

Republic of Haiti

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Review of Haiti's Report under the International Covenant on Civil and Political Rights

The Plight of Restavèk (Child Domestic Servants)

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I. EXECUTIVE SUMMARY

1. This report highlights the plight of restavèk children, child domestic servants, in Haiti. The report suggests that despite the Government of Haiti's efforts to criminalize the practice of restavèk, the poor enforcement of legislation, lack of clarity in the Labor Code, and insufficient economic and cultural interventions are some of the factors that have contributed to the continuance of the practice, in violation of articles 1, 3, 7, 8, 24, and 26 of the International Covenant on Civil and Political Rights (ICCPR), other international instruments, and Haitian law. Part I describes the abusive practice of restavèk and how economic and political conditions perpetuate it. Part II evaluates the Haitian and international laws that prohibit restavèk practice and the issues associated with lack of enforcement of such laws. Part III lists necessary actions that must be taken to address and eradicate the practice of restavèk.

II. BACKGROUND ON THE RESTAVEK PRACTICE

2. Haiti has been ranked second on a list of 162 countries with modern prevalence of slavery.¹ While the statistics vary widely, an estimated 300,000–500,000 Haitian children are domestic servants, which in many cases amounts to exploitation and modern slavery.² The word restavèk comes from the Creole and French meaning “to stay with.”³ The term is given to children who come from poor, usually rural families that are sent to live and work as domestic servants in homes without any compensation.⁴ In principle, placement of a restavèk involves a parent turning over childrearing responsibility to another household in exchange for the child's unpaid domestic service. The traditional expectation is that the “caretaker” household will cover the cost of sending the restavèk child to school.⁵ The term is widely used in Haiti and has a significant negative connotation, including that such children are dependent and servile.⁶ Many restavèk children are exploited and this has a lasting effect on their education, health, mental wellbeing and overall development.

A. Restavèk Placement and Conditions

3. The restavèk system originally began with poor families sending their children to work in houses of wealthier, urban families, often relatives who had access to social services and education.⁷ The sending families hope that their child will be treated properly and given some level of education in return for domestic service.⁸ Yet, children frequently serve as unpaid domestic workers for those in poor, urban neighborhoods. Though children are placed in households of greater wealth than the biological family, the transition is more appropriately noted as “poor” to “less poor” than “poor” to “wealthy.”⁹

4. Traditionally restavèk placement has been a direct arrangement between the biological family and relatives to the host family. Either relationships of kinship (including ties created through marriage or god-parenthood), or friendships have initiated the connection between the families. The path to locate a receiver may also come through colleagues, acquaintances or market place vendors. A more recent trend has led to “recruitment” via a middle man or *koutye* which means “intermediary” or “promoter.”

5. Another facet of the practice that has changed over time is the placement of children due to the death of a family member. According to a 2004 study, a majority of restavèk placements occurred within one year of the death of another household member, usually a parent.¹⁰ Therefore, this practice is propelled by the lack of solutions for a growing number of orphans. With such sweeping poverty and little access to healthcare, death rates of adults may correlate with the number of restavèks.¹¹ This was an issue for children after the 2010 earthquake, in which many children were left without either parent.¹² Moreover, in the effort to find the nearest emergency shelter and medical care, families were separated without any record. The orphaned and the lost children became easy prey for traffickers.

6. For those children sent to be restavèks for the sake of obtaining an education, reality hits when they realize how much work they are expected to complete within the home. A typical day for restavèks may include ten to fourteen hours of house work with no compensation.¹³ They rise before the host family, and sleep, sometimes outdoors, after the family goes to bed. They perform household chores including cooking, washing and cleaning. They also may run errands and walk the host parents' children to and from school.

7. Restavèks are most often found in middle to lower class homes as well as the poorest slums of Port-au-Prince, where the lack of public services and infrastructure creates the necessity for someone to fetch water each day and do other arduous chores. Families in need of such services rely on free child labor because they cannot afford to pay for domestic help. A survey conducted by the Pan-American Development Foundation and United States Aid for International Development (USAID) found that Cité Soleil, the largest slum in Port-au-Prince, held the highest percentage of restavèk children with 40 percent of all children surveyed there admitting they were restavèks.¹⁴ This is compared to the 16 percent of all Haitian children who self-identified as restavèks.

8. In addition to these laborious conditions, many of these children do not receive proper care. They are often physically, emotionally, and sexually abused by their host parents. They are often malnourished when compared to the average Haitian child. In one study, the average fifteen year-old restavèk stood four centimeters shorter and weighed twenty kilograms less.¹⁵ A former restavèk recounted her traumatic experience when she was sent to her godmother's home to live. She was never given any affection or schooling, and when she did not do the housework properly she was beaten. Stunted child development is another big issue for restavèks. A child's mind develops imagination, personal dreams and goals. Without time to play, a restavèk child's cognitive development often falls short of expected growth.

9. Both boy and girl restavèks are vulnerable to this emotional, physical and sexual abuse as they are regularly abused by male host family members. Approximately two-thirds of restavèks are girls.¹⁶ They are nicknamed "la pou sa" meaning "there for that" referring to their service to the male figurehead as a sexual appeaser.¹⁷

B. Cultural And Economic Causes

10. In assessing Haitian legal protections on the practice of restavèk, it is useful to consider socio-economic and cultural causes of the practice. Former President Jean-Bertrand Aristide

suggested that the practice is “so ingrained in Haiti that too many people do not even know they are breaking the law.”¹⁸ Haiti’s unique history, in which widespread practices of slavery and foreign exploitation combined with political and financial instability, has led to the continued economic vulnerability of Haitian citizens. Haiti’s economic roots can be traced to colonization, agriculture, and chattel slavery. Haiti liberated itself from slavery in 1793¹⁹, and declared independence from France in 1804.²⁰ The United States occupied Haiti from 1915 to 1934. The legacy of slavery and foreign influence has prevented Haiti from achieving economic freedom and stability.

11. Haiti’s more recent history of massive debt to international financial institutions, failed international intervention, and thirty years of dictatorship (1957–1986) has contributed to widespread poverty. Haitian people suffer from the worst living standards in the Western Hemisphere and are systematically deprived of basic needs in the spheres of nutrition, shelter, medical care, employment, education and access to justice.²¹ Sixty-one percent of the population lives below the international poverty line of \$1.25 per day, and 77 percent lives below \$2.00 a day.²² These statistics rank Haiti among the poorest countries in the world by several indexes.²³ The unemployment rate is 60 percent.²⁴ Countrywide, hunger and malnutrition are considered among the most pressing problems; 44 percent of the population suffers from malnutrition.²⁵ Conditions of life are generally more difficult for rural residents in Haiti, who make up 7 of the 10 million inhabitants, where even fewer services are available.

12. Given the widespread poverty, and without a stable government to provide social services, Haitians have created their own system of survival by way of *restavèk*. Parents who cannot afford to feed their children often feel they have no choice other than to send their children as a *restavèk* to a wealthier host family. The factors of large family size, unemployment, classism and inadequate maternal health also all perpetuate the acceptance of the *restavèk* system because Haitians see no other alternative.²⁶

13. After generations of practice, Haitian culture further preserves *restavèks* by acknowledging a clear distinction between one’s own child and the child of another. This ideology is exemplified in a Creole proverb “*Lè w’ap benyen pitit moun, lave yon bò, kite yon bò,*” translated as “when you bathe someone else’s child, wash one side, leave the other side unwashed.”²⁷ Due to this perception, many host families do not treat them as their own children. They rationalize the practice of *restavèk* as akin to saving a life because they assume the children would have lived on the streets without food or shelter if not for their providing them the opportunity to serve. However, what they are able to provide the *restavèk* is often quite meager due to the widespread poverty. In fact, a study found that eleven percent of host families themselves send their children into *restavèk* placement.²⁸

III. LAWS PROHIBITING THE PRACTICE OF RESTAVÈK

14. Although Haitian culture approves the practice of *restavèk*, Haitian law condemns it by establishing protections for children and directly prohibiting placement of children into *restavèk* service. Article 19 of the Haitian Constitution provides that: “The State has the absolute obligation to guarantee the right to life, health, and respect of the person for all citizens without distinction in conformity with the Universal Declaration of Human Rights (UDHR).”²⁹ The

rights set out in the UDHR include: the right to decent housing, food and social security³⁰; the right to primary education³¹; the right to choose one's employment with fair wages³²; the right to individual liberty³³ and the right to life, health and respect of the human person.³⁴

15. Children in Haiti are guaranteed all of the rights in the ICCPR. Under the Haitian Constitution, international treaties, once ratified, become a part of the legislation of Haiti and abrogate any pre-existing, conflicting laws.³⁵ Haiti acceded to the ICCPR on February 6, 1991, and submitted its first report on November 29, 2012.³⁶ ICCPR Article 8 prohibits slavery, servitude, and "forced or compulsory labour,"³⁷ and article 7 prohibits cruel, inhumane or degrading treatment of *restavèk* children.

16. Under the Covenant, the Government of Haiti is also required to take measures to ensure that children have the right to self-determination (Article 1), to equal protection under the law (Article 26), to be free from discrimination as children and to be provided with protective measures (Article 24), and that boys and girls have equal rights (Article 3).

17. The Committee on the Rights of the Child expressed concern in its 2003 report "at the disparities in the enjoyment of rights experienced by children belonging to the most vulnerable groups, such as girls, *restavek*, children from poor families, street children, children with disabilities and children living in rural areas."³⁸ The Committee recommended that the government of Haiti "ensure with legislation" that all children enjoy their rights without discrimination and prioritize vulnerable groups like *restavèk*.³⁹ The Committee also recommended education and training campaigns to sensitize law enforcement, parents, teachers and other professionals working with children of the harm caused by discrimination, corporal punishment and sexual abuse.⁴⁰ Given the continued vulnerability and widespread abuse suffered by *restavèks*, continued implementation of these recommendations by the Haitian government is highly recommended.

18. The Haitian government passed an act in June 2003 that outlawed the placement of children into *restavèk* service and "[a]ll Forms of Abuse, Violence, Abusive or Degrading Treatment Against Children."⁴¹ This act allocates jurisdiction to the Ministry of Social Affairs for the investigation of abuses to child domestic servants.⁴² However, it fails to outline any specific punishments and only generally alludes to the possibility of judicial action.⁴³ Likewise, Article 340 of the Haitian Labor Code provides for the levying of a fine of 3,000–5,000 gourdes against any employer who employs a child under 15 or a child 15–18 without a work permit, but Article 340 is rarely enforced.⁴⁴ The Committee on the Rights of the Child was "deeply concerned" at the "high number of under-age children involved in labour who are working long hours, which has a negative effect on their development and school attendance," and recommended that the government take all necessary measures to prevent and end under-age employment, including investigating cases and punishing perpetrators.⁴⁵

19. The Haitian Penal Code also protects *restavèks* from being placed in homes in which they endure physical, sexual and emotional abuse. Abandonment and neglect of children under five years of age is punishable by up to two years imprisonment.⁴⁶ The penal code, however, does not specify a punishment for child kidnapping or for abandonment and neglect of children over five years old. The sexual abuse that occurs between the male heads of the host household and

restavèks (often the females) is also prohibited. The Penal Code defines crimes of a sexual nature, including rape, sexual assault, and attempted sex crimes. Penalty for crimes of a sexual nature is ten years hard labor, or 15 years hard labor if the victim is under the age of 15.⁴⁷

20. In 2014, Haiti passed long-awaited anti-trafficking legislation modeled on the Palermo Protocol,⁴⁸ which commits to establishing a National Counter-Trafficking Committee. The Committee will act as the guarantor of the law's application and ensure institutional coordination in all programs aiming to protect victims of trafficking and prosecute traffickers.⁴⁹ The new broad definition of trafficking can be interpreted to further criminalize the restavèk practice, but given the economic causes of the phenomenon, it is unclear how the law will be enforced and whether it will improve the situation for restavèk children.

21. Laws are only as powerful as a government's ability to enforce them. While Haitian law outlaws the practice of restavèk, enforcement is almost non-existent. Haiti's weak justice system stems in part from a lack of political will to oversee law enforcement procedures. Poor women and children are particularly marginalized by the limited access to the justice system due to deep-rooted gender discrimination and the added economic disenfranchisement they face. The result is that the administrators of justice at all levels of the judiciary do not consider incidents of violence against women and children as a priority, and do not take these claims seriously.⁵⁰ The Committee on the Rights of the Child recommended that the Haitian government investigate cases of ill-treatment of children by law enforcement officers and ensure that alleged offenders are punished.⁵¹

22. At the same time, given the socio-cultural and economic nature of the practice, enforcement is tricky. ICCPR General Comments 3 and 4 emphasize the need for the government to go beyond enacting legislation in order to fulfill its ICCPR obligations.⁵² More specifically, General Comment No. 17 on ICCPR Article 24 indicates that a State Party to the Covenant may take "economic, social, and cultural" measures to ensure that individuals are able to fully enjoy their rights. Not only is the government charged with protecting children, but also with supporting families in "creat[ing] conditions to promote the harmonious development of the child's personality and [their] enjoyment of the rights recognized in the Covenant."⁵³

23. Taking into account the Haitian government's limitations, several organizations have begun to addressing restavèk issues through rehabilitation programs. Yet, most organizations are only able to create "pockets of change," but do not have the resources to solve the restavèk problem on a national scale.⁵⁴

IV. RECOMMENDATIONS

1. The Government of Haiti in collaboration with its international donors who are currently promoting child protection methodology across a range of programs, should take affirmative steps to improve Government of Haiti's capacity to enforce Haitian law against restavèks. Such measures should include:

- a. Investigating and pursuing accountability in instances of abuse, mistreatment, or neglect of restavèk children.

- b. Strengthening the institutions of Ministry of Social Affairs' Institute for Social Well Being and Research (IBESR), the Brigade for the Protection of Minors (BPM) and the Ombudsman Office (*Office de la Protection du Citoyen, OPC*) through provision of sustained and long term finance, additional human resources, training and expert technical support so as to ensure that international child protection standards are incorporated into their methodologies, so that they can meet the services and referral needs of affected children and their families, so that they can address their institutional weaknesses in addressing gender gaps, and disparities, gender-based violence as a specific problem, and so as to ensure that they have sufficient capacity to implement and monitor their programmes at a national level.
 - c. Adopting new training methods to teach Haitian law enforcement (police, prosecutors and judges) about restavèk issues and how to respond to victims of violence.
 - d. Increasing resources to move restavèks children home or quality long-term care.
 - e. Resourcing and prioritizing family reunification of former restavèk when appropriate or moving children into quality long-term care.
2. The Government of Haiti should take affirmative steps to develop a plan of action, in consultation with the appropriate civil society organizations, to address systemic poverty that perpetuates the need for families to send their children away for a better life. Strategies for such a plan should include:
- a. A national public school system that makes primary and secondary education mandatory and accessible to all children in both urban and rural areas.
 - b. Creation of a public information campaign to change the Haitian perspective on restavèk to viewing the practice as illegal and morally unacceptable form of child slavery.
 - c. Job creation for Haitian adults to reduce extreme levels of poverty.
 - d. Such measures should include the mobilization of restavèks and their families and their inclusion and consultation in the policy formulation and design of public information campaigns and other policy measure.

ANNEX I: ENDNOTES

¹ WALK FREE FOUNDATION, GLOBAL SLAVERY INDEX 40 (2013), available at <http://www.globalslaveryindex.org/report>.

² *Id.*

³ Restavèk Freedom, *Restavèk: The Persistence of Child Labor and Slavery* 4 (Oct. 3–14, 2011) (submission to the U.N. Universal Periodic Review), available at <http://www.ijdh.org/wp-content/uploads/2011/03/Haiti-UPR-Restavek-Report-FINAL1.pdf>.

⁴Haiti remains the poorest country in the Americas and one of the poorest in the world (with a GNI per capita of US\$760 in 2012), with significant needs in basic services. Over half of its population of 10 million lies on less than

US\$1 per day, and approximately 80% live on less than US\$2 per day. World Bank Group, *Haiti Overview*, COUNTRIES: HAITI, <http://www.worldbank.org/en/country/haiti/overview> (last visited Sept. 6, 2014).

⁵ Tone Sommerfelt et al., *Child Domestic Labour in Haiti: Characteristics, Contexts and Organisation of Children's Residence, Relocation and Work* 22 (2002), available at www.faf.no/ais/other/haiti/childlabour/EEDH_Report_draft_english.pdf.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Glenn R. Smucker & Gerald F. Murray, *The Uses of Children: A Study of Trafficking in Haitian Children*, 27–28 (Dec. 2004), available at pdf.usaid.gov/pdf_docs/PNADF061.pdf.

¹¹ *Id.*

¹² Government of Haiti, *Haiti earthquake PDNA: Assessment of Damage, Losses, General and Sectoral Needs* (Mar. 2010), available at http://siteresources.worldbank.org/INTLAC/Resources/PDNA_Haiti-2010_Working_Document_EN.pdf.

¹³ Restavèk Freedom, *supra* note 5, ¶ 3.

¹⁴ *Id.* ¶ 7.

¹⁵ *Id.* ¶ 11.

¹⁶ *Id.* ¶ 13.

¹⁷ *Id.*

¹⁸ *Id.* ¶ 17.

¹⁹ JOHN R. BALLARD, UPHOLDING DEMOCRACY : THE UNITED STATES MILITARY CAMPAIGN IN HAITI, 1994–1997 at 3 (1998).

²⁰ Benedetta Faedi, *The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti*, 44 STAN. J. INT'L L. 147, 153 (2008).

²¹ Inter-American Commission on Human Rights, *The Right of Women in Haiti to be Free from Violence and Discrimination*, ¶ 24, OEA/Ser.L/V/II, Doc. 64 (Mar. 11, 2009).

²² WORLD BANK GROUP, WORLD DEVELOPMENT INDICATORS 2014 (2014) available at <http://www.scribd.com/doc/222646575/World-Development-Indicators-2014>

²³ *Id.*; U.N. Development Programme, *The Rise of the South: Human Progress in a Diverse World* (2013), available at <http://hdr.undp.org/sites/default/files/Country-Profiles/HTI.pdf>

²⁴ U.N. Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Haiti, Gustavo Gallón*, ¶ 14, U.N. Doc. A/HRC/25/71 (Feb 7, 2014), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/25/71.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Smucker & Murray, *supra* note 10, at 13.

²⁸ *Id.* at 18.

²⁹ 1987 CONST. OF HAITI, art. 19.

³⁰ See Universal Declaration of Human Rights, art. 25, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, U.N. Doc. A/810 (Dec. 10, 1948).

³¹ *Id.* at art. 32.

³² *Id.* at art. 35–36.

³³ *Id.* at art. 24.

³⁴ *Id.* at art. 19.

³⁵ 1987 CONST. OF HAITI, art. 276.2.

³⁶ International Covenant on Civil and Political Rights, G.A. Res. 2200 A (XXA) U.N. Doc. A/Res/21/2200, (Dec. 16, 1966) (Entered into force March 23, 1976. Ratified by Haiti on November 23, 1990. Published by decree on January 7, 1991.) [hereinafter ICCPR].

³⁷ International Covenant on Civil and Political Rights, at 52, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966).

³⁸ Committee on the Rights of the Child, Concluding Observations, ¶ 25, CRC/C/15/Add.202, (Mar. 18, 2003) [hereinafter Committee on the Rights of the Child].

³⁹ *Id.* ¶ 26.

⁴⁰ *Id.* ¶ 27, 37, 43.

⁴¹ Act on the Prohibition and Elimination of All Forms of Abuse, Violence, Abusive or Degrading Treatment Against Children, Moniteur 41 (June 5, 2003).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Restavèk Freedom, *supra* note 3, at 23.

⁴⁵ Committee on the Rights of the Child, *supra* note 38, ¶ 57.

⁴⁶ Code Penal, art. 297–298.

⁴⁷ Code Penal, art. 278, 279. According to the Forced Labour Convention, and other international agreements prohibiting forced labor, the imposition of hard labor as punishment for a crime is not forced labor. Forced Labour Convention, art. 2(2)(c), May 1 1932, 39 U.N.T.S. 55.

⁴⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, G.A. Res. 55 U.N. Doc. A/RES/55/25 (Nov. 15, 2000) (ratified by Haiti Apr. 11, 2011).

⁴⁹ INTERNATIONAL ORGANIZATION FOR MIGRATION, HAITI MOVES TOWARDS ADOPTION OF COUNTER-TRAFFICKING LAW (May 16, 2014) *available at* <https://iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2014/pbn-listing/haiti-moves-towards-adoption-of.html>.

⁵⁰ Inter-American Commission on Human Rights, *The Right of Women in Haiti to be Free from Violence and Discrimination*, ¶ 127, OEA/Ser.L/V/II, Doc. 64 (2009)..

⁵¹ Committee on the Rights of the Child, *supra* note 38, ¶ 37.

⁵² Committee on the International Covenant on Civil and Political Rights, at 173, HRI/GEN/1/Rev.9 (Vol. I) (May 27, 2008).

⁵³ *Id.* at 193–95.

⁵⁴ FONDASYON KOLEZPEPÒL POU SOVE TIMOUN ET AL., CHILDREN’S RIGHTS 27 (Oct. 2011) (submission to the U.N. Universal Periodic Review), *available at* <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/HT/JS3-JointSubmission3-eng.pdf>.