

**Restavek:**  
**Child Domestic Labor in Haiti**

August 1990

A report of the  
Minnesota Lawyers International Human Rights Committee  
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## PREFACE

Since the February 1986 departure of Jean-Claude Duvalier for France, Haitians have suffered continued political and economic turmoil. The initial hope that, with Duvalier's departure, Haiti would finally have a representative government that strove to meet the needs of its people rather than to exploit them has not to date been realized. Instead, Haiti has endured three military dictatorships, a crescendo of human rights abuses, lawlessness that has created a profound sense of insecurity, and near economic collapse.

As this report goes to press, Prosper Avril, head of the third military government to rule Haiti since the fall of Duvalier, has left Haiti and there is a provisional civilian government preparing for national elections. Once again there is the hope that meaningful elections will lead to a civilian government that can begin the daunting task of addressing Haiti's very great social, political and economic problems. Among those problems which the Minnesota Lawyers International Human Rights Committee ("Minnesota Lawyers Committee" or "Committee") hopes the new government will address is *restavek* -- the use of children as unpaid domestic labor.

This report, based primarily upon information gathered during a December 1989 mission, was written by Leslie Anderson, E.J. Kelley and Zara Kivi Kinnunen, three members of the Minnesota Lawyers Committee. The Committee has had an active sub-group focusing on human rights issues affecting children in Haiti since 1988. The Committee sent two fact-finding missions to Haiti, in December, 1988 and December, 1989.

The Minnesota Lawyers Committee would like to thank the many Haitians who assisted us in gathering information for this report. Although December 1989 was a tense and troubled month in Haiti, our sources were uniformly generous with their time and also assisted us in making other contacts and obtaining additional information. We would especially like to thank Jean-Jacques Honorat, of the Centre Haitien des Droits et Libertés (CHADEL), for his invaluable assistance. This report was made possible largely with the support of the Dorsey & Whitney law firm, for which the Committee is enormously grateful.



## SUMMARY AND RECOMMENDATIONS

During its 1988 mission to Haiti, the Minnesota Lawyers Committee learned of a common practice of domestic child labor in Haiti, known in Creole as “restavek” (derived from the French words “rester avec” -- “to stay with”). The restavek child is given by his or her (usually rural) parents to an urban family, to perform household labor. While in some instances the placement is an informal adoption that allows the rural child to be brought up in a higher socio-economic setting than would otherwise be possible, in its more typical form the child is totally cut off from his or her natural family and viewed as a source of labor, not as a child, by the “employing” family.<sup>1</sup> Indeed, various Haitians have characterized the practice of restavek as a vestigial form of slavery.

After further discussion about restavek with Haitians living in the United States, the Minnesota Lawyers Committee decided to focus its second mission to Haiti on restavek children. The Committee made this decision for several reasons. First, it regards the practice of restavek as a serious human rights issue that violates a number of international legal conventions, including several to which Haiti is a party. By failing to enforce existing legislation or enact appropriate safeguards against restavek, the Haitian government violates both national and international legal obligations to prohibit forced labor and slave-like practices, and to uphold the rights of children. Second, there has been virtually no discussion of restavek outside of Haiti, and only limited attention to this issue within Haiti. The information obtained about the plight of many restavek children suggested the need for Haitian and international scrutiny and

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<sup>1</sup> The term “employing” family is used in this report to designate the family to whom the restavek child is given. It is not an entirely satisfactory term, as it implies, for example, a salary, when in fact the restavek child receives none. It does, however, accurately reflect that the typical restavek child is obtained by a family as a source of labor, not as a child to be raised and nurtured.

concern. Third, restavek is a particular manifestation of the condition of the majority of children in Haiti. Most Haitian children lack basic economic and civil rights, victims not only of their country's turbulent political history but of its crushing poverty as well.<sup>2</sup> By focusing on the restavek child, one can appreciate more concretely the effect of past Haitian governments' inability, or unwillingness, to provide for the most basic needs of the most vulnerable component of its population -- its children.

The three authors of this report visited Port-au-Prince, the capital of Haiti, in December, 1989. The delegation interviewed present and former restavek children, governmental officials, Haitian experts on restavek, human rights workers, staff from non-governmental international organizations interested in children's issues, and church workers. The delegation also obtained what is believed to be the only written study of restavek, a report issued after a 1984 conference on "Child Domesticity" which assembled Haitian government officials, sociologists, psychologists, educators, lawyers and clergy to address the subject of restavek.<sup>3</sup>

Substantial evidence exists showing that restavek is a prevalent feature of Haitian life. Large numbers of children, some at very young ages, are given by impoverished parents to more affluent families who use them as domestic servants. In many instances the restavek child has no further contact with her<sup>4</sup> real family after the initial placement.

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<sup>2</sup> For a general survey of human rights issues affecting Haitian children, see Minnesota Lawyers International Human Rights Committee, Children's Rights in Haiti, February 1989.

<sup>3</sup> The reports or statements of the various contributors to this government and UNICEF supported conference were published as Colloque Sur L'Enfance en Domesticité, subsequently referenced as "1984 Conference Report."

<sup>4</sup> The use of the feminine throughout the report includes the masculine; the Committee selected feminine forms because the majority of restaveks are girls.



Restavek children usually perform the bulk of the household labor, without pay. Working as a servant is the primary function of the restavek: typically she is not treated like a family member. She is therefore unlikely to attend school, even if the family's children attend school; to eat with the family; or to eat the same quality diet as the family. The evidence suggests that most restaveks are beaten, and girls may be sexually abused.

Many of the children presently living in the streets of Port-au-Prince have fled restavek situations. Children who flee, or are dismissed from, restavek situations often have no means to contact or return to their original homes.

Restavek children do not remain the "property" of the restavek families forever. When they become teenagers or reach adulthood, they may work for the same family or other families as cooks, drivers, maids, or similar positions, for pay. In most cases, the adult who grew up as a restavek has extremely limited opportunities to change the circumstances of her life as she grows older because of the limitations on education and development inherent in restavek situations. Similarly, there is a social and class stigma attached to being a restavek child.

The Minnesota Lawyers Committee believes that the Haitian practice of restavek should be abolished. The Committee appreciates that complex economic, cultural and historical forces in Haiti have contributed to the existence of restavek; that because it exists in a variety of forms it is not uniformly abusive and exploitative; and that it is difficult to analyze from a strictly legal viewpoint. In its typical form, however, restavek deprives a child of the most basic economic and civil rights: rights to family, education, health care, childhood and leisure, and in many cases, adequate shelter and nutrition.

The practice of restavek violates international prohibitions against practices similar to slavery, forced labor and the exploitation of children. These prohibitions are enumerated in the

Universal Declaration of Human Rights, as well as the following treaties to which Haiti is a party: the American Convention on Human Rights; the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; and International Labour Organization (ILO) Convention No. 29 on Forced Labour.

The Haitian government's attempts to regulate restavek have failed and, even if enforced, are not adequate to satisfy Haiti's legal obligations or to end the exploitation inherent in restavek placements. Therefore, Haiti should within the shortest possible period take all necessary steps to bring about the complete abolition of restavek. The government should ensure that present and former restavek children are returned to their own families or, if that is impossible, placed in an environment in which the children's interests are paramount. International organizations and non-governmental organizations should take appropriate measures to ensure Haiti's compliance with international law and to aid Haiti in its efforts to address the roots and consequences of restavek.

## INTRODUCTION

This report will present a brief background on Haiti and the conditions of children in Haiti. The report will also analyze restavek in light of relevant international legal standards, the Haitian Constitution, and pertinent Haitian law. Finally, it will offer recommendations directed toward the abolition of restavek.

### I. BACKGROUND ON RESTAVEK AND HAITI

#### A. Description of Restavek

Restavek is a prevalent feature of Haitian society. The 1984 Conference Report estimated that 109,000 Haitian children worked as restaveks, 65,000 girls and 44,000 boys.<sup>5</sup> If 109,000 children is an accurate figure today, five percent of Haitian children between the ages of five and eighteen work as domestics. Another contributor to that report thought the 109,000 figure far too low, with 240,000 a better estimate.<sup>6</sup>

There has been little written in or outside Haiti about restavek, other than the 1984 Conference Report. Haitian sources stated that restavek dates back to the nineteenth century, and that it occurs throughout the country. In its most typical form, a poor rural child is given to a family living in one of the larger cities, such as Port-au-Prince, Les Cayes or Gonaives, but the

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<sup>5</sup> These figures were provided by the Institut Haitien de Statistiques et d'Informatique and the Institut du Bien-Etre Social et de Recherches. *See* R. Dorelien, Interprétation des données statistiques relatives à l'enfance en domesticité, recueillies à partir des résultats d'un échantillon, tiré du recensement de 1982, p. 3, Table 9, 1984 Conference Report.

<sup>6</sup> E. Clesca, La domesticité juvénile est-elle une conséquence du sous-developpement ou le produit de la mentalité d'un peuple?, p.1, 1984 Conference Report.



*Restavek children in Port-au-Prince*

movement of children is not exclusively rural-urban. For example, some peasant families may have restavek children. The 1984 Conference Report estimated that 64 percent of restaveks lived in the Port-au-Prince area, 21 percent in towns of 5,000 or more, and 15 percent in the rest of the country.<sup>7</sup>

Rural Haitians often have great difficulty providing their children with enough food. Access to health care and schools is also extremely limited. Some rural parents, feeling they cannot provide for all their children, give one or more away as restavek children to more affluent families. Usually either a member of the employing family, or an intermediary, travels to the countryside to locate restaveks. Ordinarily the child is given away, not bought. If money does change hands, it is likely to be a very small gift to the child's natural family.

Restavek has deep and complex roots in Haitian culture and history. Restavek in part is a result of Haiti's traditional extended family structure. In this form, restavek is a sort of informal

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<sup>7</sup> R. Dorelien, *supra* note 5, p. 2.

adoption where poorer branches of a family send some of their children to live with wealthier ones. The Committee was repeatedly told, and the 1984 Conference Report states, that the child fares the best when the restavek placement is to a relative.<sup>8</sup> The employing family will have more of a personal interest in the restavek in this situation, and the child is far more likely to have continued contact with her immediate family. Sometimes, even though there is no blood relationship, an urban family will repeatedly return to the same rural family for restavek children over a period of several generations. Because there is a real connection between the placing and the employing family, and on-going contact between the restavek child and her parents, a restavek child in this situation may be relatively well off.

There is however a much less benign source of restavek rooted in Haiti's colonial experience. There has been a long history of exploitation of the many by the few in Haiti, starting with the French slave-owners and unfortunately, in some respects, continuing to the present.<sup>9</sup> Many Haitians interviewed confirmed that, in the more exploitative form of restavek, the employing family simply does not view the restavek child as a person whose rights and needs are equal to -- or approach -- those of the members of the employing family. Instead, the child is viewed as a source of manual labor. According to the Committee's sources, this exploitative form is the predominant form of restavek today,<sup>10</sup> and this report focuses on the abuses that sometimes occur in these sorts of restavek placements.

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<sup>8</sup> E. Clesca, *supra* note 6, p. 3. Haitians interviewed stated that even in this form of restavek, however, there are still sharp distinctions between the treatment of the restavek children and the real children of the employing family. While the restavek child will perform the household labor, the natural child will not. The restavek child will be less likely to attend school, and school for the restavek child may be subordinated to the work schedule.

<sup>9</sup> See, e.g., M. Lundahl, Peasants and Poverty: A Study of Haiti (1979), p. 23.

<sup>10</sup> See generally F. Fontus, Etude Comparée de la Domesticité Juvenile dans Quelques Pays du Tiers-Monde, 1984 Conference Report.

The restavek child may be as young as four or five when given to the employing family.<sup>11</sup> Usually she has no further contact with her family.<sup>12</sup> Quite likely, the restavek child has only a vague notion of where she comes from, her age, or her family surname.

Because the placement of the child with the employing family usually severs the child's contact with her own family, her subsequent welfare is wholly dependent upon the urban family. The rural family doubtless hopes that the employing family will feed and clothe the child, send her to school, provide her with medical care, and treat her as one of the family. These hopes are not generally realized. In most instances, the restavek child is poorly fed and clothed, does not attend school, does not receive medical care, and is definitely not one of the family.<sup>13</sup> Instead she is the family's servant, waiting not only on the adults but on the family's children.

If the restavek child is unhappy with the urban family, mistreated, beaten, or sexually abused, there is no effective mechanism to assist the child. While Haiti has enacted regulatory legislation intended to protect the restavek child,<sup>14</sup> no Haitian, including governmental officials, suggested that the existing laws are enforced. In fact, the unhappy or abused restavek child is left to solve her own problems. If she runs away, her choices are few. She can join Haiti's street children living in the slums of Port-au-Prince, find another restavek placement for herself or, perhaps, find an orphanage that will shelter her. The dislocation and uncertainty of restavek is likely to traumatize the child psychologically.

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<sup>11</sup> The 1984 Conference Report projected that seven percent of restaveks are under the age of five. R. Dorelien, *supra* note 5, p. 10.

<sup>12</sup> D. Devesin, Profil Social de l'Enfant en Domesticit , p. 16, 1984 Conference Report.

<sup>13</sup> *See generally* Section II below.

<sup>14</sup> This legislation is discussed at Section III below.

The typical restavek child thus grows up bearing emotional scars from the sense of abandonment by her real family and subservience to the new family. She also lacks education and any skilled training. Instead of the restavek placement breaking the cycle of poverty, as the rural family hoped, the cycle is perpetuated.

In the words of Haiti's former Minister of Social Affairs, the practice of restavek is "unacceptable."<sup>15</sup> It violates basic legal pronouncements of the rights of children and has characteristics both of forced labor and slavery.<sup>16</sup>

### B. Roots of Restavek

The practice of restavek in Haiti results from historical, cultural and economic causes. As a French colony after 1697, Haiti had a wealthy, productive export economy, its wealth deriving from large plantations worked by African slaves. By the end of the eighteenth century, Haiti's population consisted of 40,000 French colonists and 500,000 slaves, two-thirds of whom had been born in Africa. The French minority treated the slaves with great brutality.

In 1804 Haitian slaves succeeded in expelling the French colonists after a protracted rebellion. The new republic, the second in the new world, was isolated by European nations and

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<sup>15</sup> Minnesota Lawyers Committee interview with M. Arnault Guerrier, Port-au-Prince, Dec. 4, 1989.

<sup>16</sup> Several contributors to the 1984 Conference Report noted similarities between restavek and slavery. *See, e.g.*, E. Clesca, *supra* note 6, p. 3; A.M. Dolce, L'Enfance en domesticité peut-elle être considérée comme une nouvelle forme d'adoption?, p. 3, 1984 Conference Report; J.S. André, Efforts entrepris par l'état Haïtien en faveur de l'enfant en domesticité, p. 2, 1984 Conference Report. One Haitian interviewed expressed his opinion that Haiti today has two forms of slavery: restaveks and Haitian sugar cane cutters working in the Dominican Republic. (The condition of the latter has been investigated by the International Labour Organization and non-governmental organizations. *See, e.g.*, Americas Watch, National Coalition for Haitian Refugees, Caribbean Rights, Haitian Sugar Cane Cutters in the Dominican Republic (Nov. 1989)).

by its fellow new world republic, the United States, for much of the nineteenth century. With slavery still prevalent in many of its states, the United States did not even recognize Haiti until mid-way through the American Civil War.

At independence in 1804, the oppressive Haitian plantation system was ruined, with many plantations burned to the ground during the previous fifteen years of revolutionary turmoil. The environmental degradation caused by deforestation, which has reached almost catastrophic proportions in Haiti today, began in this period. Some of Haiti's post-colonial rulers initially tried to resurrect the plantation system by use of forced labor that bore many resemblances to slavery. These efforts to reinstate forced plantation labor failed and subsequent land reforms distributed land to the masses. Most Haitians became what most remain today: small landholders living in isolated rural communities.

Haitian society has, for at least the past 300 years, been divided into two strata: a tiny, affluent, urban elite and the rural peasants, many of whom in the last 20 years have migrated to the cities where by and large they live marginal lives in the slums.<sup>17</sup> The elite runs the government, and "(g)overnment in Haiti [has]... evolved as a huge extractive mechanism, sucking funds from the masses in the countryside and channelling them to the elite in the cities."<sup>18</sup> The various governments of Haiti have done little for the rural populace in return: on average, less than ten percent of public expenditures have been devoted to the countryside.<sup>19</sup>

More recent economic and ecologic trends have exacerbated rural poverty and made it

<sup>17</sup> Haiti's population remains predominantly rural, notwithstanding this rural exodus.

<sup>18</sup> M. Danner *Beyond The Mountains*, The New Yorker (Dec. 4, 1989), p. 78 (initial periodical publication).

<sup>19</sup> M. Lundahl, *supra* note 9, p. 23.



more difficult for rural families to provide for their children. Haiti has one of the highest ratios of population to arable land in the Caribbean.<sup>20</sup> At least three inter-related factors contribute to this ratio. First, Haiti has an extremely mountainous terrain. Second, Haiti's growing rural population led to repeated subdivision of plots of land and increasingly intensive cultivation. This more intensive farming, in turn, led to a third major cause of rural poverty: Haiti's massive deforestation and soil erosion.<sup>21</sup> Despite recent internationally funded reforestation efforts, Haiti's ecological crisis continues to pose huge problems for the rural economy.<sup>22</sup> For example, while U.S. AID has sponsored a program in which seven million trees are planted a year, rural Haitians are cutting trees at a rate of more than 20 million per year.<sup>23</sup> Haitian sources universally agreed that rural poverty is the root cause of restavek.



*Street children in the slums of La Saline, Port-au-Prince*

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<sup>20</sup> *Id.* at 17.

<sup>21</sup> *See generally*, U.S. AID/Haiti, Strategy paper for Fiscal Year 1989/1990 (Jan. 1989).

<sup>22</sup> The U.S. AID Strategy Paper notes that “(t)he misuse and mining of the natural resource base, unless arrested, will lead to environmental catastrophe.” *Id.* at 11.

<sup>23</sup> A. Wilentz, The Rainy Season (1989), p. 266.

### C. General Condition of Children in Haiti

The existence of *restavek* is only one example of the many problems that face Haitian children. When measured against virtually any indicator, the situation of children in Haiti is bleak. For example, in Haiti, only 82.6 percent of children born survive to age five.<sup>24</sup> This statistic, known as the under five mortality rate, is considered by UNICEF to be one of the best indicators of the overall condition of children in a country, and Haiti's under five mortality rate is classified by UNICEF as "very high".<sup>25</sup> Seventeen percent of Haitian babies are born with a low birth weight, and it was estimated in 1986 that five percent of Haitians under five suffer from severe malnutrition, a condition that is often fatal.<sup>26</sup> Fifty-two percent of Haitian children between the ages of two and five years are stunted by some degree of malnutrition.<sup>27</sup> In 1985, among Haitians generally, daily caloric intake was only 79 percent of minimum daily requirements.<sup>28</sup> Less than 50 percent of Haitian children complete primary school and only 18 percent attend secondary school.<sup>29</sup> In the rural areas, 80 percent of Haitians lived below the absolute poverty level in the period 1977-86.<sup>30</sup>

The great majority of Haitian children are thus extremely vulnerable economically. It is important to stress the general poverty of Haiti's children to avoid any suggestion that the

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<sup>24</sup> J. Grant, The State of the World's Children 1989 (UNICEF 1989), p. 80.

<sup>25</sup> *Id.* at 78.

<sup>26</sup> *Id.* at 96.

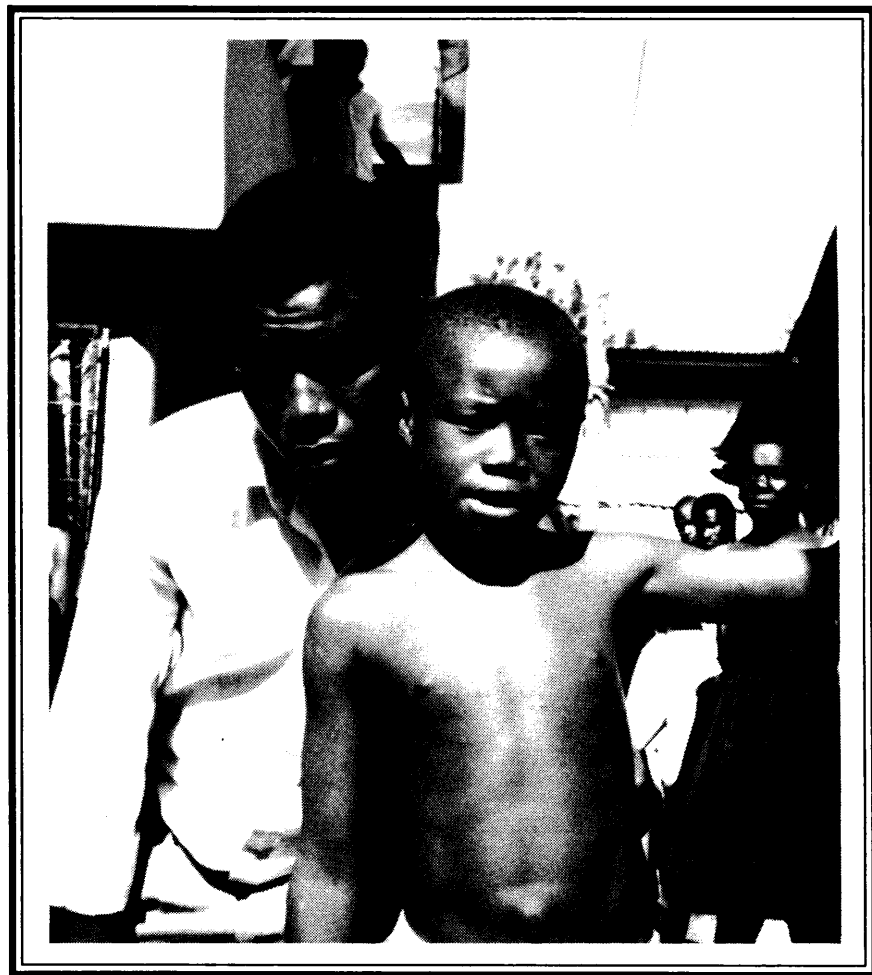
<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 100.

<sup>30</sup> *Id.* at 104.

elimination of restavek would end the restavek child's problems. The typical restavek child's present alternative to urban child labor and exploitation is a life of extreme rural poverty. While the existence of poverty among children and the general public in Haiti does not justify the practice of restavek, it is clear that it will be extremely difficult to stop restavek as long as Haitians in general - and particularly those living in the rural areas - remain as poor as they are now.



## II. CONDITIONS OF RESTAVEK

We need to sensitize all involved to protect those children whose parents, for over a century out of economic necessity, have placed them in domesticity with the hope of offering them a chance -- but what a chance! A chance that three-fourths of the children never get, because they are subjected to terrible treatment that is analogous, with some exceptions, to that inflicted on our ancestors by the colonialists.

Jacques Thesée, former Head of the Social Protection Division of the Institute of Welfare and Social Research (Haiti)<sup>31</sup>

### A. Testimonials

The stories of two restavek children, Marie<sup>32</sup> and Jean, are summarized below. Their accounts are included, before undertaking the legal analysis of restavek that follows, as specific examples of the cumulative effect on restavek children of the loss of the natural family and the exploitation by the employing family.

The household for which Marie worked consisted of a husband and wife, their three children, three other restaveks, and several boarders who, like the Committee's source,<sup>33</sup> were finishing high school in Port-au-Prince while their parents lived elsewhere. Marie, who was about seven years old, came from the countryside, although she had no precise knowledge of where. She had no continuing contact with any of her original family.

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<sup>31</sup> Allocution de Bienvenue par Jacques Thesée, p. 2, 1984 Conference Report.

<sup>32</sup> The children's first names have been changed, but the accounts are otherwise factual.

<sup>33</sup> This account was provided to the Committee by a Haitian woman now living in the United States.

As a restavek, Marie rose at 5:00 a.m. Her first job was to fetch water from a nearby well. After returning to the house balancing the heavy jug on her head, she prepared breakfast and served it to the members of the household, including the boarders. She next walked the five-year-old son of the employing family to school. While both of the employing family's children went to school, none of the restaveks did. Marie's next jobs were to buy food in the markets and run various errands, such as collecting debts owed her employer by various neighbors, who purchased from the employing family's store on credit.

Marie was also responsible for starting and tending the charcoal fire behind the house, sweeping the yard, washing some of the clothes, carrying snacks to the family's children at school, washing the mother's feet at least once a day, washing dishes and cleaning the outside kitchen.

At noon she would bring the five-year-old boy home from school and assist him in changing his clothes. She would then set the table for lunch, assist in the preparation and service of lunch and return the boy to school after lunch. She was then to return to the house to be available for errands until it was time to prepare supper.

Marie was harshly treated by the employing family. The mother regularly beat her with a leather strap if she was thought to be slow to respond to a request or if she was considered disrespectful. While the mother occasionally hit her three children, the four restaveks were much more severely disciplined, and the discipline was designed to create and maintain a subservient attitude. For example, when one of the older restavek girls ran away, she was pursued and found by the mother, and then severely beaten. It was the only time the child tried to run away.

The other restaveks (two girls and a boy) performed similar jobs to Marie's, except the older girls were more involved in the actual cooking and the boy performed rougher, heavier work,

such as cutting wood and cleaning open sewers in the backyard. The boy was also more involved in the family businesses. The boy and one of the restavek girls were siblings.

Rigid distinctions were maintained between the restaveks and the family's children. The restaveks did not go to school, ate leftovers or cornmeal rather than sharing in the family's meals, had ragged clothes and no shoes, slept outside or on the floor rather than in beds, and were not even allowed to bathe in the water they brought to the household. In contrast, the family's children went to school, ate with their parents, were well dressed, slept inside on beds and bathed regularly.

The restaveks performed all the physical labor in the household, at the direction of its various members, including the five-year-old boy. The employing family seemed to view the restaveks as a different species from themselves. Eventually the employing family moved to Montreal, Canada. The four restaveks, by then teenagers, were simply put out onto the street.

The second child, Jean, said he was twelve, but looked much younger.<sup>34</sup> He came from the North, near Cap-Haitien, and thought his parents were living, but had had no contact with them for several years. Two or three years earlier a woman he had never seen before came to his village and chose him to be her restavek child. She took him, by himself, to Port-au-Prince. The woman beat him frequently; he felt scared of and trapped by her.

Eventually the woman "fired" Jean, told him to leave her house and suggested he return to his rural home. He had no means to return home, or even a precise idea as to where his home was. He lived on the streets in Port-au-Prince for a time, eventually befriending a boy about his own age. The boy's mother let him move into her house. He now cares for the family's five

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<sup>34</sup> The delegation interviewed Jean in Port-au-Prince through a Creole interpreter.

children and does not go to school (the family's children go to school.) Jean does, however, have time to play, gets adequate food and is not beaten. He feels that his situation is much better than it was. Jean nevertheless said that he would like to go back to his real family, if he knew how. When asked if he thought his parents would help him if they knew his wish to return, he began to cry.

These accounts of the restavek's work day and general living conditions are typical of those heard from other restavek children and from other Haitians. In such conditions, the child is clearly exploited, her basic needs to develop as a person fundamentally ignored.

#### B. The Restavek Placement

Various international instruments establish the importance of the family as the fundamental unit of society, and the rights of children to remain with their parents. Article 16, Sec. 3 of the Universal Declaration of Human Rights<sup>35</sup> and Article 17(1) of the American Convention on Human Rights<sup>36</sup> state that "(t)he family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Article 7 of the Convention on the Rights of the Child ("Children's Convention")<sup>37</sup> guarantees the child's right, "so far as possible, . . . to

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<sup>35</sup> Universal Declaration of Human Rights *adopted* Dec. 10, 1948, GA res. 217A (III), UN Doc. A/810, at 71 (1948). The Universal Declaration of Human Rights has been repeatedly recognized as a binding enunciation of the basic human rights obligations of all U.N. members.

<sup>36</sup> American Convention on Human Rights, OAS Doc. OEA/Ser.L/V/II.65, doc. 6 (1985), *entered into force* July 18, 1978. Haiti deposited its instrument of accession to the American Convention on Human Rights on Sept. 27, 1977.

<sup>37</sup> Convention on the Rights of the Child *adopted* Nov. 20, 1989, GA res. 44/25, UN Doc. A/44/736, at 5-26 (1989). The former Minister of Social Welfare, Arnault Guerrier, told the Committee in December 1989 that Haiti intended to ratify the Convention. Lt. General Prosper Avril, former President of Haiti, signed the Convention on the Rights of the Child on January 26, 1990. According to the United Nations treaty office, Haiti has not yet submitted its

know and be cared for by his or her parents.”<sup>38</sup> Article 18 states that parents or legal guardians have the primary responsibility for the upbringing of the child and “(t)he best interests of the child will be their basic concern.” Article 18 obligates parties to “render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities” and to “ensure the development of institutions, facilities and services for the care of children.”

Article 21 of the Children’s Convention states that, if a party permits a system of adoption, the best interests of the child must be the paramount consideration. Parties also undertake to ensure that all adoptions are authorized by competent authorities.

In contrast to the provisions of the various international instruments cited above, the *restavek* placement denies the child her fundamental right to be raised by her family, without any competent decision that it is in her best interests to be raised by others. In the typical *restavek* placement it is furthermore impossible for the child to reestablish contact with her parents once she moves to the employing family. Once Haiti has ratified the Convention on the

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instrument of ratification. Furthermore, the 1987 Haitian Constitution clearly gives the authority to approve or reject international treaties to the National Assembly (Art. 98-3(3)); the proper exercise of the ratification power is dependent upon the majority of both houses being present (Art. 102). The President only has the authority to negotiate and sign all international treaties, conventions and agreements and submit them to the National Assembly for ratification (Art. 139). The National Assembly is not currently a functional institution in Haiti and thus not able to ratify the Convention.

The Convention on the Rights of the Child requires that "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation." *Id.*

<sup>38</sup> Article 4 of the Convention on the Rights of the Child requires that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.” *Id.*



Rights of the Child, it will be obligated to take all available measures to enforce the treaty, including assisting rural parents so that they keep and raise their children, and assisting displaced restavek children.

The placement of a restavek child with an employing family can originate in several different ways. A person seeking a restavek child may go to the countryside where he or she has some family or other connections to find, by word of mouth, a family willing to part with a child. More typically, an intermediary for the employing family travels to the countryside, finds parents who will give their children away and brings the children to the city. Some rural families bring children to Port-au-Prince or other cities and place them with urban families, although this method of placement is the least common method. We heard no reports of any government involvement in the placement of the restavek child. There is no evidence of any official coercion encouraging restavek.

Because the restavek placement is informal, there is no determination concerning the suitability of the employing family, how the interests of the restavek child are best served, or the willingness of the child to become a domestic laborer. There is also, in practice, no registry or any kind of official record of restavek placements.<sup>39</sup> Therefore, there is no effective mechanism for the child to find, return to and/or have continued contact with her parents, or for the parents to find the child. A Haitian psychologist who worked at an orphanage stated that most of the girls in the orphanage were former restavek children who had run away or been dismissed from restavek placements. According to the psychologist, the sense of abandonment felt by the girls was severe and most wished to return to their natural families. In almost all instances, however, the girls' information about their home was so scanty that it was impossible to reunite them with

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<sup>39</sup> As discussed below at Section III, existing Haitian regulations do provide for registering restavek children with the Institute for Welfare and Social Research. These regulations, however, are wholly unenforced.

their families. The Committee's experience interviewing restavek children was consistent with this information. None of the children interviewed had any precise knowledge of where they came from: they would simply say, for example, they were from the North or from near a particular provincial city.

According to the 1984 Conference Report, there is usually no blood relationship between the restavek child and the urban family.<sup>40</sup> After the initial restavek placement, the child normally has no further contact with her family of origin. In fact, at the 1984 Conference it was reported that, in a survey of former restavek children at the Centre d'Accueil (Haiti's only state orphanage) 94 percent of the former restavek children at the orphanage had no contact with their families after the restavek placement.<sup>41</sup> In a survey of children working as restaveks in Petionville (an affluent district of Port-au-Prince), 76 percent reported no contact with their families and 14 percent reported one or two visits only.<sup>42</sup> When the Committee posed this question to children, it found that none had further contact with their families in the countryside after coming to Port-au-Prince, although one girl had an adult brother in the city who kept in touch with her.

All Haitians with whom the Committee spoke confirmed that the children are given away, not sold, to the urban families.<sup>43</sup> Quite likely the urban family will pay to transport the child to the city. One source stated that occasionally the urban family will give the rural family a very

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<sup>40</sup> See F. Fontus, *supra* note 10, p. 1.

<sup>41</sup> D. Devesin, *supra* note 12, p. 16.

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

<sup>43</sup> The 1984 Conference Report mentioned one situation in which the children were sold. One contributor stated that children may be given away to satisfy a family's debts. E. Clesca, *supra* note 6, p. 3. No other references to this practice are known.

small amount of money, such as five gourdes (one U.S. dollar at the official exchange rate). The money is given as a gift to the family, not payment for the child per se. Profit to the child's real parents does not seem to be a motivating force -- or feature -- of restavek.

### C. Work Performed by Child Domestics

A number of treaties to which Haiti is a party prohibit forced labor and slavery in all its modern forms. These treaties not only condemn forced labor and slavery but place affirmative obligations upon Haiti to take all steps necessary to end forced labor and slavery.

Haiti has ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery ("Supplemental Convention of Slavery"), thereby agreeing to

take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of certain institutions and practices . . . [including] [a]ny institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Article I(d)(emphasis supplied).<sup>44</sup>

Haiti has also ratified the International Labour Convention (ILO) Convention (No. 29) Concerning Forced Labour.<sup>45</sup> As a party, Haiti has pledged "to suppress the use of forced or compulsory labour in all its forms within the shortest possible period." Article 1(1). Article 4

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<sup>44</sup> 18 U.S.T. 3201, T.I.A.S. No. 6418, 266 U.N.T.S. 3, *entered into force* Apr. 30, 1957.

<sup>45</sup> 39 L.N.T.S. 55 (1930), *entered into force* May 1, 1932.

forbids the Haitian government from permitting “the imposition of forced or compulsory labour for the benefit of private individuals . . . .” Article 2(1) of Convention No. 29 defines “forced or compulsory labour” as “work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Article (2). It is never acceptable to extract forced or compulsory labor from people under the age of 18. Article 11(1).

The American Convention on Human Rights, in Article 6, recognizes the rights of individuals to be free from both slavery and forced or compulsory labor.<sup>46</sup> Haiti as a party must ensure that its citizens enjoy those freedoms and adopt “such legislative or other measures as may be necessary to give effect to those rights or freedoms.”<sup>47</sup>

Article 32 of the Convention on the Rights of the Child confirms the rights of children to protection from economic exploitation. The provision requires ratifying states to take legislative, administrative, social and educational measures to supplement its terms and to set a minimum age for employment, regulate the hours and conditions of employment, and institute penalties for violations.<sup>48</sup>

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<sup>46</sup> American Convention on Human Rights, *supra* note 36.

<sup>47</sup> *Id.* at Art. 2.

<sup>48</sup> The International Covenant on Civil and Political Rights (“ICCPR”), and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) contain similar prohibitions against slavery-like practices (ICCPR Article 8), and exploitation of children (ICESCR Article 10). International Covenant on Civil and Political Rights, Dec. 16, 1966, GA res. 2200A (XXI), 21 UN GAOR, Supp. (No. 16) at 52, UN Doc. A/6316 (1966) *entered into force* Mar. 23, 1976; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, GA res. 2200A (XXI), 21 UN GAOR, Supp. (No. 16) at 49, UN Doc. A/6316 (1966) *entered into force* Jan. 3, 1976. Haiti has not ratified these covenants, but former President Avril announced in December 1988 that Haiti would adhere to them. To date, Haiti has taken no action to sign or ratify these two important covenants.

The common element in these treaties is the prohibition of economic exploitation of children and of forced labor, in any form. Restavek constitutes both a practice similar to slavery under the Supplemental Convention of Slavery and a type of forced labor under the ILO Convention Concerning Forced Labour. As a party to both, and other similar, treaties, Haiti is obligated to suppress restavek as soon as possible by legislative and other measures.<sup>49</sup>

To most families with restaveks, the children are present for one purpose: to perform, for no pay, the domestic work of the employing family. If the family is affluent enough, it may have paid maids who assist the restavek child. The family members, however, are unlikely to assist in performing, as opposed to directing, domestic labor. There is thus a strict division between the serving and the served.

Often the first to rise and the last to go to bed in the household, restaveks spend most of their waking hours working or on call to work at the demand of the adults and the families' natural children.<sup>50</sup> Their work can include washing dishes and clothes, sweeping the house and yard, going to the market, preparing meals, cleaning, tending charcoal fires, and fetching water from wells.

If the employing family has natural children attending school, it often requires the restavek child to accompany and carry the books for the family's children to and from school. At noon,

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<sup>49</sup> Haiti has attempted to regulate specific aspects of the practice of restavek. Haitian Labor Code, Articles 341-355. However, as discussed in Section III of this report, the Haitian government does not enforce these provisions. Even if Haiti were to enforce the existing regulations, however, the Haitian government would not satisfy its obligations under the international treaties referenced in the text. To do so, Haiti must bring about the "complete abolition or abandonment" of any practice similar to slavery and must "suppress the use of forced or compulsory labour." Slavery Convention, *supra* note 44, Art. 1(d); ILO Convention No. 29, *supra* note 45, Art. 1(1).

<sup>50</sup> Some families reportedly have restaveks wait by the door to open it for family members coming in late at night.

the restavek may return to the school with lunch for the family's children. The Committee received a report of one child domestic who routinely followed the natural child into the classroom to wash the child's feet before returning home.

If the employing family has its own business or trade, it may use restaveks in the business. These children, who are not paid for their labor, may sell produce on the street or in the market.

The employing family's interest in the restavek, therefore, appears to be fundamentally exploitative. The family uses the child for her labor with little regard to her basic needs and development. The employing family is able to exploit the restavek's labor because of the inherently forced and coercive nature of the relationship. The restavek is a child, most likely cut off from any assistance from or contact with her family. The restavek child never chose to work for the employing family, but was given away. In the new setting with the employing family, the restavek has no practical choice --- other than to run away --- except to perform the work demanded of her. In addition to profiting from the inherently coercive nature of the relationship, some employing families force compliance with their demands through punishments, such as beatings.



#### D. Physical and Emotional Treatment

The Convention on the Rights of the Child obligates Haiti to protect “the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse,” whether the child is in the care of parents, legal guardians or others. (Article 19) Article 20 affords special protection and assistance by the state to children temporarily or permanently deprived of their families. The Haitian Constitution provides, in Article 19, that the state has “the absolute obligation to guarantee the right to life, health and respect of the human person for all citizens” in conformity with the Universal Declaration of Human Rights. Abuse of some restavek children by employing families implicates Haiti’s obligations under these instruments.

Of restavek children surveyed for the 1984 Conference Report, three-quarters reported that they had been beaten by the employing families.<sup>51</sup> The Committee heard similar reports of widespread corporal punishment, including reports that attempted runaways may be beaten severely. The accounts of physical punishment varied from slapping children with leather straps to deliberately cutting a child with a broken glass bottle. The 1984 Conference Report survey also found that most restaveks who are beaten are beaten routinely.<sup>52</sup> Haitian interviewees stressed that the beatings are sparked by perceived deficiencies in the restavek’s work or attitude toward work, not as a component of child rearing.

The physical mistreatment of restaveks who are girls is not limited to beatings. Repeated and credible, although not first hand, reports were given to the Committee that some girls are sexually abused by fathers and sons of the employing families. One source who had counseled

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<sup>51</sup> D. Devesin, *supra* note 12, p. 20.

<sup>52</sup> *Id.*

former restaveks reported that a family had employed a series of girls as restaveks specifically to provide sex for the family's sons. Although the 1984 Conference Report did not provide data on the incidence of sexual abuse, its occurrence was referenced by two contributors.<sup>53</sup> One contributor described the vulnerability of restavek girls as follows:

Exploited, ridiculed, lost in the big city, girls who are totally cut off from their parents are the most victimized [by the practice of restavek.] Without any options, they are led to prostitution. After being abused by the sons of the house and then its master, the family throws them out. To survive, they become prostitutes and later they become abandoned single mothers.<sup>54</sup>

Besides physical mistreatment, restaveks are also vulnerable to psychological and emotional trauma. Haitian psychologists and sociologists who contributed to the 1984 Conference Report stressed the emotional toll of restavek. Many restaveks feel they belong nowhere. They have been abandoned by their own families, but they are not part of the employing families.<sup>55</sup> They are made to feel inferior and subservient. The employing families have no long-term obligations to care for the restavek children. Haitian psychologists who have worked with restaveks describe resulting depression, passivity, sleep and eating disorders, chronic fear and anxiety.<sup>56</sup>

One of the most striking attributes of the restavek's condition is that typically there are extreme differences between how the restavek is treated and how the employing family's children are treated. It is not just that the restavek may lack certain basic economic and social rights,

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<sup>53</sup> See A.M. Dolce, *supra* note 16, p. 4; Luce, p. 5.

<sup>54</sup> L. DeVastey, L'Enfant en Domesticité et la Santé, p. 5, 1984 Conference Report.

<sup>55</sup> K. Derenencourt, Le petit enfant domestique: cet inconnu, p. 2, 1984 Conference Report.

<sup>56</sup> See E. Clesca, *supra* note 6, p. 6; C. Douyon, Approche psychologique de l'Enfant en Domesticité, pp. 3-6, 1984 Conference Report.



such as adequate food or schooling, but that she may be living with children who receive those benefits she lacks. The restavek is typically discriminated against by the employing family. The sections that immediately follow describe various aspects of the discrimination.

#### E. Education

Article 27 of the Convention on the Rights of the Child recognizes a child's right to education and mandates free primary education. The Haitian Constitution guarantees the right to education (Article 32) and requires schooling to be free of charge, with the state assuming the costs of classroom facilities and teaching materials (Articles 32-1 and 32-30).

As discussed earlier in this report, educational opportunities in Haiti generally are limited. For the restavek child, education is even more restricted. A governmental statistician at the 1984 Conference estimated that 75 percent to 90 percent of child domestics are illiterate.<sup>57</sup> This compares to a 62.5 percent adult illiteracy rate in Haiti in 1985.<sup>58</sup> The 1984 Conference Report estimated that in 1982 thirteen percent of restaveks attended school overall,<sup>59</sup> and less than four percent reached secondary school.<sup>60</sup> In contrast, in 1987 twenty-nine percent of Haiti's urban children generally attended secondary school. This contrast supports the statement of Haiti's former Minister of Social Welfare that the rural family's hope that by sending a child to the city she will be educated is not generally realized.<sup>61</sup>

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<sup>57</sup> R. Dorelien, *supra* note 5, pp. 27-29.

<sup>58</sup> UNICEF, *supra* note 24, p. 100.

<sup>59</sup> R. Dorelien, *supra* note 5, p. 20.

<sup>60</sup> *Id.* at 27-29.

<sup>61</sup> Minnesota Lawyers Committee interview with M. Arnault Guerrier, Port-au-Prince, Dec. 4, 1989.

Education provided to restaveks by the employing families tends to be minimal and subordinate to the work schedule imposed for domestic labor. Yet, based on the anecdotal information gathered by the Committee, it appears that employing families are generally able to educate their own children.<sup>62</sup> The employing families do not feel obligated to educate restavek children either in return for the children's free labor or because the families feel child-rearing responsibilities for the restaveks.<sup>63</sup> In interviews of restaveks, the Committee was repeatedly told that the employing families' children went to school, while the restaveks did not.

#### F. Food

The right to be free from hunger is set forth in, or can be derived from, a number of international conventions and declarations.<sup>64</sup> Although Haiti's 1987 Constitution recognizes the right of its citizens to food, Haiti clearly does not, and probably cannot, guarantee this right presently. Malnutrition among Haitian children is widespread.

The Committee does not know of any statistics comparing the nutritional sufficiency of the

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<sup>62</sup> In practice in Haiti, notwithstanding Article 32 of the Haitian Constitution, education is not free. The family must buy the child's books and, in most cases, a school uniform - at a cost of approximately \$20 a month. Another practical obstacle for restavek children is that schools require birth certificates as a prerequisite to enrollment. Restaveks are unlikely to bring their birth certificate with them to the cities, even if their families obtained certificates at their birth.

<sup>63</sup> In fact, the 1984 Conference Report found an inverse relationship between the education level of the head of the employing household and that provided to the restavek child by the employing family. R. Dorelien, *supra* note 5, p. 27.

<sup>64</sup> The Convention on the Rights of the Child requires parties to take appropriate measures to diminish infant and child mortality and to combat disease and malnutrition. Article 24. The International Covenant on Economic, Social and Cultural Rights affirms the right to adequate food and to be free from hunger. Article 11. The United Nations Human Rights Committee has commented that the right to life, enunciated in Article 6 of the International Covenant on Civil and Political Rights should be read broadly, so as to suggest "it would be desirable for states parties to place responsibilities on parties to take all possible measures . . . to adopt measures to eliminate malnutrition . . ." UN Doc. CCPR/SR. 222 para. 59 (1980).

diets of restavek children either to Haitian children generally or to the diets of the children of the employing families. The 1984 Conference Report did, however, include one startling figure: when the height and weight of fifteen year-old restavek children and non-restavek children living in the same neighborhood were compared, the restavek children were on average four centimeters shorter and 40 pounds lighter.<sup>65</sup>

The statements in the 1984 Conference Report and the Committee's interviews support the proposition that in many instances the restavek child eats an inferior diet to that enjoyed by the employing family. The restavek child typically does not eat with the family, although she shops for and prepares the meals. In many instances, she eats either the family's leftovers or different food of inferior quality -- particularly in protein content. One restavek child mentioned that he ate cornmeal, when the family ate meat. Others reported that while the employing families ate three meals a day, they ate at most two. This anecdotal data suggests that many restaveks are not provided with either adequate or sufficiently nutritious food, or comparable diets to those of employing families.

#### G. Health Care

Article 23 of the Convention on the Rights of the Child provides that "the State has the obligation to ensure for all citizens . . . appropriate means to ensure the protection, maintenance and restoration of their health by establishing hospitals, health centers and dispensaries." Article 24 further recognizes the right of the child to "the highest attainable standard of health." This right requires the state "[t]o ensure the provision of necessary medical assistance and health care to all children" and to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children." The right to adequate

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<sup>65</sup> E. Clesca, *supra* note 6, p. 6.

health care is also guaranteed in Article 19 of the Haitian Constitution.

A survey of access to health care among restavek children reported that most received no medical care when sick.<sup>66</sup> The Committee received similar reports from child domestics that they had never seen a doctor, or received any form of medical care, in their lives. While to our knowledge no one has surveyed the specific rates of various diseases among restavek children, the conditions in which restavek children live and their general lack of medical care could be expected to increase the likelihood that the children will suffer serious diseases.

#### H. Rest and Leisure

Article 31 of the Convention on the Rights of the Child recognizes the right of the child to rest and leisure. This right not only encompasses the right to rest, but also “to engage in play and recreational activities appropriate to the age of the child . . . .”

Restaveks are often the first in the household to rise in the morning and the last to go to bed at night. A survey of child domestics determined that the majority rose at 5:00 A.M. or earlier and the majority did not go to bed until 10:00 P.M. or later.<sup>67</sup>

When restaveks do go to bed they often sleep on the floor. The same survey reported that less than a quarter of the children slept on beds.<sup>68</sup> Some child domestics sleep outside, often on cardboard cartons. The different treatment of child domestics from the children of the family can be seen here as well. Several child domestics reported that they slept on the floor while the

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<sup>66</sup> D. Devesin, *supra* note 12, p. 18.

<sup>67</sup> D. Devesin, *supra* note 12, p. 18.

<sup>68</sup> *Id.* at 18-19.

families' own children slept in beds.

Almost half of the restaveks surveyed by one contributor to the 1984 Conference Report stated that they did not have any friends. In almost all of these cases, the reason given was that the families with which they lived did not permit it. In all but a small percentage of the remaining cases, other children did not want to associate with child domestics.<sup>69</sup> Children who work as domestics are clearly stigmatized by their status.



#### I. Life After Restavek

More seriously, . . . [the child domestic] is zombified. He has lost . . . the right to speak. His personality is stifled, he becomes passive. Tomorrow he will grow into the great mass of the marginalized of our society.

Rev. Fritz Fontus, contributor to 1984 Conference Report.<sup>70</sup>

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<sup>69</sup> D. Devesin, *supra* note 12, pp. 19-20.

<sup>70</sup> F. Fontus, *supra* note 10, p. 7.

A restavek placement does not last indefinitely. If the employing family is dissatisfied with a restavek child, the family may give the child to another family for whom the child is expected to work as a restavek. The family may also simply put the child out on the street. The Committee heard first-hand reports that if a restavek runs away from the employing family, sometimes the family will search out the child and force her to return. In other instances, the family will not look for the child, as a restavek child is readily replaced.

Run-away or abandoned restaveks are recognized as a significant source of Haiti's street children.<sup>71</sup> As noted above, it is unlikely that a runaway restavek would be able to find her parents, even with adult assistance. Some former restaveks find their way to private orphanages or, if they are in Port-au-Prince, the Centre d'Accueil, Haiti's sole state-run orphanage. There is, however, no systematic or adequate governmental or private mechanism for assisting former restaveks. One of the most distressing aspects of our interviews was hearing accounts of the difficulties and dislocation faced by restaveks who, for whatever reason, left their first restavek placement.

Sometimes a restavek stays with an employing family through her adolescence. If the restavek continues to live with the family as an adult, at some point she will become a paid employee. If the restavek leaves the employing family, she is unlikely to return to the countryside. Instead, she will find what employment, if any, her training, education and the Haitian economy permit. The restavek system, in many cases, merely turns rural poverty into urban poverty. Furthermore, the Committee was told that former restavek status stigmatizes the adult.

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<sup>71</sup> A knowledgeable Haitian stated that most girls living as street children in Port-au-Prince are former restaveks. A contributor to the 1984 Conference Report wrote that former restaveks make up a large percentage of both prostitutes and prisoners in Port-au-Prince. E. Clesca, *supra* note 6, p. 6.

The net result of child domestic labor was summarized in the 1984 Conference Report as follows: "Although the fruit of underdevelopment, child [domestic] labor is also its cause. A product of the system, it contributes to its perpetuation."<sup>72</sup>

## LWA POU TIMOUN KI RETE AK MOUN



MINISTÈRE DES AFFAIRES SOCIALES  
INSTITUT DU BIEN-ÊTRE SOCIAL ET DE RECHERCHES

*Government pamphlet describing child labor laws in Creole*

<sup>72</sup> E. Clesca, *supra* note 6, p. 7, citing Exploitation of Child Labor: Final report submitted by Abdelwahab Bouhdiba, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/479/Rev.1 (1982).





### III. HAITIAN LAWS REGULATING RESTAVEK

Articles 341 through 355 of the Haitian Labor Code contain provisions regulating child domestic labor. These provisions, among other things, prohibit the employment of children under the age of twelve; require employing families to pay a salary to children fifteen years old or older; obligate employing families to educate their child domestics and to refrain from giving them work during school hours; require the employing families to take child domestics to a health center at least twice a year; obligate employing families who discharge child domestics to notify both the children's own families and the Institut du Bien-Etre; and authorize the Institut du Bien-Etre to remove child domestics from disadvantageous placements.<sup>73</sup>

As the findings in this report demonstrate, these regulations have not mitigated the harsh aspects of restavek. Despite regulations to the contrary, children under the age of twelve work as domestic servants; few children of any age receive payment for their work; children labor for their employing families in place of attending school; restavek children still pass through childhood without seeing a doctor; discharged children are forced to fend for themselves on the streets; and few, if any, child domestics are removed from abusive situations and are returned to their natural families. In short, many, if not most, restavek children live and work in conditions that fail to meet the standards embodied in the Labor Code, to the detriment of their physical, emotional, and intellectual development.

The Committee's findings about the ineffectiveness of the regulations were not disputed by any Haitians to whom we spoke. Many of these individuals, despite their knowledge about restavek, either believed that the practice was effectively unregulated or were unaware of the existence of the relevant Labor Code Provisions.

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<sup>73</sup> The full text of these provisions is set forth in Appendix B.

The Labor Code regulations are not only problematic because they have not been publicized or applied. They rest on a fundamentally flawed premise: that the practice of restavek should be regulated, instead of abolished.

#### **IV. RECOMMENDATIONS**

The practice of restavek violates international prohibitions against practices similar to slavery, forced labor, and the exploitation of children. In order to eradicate the practice of restavek, the Minnesota Lawyers International Human Rights Committee recommends the following:

- \* The Haitian government within the shortest possible period should take all steps necessary to bring about the complete abolition of the practice.
- \* The government of Haiti should adopt legislation making it illegal to use children as domestic servants. Removal of children from their own families should only be permitted in legitimate cases of adoption, keeping the interests of the children paramount, or upon a determination by a court of law or agency of the Haitian government that the interests of a child would be better served if the child is placed in foster care or under the care of a social service agency.
- \* To ensure that such legislation is obeyed, the government should implement an education campaign, denouncing the practice of restavek to both its rural and urban populations. The government should provide the Institute of Welfare and Social Research with adequate funding and support to remove present restavek children from employing families and return them to their own families. If it cannot locate a particular child's own family, all necessary steps should be taken to place the child into an environment in which the child's interests are paramount.
- \* The Haitian government should also devote special attention to street children, many of whom are former restaveks. Haiti needs more orphanages to care for these and other dislocated children, as well as a system to attempt to reunify children with their families.
- \* While the Committee recognizes the limited resources available to the Haitian government, the government should adopt programs that address two of the primary causes of restavek: rural poverty and underdevelopment. Programs that lead to greater self-sufficiency in food production reduce the pressure on poorer, rural families to give their children away. Similarly, more educational opportunities in the rural areas will reduce the likelihood a family will put a child into a restavek setting out of the hope -- usually false -- that the employing family will educate the child.

- \* The government should act on former promises to adhere to international human rights treaties. In particular, having signed the Convention on the Rights of the Child, the Haitian government should complete the process by ratifying the Convention. Additionally, the President of Haiti should sign, and the National Assembly ratify, the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights.
- \* The International Labour Organization, the Organization of American States, and the United Nations Working Group on Contemporary Forms of Slavery are the international organizations that implement conventions forbidding the practice of restavek. They should take appropriate measures to ensure compliance with international law through abolition of restavek.
- \* Donors of foreign aid to Haiti should monitor Haiti's progress in abolishing restavek and should make programs and funding targeted at children a high priority. In particular, the international community should support Haitian and international programs that will increase the delivery of social services to children, provide greater educational opportunities to children, and promote rural development in a way that does not undermine Haitian agricultural self-sufficiency.

## **APPENDIX A**

### **CONVENTION ON THE RIGHTS OF THE CHILD**

#### **PART I**

##### **Article 1**

For the purposes of the present Convention a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

##### **Article 2**

1. The States Parties to the present Convention shall respect and ensure the rights set forth in this Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

##### **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision.

#### Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures, for the implementation of the rights recognized in this Convention. In regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

#### Article 5

States Parties shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community as provided for by the local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

#### Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

#### Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

#### Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

## Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

## Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of other and are consistent with the other rights recognized in the present Convention.

## Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

## Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

## Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) for respect of the rights or reputations of others; or
  - (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.

## Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.



## Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

## Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

## Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being bearing in mind the provisions of articles 13 and 18.

## Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents

or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.

#### Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### Article 20

1. 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.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care should include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

#### Article 21

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent

and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

(e) promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

## Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

## Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is

appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote in the spirit of international co-operation the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) to diminish infant and child mortality,

(b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care,

(c) to combat disease and malnutrition including within the framework of primary health care, through inter alia the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution,

(d) to ensure appropriate pre- and post-natal health care for mothers,

(e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of, basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents,

(f) to develop preventive health care, guidance for parents, and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.

#### Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

#### Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

#### Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial

responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements as well as the making of other appropriate arrangements.

#### Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) make primary education compulsory and available free to all;

(b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) make higher education accessible to all on the basis of capacity by every appropriate means;

(d) make educational and vocational information and guidance available and accessible to all children;

(e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

#### Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) the development of respect for the natural environment.

2. No part of this article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

### Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

### Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) provide for a minimum age or minimum ages for admissions to employment;
- (b) provide for appropriate regulation of the hours and conditions of employment;
- (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.

### Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

### Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.

### Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.

### Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

### Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;



(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

### Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

### Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child.

### Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the

child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's re-integration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) to be presumed innocent until proven guilty according to law;

(ii) to be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) to have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

#### Article 41

Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) the law of a State Party; or
- (b) international law in force for that State.



## **APPENDIX B**

### **HAITIAN LABOR CODE**

#### **Chapter 9 - Children in Service**

##### **Article 341**

No child under the age of twelve may be entrusted to a family in order to be employed in domestic work. He shall not be employed in domestic work beyond his strength.

##### **Article 342**

In order to have one or more children under one's keeping or in one's service, it is necessary to fulfill the following conditions:

- a) be at least 25 years old;
- b) be healthy and of good moral character;
- c) have sufficient revenue to fulfill the obligations outlined in the present chapter;
- d) not have contracted a contagious disease.

##### **Article 343**

Any person, before taking a child into his service, shall obtain a permit to be delivered without charge by the Institute of Welfare and Social Research which is represented in each regional office of the Affaires Sociales . . . .

##### **Article 344**

This permit will contain the last names, first names, age, place of birth of the child; the last names, first names, address of the person taking the child into his service and all other information judged to be necessary; it must be reviewed each year until the minor reaches the age of 15. At the time of this renewal the child will be given a physical, moral and intellectual examination by the competent department of the Institute of Welfare and Social Research . .

##### **Article 345**

Any person who has one or more children in his service contracts the obligation with them to treat them as a member of the family should be treated ("en bon père de famille") to provide them a decent lodging, suitable clothing, healthy and adequate food, to obligatorily enroll them

at a scholastic learning center or professional learning center, to permit them to regularly attend the courses given by this center, and to provide them with healthy distractions.

#### Article 346

Children in service should not be confined to housework which may be injurious in some way to their health, their normal development, and which may be detrimental to their diligence in school.

#### Article 347

It is forbidden to make children work

- a) during class time which is fixed by the regulation of the school where they are regularly enrolled;
- b) Sunday afternoons and the afternoons of legal holidays;
- c) during the night.

Furthermore, these children should enjoy a daily uninterrupted rest of 10 hours.

#### Article 348

Anyone having one or more children in his service will be obligated each six months to bring the child to a health center or dispensary for a medical exam . . .

#### Article 349

It is forbidden to inflict upon children in service moral tortures or corporal chastisement under the pretext of punishment.

When it shall be determined that anyone who has been entrusted with a child in service has violated this prohibition by inflicting wounds or committing any other act of violence on the physical person of this child, an official report will be made by the competent division of the Institute of Welfare and Social Research which will be sent to the Tribunal de Travail who can impose a fine on the offender of 1000 to 3000 gourdes on behalf of the child. The damages will be deposited with the responsible parental authority.

#### Article 350

From the age of 15 the child in service will be considered as a paid domestic servant and will receive a salary equivalent to paid domestic servants working under the same conditions.

### Article 351

Whoever wants to discharge a child from his service must make a declaration to the Institute of Welfare and Social Research and advise the child's parents of his intention.

The child will be, at the expense of the employer, returned to his family. The formalities outlined in the above paragraph should be also completed when the person responsible for the child changes domicile.

### Article 352

No child in service can be placed by one employer at the home of another employer without the authorization of the Institute of Welfare and Social Research which is granted pending the consent of his parents.

### Article 353

When, because of vagabondage or for another reason, a child in service secretly abandons the home of the person responsible, such person must report the fact to the police authorities and to the Director's Office of the Institute of Welfare and Social Research.

### Article 354

The Director's Office of the Institute of Welfare and Social Research can ex-officio or following a complaint or a report, of which the origin will not be revealed, visit through its social workers the houses where children in service are found in order to investigate their living conditions.

If it is discovered that the placement is disadvantageous for the children, it will be decided according to the circumstances to return them to their family or, with the consent of their parents to place them with another family or in a home for children or in an institution of social assistance.

### Article 355

All infractions of the requirements of the articles of this chapter will be subject to a fine or 1000 to 3000 gourdes, depending on the gravity of the case, such fine to be pronounced by the Tribunal de Travail at the request of the Director's Office of the Institute of Welfare and Social Research. The same punishment will be incurred by an individual who hides in his house or in another place a child who has not been entrusted to him.

