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Citation:
Sarah J. Breyer, Using the Organization of American States to End the Abuse of Restaveks, 48 Colum. Hum. Rts. L. Rev. 147 (2016)
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USING THE ORGANIZATION OF AMERICAN STATES TO END THE ABUSE OF RESTAVEKS

Sarah J. Breyer*

INTRODUCTION

> As a growing child I became totally accustomed to the role of being a *restavek*. I had absolutely no memory of family love and care. In a very real sense, I believed that I was less than a person, unworthy even of human kindness. Every day it was made clear to me that my only purpose in life was to perform household chores for the one who "kept" me. Over a period of time, I came to believe there was something missing inside me, something that would make me worthy of being cared about by someone, anyone. I imagined a hollow place inside my chest where my heart should be, a void.[1]

As a baby, Jean-Robert[2] came to live with Florence, the woman who "kept" him.[3] After the death of the boy's mother, a black factory worker, his father, a white businessman, gave him to Florence

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1. JEAN-ROBERT CADET, MY STONE OF HOPE: FROM HAITIAN SLAVE CHILD TO ABOLITIONIST 31–32 (2011) [hereinafter MY STONE OF HOPE].

2. Jean-Robert Cadet was a restavek in the late sixties. By all accounts, the memories described below accurately depict the life of a child restavek today.

3. JEAN-ROBERT CADET, RESTAVEC: FROM HAITIAN SLAVE CHILD TO MIDDLE-CLASS AMERICAN 1 (1998) [hereinafter RESTAVEC].

to avoid taking responsibility for the unwanted, mixed-race child.[4] By age six, Jean-Robert understood a restavek's position in society.[5]

Haitian children can generally be inserted into one of three categories: the elite, the poor, and the restavek.[6] Those belonging to the elite wear fine clothes, speak proper French, and attend private schools. In contrast, the malnourished poor appear dirty and attend subpar schools. And then there are the restaveks, slave children forced to labor for host families without pay in deplorable conditions.[7] "[Restaveks] perform the most menial household chores: carrying water, scrubbing floors, cleaning chamber pots, and walking the owner-families' children to and from school."[8]

Jean-Robert performed his duties while living in a constant state of fear. For years, Florence threatened to sever his ears if he misbehaved.[9] Florence continually crushed his hopes. She forbade him from celebrating birthdays and participating in rites of passage.[10] When he asked about receiving his First Communion, Florence turned angry. "'You little shithead bedwetter, you little faggot, you shoeshine boy. If you think I'm gonna spend my money on your First Communion, you're insane,' she shouted . . . 'Get out of my face.'"[11] Jean-Robert felt inferior to others, as though he was of lesser value, a feeling confirmed when Florence chastised him by calling him a "dirty blooded, son of a dog."[12] Moreover, Jean-Robert felt alone.[13]

The psychological abuse quickly turned physical, and beatings became a daily routine.[14] Eventually, Florence purchased a *rigwaz* to inflict greater pain. "It was almost three feet long, stiff and twisted like a drill bit, narrow at the tip and rough like concrete to touch.

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4. *Id.* at 2.
5. MY STONE OF HOPE, *supra* note 1, at 31–32.
6. *See* RESTAVEC, *supra* note 3, at 3–5.
7. *Id.*
8. MY STONE OF HOPE, *supra* note 1, at 2.
9. *Id.* at 33.
10. *See* RESTAVEC, *supra* note 3, at 9–10.
11. *Id.* at 9.
12. MY STONE OF HOPE, *supra* note 1, at 35 (Florence and Jean-Robert were both of African descent, yet she often referred to him as being of an inferior—subhuman—race.); "Children in Haiti's *restavek* system often suffer a kind of apartheid, reduced to a subjugated status in their households and in society—sleeping on the floor, dressed in rags, eating leftovers, and often beaten." *Slavery in Haiti: The Practice of 'Restavèk'*, FREE THE SLAVES, http://www.freetheslaves.net/where-we-work/haiti/ (last visited Sept. 24, 2016).
13. *See* MY STONE OF HOPE, *supra* note 1, at 31–32.
14. RESTAVEC, *supra* note 3, at 16.

Each strike felt like a burn and often scarred like a burn."[15] If the *rigwaz* was out of reach, Florence resorted to beating Jean-Robert with her shoes, the spiked heels slicing into his face and momentarily blinding him.[16]

Other restaveks suffered similar fates. Once, Jean-Robert watched as René, another restavek, was blistered from each strike of his host's whip and beaten until "[h]is puffy face was twisted to one side and his ragged shirt was glued to his broken body." René disappeared after that, and Jean-Robert lived in fear.[17]

As hosts like Florence assert dominance over a restavek, their torture can also turn sexual in nature. Florence regularly squeezed the area between Jean-Robert's legs, preventing him from escaping her grasp and dropping him to his knees.[18] Even at night, safety eluded Jean-Robert. Once, a guest molested him as he slept on rags under the kitchen table. He told no one. "As a *restavek*, [his] duty was to be as useful and silent as a table or a chair. [Besides, w]ho would have believed [him]?"[19] Jean-Robert carried the shame of that night for years.[20]

Once Jean-Robert reached age fifteen, a new fear emerged.[21] Florence planned on moving to the United States.[22] Customarily, host families sent their restaveks to live on the streets, rather than provide for their relocation.[23] Although life with Florence proved cruel, Jean-Robert feared abandonment.[24] Eventually, he was sent to live with Florence's mother, but the psychological and physical abuse continued. The man who once sexually molested Jean-Robert lived there as well. "[F]ighting off [the man's] advances every night was harder than fighting off wild pigs and dogs in the underbrush." He remained silent.[25] In the ensuing years, Jean-Robert bounced between houses, never finding a true home until he luckily found passage to the United States.[26]

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15. MY STONE OF HOPE, *supra* note 1, at 33.
16. RESTAVEC, *supra* note 3, at 19–20.
17. *Id.* at 15–16.
18. *Id.* at 19, 28.
19. MY STONE OF HOPE, *supra* note 1, at 57.
20. *Id.*
21. *Id.* at 55.
22. RESTAVEC, *supra* note 3, at 56.
23. MY STONE OF HOPE, *supra* note 1, at 55.
24. RESTAVEC, *supra* note 3, at 56.
25. *Id.* at 69–70.
26. MY STONE OF HOPE, *supra* note 1, at 55–72.

I. HAITIAN HISTORY AND THE RESTAVEK SYSTEM

A. Haiti's History as a Slave Nation

Slavery has been hopelessly interwoven into the fabric of Haitian history.[27] After reaching the island in 1492, the Spaniards enslaved the natives and exploited the land.[28] By 1665, the French seized control and colonized part of the island.[29] As the economy flourished, the need for labor grew.[30] The French began importing African slaves, thinking they would be better suited to endure harsh physical labor.[31] By 1790, the slave population exceeded 500,000, constituting nine-tenths of the island's total population.[32] In all, the French imported as many as one million African slaves.[33] Unable to survive the physical hardships, however, "slaves died by the thousands."[34]

"Although masters controlled slaves in part through the promise of material rewards—extra food, better work, and sometimes even freedom—they depended most of all on terror. Slaves were branded with their masters' initials . . . and quickly learned that any resistance would be met with a whipping or worse."[35] Other sadistic punishments included amputating limbs and "burying slaves up to their necks, . . . leaving them to be attacked by biting insects."[36] The slaves thirsted for freedom and eventually rebelled.[37] In 1804, Haiti formally declared independence from France.[38]

The scars of colonial rule reverberate through present-day Haiti. Poverty plagues the nation due, in part, to depleted natural resources and foreign politics: for example, France forced Haiti to indemnify slaveholders for their economic losses.[39] "All these factors

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27. Orlando Matos, *Caribbean Countries Shed Light on the Legacy of Slavery*, *in* SLAVERY: GLOBAL VIEWPOINTS 37, 38 (Maria Tenaglia-Webster ed., 2009).
28. PHILIPPE GIRARD, HAITI 17, 20 (reprt. 2010).
29. *Id.* at 22–23.
30. *Id.* at 24.
31. *Id.*
32. LAURENT DUBOIS, HAITI: THE AFTERSHOCKS OF HISTORY 4 (2010).
33. *Id.*
34. GIRARD, *supra* note 28, at 25.
35. DUBOIS, *supra* note 32, at 20.
36. *Id.* at 21.
37. GIRARD, *supra* note 28, at 41.
38. *Id.* at 19.
39. DUBOIS, *supra* note 32, at 7–8.

have contributed to a powerful sense of political exhaustion surrounding Haiti's future. [Additionally, a] succession of military regimes has left the country with almost no functioning social infrastructure."[40] On January 12, 2010, a 7.0 magnitude earthquake further crippled the impoverished nation and its political system.[41] In the face of such disaster, however, Haitians continue to boast of their most momentous achievement, being the first nation to abolish colonial slavery.[42]

B. The Origin of the Restavek System

Although Haitians pride themselves in having abolished slavery, another form thrives in its place.[43] The term *restavek* derives from the French *rester avec*, which means *to stay with*.[44] In Creole, the term refers to a child staying with someone other than immediate family.[45] This practice dates back centuries.[46] The practice stems from traditional Caribbean notions of family networks and support during difficult financial periods:

> The *restavek* system was built on an otherwise commendable tradition of Haitian hospitality. When parents experience financial difficulties, it is common in the Caribbean for distant relatives to host their children, often for years, and to raise them as their own. Poor peasants of rural Haiti thus considered it normal to give away one of their children (usually a girl) to a wealthier family in . . . [a] large town. Parents hoped that growing up in a more affluent family and in a big city environment would give their

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40. *Id.* at 9.

41. Jennifer S. Abrams, Note, *"The Kids Aren't Alright": Using a Comprehensive Anti-Trafficking Program to Combat the Restavek System in Haiti*, 24 TEMP. INT'L & COMP. L.J. 443, 444–45 (2010).

42. *See* Pete Pattisson, *Haiti's Child Slaves Suffer Abuse in "Restavek" System*, *in* SLAVERY: GLOBAL VIEWPOINTS 200, 202 (Maria Tenaglia-Webster ed., 2009) ("The small Caribbean nation . . . prides itself as the first to throw off the yoke of colonial slavery . . . .).

43. *History*, RESTAVEK FREEDOM, http://www.restavekfreedom.org/the-issue/modern-history (last visited Sept. 24, 2016).

44. W. Warren H. Binford, *Saving Haiti's Children from Hell*, 6 INTERCULTURAL HUM. RTS. L. REV. 11, 15 n.24 (2011).

45. MY STONE OF HOPE, *supra* note 1, at 2.

46. Pattisson, *supra* note 42, at 201.

> child educational opportunities unavailable in the provinces . . . .[47]

Additionally, the practice of child-lending served as a way of aiding elderly or sick extended family members.[48]

In keeping with this centuries-old tradition, modern host families promise room and board, food, and education in exchange for the child's service.[49] "The system, on its own, is not inherently abusive: it purports to place children who would not otherwise be properly fed or educated in homes that are willing to take on these responsibilities."[50] In reality, this seemingly benign practice breeds exploitation.[51] Host families abuse the system by treating their restaveks as slaves and denying them education.[52] Today, the term *restavek* demeans the child, "relegating him or her to the lowest possible servile status in a social order based on hierarchy and domination."[53]

The shift in motivation from caretaker to exploiter is further evidenced by the change in status of families acquiring these children; wealth is no longer a requirement to be a restavek host.[54] Many host families are only slightly wealthier than the child's birth family.[55] Furthermore, the system is also used to hide illicit sexual affairs resulting in children[56] and as a front to traffic children.[57] Host families pay "*koutchye*"—middlemen recruiters—to find restaveks, a

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47. GIRARD, *supra* note 28, at 170.

48. Paige Tackett, Note, *"I Get By With a Little Help from My Friends": Why Global Cooperation is Necessary to Minimize Child Abduction and Trafficking in the Wake of Natural Disaster*, 79 U. MO. KAN. CITY L. REV. 1027, 1029 (2010).

49. Mary Hill, *A Domestic and International Comparison of the Sex-Trafficking Problem in Brazil and Haiti*, 9 REGENT J. INT'L L. 179, 186, 209 (2012); Abrams, *supra* note 41, at 445–46.

50. Abrams, *supra* note 41, at 451.

51. MY STONE OF HOPE, *supra* note 1, at 2.

52. Abrams, *supra* note 41, at 446, 451.

53. GLENN R. SMUCKER & GERALD F. MURRAY, THE USES OF CHILDREN: A STUDY OF TRAFFICKING IN HAITIAN CHILDREN 21 (2004).

54. *Restavek: The Persistence of Child Labor and Slavery—Submission to the United Nations Universal Periodic Review*, RESTAVÈK FREEDOM, paras. 6–7, 22 (March 3, 2011), http://www.ijdh.org/wp-content/uploads/2011/03/Haiti-UPR-Restavek-Report-FINAL1.pdf. [hereinafter RESTAVÈK FREEDOM]. (Unfortunately, information on host family and *koutchye* recruitment practices remains limited.

55. *See id.*

56. *See* RESTAVEC, *supra* note 3, at 2.

57. RESTAVÈK FREEDOM, *supra* note 54, at para. 6.

system that results in children losing both their identity and contact with their biological parents.[58] "These recruiters, for their own financial gain, recruit children from rural areas to work . . . . Since the [biological] families are sending their children with a recruiter to be placed with a family of strangers, many . . . label this phenomenon as trafficking."[59]

An estimated 150,000 to 500,000 children currently serve as restaveks.[60] Other sources place that number at 300,000,[61] meaning approximately one-tenth of Haiti's children become restaveks.[62] The exact number remains unknown because the system operates without government regulation or interference.[63] The system, while informal, runs efficiently and continues to grow.[64]

C. The Restavek System Today

1. Cultural Acceptance

Haitian culture plays an important role in perpetuating the restavek system. Haitians continually boast of being the first to abolish colonial slavery yet fail to recognize the restavek system as its modern equivalent,[65] "insisting that the exploitation [is] temporary and that the restavek [has] few alternatives anyway."[66] Accordingly,

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58. *Id.* at para. 8. "Increasingly, the direct placement of children from one family to another has been replaced by adult 'recruiters' who, for a fee, recruit children from rural areas for domestic slavery." Maidmentrail@aol.com, *UN Concern over the Haiti 'Restavek' System*, AMNESTY INT'L UK: CHILDREN'S HUMAN RIGHTS NETWORK (June 18, 2009, 4:35 PM), https://www.amnesty.org.uk/blogs/childrens-human-rights-network-blog/un-concern-over-haiti-restavek-system [hereinafter Amnesty Int'l UK].

59. ICF INT'L, CHILD LABOR IN DOMESTIC SERVICE: ("RESTAVEKS") IN PORT-AU-PRINCE, HAITI 5 (2012).

60. RESTAVÈK FREEDOM, *supra* note 54, at para. 3.

61. *See, e.g.*, THE JEAN R. CADET RESTAVEK ORG., http://jeanrcadet.org/casestudy.aspx (last visited Jan. 30, 2016) [hereinafter Cadet Org.] (discussing the number of Haitian children serving as restaveks).

62. Pattisson, *supra* note 42, at 203.

63. MY STONE OF HOPE, *supra* note 1, at 45.

64. *Id.*; RESTAVÈK FREEDOM, *supra* note 54, at para. 3.

65. Pattisson, *supra* note 42, at 202; *see also* Jim Loney, *Haiti "Restavek" Tradition Called Child Slavery*, REUTERS (Feb. 18, 2010, 9:17 AM), http://www.reuters.com/article/us-quake-haiti-restaveks-idUSTRE61H3F920100218.

66. GIRARD, *supra* note 28, at 172.

host families see the system as "beneficial and generous."[67] In this way, Haitians emphasize foreign oppression while downplaying their responsibility for the more recent abuse.[68]

Attitudes about children further exacerbate the issue.[69] Distinctions exist between one's biological children and those of another.[70] The following Haitian proverb illustrates the point: "*lè w'ap benyen pitit moun, lave yon bò, kite yon bò*," meaning "when you bathe someone else's child, wash one side, leave the other side unwashed."[71] Restaveks are keenly aware of the different treatment; one recalled,

> Marie Anne Hera keeps two child domestics in a shack on the slopes above the capital. "I'm not taking care of them the way I should," she said, "but it's not my fault. I just don't have enough money." She treats her restaveks very differently to her own children. "She sends her own children to school, but I have to stay here and work," complained Micheleine, 14, one of the restaveks. "They get to eat rice and I am fed corn. They sleep on the bed, but I sleep on the floor."[72]

Host families would never openly admit to treating their restaveks in such a way, however, and the government declines to get involved,[73] explaining that the restavek system is "so ingrained in Haiti that too many people do not even know that they are breaking the law."[74]

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67. RESTAVÈK FREEDOM, *supra* note 54, at para. 21.

68. GIRARD, *supra* note 28, at 172.

69. Cadet Org., *supra* note 61; *see also* Roza Pati, *Domestic Servitude: A Contemporary Form of Slavery*, 7 INTERCULTURAL HUM. RTS. L. REV. 9, 16–17 (2012) (discussing how social perceptions worsen the plight of domestic servants).

70. RESTAVÈK FREEDOM, *supra* note 54, at para. 20.

71. *Id.* "Proverbs play a major role in [Haitian] culture. No conversation takes place without a proverb being included . . . . " LILI DAUPHIN, I WILL FLY AGAIN: THE RESTAVEK 24 (Miraquest ed. 2007) (demonstrating the seriousness Haitians attribute to proverbs).

72. Pattisson, *supra* note 42, at 202.

73. Cadet Org., *supra* note 61; *see also* Loney, *supra* note 65 (quoting Jean-Robert Cadet as stating that families will never admit to mistreating restavek children and that the Haitian Government is reluctant to get involved in domestic issues).

74. RESTAVÈK FREEDOM, *supra* note 54, at para. 17.

2. Economic and Social Causes

In most cases, children enter the restavek system through placement by either one or both parents or, in the case of an orphan, the child's next of kin.[75] A host of economic and social factors account for this systematic displacement of children.[76]

With a GDP per capita of only $1,800 USD, Haiti remains the poorest nation in the Western Hemisphere as well as one of the poorest in the world.[77] An estimated 58.5% of Haitians live below the national poverty line, surviving on less than two dollars per day—although other estimates put that number at 80%.[78] 24.7% live below the abject poverty line, $1.25 per day.[79] Poverty and desperation prompt many parents to send one or all of their children to live with host families as restaveks, trusting that the child (or children) will be fed and educated in exchange for their labor.[80] Despite being aware of restavek abuse, parents seize the opportunity, believing their child to be the exception and hoping placement will lead to social mobility for them and the child.[81]

The estimated 40.6% unemployment rate in Haiti further perpetuates the system.[82] Many families in poor neighborhoods rely on restaveks who work without pay because the family is unable to afford paid domestic workers.[83] The lack of water infrastructure, electricity, and other utilities necessitates the demand for laborers who can fetch water and perform other related tasks.[84] Additionally, recent natural disasters have further destroyed public infrastructure, exacerbated the poverty crisis, and increased the number of orphaned children.[85] "Moreover, in an effort to find the nearest emergency shelter and medical care [in the aftermath of these disasters], families were [often] separated without any record. There continues to be no effective data system in place for individuals to find lost

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75. Cadet Org., *supra* note 61.
76. *Id.*
77. CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK: HAITI (2015) [hereinafter WORLD FACTBOOK: HAITI].
78. *Id.*; *Haiti Statistics*, HAITI PARTNERS, https://haitipartners.org/about-us/haiti-statistics/ (last visited Sept. 24, 2016).
79. HAITI PARTNERS, *supra* note 78.
80. Cadet Org., *supra* note 61.
81. *See* RESTAVÈK FREEDOM, *supra* note 54, at paras. 4, 18.
82. WORLD FACTBOOK: HAITI, *supra* note 77.
83. RESTAVÈK FREEDOM, *supra* note 54, at para. 7.
84. *Id.*
85. WORLD FACTBOOK: HAITI, *supra* note 77.

family members. Other orphaned children and lost children are easy prey for [middlemen such as the *koutchye*]."[86]

Cultural attitudes about children, particularly restaveks, fuel the desire to obtain a restavek.[87] Host families see restaveks as disposable cloths, as something you use and then throw away,[88] their labor free and their supply inexhaustible.[89] Overpopulation in rural areas,[90] lack of family planning, and the irresponsibility of some fathers further increases the number of available restaveks.[91] Additionally, children from the low and middle classes grow "up being exposed to the restavek practice in some way. If not growing up [as a] restavek herself, a child will be exposed to the practice within her own home or neighborhood and will be conditioned to perceive the practice as normal."[92] Social conditioning, therefore, plays a crucial role in perpetuating the system.[93] Public perception also provides for an influx of restaveks whose births conflict with societal norms.[94] As a result, biological parents often condemn illegitimate and fatherless children—as well as those born of rape—to a life of servitude.[95]

Furthermore, children, ignorant of their rights, tolerate abusive working conditions that adults simply would not.[96] They take orders, complain less, and perform demeaning tasks simply because they believe they have no other option.[97]

Together, these economic and social causes form the backbone of the restavek system, a system doomed to continue until the economy grows, cultural attitudes change, and the international community intervenes.

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86. RESTAVÈK FREEDOM, *supra* note 54, at para. 26.

87. *See supra* Part II(C)(i).

88. Tackett, *supra* note 48, at 1030.

89. *See* RESTAVEC, *supra* note 3, at 31; *see also* WORLD FACTBOOK: HAITI, *supra* note 77 (noting that one-third of the Haitian population is under the age of fourteen).

90. GIRARD, *supra* note 28, at 170.

91. Cadet Org., *supra* note 61.

92. *Id.*; Michelle Crawford Rickert, *Through the Looking Glass: Finding and Freeing Modern-Day Slaves at the State Level*, 4 LIBERTY U.L. REV. 211, 226 (2009) ("Many domestic servants are members of cultures where keeping domestic slaves is common, such as the Haitian practice of keeping *restaveks*.").

93. Cadet Org., *supra* note 61.

94. *Id.*

95. *Id.*

96. Timothy Janak, *Haiti's "Restavec" Slave Children: Difficult Choices, Difficult Lives . . . yet . . . Lespwa fe Viv*, 8 INT'L J. CHILD. RTS. 321, 325 (2000).

97. *Id.*

3. Broken Promises and Abuse

Economic turmoil and societal pressure prompt parents to place children with host families, but parents do so with the understanding that the child's basic needs will be met.[98] Host families and *koutchye* falsely promise to treat the child well and to provide him or her with food, shelter, and education.[99] Instead, many restaveks work up to eighteen hours each day, leaving no time for classes.[100] Furthermore, many host families earn only slightly more than the child's biological family; as such, financing an education and adequately caring for the child's needs is not economically feasible.[101] Natural disasters have worsened the situation.[102] Restaveks consider themselves fortunate if they eat twice daily, host families seeing them as extra mouths to feed.[103] "In fact, restaveks are often so malnourished that on average, a fifteen year old restavek stands four centimeters [or about two inches] shorter and weighs twenty kilograms [or forty-four pounds] less than the average Haitian child."[104] In addition to neglecting their basic needs, host families inflict psychological, physical, and sexual abuse on their restaveks.[105]

Psychological abuse, neglect, and isolation irreparably damage the child's psyche. Early on, some host families give restaveks new names "for the sake of convenience," stripping the children of their identities.[106] The child's date of birth is likely a fiction as well.[107] Hosts further dehumanize restaveks by forbidding personal contact between them and the child; Jean-Robert recalled being unable to "talk to [Florence] about [his] needs. In fact, [he] could not speak until spoken to, except to give her messages third parties had left with [him. He] also did not dare smile or laugh in her presence, as this would have been considered disrespectful."[108]

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98. Cadet Org., *supra* note 61.
99. RESTAVÈK FREEDOM, *supra* note 54, at para. 5.
100. Pattisson, *supra* note 42, at 201–02.
101. *Id.*
102. MY STONE OF HOPE, *supra* note 3, at 10 (examples include the 2010 earthquake and a 2012 hurricane).
103. *Id.*
104. RESTAVÈK FREEDOM, *supra* note 54, at para. 11.
105. Pattisson, *supra* note 42, at 200.
106. RESTAVEC, *supra* note 3, at 4.
107. *See* MY STONE OF HOPE, *supra* note 1, at 17 (describing how it was unthinkable for the owner-family to celebrate a *restavek's* birthday and how the author never knew his own date of birth).
108. RESTAVEC, *supra* note 3, at 4–5.

Host families never thank their restaveks, rather berate them with phrases like "Imbecile!" and "I am not of your race!"[109] In time, restaveks come to believe the taunts, thinking they must belong to an inferior race or are of "bad blood."[110] Restaveks see themselves as worthless,[111] a feeling confirmed when host families deny them education.[112] They understand that education leads to opportunities and wealth, opportunities that many of them will never have.[113] Additionally, another

> tragic psychological process may be at work in the mind of a [restavek]. She looks upon herself as more "adult" than she really is. She finds herself conducting tasks that she has seen or that she imagines adults should do. In a restave[k]'s case, running the house and caring for children are adult tasks that are beyond her childhood abilities. Therefore, she would place herself on an emotional plane that would be several years or levels beyond her physical reality. In a sense, the child reaches a level of "pseudo-maturity" . . . . Further adding to the tragedy of a restave[k]'s sense of false adulthood, is the fact that a child worker has little or no time for play. The child suffers from a general lack of imagination and even daydreams are nonexistent . . . . [The] child will probably have no personal vision or goal for her life beyond the everyday chore of survival. This fact, coupled together with the lack of educational opportunities available to [restaveks], leaves little room for an alternate reality to form. Thus their lives are only viewed through clouded images of the past or dark realities of the current day. Their future, in their eyes, is nothing more than a continuation of the hopeless present.[114]

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109. *See* MY STONE OF HOPE, *supra* note 1, at 33, 53.

110. *Id.* at 32, 53. "When individuals are confronted by a traumatic event which destroys their assumptions about the world, they start to develop a narrative which pulls together and makes meaning of what has happened to them." Leeanne Hemenway, A Phenomenological View of Slavery Through the Eyes of Rescued Slave Children in Ghana 18 (2012) (unpublished Ph.D. dissertation, Fielding Graduate University) (on file with author).

111. *See* MY STONE OF HOPE, *supra* note 1, at 33.

112. *See* Hemenway, *supra* note 110, at 64.

113. *See id.*

114. Janak, *supra* note 96, at 325–326.

In this way, host families strip restaveks of their childhoods, producing underdeveloped adults. Stunted child development, lack of imagination, and failure to develop personal aspirations breed adults without hope, futures, or basic life skills.[115] As adults, former restaveks often have difficulty communicating, interacting with strangers, and differentiating between normal and sadistic behavior.[116]

Unfortunately, host families inflict more than psychological trauma. Jean-Robert recalls the physical assaults all too well:

> Denis [Florence's son] knocked me down with a slap across the face. He returned inside and came back out with an extension cord. After the first strike, I urinated on myself. The cord ripped my shirt and broke my skin. I was soon bloodied. I screamed as loudly as I could, hoping Florence would intervene, but she didn't. Denis perspired so much that he had to shower before leaving. I had so many blisters that I could not sit comfortably in a chair, and sleeping on my back was even more unbearable.[117]

On another occasion,

> [Florence] kicked me to the ground, placing a foot on my throat while beating me. I could not breathe. It seemed that someone was slowly turning off the light of day and everything that made noise. [Others] watched as Florence pounded away. My body went limp and I couldn't feel pain.[118]

A neighbor had to resuscitate him.[119]

Physical abuse of this magnitude is not unique to Jean-Robert. Host families commonly overwork, beat, rape, threaten,

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115. GIRARD, *supra* note 28, at 172; *see also* RESTAVEC FREEDOM ALLIANCE, https://www.rfahaiti.org/restavec/ (last visited Sept. 24, 2016) (discussing the reason for a former restavek's bleak future).

116. GIRARD, *supra* note 28, at 171.

117. RESTAVEC, *supra* note 3, at 29.

118. *Id.* at 42–43.

119. *Id.*

and punish their restaveks.[120] The director of a Haitian organization offering support to restavek victims reports aiding one child whose head was gashed from being struck with a machete and another whose back was sliced with a razor.[121] Others suffered from burns, bruises, and broken bones.[122]

Tilou, then age six, faced abuse and witnessed the pain inflicted on others.[123] She saw one restavek's face disfigured from a poorly healed dislocated jaw, another's fingers severely burned after her host held them over hot charcoal, and another's face and scalp grotesquely scarred from burns, punishment for being late bringing water.[124]

Restaveks, both male and female, experience unsolicited sexual advances and assaults as well.[125] Although the minimum age of consent in Haiti is eighteen,[126] hosts still categorize young female restaveks as *la pou sa*, meaning *there for that*.[127] Tradition favors these sexual relationships between host and restavek, deeming the contact acceptable and natural.[128] Should the restavek become pregnant, however, the host family abandons her on the streets, disposing of her like garbage.[129]

As such, the restavek system is hopelessly riddled with broken promises and abuse. While not all restaveks suffer such fates, most will face psychological, physical, and sexual exploitation.[130]

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120. GIRARD, *supra* note 28, at 172.
121. Pattisson, *supra* note 42, at 203–04.
122. *Id.*
123. DAUPHIN, *supra* note 71, at 26, 46.
124. *Id.* at 45-46.
125. Janak, *supra* note 96, at 325 (explaining that "[t]he sexual advance of a master toward a worker, even a very youthful one, is a norm for these types of labour arrangements").
126. U.S. DEP'T OF STATE, HAITI 2012 HUMAN RIGHTS REPORT 30 (2012) [hereinafter 2012 HUMAN RIGHTS REPORT].
127. RESTAVÈK FREEDOM, *supra* note 54, at para. 13.
128. Janak, *supra* note 96, at 325.
129. Pattisson, *supra* note 42, at 204.
130. RESTAVÈK FREEDOM, *supra* note 54, at paras. 5–12.

II. HAITIAN RESPONSE

A. Haiti's Constitution, Labor Code, and Related Laws

Haitian law purports to protect children from exploitation and abuse. Haiti's Constitution, Labor Code, 2003 Act, and Penal Code contain provisions that, in theory, criminalize the mistreatment of restaveks and attack the system as a whole.[131]

The 1987 Constitution of Haiti sets forth fundamental principles and a legal framework under which the Haitian government operates.[132] The Preamble proclaims Haiti's commitment to ensuring the right to life and liberty and to instituting a system of government based, in part, on respect for human rights.[133] Article 19 further expounds on this ideal, obligating the state "to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Rights of Man."[134] Additionally, "[t]he State recognizes the right of every citizen to decent housing, education, food and social security" and obligates itself "to ensure for all citizens in all territorial divisions appropriate means to ensure protection, maintenance and restoration of their health by establishing hospitals, health centers and dispensaries."[135] The state must also guarantee and protect individual liberty.[136]

In addition to those rights universally guaranteed to all citizens, the Haitian Constitution further enumerates several child specific provisions.[137] For example, Article 35-6 provides for a minimum age of employment and states that "[s]pecial laws govern the work of minors and servants."[138] Additionally, Title X endeavors

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131. *See* Bureau of Int'l Labor Affairs, U.S. Dep't of Labor, *Haiti: Minimal Advancement*, *in* 2013 FINDINGS ON THE WORST FORMS OF CHILD LABOR 3–4 (2014) (detailing Haitian laws and regulations related to child labor) [hereinafter 2013 FINDINGS].

132. Hill, *supra* note 49, at 184; *see generally* CONSTITUTION DE LA REPUBLIQUE D'HAITI, Mar. 29, 1987 (establishing the legal structure of the Haitian government).

133. CONSTITUTION DE LA REPUBLIQUE D'HAITI, Mar. 29, 1987, pmbl.

134. *Id.* art. 19.

135. *Id.* arts. 22–23.

136. *Id.* art. 24.

137. *Id.* tit. X.

138. *Id.* arts. 35-6.

to protect the family, the foundation of society.[139] Specifically, Article 260 obligates the State to "aid and assist mothers, children and the aged,"[140] and Article 261 requires the State to ensure "protection for all children. [Every] child is entitled to love, affection, understanding and moral and physical care [through] its father and mother."[141] Finally, "Courts and other Government agencies charged with the protection of these rights must be accessible [and] free of charge at the level of the smallest territorial division."[142] An armed police force, operating under the Ministry of Justice, must ensure compliance with these laws.[143]

In compliance with Article 35-6 of the Haitian Constitution, Haiti's Labor Code sets the minimum age for work at fifteen for commercial, agricultural, and industrial workers and at twelve for domestic workers.[144] The government levies fines ranging from 3,000-5,000 gourdes—approximately fifty to eighty USD—on employers in violation of this provision.[145] Unfortunately, the Act on the Prohibition of Elimination of All Forms of Abuse, Violence, Ill Treatment, or Inhuman Treatment Against Children of 2003 (the "2003 Act") repealed the minimum age provisions for domestic service situations, leaving the minimum age requirement unclear.[146]

Article 2 of the 2003 Act prohibits forced labor, child trafficking, and commercial sexual exploitation of children.[147] Article 2 also criminalizes the use of children in illicit activities.[148] The 2003 Act specifically forbids restavek placement[149] and "contains a general prohibition against work that harms the health, security, or morality of a child."[150] Despite proscribing these activities, however, the act fails to include penalties for employing children in work of this nature.[151]

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139. *Id.* arts. 259–262.
140. *Id.* art. 260.
141. *Id.* art. 261.
142. *Id.* art. 262.
143. *Id.* art. 269-1.
144. Bureau of Int'l Labor Affairs, U.S. Dep't of State, *Haiti: Moderate Advancement*, *in* 2014 FINDINGS ON THE WORST FORMS OF CHILD LABOR 3 (2015) [hereinafter 2014 FINDINGS].
145. RESTAVÈK FREEDOM, *supra* note 54, at para. 23.
146. 2013 FINDINGS, *supra* note 131, at 3.
147. 2014 FINDINGS, *supra* note 144, at 3 tbl.4.
148. *Id.*
149. RESTAVÈK FREEDOM, *supra* note 54, at para. 23.
150. 2014 FINDINGS, *supra* note 144, at 3.
151. *Id.*; RESTAVÈK FREEDOM, *supra* note 54, at para. 23.

Articles 278 through 282 of Haiti's Penal Code prohibit the debauchery or corruption of minors, which includes rape and commercial sexual exploitation of children.[152] Article 282, which covers debauchery and corruption, mandates imprisonment for six months to two years if the victim was a minor under the age of fifteen.[153] If the perpetrator held a position of authority over the victim, Article 281 further authorizes a sentence of hard labor for life.[154] Unfortunately, the Penal Code does not define what constitutes authority over the victim, which leaves the provision's applicability to hosts unclear.[155]

Haiti's Ministry of Social Affairs and Labor ("MAST") oversees enforcement of child protection and labor laws.[156] Its Institute of Social Welfare and Research (the "IBESR") performs inspections and, in helping to enforce the 2003 Act, can refer cases to juvenile courts for disposition and provide services to the victims.[157] The IBESR implements and monitors a hotline used for citizens to report abuses and violations of children's rights.[158] Additionally, the IBESR may partner with the Brigade for the Protection of Minors (the "BPM"), a segment of the Haitian National Police, which investigates and punishes violations of Haiti's Penal Code related to minors.[159] "BPM agents gather and submit information to judicial and/or social protection authorities to allow criminal prosecution of crimes against minors or to provide social protection and placement services for victims (as needed)."[160]

Taken together, Haiti's Constitution, Labor Code, 2003 Act, and Penal Code seemingly address the ills of the restavek system: criminalizing the practice, instituting organizations to monitor for abuse, and establishing, albeit incompletely, penalties for violations.

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152. 2014 FINDINGS, *supra* note 144, at 4; CODIGO PENAL DE HAITI [PENAL CODE] arts. 278–82 (1985) (Haiti) [hereinafter PENAL CODE].

153. PENAL CODE, *supra* note 152, art. 280, 282. Here, the term "minors" refers to an individual under the age of twenty-one. *Id.* art. 282.

154. *Id.* art. 281 ("The penalty shall be hard labor for life, if the culprits are the class of those who have authority over the person to whom they have committed the attack . . . .").

155. *See id.*

156. 2014 FINDINGS, *supra* note 144, at 4 tbl.5.

157. *Id.*

158. RESTAVÈK FREEDOM, *supra* note 54, at para. 24.

159. 2014 FINDINGS, *supra* note 144, at 4 tbl.5.

160. *Id.*

In practice, however, these efforts have proven insufficient to protect children from exploitation and abuse.[161]

B. Ineffectiveness and Non-enforcement of Haitian Laws

Haiti's Constitution and subsequent legislation seek to establish a system of government respectful of human rights, a strong state "capable of protecting the country's values, traditions, sovereignty, independence and national vision."[162] In practice, however, political turmoil, corruption, cultural attitudes, and a lax legal structure have left Haiti's most vulnerable unprotected.[163] The restavek system continues to operate largely unencumbered by government interference.[164]

MAST, the government agency tasked with enforcing child protection and labor laws, lacks sufficient funding to employ adequate personnel, fully investigate child abuse cases, and provide training.[165] As of 2014, the IBESR, an investigative and enforcement division of MAST, only employed 150 individuals across Haiti, including only forty-eight protection agents and twenty social workers, to combat all child labor related issues.[166] Less than half of those received training related to child protection.[167] With as many as 500,000 children

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161. *See infra* Part III.B.

162. CONSTITUTION DE LA REPUBLIQUE D'HAITI, Mar. 29, 1987, pmbl.

163. 2012 HUMAN RIGHTS REPORT, *supra* note 126, at 30 ("The most serious impediments to human rights involved weak democratic governance in the country; the near absence of rule of law, exacerbated by a judicial system vulnerable to political influence; and chronic, severe corruption in all branches of government."); *see also* Hill, *supra* note 49, at 184 ("The nation of Haiti has been in political turmoil since it declared its freedom and must take tremendous strides before it can live up to its aspirations as laid out in the preamble and constitution."); Tackett, *supra* note 48, at 1030 ("The Haitian government has a notoriously lax legal structure for protecting its children, which makes the country vulnerable to manipulation and exploitation both from within and worldwide.").

164. MY STONE OF HOPE, *supra* note 1, at 45.

165. 2014 FINDINGS, *supra* note 144, at 5; *see also* Binford, *supra* note 44, at 17 (discussing the financial instability and fragmentation of Haiti's child protection agencies); NAT'L COALITION FOR HAITIAN RIGHTS, RESTAVEK NO MORE: ELIMINATING CHILD SLAVERY IN HAITI (2007) [hereinafter NCHR] (stating, "[t]he government of Haiti's long-standing practice of investing little in programs and initiatives that promote good governance while embracing lofty goals and ideals designed to attract international handouts also permeates its response to the *restavèk* system . . . .").

166. 2014 FINDINGS, *supra* note 144, at 5.

167. *Id.*

serving as restaveks, this number is grossly inadequate.[168] Additionally, the IBESR lacks "sufficient reach or standard protocols to conduct targeted inspections."[169]

The BPM, the division of the Haitian National Police tasked with the protection of minors, also lacks sufficient funding to adequately staff its department, train employees, obtain equipment and transportation, and conduct criminal investigations related to child labor.[170] As of 2014, the BPM only employed eighty agents throughout Haiti.[171]

Minimal funding also undermines the effectiveness of programs instituted by the IBESR and the BPM. For example, each staffs a hotline for child protection complaints.[172] The IBESR's hotline alone receives approximately 200 calls each year from children and others reporting abuse.[173] For restavek-related calls, employees "make an initial inquiry into the case and try to educate host parents to stop the abuse . . . occasionally remov[ing] the child from the host family or [taking] a case to court. However, generally, there was no follow-up beyond the initial investigation."[174] The IBESR and the BPM hotlines suffer another fatal flaw. Because each operates exclusively in Port-au-Prince, reporting child labor and abuse in rural areas is more difficult.[175]

Additionally, Haiti's 2003 Act fails to provide meaningful protection for restaveks. "While it allocates jurisdiction for investigating these cases to [MAST], it does not outline any specific punishments and only generally alludes to the possibility of judicial action."[176] Similarly, Haiti's Labor Code fails to explicitly provide penalties for employing restaveks; the minimum age requirement currently applies only to commercial, agricultural, and industrial workers, not domestic workers such as restaveks.[177] Even then,

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168. RESTAVÈK FREEDOM, *supra* note 54, at para. 3.

169. 2014 FINDINGS, *supra* note 144, at 5.

170. *Id.*; *see also* 2012 HUMAN RIGHTS REPORT, *supra* note 126, at 29 ("The government continued to lack sufficient resources to adequately support or enforce existing mechanisms to promote children's rights and welfare.").

171. 2014 FINDINGS, *supra* note 144, at 5.

172. *Id.*

173. RESTAVÈK FREEDOM, *supra* note 54, at para. 24.

174. *Id.* (The ratio of calls made to children removed or cases taken to court is not available.); NCHR, *supra* note 165.

175. 2014 FINDINGS, *supra* note 144, at 5.

176. RESTAVÈK FREEDOM, *supra* note 54, at para. 23.

177. Hill, *supra* note 49, at 186.

evidence of labor law enforcement is almost non-existent.[178] Labor tribunals delay imposing fines, and the government neglects to enforce its judgments.[179]

Despite ambiguity in Haitian law regarding the minimum age for domestic workers, the law requires employers to preserve "the welfare of a child until he or she is fifteen years old."[180] After the child reaches age fifteen, the employer must provide room and board and pay the child no less than half the wage of an adult domestic.[181] Many host families circumvent possible punishment by dismissing restaveks at age fifteen, condemning these children to live on the streets as shoe shiners, gardeners, and prostitutes.[182]

Moreover, "the government is reluctant to interfere in domestic affairs"[183] and rarely prosecutes these cases.[184] Furthermore, corruption within the Haitian police force tempers enforcement efforts:

> In order for the law to have a real effect on the nation of Haiti, the police must abide by and enforce it. Although the police take an oath to uphold the Haitian Constitution, which ensures that the police promote law and order, corruption remains a serious problem. Police dedication to the ideals of the Constitution of Haiti is less than adequate.[185]

In some cases, officials refuse to perform their duties unless bribed.[186]

Equally important, the January 2010 earthquake further crippled Haiti's criminal justice system.[187] "During the earthquake,

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178. RESTAVÈK FREEDOM, *supra* note 54, at para. 23.

179. 2014 FINDINGS, *supra* note 144, at 4; 2012 Human Rights Report, *supra* note 126, at 34.

180. Abrams, *supra* note 41, at 458.

181. *Id.*

182. RESTAVEC, *supra* note 3, at 4; Abrams, *supra* note 41, at 458; Janak, *supra* note 96, at 327.

183. Cadet Org., *supra* note 61; *see also* RESTAVÈK FREEDOM, *supra* note 54, at para. 17 (stating that the law against keeping restaveks is difficult to enforce because the practice is so commonplace that many are unaware of its illegality).

184. *See* 2014 FINDINGS, *supra* note 144, at 5 ("Prosecutions of crimes related [to] the worst forms of child labor are rare.").

185. Hill, *supra* note 49, at 185.

186. *Id.* at 188.

twelve out of the thirteen ministries of government collapsed, making the ability of the government to function in the areas of law enforcement, social services, and border control extremely limited."[188] Many courts were rendered inoperable.[189] Notably, the earthquake leveled the Palace of Justice, Port-au-Prince's courthouse, burying troves of legal documents.[190] Successfulness of archival restoration efforts remains unclear,[191] and as of early 2015, Haiti had yet to rebuild the Palace of Justice.[192] Temporary sites have been used for hearings.[193] Today, "[t]he dysfunctional judicial system [remains] underfunded, inefficient, corrupt, and burdened by a large backlog of cases, outdated legal codes, and poor facilities."[194] In fact,

> [t]he judiciary, like most of the government, suffers from widespread corruption. Threats of violence often render judges and juries unable to make impartial decisions. Bribes not only sway judges but also taint potential witnesses. In addition to corruption, the judicial system suffers from shortages of both funding and qualified personnel. The combination of corruption and inefficiency has resulted in a serious backlog of criminal cases and an overflow in the country's jail.[195]

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187. Henri E. Cauvin, *Haitian Earthquake Upends Country's Criminal Justice System*, THE WASH. POST (Feb. 7, 2010) http://www.washingtonpost.com/wp-dyn/content/article/2010/02/06/AR2010020602047.html.

188. Hill, *supra* note 49, at 190–91.

189. INT'L CRISIS GROUP, KEEPING HAITI SAFE: JUSTICE REFORM (2011).

190. Cauvin, *supra* note 187.

191. *Haiti-Justice: The Archives of the Palace of Justice Under Restoration*, HAITI LIBRE (Mar. 1, 2012, 1:32 PM), http://www.haitilibre.com/en/news-4628-haiti-justice-the-archives-of-the-palace-of-justice-under-restoration.html. In 2012, "the Office of the High Commissioner for Human Rights (OHCHR), launched the project 'Reconstruction of the archives of the Palace of Justice' of an initial period of 3 months." *Id.* No follow-up is available.

192. *5 Years Later: Remembering the 2010 Haiti Earthquake*, DAILY NEWS, http://www.nydailynews.com/news/haiti-earthquake-5-years-gallery-1.2073132?pmSlide=1.2073129 (last visited Oct. 1, 2016).

193. *See* Cauvin, *supra* note 187.

194. Heritage Found., *Haiti*, *in* 2016 INDEX OF ECONOMIC FREEDOM (2016).

195. *Haiti Government*, GLOBALSECURITY.ORG (Feb. 8, 2011, 4:44 PM), http://www.globalsecurity.org/military/world/haiti/government.htm.

Compounding the problems of the weak judiciary, the government often will not enforce its judgments.[196]

While Haiti's judiciary and legislature aim to establish a strong state capable of protecting human rights,[197] Haiti fails to achieve this ideal. Inefficiency and non-enforcement allow the restavek system to continue.

C. Haiti's Legal System: Reform Through International Intervention

The Haitian Constitution and subsequent legislation provide little solace or aid to restaveks.[198] Minimally-funded programs and government agencies, untrained personnel, and corruption continue to hinder justice.[199] The nation's judiciary remains dysfunctional, fragmented, and weak.[200]

Poverty and natural disasters exacerbate the issue.[201] However, "it would make no sense to suggest that a state is free of obligations to comply with human rights law because of the occurrence of a natural event that jeopardizes the rights of so many children."[202] Furthermore, "such a reading would . . . suggest that when children's rights are at greater risk, states have a reduced obligation to ensure them."[203]

The Haitian government has repeatedly shown indifference to the restavek system and the abuse of these children.[204] As one former Haitian president has remarked, the restavek system is "so ingrained in Haiti that too many people do not even know they are breaking the law."[205] Cultural attitudes of this nature weaken the government's incentive to provide for these children, making the government reluctant to interfere.[206]

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196. *See* 2012 HUMAN RIGHTS REPORT, *supra* note 126, at 34.
197. CONSTITUTION DE LA REPUBLIQUE D'HAITI Mar. 10, 1987, pmbl.
198. *See supra* Part III.B.
199. *Id.*
200. *Id.*
201. *See* Hill, *supra* note 49, at 181.
202. Jonathan Todres, *A Child Rights-Based Approach to Reconstruction in Haiti*, 6 INTERCULTURAL HUM. RTS. L. REV. 43, 72 (2011) (footnote omitted).
203. *Id.* at 72–73.
204. *See, e.g.*, RESTAVÈK FREEDOM, *supra* note 54, at para. 17 (finding that while Haitian law condemns restavek placement, the law sets out no penalties for these violations).
205. *Id.*
206. Cadet Org., *supra* note 61.

The restavek system continues to grow under Haiti's watch.[207] As such, the international community must intervene on behalf of those too powerless to help themselves and insist on reform at the regional level.

III. INTERNATIONAL RESPONSE

A. NGO Efforts

The term non-governmental organization ("NGO") generally refers to a private organization, which operates independently from, and without representation in, the government.[208] NGO objectives typically include international development, humanitarian aid, and cooperative efforts aimed at "reliev[ing] suffering, promot[ing] the interests of the poor, protect[ing] the environment, provid[ing] basic social services, or undertak[ing] community development."[209]

NGOs have been instrumental in promoting human rights and shaping regional human rights systems.[210] In the Inter-American System of Human Rights, for example, NGOs lobby the various organs and communicate with OAS officials.[211] Additionally, NGOs submit position papers, file amicus curiae briefs, and meet with politicians and diplomats.[212] "Human rights NGOs . . . contribute by assisting in standard-setting and requesting political action in urgent situations of human rights violations."[213]

NGOs may aid individuals as well by providing them with legal assistance.[214] NGOs may also file complaints with the regional bodies on behalf of victims who have suffered from a human rights violation.[215] For example, Article 44 of the American Convention states that "[a]ny person or group of persons, or any nongovernmental

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207. RESTAVÈK FREEDOM, *supra* note 54, at para. 3.

208. Dan Anderson, *What is an NGO?*, NON-GOVERNMENTAL ORGS. (Dec. 5, 2011), http://ngos.org/what-is-an-ngo/.

209. Eric D. Werker & Faisal Z. Ahmed, *What Do Non-Governmental Organizations Do?* 3 (J. of Econ. Persps.,Working Paper No. 08-041, 2007).

210. Martin A. Olz, *Non-Governmental Organizations in Regional Human Rights Systems*, 28 COLUM. HUM. RTS. L. REV. 307, 308–09 (1997).

211. *Id.* at 354–55.

212. *Id.* at 327, 355.

213. *Id.* at 355.

214. *Id.* at 327.

215. *Id.*

entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violations of this Convention by a State Party."[216] In fact, NGOs initiate most petitions.[217]

NGOs prove instrumental to monitoring state compliance with treaty obligations. Human rights treaties commonly obligate state parties to submit periodic reports detailing progress and compliance with the treaty's provisions.[218]

> The degree of NGO involvement in State reporting procedures is determined by the following variables: (1) the willingness of States to inform NGOs of their reporting activities and to let them participate in the process; (2) the availability of State reports to NGOs; [and] (3) the extent to which the respective treaty body accepts "alternative" reports presented by NGOs and makes use of information provided by NGOs . . . .[219]

Over 10,000 NGOs operate and fund projects within Haiti.[220] Several spearhead efforts to identify restaveks and bring international attention to the system.[221] These organizations further seek to "strengthen community dialogue on the problems and abuses associated with the restavek system."[222]

Restavek Freedom, for example, an NGO dedicated solely to ending the restavek system, seeks to challenge cultural norms and exert influence in communities. To that end, the organization instituted a variety of programs to advocate and care for restaveks, "convers[e] with families about the harsh realities of the practice, [and encourage] community leaders to effect (*sic*) permanent

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216. American Convention on Human Rights, *opended for signature* Nov. 22, 1969, art. 44, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, 135 (entered into force July 18, 1978) [hereinafter ACHR].

217. Olz, *supra* note 210, at 357.

218. *Id.* at 326.

219. *Id.* (footnote omitted).

220. Cynthia Kao, *Haiti's Multi-Billion Dollar Humanitarian Aid Problem*, HUFFINGTON POST (Sept. 28, 2015, 9:40 AM), http://www.huffingtonpost.com/young-professionals-in-foreign-policy/haitis-multi-billion-doll_b_8207494.html.

221. Hill, *supra* note 49, at 211; Abrams, *supra* note 41, at 463.

222. 2012 HUMAN RIGHTS REPORT, *supra* note 126, at 29.

change."[223] In 2014 alone, Restavek Freedom spent $1,532,859 USD on program development designed to target the restavek system.[224]

The NGO partners with over fifty schools across Port-au-Prince and Haiti's southern peninsula to educate restaveks[225] and operates a transitional home in Port-au-Prince, a refuge for former restaveks to seek shelter and learn important skills before transitioning to more stable settings, which include placement with foster families and, sometimes, reunification with biological parents.[226] Furthermore, Restavek Freedom educates biological and host families, the former on the abuse children face as restaveks and the latter on alternative solutions to addressing the challenges within their homes.[227] In this way, the organization hopes to cut off both the source of and need for restaveks. Additionally, Restavek Freedom holds open space meetings, forums for community members to discuss the system and the damage it causes.[228]

Restavek Freedom also mobilizes for international response. In 2011, for example, Restavek Freedom submitted a report entitled "Restavek: The Persistence of Child Labor and Slavery" to the United Nations' Universal Periodic Review (the "UPR").[229] "The Universal Periodic Review (UPR) is a unique process which involves review of the human rights records of all UN Member States . . . . The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur"[230] by "remind[ing] States of their responsibility to fully respect

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223. *Join the Team*, RESTAVEK FREEDOM, http://www.restavekfreedom.org/who-we-are/join-the-team (last visited Oct. 14, 2016).

224. *2014 Annual Report*, RESTAVEK FREEDOM, http://www.restavekfreedom.org/document.doc?id=38 (last visited Oct. 14, 2016).

225. *Child Advocacy Program*, RESTAVEK FREEDOM, http://www.restavekfreedom.org/what-we-do/child-advocacy-program (last visited Oct. 14, 2016).

226. *Transitional Home*, RESTAVEK FREEDOM, http://www.restavekfreedom.org/what-we-do/transitional-home (last visited Oct. 14, 2016).

227. *See Rural Programs*, RESTAVEK FREEDOM, http://www.restavekfreedom.org/what-we-do/rural-programs (Last visited Oct. 14, 2016); *Urban Programs*, RESTAVEK FREEDOM, http://www.restavekfreedom.org/what-we-do/urban-programs (last visited Oct. 14, 2016).

228. *Urban Programs*, RESTAVEK FREEDOM, http://www.restavekfreedom.org/what-we-do/urban-programs (last visited Oct. 14, 2016).

229. *See generally*, RESTAVEK FREEDOM, *supra* note 54 (discussing the persisting challenge of restavek children in Haiti).

230. *Universal Periodic Review*, OFF. U.N. HIGH COMM'R FOR HUMAN RTS., http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx (last visited Oct. 14, 2016).

and implement all human rights and fundamental freedoms."[231] The report highlighted the abuses faced by restaveks, Haiti's inaction, and other challenges to confronting the system.[232]

Despite the progress made by NGOs like Restavek Freedom, lack of coordination and government support limit their ability to create more than "pockets of change."[233] Additionally, private donors fund NGOs, making the latter cognizant of donor satisfaction.[234] This can temper NGO policies and initiatives.[235] Furthermore, NGOs do not possess the ability to compel government compliance.[236] Rather, NGOs highlight human rights violations, advocate for victims, and lobby external bodies.[237]

In recent years, NGOs have drawn attention to the restavek system on an international scale.[238] Despite these efforts, however, the Haitian government continues to act with indifference, and NGOs remain powerless to force governmental compliance with Haitian law.[239] As such, NGO efforts alone—though commendable—do not adequately address the abuses inherent in the restavek system. Refocusing these efforts into a collaborative scheme, however, would enhance their effectiveness and ability to generate widespread change.

B. The International Labour Organization

The International Labour Organization (the "ILO"), established in 1919, became a specialized United Nations ("U.N.")

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231. RESTAVÈK FREEDOM, *supra* note 54.

232. *Id.* at § A.

233. *Id.* at 140; *see also* Grace Everest, *NGOs in Haiti: Caught in an Aid Worker Bubble*, E-INT'L REL. STUDENTS (Oct. 5, 2011), http://www.e-ir.info/2011/10/05/ngos-in-haiti-caught-in-an-aid-worker-bubble/ (examining the role of NGOs in Haiti's underdevelopment).

234. Werker & Ahmed, *supra* note 209, at 8.

235. Michael Shaw-Bond, *The Backlash Against NGOs*, PROSPECT (Apr. 20, 2000), http://www.prospectmagazine.co.uk/features/thebacklashagainstngos ("NGOs are like political parties in that they depend on their members for funding and answer to them for their policies. Since they could not survive without their 'grassroots,' much of their campaigning is geared towards expanding this base, sometimes in competition with other organisations . . . . However much they claim to speak for the public, their main responsibility is always to themselves").

236. *See* Olz, *supra* note 210, at 329.

237. *See id.* at 327, 354–55.

238. *See* Abrams, *supra* note 41, at 463.

239. *See* MY STONE OF HOPE, *supra* note 1, at 45.

agency in 1946.[240] The ILO promotes "social justice and internationally recognized human and labor rights, pursuing its founding mission that social justice is essential to universal and lasting peace."[241] Since its foundation, the ILO has promulgated over one hundred legally binding international treaties known as conventions.[242] These conventions address a variety of topics, including child labor.[243]

On March 4, 1958, Haiti ratified ILO C. 29, the Forced Labour Convention, which obligates state parties "to suppress the use of forced or compulsory labour in all its forms."[244] Article 2 defines "forced or compulsory labour" as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[245] The state party must completely suppress forced or compulsory labor—regardless of whether an individual, company, or association receives the benefit of the work—upon the convention entering into force for that state.[246]

Article 2 can be broken down into the following four components: (1) work or service, (2) exacted from any person, (3) under menace of any penalty, (4) involuntarily.[247] The restavek system violates ILO C. 29 for the following reasons:[248]

Work or Service. Restaveks work up to eighteen hours each day, carrying water, cleaning chamber pots, cooking meals, scrubbing floors, and the like.[249] As such, restaveks function as domestic servants,[250] whose activities qualify as work under this prong.

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240. *About the ILO*, The Int'l Lab. Org., http://www.ilo.org/global/about-the-ilo/lang--en/index.htm (last visited Oct. 14, 2016) [hereinafter ILO Web].

241. *Mission and Impact of the ILO*, THE INT'L LAB. ORG., http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm (last visited Oct. 14, 2016).

242. *Id.*; LOUIS HENKIN, HUMAN RIGHTS 278 (Robert C. Clark, et al. eds., 2d ed. 1999).

243. Michael Tonya, *Baby Steps Toward International Fair Labor Standards: Evaluating the Child Labor Deterrence Act*, 24 CASE W. RES. J. INT'L L. 631, 639 (1992).

244. Convention Concerning Forced or Compulsory Labour (No. 29) art. 1, June 28, 1930, 39 U.N.T.S. 55, 55 [hereinafter ILO C. 29].

245. *Id.* art. 2.

246. *Id.* art. 4.

247. *Id.* art. 2.

248. AMNESTY INT'L UK, *supra* note 58.

249. MY STONE OF HOPE, *supra* note 1, at 2.

250. Abrams, *supra* note 41, at 446.

Exacted from Any Person. Although ILO C. 29 fails to define persons, the U.N. has recognized the convention's applicability to children.[251] Therefore, restaveks, though minors, constitute persons.

Under Menace of Any Penalty. Host families compel restaveks to labor under menace—or threat—of physical punishment.[252] Furthermore, these children are beaten for not completing their work fast enough.[253] Punishments include burning, bruising, and other physical assaults.[254]

Involuntarily. Voluntary means intentional or without compulsion from an external influence.[255] Parents place children with host families under the mistaken belief that their basic needs will be met.[256] Host families advance these delusions, promising to provide the child with food, shelter, and education.[257] These promises are patently false.[258] As such, parents "involuntarily" place their children with host families. Although aware of the abuse faced by other restaveks, parents believe the host's promises, thinking their child to be the exception.[259] Children, ignorant of their rights, go and tolerate their abusive working conditions.[260]

Accordingly, the restavek system satisfies all four prongs under Article 2, meaning that Haiti must suppress this form of forced labor. Its failure to do so violates ILO C. 29.[261]

On July 19, 2007, Haiti ratified ILO C. 182, which endeavors to "secure the prohibition and elimination of the worst forms of child labour as a matter of urgency."[262] Article 3 defines "the worst forms of child labour" as

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251. *Cf.* AMNESTY INT'L UK, *supra* note 58 (The U.N. Special Rapporteur on Contemporary Forms of Slavery noted that Haiti failed to meet its obligations under ILO C. 29 by allowing the restavek system to persist. Because ILO C. applies only to forced labor of persons, children are necessarily included.)

252. GIRARD, *supra* note 28, at 172.

253. *See* RESTAVÈK FREEDOM, *supra* note 54, at para. 12.

254. Pattisson, *supra* note 42, at 203–04.

255. *Voluntary*, BLACK'S LAW DICTIONARY (10th ed. 2014).

256. Cadet Org., *supra* note 61.

257. RESTAVÈK FREEDOM, *supra* note 54, at para. 5.

258. *See id.* at paras. 4–19 (describing the neglect, mistreatment, and abuse suffered by restavek children).

259. *See Causes: The Rural Family,* RESTAVEK FREEDOM, http://www.restavekfreedom.org/the-issue/rural-causes (last visited Oct. 14, 2016).

260. Janak, *supra* note 96, at 325.

261. AMNESTY INT'L UK, *supra* note 58.

262. ILO Web, *supra* note 240; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (No. 182)

> (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour . . . ; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties; [or] (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.[263]

In addition to ensuring effective implementation and enforcement of this convention, state parties must "take effective and time-bound measures to . . . prevent the engagement of children in the worst forms of child labour [and] provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration."[264]

Child slavery has been defined as

> [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.[265]

As such, the following elements must be met: (1) institution or practice, (2) child under age eighteen, (3) delivered by parent or guardian, (4) to another, (5) with the intent to exploit the child or his or her labor.

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art. 1, June 17, 1999, 2133 U.N.T.S. 161, 161 [hereinafter Worst Forms of Child Labour Convention]. The term child refers to those under the age of 18. *Id.* art. 2.

263. Worst Forms of Child Labour Convention, *supra* note 262, art. 3.

264. *Id.* at art 7.

265. Hill, *supra* note 49, at 208–09 (quoting from the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, "an international legal instrument that classifies the conditions of the restaveks as slavery," which Haiti ratified in 1958).

Institution or Practice. The restavek system pervades Haitian society and has done so for centuries.[266] On average, 300,000 children currently serve as restaveks, proving the restavek system to be an institution rather than an isolated incident.[267]

Child under Age Eighteen. Children become restaveks as early as age five[268] and are generally dismissed at age fifteen.[269] As such, virtually all restaveks are under age eighteen.

Delivered by Parent or Guardian. Most children enter the restavek system through placement by one or both parents.[270] Others "fall into" the restavek system—orphaned or kidnapped—but this represents a slight minority of all restaveks.[271]

To Another. Custody of these children is transferred to host families. Children stay with these host families and often lose complete contact with their biological families.[272]

With the Intent to Exploit the Child or His or Her Labor. Host families procure restaveks with the intent to exploit these children and their labor. Restaveks wake by dawn to begin working, receive little food and no pay, and face physical and psychological abuse.[273] Additionally, restaveks, particularly females, are often there to satisfy the sexual impulses and advances made by males in the host family.[274]

As such, each element of child slavery is satisfied. Therefore, the restavek system constitutes a form of slavery, a violation of ILO C. 182.

Furthermore, host families sometimes pay *koutchye* to obtain restaveks, yet another violation of ILO C. 182, which prohibits the sale or trafficking of children.[275] The restavek system may also violate the Article 3 provision prohibiting children from engaging in "work

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266. Pattisson, *supra* note 42, at 201.
267. *See id.*
268. RESTAVÈK FREEDOM, *supra* note 54, at para. 10.
269. RESTAVEC, *supra* note 3, at 4; Abrams, *supra* note 41, at 458; Janak, *supra* note 96, at 327.
270. *See* Cadet Org., *supra* note 61.
271. *See id.*
272. RESTAVÈK FREEDOM, *supra* note 54, at para. 8.
273. Cadet Org., *supra* note 61.
274. RESTAVÈK FREEDOM, *supra* note 54, at para. 13.
275. *Id.* at para. 8; Worst Forms of Child Labour Convention, *supra* note 262, art. 3.

which . . . is likely to harm the health, safety or morals of children."[276] Unfortunately, Article 4 allows national law to determine the types of work falling into this category.[277] Although Haitian law criminalizes the restavek system, its application to Article 3 is unclear.

The ILO monitors state compliance with convention obligations, utilizing a supervisory system that "regularly examines the application of [convention] standards in member states and points out areas where they could be better applied."[278] Supervisory mechanisms include regular and special procedures.[279] Under the regular procedures, the ILO examines periodic reports submitted by states detailing compliance with ratified ILO conventions; in contrast, special procedures consist of representations and complaints of noncompliance.[280]

Should issues arise while implementing convention standards, "the ILO [first] seeks to assist countries through social dialogue and technical assistance" with drafting legislation.[281] If the state fails to adequately address concerns, the ILO may publish representations made against a state or appoint a Commission of Inquiry to make recommendations via report.[282] On its own, however, the ILO cannot authorize "retaliatory trade measures or sanctions," leaving many to question whether "it can protect workers using its existing enforcement tools since they impose little penalty besides bad publicity."[283]

The restavek system continues to persist and grow in Haiti despite ratification of ILO C. 29 and ILO C. 182.[284] Additionally, no individual complaint mechanism exists under the ILO, so restaveks cannot seek redress.[285] Only industrial associations of employers or workers may make representations, and only member states or an

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276. Worst Forms of Child Labour Convention, *supra* note 262, art. 3.

277. *Id.* at art. 4.

278. *Applying and Promoting International Labour Standards,* INT'L LABOR ORG. (2016), http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm.

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. Gary Burtless, *Workers' Rights: Labor Standards and Global Trade*, BROOKINGS (Sept. 1, 2001), https://www.brookings.edu/articles/workers-rights-labor-standards-and-global-trade/; Tonya, *supra* note 243, at 639 ("The ILO cannot enforce its child labor conventions.").

284. *See* RESTAVÈK FREEDOM, *supra* note 54, at para. 3.

285. *See* ILO Web, *supra* note 240.

ILO body may lodge a complaint.[286] For this and the reasons noted above, the restavek system cannot be left in the hands of a system of essentially voluntary compliance. As such, the ILO is not the best forum to address the abuses inherent in the restavek system.

C. The U.N. Committee on the Rights of the Child

Upon enactment, the Convention on the Rights of the Child (the "CRC") became the first legally binding treaty to enumerate the rights of children.[287] Its fifty-four articles can generally be divided into four categories: "(1) guiding principles, (2) survival and development rights, (3) protection rights, and (4) participation rights. Guiding principles of the [CRC] include non-discrimination, promotion of the best-interests of the child, the rights to life, survival and development, and the right to participate."[288]

State parties must undertake all measures necessary to ensure the protection of children's rights, measures which include legislative or administrative reform and enforcement.[289] Haiti signed the CRC on January 26, 1990 and ratified it on June 8, 1995.[290] However, the restavek system stands in violation of the CRC. For example, Article 6 charges states with the duty to "ensure to the maximum extent possible the survival and development of the child."[291] Malnutrition contributes to physical underdevelopment; on average, a teenage restavek stands two inches shorter and weighs forty-four pounds less than the average Haitian child.[292] Additionally, the system breeds uneducated and psychologically stunted adults who lack basic life skills and hope for the future.[293]

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286. *Id.*

287. Hill, *supra* note 49, at 201. The term "child" means any "human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Convention on the Rights of the Child art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3, 46 [hereinafter CRC].

288. Abrams, *supra* note 41, at 460 (footnotes omitted).

289. CRC, *supra* note 287, art. 4 at 46.

290. *Reporting Status for Haiti*, OFF. U.N. HIGH COMM'R FOR HUM. RTS., http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HTI&Lang=EN (last visited Oct. 14, 2016).

291. CRC, *supra* note 287, art. 6 at 46.

292. RESTAVÈK FREEDOM, *supra* note 54, at para. 11.

293. GIRARD, *supra* note 28, at 172; *see also* RESTAVÈK FREEDOM, *supra* note 54, at para. 14 ("Some restavèk, while not suffering from such overt abuse, suffer emotionally from neglect and isolation . . . . Many restavèk also have stunted child development.").

Articles 12 and 13 provide children with the freedom to express their views in matters that affect them.[294] A restavek's duty, however, is to be as useful and silent as a chair.[295] They must not speak until spoken to, especially about their needs.[296] Article 18 states that parents "have the primary responsibility for the upbringing and development of the child" and that "[t]he best interests of the child will be their basic concern."[297] Yet, an estimated 300,000 children serve as restaveks.[298] Being scarred physically and emotionally does not promote their best interests.

Article 19 obligates states to 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.

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.[299]

MAST, the government agency tasked with enforcing child protection and labor laws, lacks sufficient funding to employ adequate personnel, fully investigate child abuse cases, or provide training.[300] Furthermore, the agency lacks "sufficient reach or standard protocols to conduct targeted inspections."[301] Additionally, the agency operates a hotline to promote identification and reporting of child protection complaints, but employees fail to follow-up after their initial

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294. CRC, *supra* note 287, arts. 12–13 at 48.

295. MY STONE OF HOPE, *supra* note 1, at 57.

296. *See e.g.*, RESTAVEC, *supra* note 3, at 4–5 ("I could not talk to her about my needs. In fact, I could not speak until spoken to . . . .").

297. CRC, *supra* note 287, art. 18 at 50.

298. Pattisson, *supra* note 42, at 201.

299. CRC, *supra* note 287, art. 19 at 50.

300. 2014 FINDINGS, *supra* note 144, at 4; *see also* Binford, *supra* note 44, at 17 (discussing the financial instability and fragmentation of Haiti's child protection agencies); NCHR, *supra* note 165 (discussing the government's limited response to the restavek system).

301. 2014 FINDINGS, *supra* note 144, at 5.

inquiry.[302] Rarely are cases taken to court.[303] As such, Haiti's legislative measures and social programs fail to protect children from the forms of abuse prohibited by Article 19 of the CRC.

Article 27 of the CRC recognizes a child's right to "a standard of living adequate for the child's physical, mental, spiritual, moral and social development," and Article 28 grants the right to education.[304] States must ensure that "primary education [is] compulsory and available free to all."[305] Article 31 recognizes the child's right "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," and Article 32 obligates a state to protect a child "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."[306] The list of provisions applicable to the restavek system goes on and on, as do Haiti's infractions of them.

The U.N. Committee on the Rights of the Child, a body of eighteen independent experts, monitors state compliance with the CRC.[307] The committee reviews progress reports submitted by parties,[308] and "publishes concluding observations on each country's report as well as general comments that offer guidance and recommendations to all states parties on specific subjects covered by the Convention."[309] Additionally, the committee may consider complaints by individual children; however, the offending state must have ratified OPIC, the third optional protocol, which provides for the communications procedure.[310] Haiti has not ratified the protocol.[311]

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302. *Id.*
303. *Id.*
304. CRC arts. 27–28.
305. *Id.* art. 28.
306. *Id.* arts. 31–32.
307. *Monitoring Children's Rights*, OFF. U.N. HIGH COMM'R FOR HUM. RTS. (2016), http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx (last updated 2016).
308. *Id.* ("[State parties] must submit an initial report two years after acceding to the Convention and then periodic reports every five years.").
309. HENKIN, *supra* note 242, at 263.
310. *Monitoring Children's Rights*, supra note 307.
311. *Status of Ratification: Interactive Dashboard*, OFF. U.N. HIGH COMM'R FOR HUM. RTS. (2014), http://indicators.ohchr.org/ (last updated 2014).

The committee lacks power to compel compliance[312] and may not seek an advisory opinion of the International Court of Justice (the "ICJ").[313] The ICJ may only "give advisory opinions on legal questions at the request of [authorized U.N. organs] or specialized agencies"; unfortunately, the committee did not make that list.[314] Additionally, the ICJ may only hear contentious cases concerning disputes between states.[315] As noted above, the restavek system cannot be left in the hands of system of essentially voluntary compliance. As such, the United Nations and its Committee on the Rights of the Child are not the best forum to address the restavek system.

IV. THE ORGANIZATION OF AMERICAN STATES AND ITS ABILITY TO EXACT CHANGE

A. The American Convention on Human Rights

The American Convention on Human Rights (the "Convention") secures international protection of human rights by consolidating, in the western hemisphere, "a system of personal liberty and social justice based on a respect for the essential rights of man."[316] The Convention obligates states to amend or adopt domestic legislation and to take other measures necessary to secure those rights to all persons subject to their jurisdiction.[317] Haiti ratified the American Convention on September 14, 1977.[318] Its ratification signaled acceptance of this duty, yet the restavek system continues to grow—essentially without government interference—in violation of Articles 6 and 19 of the Convention.

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312. *See* Attila Tanzi, *Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations*, 6 EUR. J. OF INT'L LAW 542 (1995) (stating that the Security Council is, "virtually, the only institutional means for enforcement in the UN system").

313. *Jurisdiction: Organs and Agencies of the United Nations Authorized to Request Advisory Opinions*, INT'L CT. OF JUSTICE, http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=2&p3=1 (last visited Sept. 27, 2016).

314. *Id.*

315. *Id.*

316. ACHR, *supra* note 216, pmbl.

317. ACHR, *supra* note 216, arts. 1–2 (defining "person" to mean "every human being").

318. Dep't of Int'l Law, *Multilateral Treaties*, ORG. OF AM. STATES (2014), http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm.

Article 6 prohibits slavery, stating that "[n]o one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms."[319] Work performed during incarceration, military service, or civic obligations are exempt.[320] The Convention fails to include any other guidelines for determining which practices qualify as slavery.[321] However, *Trabalhadores de Fazenda Brasil Verde v. Brasil*, a 2011 case, sheds light on the issue.[322] There, estate owners subjected males of African ancestry—by the thousands—to harsh labor and deplorable living conditions.[323] Workers as young as age fifteen were "brought to estates under deceptive circumstances" where they would later be beaten, sexually abused, and otherwise humiliated.[324] Threats and acts of violence compelled the workers to stay.[325] To determine whether the practice constituted forced labor amounting to slavery, the Inter-American Commission on Human Rights (the "Commission") considered the presence of death threats or "other deterrents to being able to leave freely; the lack of wages or the existence of a minimal salary; the debt they had incurred with the estate owner; and the lack of decent housing, food, and health care, among other problems."[326] Ultimately, the Commission characterized the practice as a "modern form of slavery."[327]

The restavek system undoubtedly qualifies as a modern form of slavery under this case. Like the Brazilian *trabalhadores*, restaveks are overworked and assaulted, physically and psychologically; likewise, restaveks labor under threat of violence.[328] Both lack decent housing, food, and healthcare. In fact, restaveks sleep on mats under the kitchen table, receive little food, and lack access to health care and medical clinics.[329] Notably, the Brazilian

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319. ACHR, *supra* note 216, art. 6.

320. *Id.*

321. *See id.*

322. *See* Press Release, Inter-American Commission on Human Rights, IACHR Takes Case involving Brazil to the Inter-American Court, Org. of Am. States Press Release No. 045/15 (May 7, 2015), http://www.oas.org/en/iachr/media_center/PReleases/2015/045.asp (The case has not yet been heard by the Court).

323. *Id.*; AMERICAS WATCH, FORCED LABOR IN BRAZIL 2 (Cynthia Arnson ed., 1990).

324. AMERICAS WATCH, *supra* note 323, at 2, 5.

325. *Id.*

326. Inter-American Commission on Human Rights, *supra* note 322.

327. *Id.*

328. GIRARD, *supra* note 28, at 172.

329. Loney, *supra* note 65; *see also* RESTAVEC, *supra* note 3, at 17 (detailing restavek abuse including refusal to take a sick restavek to a clinic).

practice qualified as slavery even though many *trabalhadores* received minimal salaries. Restaveks, however, remain unpaid.[330] As such, the restavek system, akin to the Brazilian practice, violates Article 6 of the Convention.

Importantly, in *Trabalhadores de Fazenda Brasil*, the Commission faulted Brazil for the practice.[331] Brazil, although aware of the situation, failed to "take reasonable prevention and response measures and failed to provide victims with an effective judicial mechanism for the protection of their rights, the punishment of those responsible, and the procurement of reparations."[332] Essentially, by "tolerating these practices, [Brazil] perpetuated them."[333] Similarly, the Haitian government fails to take reasonable prevention and response measures. The agency tasked with enforcing child protection laws lacks sufficient funding to employ and train enough personnel, investigate child abuse cases, and adequately monitor its hotline.[334] The agency rarely takes a case to court, generally making only an initial inquiry into reported cases.[335] Additionally, the 2003 Act fails to provide for the punishment of host families and for the procurement of reparations.[336] Therefore, Haiti's reluctance to interfere in a practice so culturally ingrained perpetuates the system.[337] As such, the restavek system will be attributed to Haiti, making Haiti responsible for violating Article 6 of the Convention.

Article 19 of the Convention specifically addresses children's rights, stating that "[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state." This duty of "special protection may not be suspended under any circumstances."[338] Although the Convention itself lacks further guidance, the Commission has examined the issue. In 2001, for example, the Commission investigated the situation of street children in Guatemala.[339] In its report, the Commission noted that "[s]treet children are forced by

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330. GIRARD, *supra* note 28, at 172.
331. Inter-American Commission on Human Rights, *supra* note 322.
332. *Id.*
333. *Id.*
334. *See supra* Part III(B).
335. RESTAVÈK FREEDOM, *supra* note 54, at para. 24; 2014 FINDINGS, *supra* note 144, at 5.
336. RESTAVÈK FREEDOM, *supra* note 54, at para. 23.
337. *Id.* at para. 17; Cadet Org., *supra* note 61.
338. RAPPORTEURSHIP ON THE RIGHTS OF THE CHILD, THE RIGHTS OF THE CHILD IN THE INTER-AM. SYS. OF HUMAN RIGHTS 243 (2003) art. 27.
339. *Id.*, at 247–48.

socioeconomic circumstances to live in extremely precarious circumstances, marginalized from society at large, and deprived of the protections normally available to children . . . . Reports suggest that the majority of the female street children suffered sexual abuse."[340] Furthermore, "[s]treet children are extremely vulnerable to acts of abuse and violence by virtue of their circumstances."[341]

The Commission broadly stated that a child's right to "protection requires that the State take measures to . . . respond with due diligence to *any violations* that take place."[342] That duty extends to "rights of both a civil and political, and an economic, social and cultural nature."[343]

Like Guatemala's street children, restaveks are forced by socioeconomic circumstances to live in extremely precarious circumstances. Prompted by extreme poverty, biological families send their children to live with host families where, while serving as restaveks, these children are beaten, raped, and psychologically abused.[344] Additionally, society marginalizes restaveks, seeing them as less than human.[345] Despite Haiti's duty to respond with due diligence to these violations and to protect these children from abuse, Haiti neglects to meaningfully interfere. As such, the restavek system violates Article 19 of the Convention, and Haiti will be held responsible.

Article 33 of the Convention charges the Commission and the Inter-American Court of Human Rights (the "Court") with ensuring that states fulfill their commitments under the Convention.[346]

B. The Inter-American Commission on Human Rights

The Commission, together with the Court, promotes and protects human rights in the western hemisphere.[347] "The work of the [Commission] rests on three main pillars: the individual petition

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340. *Id.*
341. *Id.*
342. *Id.* at 244 (emphasis added).
343. *Id.*
344. *See supra* Part II(C).
345. *Id.*
346. ACHR, *supra* note 216, art. 33.
347. *What is the IACHR*, Org. of Am. States, INTER-AM. COMM'N ON HUMAN RIGHTS, (2011), http://www.oas.org/en/iachr/mandate/what.asp.

system, monitoring of the human rights situation in the Member States, and the attention devoted to priority thematic areas."[348]

An individual may not bring a human rights cause of action before the Court directly; rather, an individual must start by lodging a petition with the Commission.[349] NGOs may also file petitions on behalf of victims.[350] In either case, the petition must confirm that domestic remedies have been pursued and exhausted.[351] When domestic remedies are unavailable, ineffective, or insufficient, however, "the individual may be excused from the duty to exhaust them."[352] Additionally, an individual will be excused from exhausting domestic remedies when "the party alleging the violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them . . . ."[353]

Haitian remedies are ineffective. The government rarely prosecutes cases involving the mistreatment of restaveks.[354] Instead, the government acts with indifference toward the centuries-old practice.[355] Haitians see these children as disposable, worthless, and undeserving of human compassion.[356] Social conditioning perpetuates the discriminatory treatment.[357] Because the restavek system is so deeply ingrained in Haitian society, the government allows the practice to persist and grow.[358]

Furthermore, Haitian remedies are insufficient. The 2003 Act allocates jurisdiction for investigating child labor cases to MAST. Under MAST, the IBESR monitors a hotline to receive complaints alleging violations of children's rights.[359] The understaffed and minimally funded program offers only limited assistance.[360] For

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348. *Id.*
349. ACHR, *supra* note 216, art. 61.
350. *Id.*
351. *Id.* art. 46.
352. Cesare P. R. Romano, *The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures*, *in* INT'L COURTS AND THE DEV. OF INT'L LAW 561, 565 (Nerina Boschierio et al., eds. 2013).
353. ACHR, *supra* note 216, art. 46 (emphasis added).
354. 2014 FINDINGS, *supra* note 144, at 5 ("Prosecutions of crimes related [to] the worst forms of child labor are rare.") (citation omitted).
355. *See* RESTAVÈK FREEDOM, *supra* note 54, at para. 17.
356. *See* Tackett, *supra* note 48, at 1030.
357. Cadet Org., *supra* note 61.
358. RESTAVÈK FREEDOM, *supra* note 54, at paras. 3, 16–17.
359. *Id.* at para. 24.
360. *Id.*

example, the IBESR makes an initial inquiry into a complaint but generally fails to follow-up.[361] Occasionally, such inquiry leads to a child being removed from the host family or a case being taken to court; however, that appears to be the exception rather than the rule.[362] As such, most complainants are left without recourse.

In any event, the Haitian government's inability or refusal to investigate and prosecute these cases prevents restaveks from exhausting domestic remedies. As such, an exhaustion of domestic remedies exception applies, meaning a restavek need not prove that domestic remedies have been pursued and exhausted. The burden falls on Haiti to show otherwise.[363] Given the "considerable degree of flexibility" with which courts have applied this exception, Haiti likely would not meet that burden.[364]

Upon receipt of an admissible petition, the Commission requests information from the offending state, information the Commission uses to determine whether grounds for the petition exist.[365] The Commission may also order the state to open an investigation where appropriate.[366] Should the parties reach an amicable solution, the Commission prepares a report containing a statement of the facts and the agreed-upon solution and transmits the report to the petitioner, the offending state, and the Secretary General of the OAS.[367] Should no settlement be reached, the Commission prepares a report containing a statement of the facts and its conclusions, which may include proposals and recommendations for the offending state.[368] That report is transmitted to both parties.[369] The parties have three months to settle the dispute after which time the Commission makes recommendations to the offending state and

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361. *Id.*

362. *See id.*

363. Romano, *supra* note 352, at 567 ("[T]he Rules of Procedure of the . . . Commission, as amended in 2002, provide: 'When the petitioner contends that he or she is unable to prove compliance with the [exhaustion of remedies] requirement, . . . it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.'").

364. *Id.* at 570.

365. ACHR, *supra* note 216, art. 48. The Commission may bypass this step and proceed with an investigation in "serious and urgent cases" provided the petition "fulfill[ed] all the formal requirements of admissibility." *Id.*

366. *Id.*

367. ACHR, *supra* note 216, art. 49.

368. ACHR, *supra* note 216, art. 50.

369. *Id.*

sets a timeframe for compliance.[370] Recommendations include adopting, amending, or repealing legislation, ordering judicial enforcement, and establishing special policies, mechanisms, and institutions.[371] If the time period expires without the offending state implementing the recommendations, the Commission may refer the matter to the Court.[372]

C. The Inter-American Court of Human Rights

The Commission initiates proceedings in the Court by submitting its report to the Secretariat.[373] The Court's competence to hear such cases hinges on whether the offending state ratified the Convention and accepted the contentious jurisdiction of the Court.[374] Haiti ratified the Convention on September 14, 1977.[375] On March 3, 1998, Haiti also "recognize[d] as binding, . . . and not requiring special agreement, the jurisdiction of the [Court] on all matters relating to the interpretation or application of the Convention."[376]

Upon notice of the presentation of the case, the victim has two months to independently submit a brief containing pleadings, motions, and evidence to the Court.[377] The brief must contain a statement of the facts, of any evidence, of the identity and purpose of witnesses, and of all claims.[378] Within two months, the state must file an answer with the Secretary expressly accepting or denying all of the victim's facts and claims; failure to file an answer or to expressly deny any fact results in those claims being deemed accepted.[379] The state's answer must also include a statement concerning any evidence, the identity and purpose of witnesses, and the state's legal arguments, observations, and conclusions.[380] Upon conclusion of the

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370. ACHR, *supra* note 216, art. 51.

371. RAPPORTEURSHIP ON THE RIGHTS OF THE CHILD, *supra* note 338, at 304.

372. ACHR, *supra* note 216, art. 51.

373. Inter-Am. Ct. H.R. R. arts. 34–35. States may also bring a cause of action against another state by submitting a brief to the Secretariat in accordance with Article 36 of the Court's Rules of Procedure. *Id.* art. 36.

374. *See* RAPPORTEURSHIP ON THE RIGHTS OF THE CHILD, *supra* note 338, at 308.

375. *Multilateral Treaties*, supra note 318.

376. *Id.*

377. Inter-Am. Ct. H.R. R., *supra* note 373, art. 40.

378. *Id.*

379. *See id.* art. 41; Yvon Neptune v. Haiti, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180, ¶ 17 (May 6, 2008).

380. Inter-Am. Ct. H.R. R., *supra* note 373, art. 41.

written proceeding stage, oral proceedings commence.[381] Afterward, each party presents a final written argument.[382]

Finally, the Court makes a final judgment, which includes the ruling, the decision on any applicable reparations, and the result of the vote.[383] Five judges constitute a quorum, and the majority rules.[384] "The judgment of the Court shall be final and not subject to appeal."[385]

The Convention established the Court to promote and protect human rights in the western hemisphere, to be a sword for change. With the stroke of its pen, the Court could do just that; it could order the Haitian government to confront the centuries old practice, rather than allowing the government's indifference and non-interference to continue. In *Villagrán-Morales et al. v. Guatemala*, for example, the Court confronted Guatemala's non-response to concerns over the increasing number of street children.[386] Thousands of Guatemalan children lived on the streets, "marginalized from society at large and deprived of the protections normally available to street children."[387] These children, ages seven to fourteen, beg for food or turn to prostitution as a means of support.[388] Guatemala lacked both a "comprehensive plan to deal with [the] problem"[389] and the services necessary to get "children off the streets and back on a productive life path."[390] As such, the Court ordered Guatemala to "adopt in its domestic legislation, . . . legislative, administrative and any other measures . . . necessary in order to adapt Guatemalan legislation to Article 19 of the Convention," which pertains to the rights of the child.[391] Additionally, the Court ordered Guatemala to pay compensation to the petitioners, designate an educational center to honor the victims, "investigate the facts of this case, identify and

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381. *Id.* art. 45.
382. *Id.* art. 56.
383. *Id.* art. 65.
384. ACHR, *supra* note 216, art. 56; Inter-Am. Ct. H.R. R., *supra* note 373, art. 67.
385. ACHR, *supra* note 216, art. 67.
386. RAPPORTEURSHIP ON THE RIGHTS OF THE CHILD, *supra* note 338, at 247.
387. *Id.*
388. *Id.*
389. *Id.* at 248.
390. *Id.*
391. Villagrán-Morales et al. v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 123 (May 26, 2001).

punish those responsible and adopt, in its domestic law, the provisions needed to ensure compliance with this obligation."[392]

Conforming to that precedent, the Court should order Haiti to:

> (a) Amend the 2003 Act provision that leaves the minimum age for domestic workers ambiguous;
> (b) Amend the 2003 Act to include punishments and penalties for violators;
> (c) Take severe legislative, judicial, or other measures to identify, prosecute, and punish (i) host families who procure and abuse restaveks and (ii) *koutchye* who facilitate the recruitment and placement of restaveks;
> (d) Enact legislation allowing NGOs to file lawsuits in domestic courts on behalf of restaveks and other abused children;
> (e) Provide adequate funding to child abuse and labor law enforcement agencies;
> (f) Mandate periodic supervision after the initial inquiry into child abuse reports;
> (g) Investigate host family and *koutchye* recruitment practices to identify potential victims;
> (h) Establish a recovery center and educational facility to provide for the social rehabilitation of rescued restaveks;
> (i) Establish educational programs that challenge cultural attitudes about children—particularly restaveks—and increase awareness of their abuse; and
> (j) Establish policies aimed to redress damage to restaveks, which includes reparatory orders.

Additionally, the Court should order Haiti to establish a comprehensive program for combating the restavek system. The program should focus on systematic cooperation among NGOs and between NGOs and the Haitian government (the "Program"), basing its structure on Liberia's Governance and Economic Management Assistance Programme ("GEMAP"). "GEMAP was a response to serious corruption and mismanagement of public finances in post-

392. *Id.*

conflict Liberia, the extent of which, in the view of international donors, threatened Liberia's current transition and prospects for stable peace."[393] Specifically, "GEMAP targets public finance management and accountability in Liberia and, in particular, revenue collection, expenditure controls and government procurement and concession practices. It does this through a set of comprehensive international controls including the [placement] of international experts with co-signature authority in selected government ministries . . . ."[394] GEMAP also established an Anti-Corruption Commission, which enforces the law, and a steering committee, which guides and monitors GEMAP's implementation.[395] The steering committee is "chaired by the Liberian head of state, with a representative of the international community serving as deputy chair."[396] The U.N. Security Council provides additional oversight.[397]

Similarly, corruption, fund mismanagement, and cultural bias pervade the Haitian government, which threatens Haiti's desire and ability to effect meaningful change within the restavek system.[398] International collaboration would remove Haiti as the sole driver. In creating the Program, comprehensive international controls—similar to those found in GEMAP—should be instituted. International experts with co-signature authority should be inserted into MAST and the IBESR. These individuals would indirectly monitor the enforcement of child labor laws by reviewing program expenditures and overseeing judicial reform. The Haitian head of state could chair the Program's steering committee and a vetted NGO could serve as deputy chair. An independent Anti-Corruption Commission could be established to enforce child labor laws and the Court, like the U.N. Security Council, could provide oversight.

Currently, Haiti's Ministry of Planning and External Cooperation coordinates and supervises NGO activities within the country.[399] In practice, however, lack of interaction, partnership, and coordination weakens the Ministry and prompts most NGOs to work

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393. RENATA DAWN & LAURA BAILEY, LIBERIA'S GOVERNANCE AND ECONOMIC MANAGEMENT ASSISTANCE PROGRAMME 6 (GEMAP) (2006).

394. *Id.*

395. *Id.* at 6, 16.

396. *Id.* at 16.

397. *Id.* at 6.

398. *See supra* Parts I and II.

399. Comm. on the Rights of the Child, 71st Sess., Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Haiti, GAOR ¶ 38, U.N. Doc. CRC/C/HTI/2-3 (2015) [hereinafter CRC Report].

independently from the Haitian government;[400] the Program would change that. In fact, precedent for this type of endeavor already exists in Haiti.[401] For example, the "International Donors' Conference held in March 2010 established . . . a multi-donor trust . . . managed by the World Bank for large-scale projects in order to facilitate coordination and avoid duplication."[402]

Similarly, the Program's steering committee could manage a trust funded by NGOs, international partners, and the Haitian government. Under the steering committee's supervision, vetted NGOs would implement a variety of projects, which include developing proposals for restructuring the child protective system, providing technical assistance and support, establishing data collection systems, and creating programs designed to increase the income of biological families and provide incentives for them to keep their children. Additionally, the Program could foster cooperation with government agencies—such as MAST, the IBESR, and the BPM—by providing training sessions and enforcement tools and by organizing round tables "to bolster the capacity of [these agencies] to carry out joint cooperation [programs] and to serve as a platform for dialogue and consensus on drafting recommendations and implementing" child protection laws.[403] Following GEMAP's framework, the Program would be temporary, dissolving once Haiti develops sufficient infrastructure to independently combat the restavek system and achieves full compliance with the Court's decision.

Finally, the Court should order Haiti to systematically publicize its child protection laws, specifically the 2003 Act. Article 40 of the Haitian Constitution requires the government to publicize legal instruments, yet the general public remains largely unaware that restavek placement violates the law.[404] In fact, the Haitian government has not undertaken any systematic measures to raise awareness of its child protection laws and responsibilities.[405]

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400. *Ngos Go Collaboration in Haiti Economics Essay*, UKESSAYS (Mar. 23, 2015), https://www.ukessays.com/essays/economics/ngos-go-collaboration-in-haiti-economics-essay.php.

401. CRC Report, *supra* note 399, ¶ 34.

402. *Id.*

403. *Id.* ¶ 39.

404. CONSTITUTION DE LA REPUBLIQUE D'HAITI, Mar. 29, 1987, art. 40; *see also* RESTAVÈK FREEDOM, *supra* note 54, at para. 17 (listing ignorance of the law as one challenge to eliminating child labor in Haiti).

405. *See* CRC Report, *supra* note 399, ¶ 43.

In response to international pressure from the U.N. Committee on the Rights of the Child in 2002, Haiti enacted the 2003 Act, which prohibits the placement of restaveks.[406] However, the Haitian government has often refused to enforce the act, stating that the restavek system is "so ingrained in Haiti that too many people do not even know that they are breaking the law."[407] Lack of enforcement, however, perpetuates the lack of knowledge. As such, awareness and enforcement of the 2003 Act are key to combating the restavek system. In fact, Haitians already comply with at least one restavek related law. After the child reaches the age of fifteen, the employer must provide room and board and pay the child no less than half the wage of an adult domestic.[408] To avoid punishment, host families dismiss restaveks at age fifteen. Admittedly, this is a tragic result, but nonetheless, Haitians comply. Were the government to publicize the 2003 Act, host families, aware of possible punishment, might not procure restaveks. Thus, children would avoid the system entirely.

Accordingly, the Court will send a powerful message—a message of hope to these children and of intolerance to those responsible for the system's perpetuation.

D. The Effectiveness of this Approach

The Court considers the effective implementation of its decisions to be the cornerstone of the Inter-American System of Human Rights.[409] Both the nature of the Court and the structure of its orders make compliance crucial.[410]

> First, the Court mostly hears high-profile cases of egregious state violations of fundamental rights . . . [which] garner[] attention at the national and international levels and, in turn, boost[] the Court's legitimacy and influence. This is particularly true [because] the small size of the Court's docket

406. *Cf. id.* ¶¶ 1, 8–10 (listing recent legislative developments in Haiti).
407. RESTAVÈK FREEDOM, *supra* note 54, at para. 17.
408. Abrams, *supra* note 41, at 458.
409. *See* Alexandra Huneeus, *Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights*, 44 CORNELL INT'L L.J. 493, 504 (2011) ("[Compliance] has been an elusive goal for the Inter-American Court.").
410. *Id.* at 506.

> gives each case greater visibility. Second, in its reparatory orders, the Court goes beyond simply repairing the harm caused to particular victims. For example, it frequently issues "non-repetition measures," ordering the state to make structural changes to assure that like injuries do not recur.[411]

In this way, compliance leads to important structural changes at the national level.[412] As such, the Court considers compliance to be more than just an effect of its decisions; rather, "it is the work of the Court itself."[413]

The Court relinquishes jurisdiction over a case only after a state has fully complied.[414] This may mean years of oversight and supervision.[415] During the oversight process, a state must "report on their own compliance efforts within a set period. Once the state sends its report, the Court gives the [Commission] and the victim the opportunity to review and respond to those self-reports."[416] The Court, then, responds by specifying what actions the state must take next, and the cycle repeats.[417] When deemed appropriate, the Court may summons the state and conduct a closed hearing on compliance.[418]

Additionally, the Court may enlist the aid of other OAS organs to enforce its decisions. "To each regular session of the General Assembly of the [OAS] the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations."[419] The General Assembly may actively encourage

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411. *Id.* (footnotes omitted); *see, e.g.*, Villagrán-Morales et al. v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 123 (May 26, 2001); Pacheco Teruel et al v. Honduras, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 241, ¶ 143 (Apr. 27, 2012) (recognizing Honduras's responsibility for the violation of fundamental rights and imposing obligations on the Honduran government to prevent future injuries of the same nature).

412. Huneeus, *supra* note 409, at 506.

413. *Id.* at 507.

414. *Id.* at 506.

415. *Id.* at 506–07.

416. *Id.* at 501 (footnotes omitted).

417. Huneeus, *supra* note 409, at 502.

418. *Id.* at 501.

419. ACHR, *supra* note 216, art. 65.

"other organizations around the hemisphere to halt aid and loans,"[420] suspend economic development programs aimed at strengthening the state's institutional capacities,[421] or take other appropriate action. For example, the General Assembly could encourage international organizations to channel aid allocated for child protection into the Program. In doing so, its steering committee could facilitate the disbursement of funds to priority program areas.

Foreign aid plays a vital role in supporting Haiti's economic development and public programs.[422] Suspension of loans or economic development programs would cripple and destabilize Haiti's already fragile economy, the threat of which may incentivize Haiti to comply with the Court's judgment. In fact, Haiti has already shown some compliance with the Court's decisions.[423] The Court decided two cases against Haiti, *Yvon Neptune v. Haiti* (2008) and *Lysias Fleury et al. v. Haiti* (2011).[424]

In *Yvon Neptune*, the Haitian government detained Mr. Neptune for alleged criminal conduct while serving as the Prime Minister of the Government.[425] "[A]t the time of his arrest, he was not informed of the reasons for his detention, nor was he informed of his rights . . . . [T]he State did not bring Mr. Neptune promptly before a judge . . . ."[426] Additionally, "he was not granted recourse to a competent court to decide on the lawfulness of his arrest; his physical, mental and moral integrity was not guaranteed, nor his right to be separated from convicted criminals, given the conditions of his detention and treatment he received."[427] Haiti's actions violated Articles 5, 7, 8, 9, and 25 of the Convention; the rights to humane treatment, personal liberty, a fair trial, freedom from ex post facto

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420. *Cf.* Associated Press, *OAS Suspends Honduras After Coup*, FOX NEWS (July 5, 2009), http://www.foxnews.com/story/2009/07/05/oas-suspends-honduras-after-coup.html (describing possible consequences of OAS suspension).

421. *Cf. Trade and Economic Development*, DEP'T FOR ECON. DEV., ORG. OF AM. STATES (2016), http://www.oas.org/en/sedi/desd/ted/ (discussing one of the programs ultimately under the General Assembly's power).

422. Kao, *supra* note 220.

423. *See* Raya Marinova, *Yvon Neptune v. Haiti*, 36 LOY. L.A. INT'L & COMP. L. REV. 1167, 1182 (2014).

424. *Decisions and Judgments*, INTER-AM. CT. OF HUM. RTS., http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=en (last visited Sep. 28, 2016).

425. Yvon Neptune v. Haiti, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180, ¶ 4 (May 6, 2008).

426. *Id.* ¶ 10.

427. *Id.*

laws, and judicial protection, respectively.[428] As such, the Court ordered Haiti to guarantee Mr. Neptune received a fair trial regarding the accusations against him.[429] Additionally, the Court required Haiti to adopt legislation defining procedural norms for its courts, guaranteeing due process, and addressing prison conditions.[430] In compliance with the Court's judgment in *Yvon Neptune*, Haiti formally dropped charges against Mr. Neptune, revisited outdated legislation, and proposed judicial reform.[431] Although the 2010 earthquake halted further progress, Haiti's initial actions demonstrate a respect for the Court and its decisions.[432]

In *Lysias Fleury*, the Court considered a similar case concerning the arrest, detention, and inhumane treatment of an individual, this time a human rights advocate charged with stealing a water pump.[433] Again, the Court found Haiti in violation of Articles 5, 7, 8, 16, 22, and 25; the rights to humane treatment, personal liberty, a fair trial, free association, movement and residence, and judicial protection, respectively.[434] *Inter alia*, the Court ordered Haiti to investigate the detention and torture of Mr. Fleury, publish its findings, implement a mandatory course educating the national police and judicial officials on international human rights standards, and adopt legislation for holding the national police accountable for their actions.[435] Information on Haiti's compliance with *Lysias Fleury* has not yet been made available.[436]

Overall, the Court's ability to monitor, the General Assembly's ability to enforce, and Haiti's demonstrated compliance make the OAS an effective avenue to address the restavek system. No other international body allows a restavek to lodge an individual complaint and maintains jurisdiction to ensure compliance.

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428. *Id.* ¶¶ 86, 123, 124, 151.
429. Marinova, *supra* note 423, at 1180.
430. *Id.*
431. *Id.* at 1182.
432. *See id.*
433. Lysias Fleury et al. v. Haiti, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 236, ¶¶ 27, 32–33 (Nov. 23, 2011).
434. *Id.* ¶¶ 64, 89, 96, 102, 114.
435. Sarah Frost, *Lysias Fleury et al. v. Haiti*, 36 LOY. L.A. INT'L & COMP. L. REV. 1095, 1107–09 (2014).
436. *Id.* at 1110.

CONCLUSION

The abuse of children can no longer be tolerated. Society must defend the rights of vulnerable children even when faced with impossible cultural attitudes and corrupt governments. As many as 500,000 children serve as restaveks. "'The restavek system is one of the most severe examples of child domestic work, both in terms of the children's young age and the abuses they suffer.'"[437] These children are "unpaid, overworked, raped, beaten, uneducated, bought and sold, and generally compelled to provide free labor under the threat of physical punishment."[438] For what purpose? Restaveks provide "a service whose economic value [is] limited; their masters could easily [wash] their own clothes and [scrub] their own floor[s]."[439]

The Haitian government acts with indifference, blaming cultural attitudes without challenging those perceptions. Even when confronted with allegations of abuse, Haiti rarely prosecutes these types of cases. The international community must intervene, and the OAS provides the best avenue to do so. The ILO and U.N. Committee on the Rights of the Child's efforts fail to adequately address the system. Neither provides an individual complaint mechanism nor a viable method of enforcement. The OAS, however, allows individuals and NGOs acting on their behalf to lodge petitions. The multilayer system provides oversight of government practices, oversight which continues years after a case's resolution. Furthermore, Haiti has already demonstrated compliance and respect for the Court.

The Court can compel Haiti to actively work toward stamping out this modern form of slavery. Poverty does not excuse a nation from meeting its international obligations, and while implementing Court-ordered reform and programs may prove costly, international assistance continues to subsidize Haiti's existing budget, which provides sufficient resources to begin addressing the restavek system.

Under its 2011–2012 budget, Haiti allocated 718,728,000 gourdes—approximately $17,968,200 USD—for child protection.[440] Of that, fifty million gourdes—approximately $1.25 million USD—was allocated to the IBESR.[441] Additionally, the Haitian private sector provides special assistance for awareness-raising activities

437. Pattisson, *supra* note 42, at 202.
438. GIRARD, *supra* note 28, at 172.
439. *Id.*
440. CRC Report, *supra* note 399, ¶ 29.
441. *Id.*

throughout Haiti.[442] Moreover, international donors—such as the United Nations, "the World Bank, the Inter-American Development Bank (IDB), the United States Agency for International Development (USAID), the European Union, the Canadian International Development Agency (CIDA), the European Commission's Humanitarian Aid and Civil Protection department (ECHO), the Petrocaribe Development Fund and the International Organisation of La Francophonie"—play a crucial role in promoting children's rights within Haiti.[443] "[T]he tragic situation of Haitian society following the 2010 earthquake [also places] NGOs . . . in a better position than ever to [aid the Haitian government in] rais[ing] funds and develop[ing] comprehensive programs aimed at eliminating the restavek system altogether."[444] In fact, over ten-thousand NGOs already supply billions in aid to Haiti,[445] a fraction of which would provide the Haitian government with the resources needed to address the restavek system. Were Haiti to channel these funds into the Program, the international community could ensure these resources were used for their intended purpose.

Currently, government corruption, fund mismanagement, and indifference leave the most vulnerable unprotected. Restaveks, like Jean-Robert, suffer in silence, largely ignored by the government sworn to protect them, but for the reasons noted above, the OAS can serve as a powerful catalyst for change, making the OAS an effective avenue for inspiring hope and for protecting the next generation of restaveks from abuse.

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442. *Id.* ¶ 30.
443. *Id.* ¶ 31–32.
444. Abrams, *supra* note 41, at 463.
445. Kao, *supra* note 220.