the Neocolonialist Tradition*, 8 Ind. J. Global Legal Stud. 9 (2000).

[36] See, e.g., Segura, *supra* note 19 (noting in July 2012 with respect to International Talent Committee discussions on the eligibility age that "[a]n MLB spokesman declined to comment on the international age rule because he said the committee had just begun discussions.").

[37] *Baseball in Latin America: Draft Dodgers No More*, Economist (Feb. 4, 2012), available at <http://www.economist.com/node/21546064?frsc=dg%7Ca> ("In the DR, MLB's biggest source of foreign players, the reaction has been apoplectic . . . Felipe Payano, the sports minister, has already written a letter to Bud Selig, MLB's commissioner, expressing his opposition to a draft. He says his office is investigating whether it might violate the DR's free-trade agreement with America. Another option would be to sue MLB for collusion under Dominican antitrust law.").