Legal Curriculum on *Restavèk* Children in Haiti

Prepared by

Tina Borysthen-Tkacz
Adrienne Zack
Jill Zumbach
Law Students

Susan M. Akram
Clinical Professor and Supervising Attorney
Asylum & Human Rights Program
Boston University School of Law
765 Commonwealth Ave.
Boston, Massachusetts 02215
(617)-353-3148

TABLE OF CONTENTS

Introduction *Restavèk* Children in Haiti and Project Goals
Overview Legal System in Haiti

I. Child Labor Laws
- A. International Law Applicable to Haiti
  1. Convention on the Rights of the Child
  2. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Prostitution and Child Pornography
  3. ILO Minimum Age Convention (138)
  4. ILO Convention Concerning Child Labor (182)
  5. Memorandum of Understanding with the International Labour Organization's International Program on the Elimination of Child Labor (ILO-IPEC)
- B. Haitian Domestic Law
  1. Relevant Employment Law
  2. Relevant Child Welfare Law

II. Anti-Trafficking Laws
- A. International Law Applicable to Haiti
  1. Convention for the Suppression of the Traffic of Persons and the Exploitation of the Prostitution of Others
  2. Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children
  3. Protocol on the Smuggling of Migrants by Land, Sea and Air
  4. The Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto
- B. Haitian Domestic Law
  1. Haitian Constitution
  2. Act on the Prohibition and the Elimination of All Forms of Abuse, Violence, Ill Treatment or Inhuman Treatment Against Children of 2003
  3-7. Haitian Criminal Laws

III. Adoption Laws
- A. International Law Applicable to Haiti
  1. Convention on the Rights of the Child
  2. Hague Convention on Intercountry Adoption
- B. Haitian Domestic Law

IV. International Human Rights Law and Enforcement Mechanisms
- A. Organization of American States
- B. Inter-American Commission on Human Rights & the Inter-American Court of Human Rights

Introduction

Restavèk Children in Haiti and Project Goals

Many parents in Haiti who cannot afford to provide for their children send them into informal adoption known as *restavèk*, whereby they become domestic servants for other families. Unfortunately, a large number of these children are forced into involuntary servitude, prevented from attending school, provided with inadequate food and housing, and subjected to physical and verbal abuse. Forced child labor has become further entrenched since the 2010 earthquake, which left thousands of children without houses to live in or parents to care for them. Estimates put the number of *restavèk* children in Haiti between 150,000-500,000.[1]

The practice of *restavèk* is now illegal in Haiti, but remains a deeply entrenched and culturally accepted practice. Often seen by poverty-stricken families as a way to provide for a better life for their children, parents willingly send their children to better-off families in the city to live and work in their households. *Restavèk* children can be as young as five; most are denied access to schooling; they are frequently undernourished; and they are overworked. Girls comprise the majority of *restavèk* children and are particularly vulnerable to abuse, sexual violence, and rape. Recruiters are frequently used in Haiti to find *restavèk* children for middle class families. Consequently, aside from the benefits to families using such children for free labor, there is financial incentive to another group of profiteers to maintain the practice. Traffickers also move children across the Haitian border, and there are an estimated 3,000 *restavèk* children in the Dominican Republic.[2]

Thus, reducing or eliminating the practice of *restavèk* is a multifaceted problem that must be addressed through a broad combination of laws and policies on child trafficking, exploitation, abuse, labor, health, education, and regulation of adoption. Haiti has passed a number of laws—including the law prohibiting *restavèk* placement—that would significantly address the problem, but is not able to effectively enforce them. Haiti is a poor country with extremely limited resources. The agency responsible for policing the laws prohibiting *restavèk*, the Institute of Wellbeing and Social Research (IBESR) of the Bureau of Social Affairs, instituted a hotline for complaints of child abuse in 2000. However, the agency has been unable to effectively follow-up on the vast majority of complaints or initiate prosecutions of violators.

Many non-governmental organizations have stepped in to fill the gap in Haitian government resources, and are working to address the problem of *restavèk* children. Among these—but by no means all of them-- are *Restavèk* Freedom, *Bureau des Avocats*

---

[1] Gulnara Shahinian, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Report of the Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences*, Addendum 7 (Sept. 2009), *cited in* Universal Periodic Review submission on Haiti to the Human Rights Council by *Bureau des Avocats. Internationaux*, Center for Constitutional Rights, *et al*, (3-14 October, 2011), at p. 1.

[2] See *id.*, Universal Periodic Review submission, pp. 1-3.

Internationaux, the Institute for Justice & Democracy in Haiti, Beyond Borders, Haiti Partners, and UNICEF. This project focuses on interacting with a number of stakeholders involved with protecting children's rights and legal advocates for *restavèk* children in Haiti through a series of meetings to be held in September 2012. The aim is to share information about how Haitian and international law is being used by NGO's and Haitian government agencies to combat the problems of *restavèk*. The Boston University human rights clinical team will share their research on the larger legal framework available to address *restavèk*, learn from Haitian stakeholders what is being used effectively, and what areas might be strengthened with additional legal resources that Boston University law school might be able to contribute. The proposal's aim is to help strengthen creative advocacy through combining Haitian domestic law with international norms to ensure that *restavèk* children get the care and protection they require. The longer-term goals are to determine whether there are areas in which ongoing collaboration with the Boston University law school might be developed to support the existing legal work in Haiti to address the *restavèk* problem.

Overview

Legal System in Haiti

Haiti currently has several laws and regulations that are under-utilized for protection of *restavèk* children, including Haiti's labor code, which provides for regulations on child labor; anti-kidnapping laws; and mandatory education laws. In 2003, Haiti passed the *Act on the Prohibition and Elimination of all Forms of Abuse, Violence, Abusive or Degrading Treatment against Children*,[3] seemingly prohibiting *restavèk.*

Haiti has also ratified a number of international treaties that provide for protection of children, including the UN Convention on the Rights of the Child (CRC), ratified by Haiti in 1995, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, ratified by Haiti in 2011. Haiti has also ratified the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and the ILO Minimum Age Convention, which are incorporated into Haitian domestic legislation. Moreover, Haiti is a member of the Organization of American States (OAS), a party to the OAS Charter and the American Convention on Human Rights, and bound to the Inter-American Court of Human Rights and Commission, which enforce the OAS Charter and Convention. Thus, there are strong applicable legal norms and protections to apply to prosecute and punish the abuses involved in the *restavèk* system, even if *restavèk* cannot be eliminated entirely in the short term. However, the resources and enforcement mechanisms are weak and underutilized, as illustrated in this review of the existing applicable legal framework to the problem.

[3] Projet de Loi Relatif a l'Interdiction et a l'Elimination de Toutes Formes d'Abus, de Violences, de Mauvais Traitements Inhumains Contre les Enfants, published in *Le Moniteur*, May 15, 2003 (available via www.glin.gov).

I. Child Labor Laws

A. International Law Applicable to Haiti

1. Haiti signed the Convention on the Rights of the Child[4] on January 26, 1990 & ratified it on June 8, 1995 (no reservations).
   - Art. 28 recognizes the right to education.
   - Art. 31 recognizes the right to play.
   - Art. 32 recognizes the right to be free from economic exploitation, or from performing any hazardous work or work that interferes with the child's education.
     - States Parties are responsible for setting minimum age of employment; providing regulation of work hours and conditions.
   - Art. 34 recognizes States Parties' responsibility to protect children from sexual exploitation and abuse.
   - Art. 35 recognizes States Parties' responsibility to take measures against child abduction & trafficking.
   - Art. 39 recognizes States Parties' responsibility to rehabilitate and reintegrate all abused and exploited children into society.
   - Art. 43 establishes the Committee on the Rights of the Child, which is intended to examine progress of States Parties in meeting their obligations under the Convention. The Committee makes reports on its activities to the U.N. General Assembly through the U.N. Economic and Social Council every two years.
     - Using the Convention, UNICEF supports several programs in Haiti that "help child domestic workers . . . regain their rights." [5]

2. Haiti signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Prostitution and Child Pornography[6] on August 15, 2002, with no reservations, but never ratified it. This Protocol requires states-parties to "prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol."[7]
   - Art. 1 "State Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol."
   - Art. 2 "For the purposes of the present Protocol:
     (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

---

[4] Convention on the Rights of the Child, *open for signature* Nov. 20, 1989, 1577 U.N.T.S 3, *available at* http://www2.ohchr.org/english/law/crc.htm#art21.

[5] *See UNICEF and Partners Help Child Domestic Workers in Haiti Regain Their Rights* (Apr. 20, 2007), UNICEF: At a Glance: Haiti, available at http://www.unicef.org/protection/haiti_39418.html (last visited Aug. 13, 2012).

[6] Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *opened for signature* May 25, 2000, 2171 U.N.T.S. 227, *available at* http://www2.ohchr.org/english/law/crc-sale.htm.

[7] *Id.*

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes."

- Art. 3 States who are parties to the Optional Protocol are required to take further steps to ensure that its domestic laws effectively punish acts that exploit, endanger, and otherwise harm children including:
  - Criminally punishing the sale of children as defined in article 2 ["sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;"] including offenses of:
    - Offering, delivering, or accepting a child for the purposes of
      - sexual exploitation,
      - transfer of organs of the child for profit,
      - engagement of the child in forced labor
    - Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
  - Criminally punishing any attempt of the above-referenced acts;
  - In order to criminally punish the acts or attempts of them, parties are requires to make the offenses punishable by "appropriate penalties that take into account their grave nature."
- Art. 8 "States shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
  - Adapting procedures to the special needs of child victims, especially as witnesses during prosecutions;
  - Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and the disposition of their cases;
  - Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
  - Providing appropriate support services to child victims;
  - Protecting the privacy and identity of child victims and taking measures to avoid inappropriate dissemination of information that could lead to the identification of child victims;
  - Providing for the safety of child victims as well as that of their families and witnesses on their behalf;
  - Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims."

3. On June 3, 2009, Haiti ratified the ILO Convention on Minimum Age (No. 138), adding a provision setting its minimum working age at 14 rather than 15, as specified in Article 2, section 3 of the Convention; members are permitted to

make this modification under section 4 of that same article.[8] According to the ILO, it pushes for stronger national laws and enforcement mechanisms within member nations, including prosecution of those who employ workers illegally.[9]

- Art. 3, section 1 of the Convention requires that workers be at least 18 years of age to do any "work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety, or morals of young persons." [10]
- Art. 7 emphasizes the importance of preventing those between ages 13 and 15 from engaging in work that could be harmful to their health or development, or which could interfere with their school attendance.[11]
  - "1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age or light work which is-- (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received."

4. On July 19, 2007, Haiti ratified the ILO Convention on the Worst Forms of Child Labour (No. 182).[12]
   - Art. 1 requires that each ratifying member "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency."[13]
   - Art. 3 defines the "worst forms of child labour" as including "all forms of slavery , . . . such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour" and "work which . . . is likely to harm the health, safety or morals of children." [14]
   - Art. 6 requires each ratifying member to design and implement programs of action to eliminate the worst forms of child labour.
   - Article 7, section 2 requires members to take effective and time-bound measures to: "(a) prevent the engagement of children in the worst forms of

---

[8] *See* Normlex Information System on International Labour Standards, *Ratifications for Haiti*, available at www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200_COUNTRY_ID:102671 (last visited July 26, 2012).
[9] *See The ILO at a Glance* 14, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082367.pdf (last visited Aug. 13, 2012).
[10] *See* Normlex Information System on International Labour Standards, *C138 – Minimum Age Convention, 1973 (No. 138)*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312283 (last visited July 26, 2012).
[11] *See id.*
[12] *See* Normlex Information System on International Labour Standards, *Ratifications for Haiti*, available at www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO::P11200_COUNTRY_ID:102671 (last visited July 26, 2012).
[13] *See* Normlex Information System on International Labour Standards, *C182 – Worst Forms of Child Labour Convention, 1999*, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312327:NO (last visited July 26, 2012).
[14] *See id.*

child labour; (b) provide the necessary and appropriate direct assistance of the removal of children from the worst forms of child labour and for their rehabilitation and social integration; (c) ensure access to free basic education, and wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; (d) identify and reach out to children at special risk; and (e) take account of the special situation of girls."[15]

- Art. 11 permits any ratifying member to denounce this Convention within ten years of the convention entering into force, so Haiti may still be able to do so.[16]

5. In 1998, Haiti signed a Memorandum of Understanding ("MOU") with the International Labour Organization's International Program on the Elimination of Child Labor (ILO-IPEC).[17] On June 15, 2010, the U.S. and Brazil signed a related MOU with the ILO and Haiti to work to eradicate child labor in Haiti following the January 12, 2010 earthquake.[18] The 1998 MOU established a National Steering Committee on child labor made of up ILO-IPEC delegates. As of June 8, 2012, the ILO-IPEC group had launched the "Frennen Sistem *Restavèk*" Facebook campaign against *restavèk* in Haiti.

B. Haitian Domestic Law[19]

Relevant Employment Law

1. Haiti's Employment Code regulates employment wages, hours and conditions.
   - The minimum age for work in industrial, agricultural, & commercial enterprises is 15 (minimum age for hazardous work is 18); however, the minimum age for domestic labor is 12.[20] Allowing children as young as 12 to work violates ILO Convention No. 138, which Haiti ratified in 2009.
   - Penalties for child labor violations are 1,000-3,000 gourdes ($42-$126 USD).[21]
   - According to Title VI, ch. 1, §255, of the Code of Employment, domestic workers should be paid wages and provided adequate food & housing.[22]

---

[15] *See id.*
[16] *See id.*
[17] *See* U.S. Dept. of Labor, Bureau of International Labor Affairs, Haiti: Child Labor in Haiti, available at http://www.dol.gov/ilab/media/reports/iclp/Advancing1/html/haiti.htm.
[18] *See Brazil, U.S. and ILO to expand fight against child labour in post-earthquake Haiti - first ILO North-South-South 'triangular agreement,'* International Labour Organization Press Release, June 15, 2010, available at http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_141747/lang--en/index.htm (last visited July 25, 2012).
[19] *See* U.S. Dept. of Labor, *2010 Findings on the Worst Forms of Child Labor – Haiti*, Oct. 3, 2011, available at http://www.unhcr.org/refworld/docid/4e8c397f1a.html).
[20] *See* Govt. of Haiti, *Code du Travail* (1984), art. 335, available at http://www.ilo.org/dyn/natlex/docs/WEBTEXT/135/64790/F61HTI01.htm: "*Les mineurs âgés de moins de quinze ans ne pourront travailler dans les entreprises industrielles, agricoles ou commerciales.*"
[21] *See* U.S. Dept. of Labor: Haiti, available at http://www.dol.gov/ilab/media/reports/iclp/Advancing1/html/haiti.htm.

- Haiti's Code of Employment, Part II, law 4, ch. II, § 96 provides for an eight-hour workday; minimum wage guidelines are listed in ch. VI.[23]
- 2003 law amended the Labor Code to prohibit abuse, exploitation, or violence of any kind against children.[24] [See Anti-Trafficking Laws, below]
- The *Ministre des Affaires Sociales et du Travail* is responsible for enforcing employment laws in Haiti.

Relevant Child Welfare Law

2. The 1987 Haiti Constitution guarantees free and compulsory education for all children, but most Haitian children who attend school pay to attend private school.[25]
    - Many children don't attend school and many public schools are inadequate.
    - Children are only required to attend school until age 11.
    - The Haitian government runs the Education for All (EFA) program, but it doesn't address child labor. Many schools need to be rebuilt following the 2010 earthquake.

Laws on Child Trafficking
[See Anti-Trafficking Laws, below]

Questions and Points for Discussion

1. The U.S. State Department provided $5.75 million in grants to fight child trafficking in Haiti following the earthquake. How has this money been used, and what, if anything, will it be available for in the future?
2. Haiti has no shelters for human trafficking victims, but the Group against Child Trade and Trafficking in Persons coordinates anti-trafficking measures, and most

---

[22] *See* Govt. of Haiti, *Code du Travail* (1984), art. 255, available at http://www.ilo.org/dyn/natlex/docs/WEBTEXT/135/64790/F61HTI01.htm: "*Sauf convention contraire, la rétribution des travailleurs domestiques comprend, outre le versement de gages en espèces, la fourniture du logement et d'une alimentation en quantité suffisante et de qualité courante.*"
[23] *See* Govt. of Haiti, Code du Travail (1984), art. 96, available at http://www.ilo.org/dyn/natlex/docs/WEBTEXT/135/64790/F61HTI01.htm: "*Dans tous les établissements agricoles, industriels et commerciaux, la durée normale du travail est de huit heures par jour et de quarante-huit heures par semaine.*"
[24] *See* Projet de Loi Relatif a l'Interdiction et a l'Elimination de Toutes Formes d'Abus, de Violences, de Mauvais Traitements Inhumains Contre les Enfants, published in *Le Moniteur*, May 15, 2003 (available via www.glin.gov); *see also* http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=HTI&p_classification=04&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.
[25] *See* 1987 Constitution of Haiti, Title III, Chapter II, Section F, Article 32-1, available at http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html (last visited July 26, 2012): "Education is the responsibility of the State and its territorial divisions. They must make schooling available to all, free of charge, and ensure that public and private sector teachers are properly trained."

anti-trafficking work is done by NGOs, not the Haitian government.[26] According to the *Restavèk* Freedom Foundation, this creates piecemeal change without solving the *restavèk* problem across the board. Is there any mechanism to enforce the Haitian labor laws or the free compulsory education requirement?

3. Could legal workers be trained if additional resources were available so that they could assist in monitoring and supporting official enforcement actions?
4. Would an approach that uses 'know-your-rights' materials and trainings in rural and poor communities concerning applicable laws to protect against abuse of children, trafficking, and the risks involved in giving children up as *restavèk* be useful? Such materials and trainings could be developed for NGOs, Haitian legal workers and activists to use within vulnerable communities, as the AHR clinic has done in Cambodia.
5. What additional resources could be developed to enhance or support criminal prosecutions of abusers, civil remedies, or to enhance the lives and opportunities of children in poor communities so that their families are less likely to send them into *restavèk*? Could resources be developed to make education in rural communities more widely available, such as has been done in India?
6. Does Haiti have a mechanism for pushing and adhering to international norms, especially those outlined in the treaties Haiti has ratified? Who in the Haitian government knows about, and/or works within these norms? Do Haitians have access to any kind of publication of these norms? Could BU law students assist in developing issues or preparing reports to the Inter-American Commission or relevant special procedures?
7. Could BU law students assist in developing cases to get the Inter-American Commission on Human Rights and the Inter-American Court more involved in the issue of *restavèk*?

[26] *See* United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* 146, available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf.

II. Anti-Trafficking Laws

A. International Law Applicable to Haiti

1. Haiti ratified the Convention for the Suppression of the Traffic of Persons and the Exploitation of the Prostitution of Others[27] on August 26, 1953 (no reservations). This Convention requires states-parties to punish those who coerce individuals into sex trafficking or who run brothels, and allows for repatriation of those who have been trafficked out of their home countries.

2. Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime [hereinafter "Trafficking Protocol"][28]
    - Haiti signed the Trafficking Protocol on December 13, 2000, and ratified it on April 19, 2011, with no reservations.
    - The Trafficking Protocol requires the Haiti to criminalize the offense of trafficking as defined in the Protocol.
    - It also requires Haiti to protect victims of trafficking and prevent and combat trafficking. One way that the Protocol requires States to assist and protect victims is to provide for a method to be compensated for the damage suffered, a civil, rather than criminal remedy. The language requiring Haiti to enact these measures in the Protocol is "States Parties shall." However even with this strong language, Haiti has not yet passed the laws it is required to create under the Protocol.
    - The following articles are most relevant to the issue of child trafficking:
    - Art. 2 states that the purposes of the Protocol are to prevent and combat, to protect and assist, and to promote cooperation.
        - "The purposes of this Protocol are: (a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives."
    - Art. 3(a) sets out a general definition of trafficking.
        - " 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the

[27] Convention for the Suppression of the Traffic of Persons and the Exploitation of the Prostitution of Others, *opened for signature* March 21, 1950, 96 U.N.T.S. 271, *available at* http://www.unhcr.org/refworld/docid/3ae6b38e23.html/ (last visited July 26, 2012).
[28] Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, supplementing the United Nations Convention against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, 2237 U.N.T.S. 319.

prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

- Art. 3(c) sets out the definition of trafficking, particularly as to children.
  - "The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article."
- Art. 5 requires State Parties to criminalize the conduct defined as trafficking.
  - "1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally. 2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences: (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article; (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article."
- Art. 6 requires State Parties to (1) protect privacy and identity; (2) ensure there are measures to provide victims information on court or admin proceedings; (3) consider implementing care after trafficking; (5) endeavor to provide for physical safety while in its territory; (6) ensure that domestic system offers possibility of compensation.
  - "1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential. 2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence. 3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities. 4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care. 5.

Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory. 6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."

- Art. 9 states that Parties will establish policies to prevent and protect victims of trafficking.
  - "1. States Parties shall establish comprehensive policies, programmes and other measures: *(a)* To prevent and combat trafficking in persons; and *(b)* To protect victims of trafficking in persons, especially women and children, from revictimization. 2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons. 3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society. 4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity. 5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking."
- Art. 10 requires State Parties to cooperate and use an information exchange to combat cross border trafficking.
  - 1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine: (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons; (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them. 2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should

encourage cooperation with nongovernmental organizations, other relevant organizations and other elements of civil society. 3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use."

3. Haiti signed the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing The United Nations Convention Against Transnational Organized Crime on December 13, 2000, and ratified it on April 19, 2011, without reservations.[29]
    - Art. 6 requires that states parties make the smuggling of migrants and the production or procurement of false travel documents criminal offenses, except that, under Article 5, migrants themselves will not be liable to criminal prosecution. States parties also are required to criminalize any acts that endanger the lives or safety of or exploit migrants. [30]
    - Art. 5: "Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol."
    - Art. 6: "1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit: (a) The smuggling of migrants; (b) When committed for the purpose of enabling the smuggling of migrants: (i) Producing a fraudulent travel or identity document; (ii) Procuring, providing or possessing such a document; (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means."
    - Art. 11 requires states parties to strengthen border controls "as may be necessary to prevent and detect the smuggling of migrants."[31]
        - "Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants."
    - Art. 16 requires states parties to take protective measures to prevent torture or other cruel, inhuman or degrading treatment to migrants.[32]
        - "1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the

[29] Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, 2237 U.N.T.S. 319, available at http://www2.ohchr.org/english/law/organizedcrime.htm (last visited July 26, 2012).
[30] *See id.*
[31] *See id.*
[32] *See id.*

right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. 2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol. 3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol. 4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children."

- Art. 17 permits states parties to enter into regional understandings and agreements aimed at combating smuggling of migrants and improving the Protocol itself.
- Art. 18 requires states parties to facilitate quick return of smuggled migrants to their home countries.[33]
  - "1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return. 2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law."

4. The Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, established in Article 32 of the United Nations Convention Against Transnational Organized Crime [hereinafter "Organized Crime Convention"],[34] is creating and administering the procedures for the formal review process of the implementation of the Trafficking Protocol by State Parties. Any disputes between States Parties regarding the Protocol may be brought to the International Court of Justice if States Parties are not able to resolve such a dispute among themselves within six months.[35]
   - Art. 32(5) requires State Parties to submit information regarding how it is implementing the Trafficking Protocol.
     - "Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties."
     - Preliminary reviews of some State Parties implementation have been undertaken on a volunteer basis in a pilot program of the review mechanism. Because Haiti ratified the Organized Crime Convention

[33] *See id.*
[34] Convention Against Transnational Organized Crime, *opened for signature* Dec. 12, 2000, 2225 U.N.T.S. 209.
[35] *See id.* at art. 35.

and Trafficking Protocol after the last Conference meeting in 2010, it has not yet undergone review or volunteered to do so. The next meeting of the Conference is in October 2012. It appears from the Conference's website that State Parties are supposed to complete an "Omnibus Assesment Checklist" in an effort to self-evaluate.[36]

B. Haitian Domestic Law

1. 1987 Haitian Constitution[37]
   - Art. 276: "The National Assembly may not ratify any international treaty, convention or agreement containing clauses contrary to this Constitution."
   - Art. 276 - 1: "International treaties, conventions and agreements are ratified in the form of a decree."
   - Art. 276-2: "Once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them."

2. Haiti has no criminal domestic anti-trafficking law, but children are protected from trafficking under Projet de Loi Relatif a l'Interdiction et a l'Elimination de Toutes Formes d'Abus, de Violences, de Mauvais Traitements Inhumains Contre les Enfants [Act on the Prohibition and the Elimination of All Forms of Abuse, Violence, Ill Treatment or Inhuman Treatment Against Children of 2003, hereinafter "2003 law"][38] which prohibits forced labor and the use of children in armed conflict and for criminal activities, as well as criminalizes sexual exploitation of children.

   Rough translation:
   - Art. 2. - The abuse and violence of any kind against children, as well as their exploitation is prohibited. Abuse and violence of any kind against children means any abuse or inhumane treatment in their exploitation and including, without limiting the generality of the following enumerations: a) The sale and trafficking of children, debt bondage and forced or compulsory labor as forced services; b) The offer of recruitment, transportation, transfer, harboring, or use of children for sexual exploitation, prostitution, or pornography; c) The offer, recruitment, transfer, harboring, or use of children for criminal activities; d) The offer, recruitment, transfer, harboring, or use of children for sample organ or scientific guinea pigs; e) Work which is likely to harm the health, safety or morals of children by their nature or conditions under which they work; f) The recruitment of children for use in armed conflict.

---

[36] http://www.unodc.org/unodc/en/treaties/CTOC/CTOC-COP.html

[37] CONSTITUTION 1987 (Haiti). (The Haitian Constitution codifies the 'monist' relationship between international and domestic law.; it says that international law is part of domestic law and not a separate body of law. Article 276-2 states that treaties are part of the legislation of the country)

[38] Projet de Loi Relatif a l'Interdiction et a l'Elimination de Toutes Formes d'Abus, de Violences, de Mauvais Traitements Inhumains Contre les Enfants, published in *Le Moniteur*, May 15, 2003 (available via www.glin.gov).

- Art. 3. - A child may be placed in a foster home as part of a helping relationship and solidarity. It must enjoy the same rights and prerogatives as other children of this family. It should be treated as a member of this family.
- Art. 4. - The Ministry of Social Affairs is competent when it comes to their attention that a child is abused, mistreated or abused in accordance with the present Act. It can enter the appropriate judicial authority in accordance with prescribed laws in force against any individual identified as the perpetrator, accomplice or an accessory and / or violator in violation of this Act. The Minister shall examine in each case, with the child, any decision concerning his opinion and collects. All reports must be recorded in a register for that purpose the said Ministry.
    - The Ministry of Social Affairs Institute of Social Welfare and Research (IBESR) is responsible for enforcing child labor laws, including the 2003 law, in Haiti, but reports state that it is understaffed, and the lack of basic equipment hinders investigations. The Ministry of Social Affairs implemented the *SOS Timoun* program, under which IBESR works with the "Service de la Protection de Mineurs" to withdraw children from abusive households; so far, it has withdrawn 240 children from abusive situations. However, according to a 2011 report submitted to the UN by the *Restavèk* Freedom Foundation, there is no evidence that this program continues to function, or that the hotline allowing individuals to report abuse of children still exists.[39] In the last year, the US State Department reports that no prosecutions or convictions were reported.[40]
    - Haitian National Police's Bureau for the Protection of Minors (BPM) is responsible for investigating child trafficking and crimes against children.[41] The BPM faces significant hurdles in funding, the pace of the judicial process, and confusion in the law surrounding trafficking.[42]

Haitian Criminal Law

Haiti has not formally criminalized trafficking, because it has not been defined.[43]

Domestic decrees from the 1980s[44] - These decrees criminalize illegal immigration into Haiti as well as illegal emigration from Haiti and would apply to cross-border trafficking. However, it is unclear if these laws are still in use and still good law.

---

[39] *See Restavèk* Freedom Foundation, *Restavèk: The Persistence of Child Labor and Slavery*, Submission to the UN Oct. 3-14, 2011 (*citing* National Coalition for Haitian Rights, *Restavèk No More: Eliminating Child Slavery in Haiti*, 2002).
[40] United States Department of State, Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report 2012 (June 19, 2012) [hereinafter "2012 DoS Trafficking Report"].
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *See* Glenn R. Smucker & Gerald F. Murray, The Uses of Children: A Study of Trafficking in Haitian Children, USAID/Haiti Mission, 70 (Dec. 28, 2004) (discussing the decrees).

3. Decree of Nov. 17, 1980[45] - threatens six months to three years of prison for those organizing illegal cross-border trips without passing through police and immigration procedures. Article 5 of this decree establishes special punishments for those guilty of deceit, and seems to level penal code sanctions against the purchasers of these services as well.
    - Rough translation of Art 5: "In cases of fraud and breach of trust caused by persuasions, promises by artifice or perception of money, shimmering material benefits, or chimeric or vain hopes, the authors and accomplices who have abused the credulity of those who travel or used spineless, unwanted ways similar to those above are liable to the penalties provided in sections 337 and 340 of the Penal Code."

4. Decree of April 6, 1983 - Article 62 makes illegal any attempt to leave the country without a passport.
    - Unable to locate a copy of Le Moniteur with this decree.

5. Article 300 et seq. of the Penal Code[46] criminalizes the abduction of minors. While not particularly on point, it could be useful.
   Rough translations:
    - Art. 300. – Whoever will, by fraud or violence, kidnaps or causes to kidnap minors, or has driven, diverted or moved, or will actually lead, divert or move from where they were placed by those in authority or direction they were submitted or entrusted, shall suffer the penalty of imprisonment. - C. pen. 17, 20, 23, 33, 279 ff, 294.
    - Art. 301. - If the person abducted or abused is a girl under fifteen years of age, the penalty shall be hard labor. - C. civ. 311. - C. pen. 7-30, 15, 18, 19, 31, 280, 281, 300, 302, 303.
    - Art. 302. - When the girl under fifteen years would have consented to her abduction, or the abductor voluntarily followed, if it was an adult twenty-one years or above, shall be sentenced to hard labor . - C. civ. 311. - C. pen. 7-30, 15, 18, 19, 31. If the abductor had not yet twenty-one years, he shall be punished by imprisonment of one to three years. - C. pen. 26 et seq.
    - Art. 303. - In the event that the kidnapper had married the girl he kidnapped, he can be prosecuted on the complaint of people who, according to the Civil Code, have the right to request the annulment of marriage or sentenced after the nullity of marriage has been pronounced. - C. civ. 148, 170, 311. - C. pen. 284, 300 et seq.

6. Décret: Enlèvements de personnes [Decree: Abductions of persons][47]
    - Summary from GLIN: "Decree completes chapter one, crimes and offenses against persons, of title II, crimes and offenses against individuals, of Law 4, on crimes, offenses and their punishment, of the

[45] Decret, published in *Le Moniteur*, 135th year No. 34, November 24, 1980 (available via www.glin.gov).
[46] Haitian Code Penal (available at http://www.oas.org/juridico/mla/fr/hti/fr_hti_penal.html).
[47] Décret: Enlèvements de personnes, published in *Le Moniteur*, May 16, 2005 (available via www.glin.gov).

Criminal Law by section 5 bis, entitled kidnapping of persons; it imposes penalty of forced labor for life on perpetrators and their accomplices of kidnapping with the intention of receiving ransom. (2 articles; pp. 4-6)"

- Much less robust than the law passed in 2009

7. Loi Sur L'enlèvement, La Séquestration Et La Prise D'otages De Personnes [Law on Kidnapping, Illegal Restraint, and Hostage-taking of People][48]
    - Summary from GLIN: "Law (no number) on the abduction, kidnapping and taking of hostages of persons. This Law establishes penalties and prison terms for officials abusing their positions and imposes even heavier punishment for those who abduct and kidnap persons and subject them to violence and physical torture; penalties will also be applied to those who assist the perpetrators in the commission of the above mentioned crimes. Articles 251-1 and 151-2 are added to the Code of Criminal Procedure. (5 articles; pp. 1-6)"
    - Article 293-9(d) also provides that the assets of someone convicted go to the State to compensate victims ("pour servir au dédommagement des victims").

Questions and Points for Discussion

1. Is there an official government position on how international treaties are incorporated into domestic law, apart from the text of the constitution? Can the direct application of treaties in Haitian domestic law be supported in some way?
2. How has the Ministry of Social Affairs been implementing the 2003 law? Are there any other specific agencies that enforce the criminal laws listed here?
3. Is there any record of whether these criminal provisions have been used to prosecute illegal adoptions or child trafficking? Could additional resources be helpful to support criminal prosecutions, such as SISHA is doing in Cambodia? Would communication between an organization like SISHA and the Ministry of Social Affairs be facilitated for developing trainings of police and other law enforcement to combat abuse of children?
4. Has there been any movement on passing a trafficking criminalization statue? Could BU Law School assist in drafting/revising proposals for a bill on trafficking of children?
5. Are the decrees from the 1980s still good law – can they be used to bring criminal cases?
6. Are traffickers prosecuted under any other laws – immigration, border controls, torts like false imprisonment? Are any of these feasible? Could BU Law School assist in drafting companion legislation to the existing laws to enhance prosecutions?

[48] Loi Sur L'enlèvement, La Séquestration Et La Prise D'otages De Personnes, Loi No.: CL: 01-2009-002; published in *Le Moniteur*, 164th year No. 26, March 20, 2009 (available via www.glin.gov).

III. Adoption Laws

A. International Law Applicable to Haiti

1. Convention on the Rights of the Child.[49] Art. 21 is applicable here.
   - The goal of Article 21 is to ensure that the best interests of the child are the paramount consideration in laws regulating adoptions. The Convention incorporates five different requirements for the forms of protection and oversight:
     - (a) a competent authority who oversees the individual adoptions and ensures that all concerned parties have given their consent for a child to be adopted and that the consent was freely given and not unduly influenced.
     - (b) provisions for inter-country adoptions, "if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;"
     - (c) that children in inter-country adoptions enjoy the same safeguards and standards equivalent to those as in the child's country of national origin,
     - (d) that inter-country adoptions not "result in improper financial gain for those involved in it;"
     - (e) "Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangement or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs."

   L'instut de Bien Être Recherche et Sociale (IBSER) was tasked with carrying out the requirements of the Convention. However, information after 2010 has suggested that the Institut is severely understaffed and unable to adequately carry out its duties, as discussed above. This also relates to destruction of, missing, or incomplete records that occurred after the devastation of the earthquake.[50]

2. Hague Convention on Intercountry Adoption,[51] Haiti is a signatory and has ratified (but not yet deposited the ratification) the Hague Adoption Convention The Hague Adoption Convention is an international treaty that governs the international adoption process. To date 88 countries are part of the Convention, which requires parties to designate a Central Authority to oversee international adoptions and review and accredit service providers.[52] The review and accreditation process incorporates standards state licensing requirements, financial and risk management requirements, ethical practices and responsibilities, professional qualifications and training for employees of service providers,

---

[49] Convention on the Rights of the Child, *open for signature* Nov. 20, 1989, 1577 U.N.T.S 3, *available at* http://www2.ohchr.org/english/law/crc.htm#art21. *See supra*, Part I.A.1.
[50] Satchit Balsari et al. *Protecting the Children of Haiti*, 362 NEW ENG. J. MED. e25 (2010).
[51] Hague Convention on Intercountry Adoption, *opened for signature* May 29, 1993, 1870 U.N.T.S. 167, *available at* http://www.hcch.net/index_en.php?act=conventions.text&cid=69.
[52] US State Dep't, "Understanding the Hague Convention," (n.d.) *available at* http://adoption.state.gov/hague_convention/overview.php.

required disclosures on fee practices and quality control, establishment of a system for complaints, and record requests.[53]

- If a party's practice conforms to these standards, a Hague Adoption Certificate or Hague Custody Declaration is awarded. These are usually held by an officer of the Central Authority.[54]
- On July 16, 2012, Haiti's adoption authority l'Institut du Bien-Etre Sociale et de Recherches (IBESR) confirmed that the Haitian Parliament approved ratification of the Hague Adoption Convention on June 11, 2012.[55] This Convention will enter into force for Haiti in three months after the instrument is deposited with the Dutch Ministry of Foreign Affairs.[56]
- The Hague Adoption Convention is an international agreement to establish safeguards for the child's best interest during inter-country adoptions and to establish a system of co-operation among signatories to ensure that such safeguards are respected and thereby prevent the abduction, sale, or traffic of children.
- The Convention requires that countries who are party to the Convention establish a Central Authority to be the authoritative source of information and point of contact in that country.
- The Convention recognizes inter-country adoption when:
    1. The child has been deemed eligible for adoption by the child's country of birth; and
    2. Proper effect has been given to the child's adoption in his or her country of origin.

B. Haitian Domestic Law

1. Domestic Adoption Provisions [only outlines of procedures available, such as this found at http://adoption.state.gov/country_information/country_specific_info.php?country-select=haiti]

- **Eligibility to Adopt**
    - Haitian law requires prospective parents to be at least 35 years old and to have no other biological children – living or deceased (if not related to the adoptive child).
    - The President of Haiti can waive ineligibility to adopt, however, sources suggest that such waivers are rare the reasons for which are unclear.
    - There is no residency requirement in Haiti, but at least one adoptive parent must travel to Haiti before an adoption is finalized and applications for emigration-related guardianships are not permitted.

---

[53] *Id.*
[54] *Id.*
[55] US State Dep't, "Alert: Haiti Approves Ratification of the Hague Adoption Convention," (July 16, 2012), *available at* http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=alerts&alert_notice_file=haiti_3.
[56] *Id.*

- The law prohibits payment of any kind from prospective parents to agencies or biological parents.

- **Procedures**
  - First, prospective parents must obtain a proper release (*Extrait des Minutes des Greffes)* from the surviving parent(s) or legal guardian of the child.
  - Second, this release – or a *Extrait de l'Act de Decès* (death certificate extract) must be presented to the de Bien-Etre Social et de Recherche (IBESR, Haiti's social work agency).
    - The IBESR is charged with investigating the medical and psychological well-being of both the prospective parents and child.
    - After its investigation, the IBESR will approve or deny the adoption. If an adoption is approved then the central IBESR office will issue a certification called Autorisation d'Adoption. Regional offices do not reportedly have the ability to issue such certificates.
  - Third, this certificate is then presented to a Tribunal Civil court that has jurisdiction over the child. The court will then issue the official Acte d'Adoption decree.
  - Finally, all adoptions must be finalized before prospective parents are allowed to leave Haiti with an adoptive child. Haitian immigration authorities require Haitian passports for all Haitian children leaving the country.
- **Legal Issues / Grey Areas**
  - Some authorities suggest that abandoned-child adoptions pose particular difficulties for IBESR to investigate because IBESR is limited to appeals for a child to be claimed, to which there is rarely a response.
  - Child Abandonment is also (purportedly) punishable as a crime under Haitian Criminal Code. Certificate of abandonment are issued either by the IBESR or the Justice of the Peace.
  - Based on news media reports, *restavèk* children have little to no association with Haitian adoption law and many are commonly "trafficked" by their family or other acquaintances. The IBESR reportedly had a program that allowed anonymous reporting of children in *restavèk* placements but it is unclear whether this program has been discontinued.
    - Additionally, media also reports that *restavèk* is understood to be a common practice in Haiti with many parents characterizing their decision as one that is meant to provide children with a better life – for instance, by giving them to families in an urban area with educational institutions
    - Some sources suggest that the practice of *restavèk* is outlawed but the precise citation was not noted. These same sources also suggest that the law provides no specific punishment for those that keep *restavèks*. At most, one may possibly be fined under the Haitian Labor Code.

Questions and Points for Discussion:

1. Currently, Haiti's domestic adoption laws do not cover the circumstances faced by *restavèk* children because the majority of them do not seem to be formally adopted. It may be best to push for a broader definition of adoption and statutes relating to the unconsented taking of children (e.g., kidnapping laws). For instance, requiring any adult with whom a minor child is to reside for more than a few days, formally adopt that child – which, under the UN Convention on the Rights of the Child, would subject them to inspection, counseling, and a review process that is (in theory) supposed to ensure that the best interests of the child are protected. However, this suggestion assumes that a competent agency capable of handling such requests is in place, but this does not currently seem to be the case.
2. Can advocates push for a broader definition of adoption such that it requires greater oversight of *restavèk* circumstances? Is an approach that tightens up criminalization and enforcement of abuse, and provides more support to vulnerable families, and broader education rights useful in addition to one that prohibits *restavèk*? If so, can BU Law assist with any of those areas, including training and sending groups of law students in the spring and summer, or legal interns for a semester, to support the oversight of laws or expansion of these activities?
3. What formal punishments can be created for violating a broader definition of adoption? Could such adults in violation be punished as kidnappers, or something similar? Could BU legislative clinic assist with drafting or revising new or existing laws?
4. Can non-government agencies help to conduct inspections and oversight of adoptions in Haiti if the IBESR is incapable? Can other Haitian agencies help take over some of the burden? Here, also, would law student interns or short-term legal student teams be helpful?
5. The sale of children is defined broadly in the Optional Protocol and arguably covers many of the circumstances – as outlined in the UPR *Restavèk* Report – faced by *restavèk* children as it does not require monetary remuneration. In fact, transfer of children to *restavèk* placements is an exchange for remuneration because (i) a parent relinquishes a child in exchange which reduces financial strain on families to feed, clothe, and educate children; the other party to the exchange then gets free labor in exchange for "taking in" the child. Exchange of a child for remuneration is prohibited both under the Convention on the Rights of the Child, and domestic Haitian law. But again, it is unclear whether these may be considered "illegal adoptions" as no formal paperwork is exchanged. However, the argument for advocates is to emphasize that complete relinquishment of parental control (agreed upon or not) is what occurs during adoption and that failure to abide by both domestic and international law should result in punishment for those who participate in "hosting" and acting as intermediaries for the "hosts." Other domestic laws may cover the circumstances for failing to abide by these laws, such as kidnapping, child trafficking, and punishing underage labor. Without an explicit punishment for taking these children, however, the adoption and *restavèk* laws will be largely unsuccessful in implementation.
6. Will greater prosecution of intermediaries and "hosts" increase that the practice of *restavèk* is illegal under Haitian law?
7. How willing are victims to participate in prosecution?

8. Are there appropriate avenues to help a victim become involved in prosecutions, and resources to help them heal?
9. What are appropriate punishments for violating adoption and *restavèk* laws? How can they better be enforced?
10. How could BU Law clinics or interns help in this area? Could more be done to ensure ratification of the Protocol by Haiti? Could legislation be drafted to expand illegal adoptions to certain *restavèk* arrangements? Could legislation be drafted that would require the registration of every *restavèk* situation so they could be better monitored? Could a registry be established that includes NGO workers or legal workers who regularly go out to monitor the *restavèk* situations or reports that each *restavèk* family (biological parents and host parents) would be required to file (eg, required hours of work, remuneration, verification that the child is in school, receiving regular health care, etc.)?
11. It is unclear at this time how relevant the Hague Adoption Convention is for addressing *restavèk* problems in Haiti. However, its provisions do propose greater protections for promoting the best interests of children who are subject to inter-country adoptions, which could be aspirational and informative for making greater protections.
12. A focus on methods to criminally (and civilly) punish those who have neglected and abused children is enhanced by looking at how the children came to be in these situations. Is it legal for children to be put in these situations in the first place? Are they formally adopted? Kidnapped?
13. The fact that children are essentially traded as commodities (with or without remuneration) contravenes what we understand to be existing Haitian law. They are not formally adopted as the parents do not give up their parental rights, but nor are they kidnapped because parents willingly place their children into these placements. Thus, current law leaves these children in purgatory and does not allow for oversight of where they are or whom they are with; no law seems to require it. By filling in the laws gaps – such as defining what *restavèk* is and what requirements must be made in order to put children in placements – advocates can enable greater oversight of children subject to these placements. Greater oversight also offers the benefit of how the problem is being exacerbated, what the purpose of intermediaries is, and where children are most vulnerable. Greater oversight will also help victims of *restavèk* practices to reunite with their families, as the UPR Report states that many lose touch with children put in these placements.

14. Human Rights Contacts

    Farida Lambay
    Executive Committee Member & Co-Founder, Pratham, Mumbai, India
    http://pratham.org[57]

    Steve Morrish
    Director, SISHA,[58] Phnom Penh, Cambodia: www.sisha.org

[57] Pratham is a nongovernmental organization that provides quality education to underprivileged children in India.

IV. International Human Rights Law and Enforcement Mechanisms

A. Organization of American States (OAS)

- Haiti entered into the Inter-American system in 1889 and is a member of the OAS.[59]
- Under Article 34, Section g of the OAS Charter, Haiti—as a member of the OAS—is responsible for ensuring "fair wages, employment opportunities, and acceptable working conditions for all."60 The same article calls for an eradication of illiteracy and for proper nutrition and housing for citizens of all member states.61 The Permanent Council of the Organization is in charge of carrying out the decisions of the OAS General Assembly, promoting cooperation between the OAS and the UN, facilitating cooperation between member states entering into treaties, and considering reports submitted to the OAS on various issues.
- Haiti became a signatory to the Inter-American Convention on the Return of Children on July 15, 1989, but never ratified this document.62
- In conjunction with the OAS, Haiti held a two-day seminar in Port-au-Prince in June 2006 on the fight against human trafficking in Haiti.[63]

B. Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights

- As a member of the OAS, Haiti is subject to the decisions of the IACHR.
- Haiti ratified the American Convention on Human Rights (ACHR) on September 14, 1977; in its binding statement, Haiti acknowledged that it was subject to the jurisdiction of the IACHR and ratified the ACHR without reservations.[64]
    - Art. 6 of the ACHR prohibits all forms of compulsory labor.[65]
    - Art. 19 acknowledges that minors have a special right to protection.[66]

---

[58] SISHA is an Anti-Human Trafficking and Exploitation Organization based in Phnom Penh, Cambodia whose mission is "to provide justice for victims of human trafficking and other forms of exploitation by strengthening the criminal justice system, and victim, social and legal support services throughout Asia." In 2010 a group of BU Law students delivered a curriculum similar to this one, but on women's rights, at SISHA.

[59] *See Member State: Haiti*, Organization of American States, available at http://www.oas.org/en/member_states/member_state.asp?sCode=HAI (last visited Aug. 13, 2012).

[60] *See Charter of the Organization of American States*, art. 34 (last amended June 10, 1993), available at http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm#ch3 (last visited Aug. 13, 2012).

[61] *See id.*

[62] *See Signatories and Ratifications: B-53: Inter-American Convention on the Return of Children*, available at http://www.oas.org/juridico/english/sigs/b-53.html (last visited Aug. 13, 2012).

[63] *See Anti-Trafficking in Persons Section*, Organization of American States, available at http://www.oas.org/atip/atip_Detail.asp (last visited Aug. 13, 2012).

[64] *See American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32)*, Nov. 11, 1969, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm (last visited Aug. 13, 2012).

[65] *See id.*

[66] *See id.*

    - Art. 42 requires all members of the OAS to provide the IAHCR with annual reports so that the IAHCR may monitor the protection and recognition of the rights mentioned in the ACHR.[67]
- Haiti is not a signatory to the Inter-American Convention on International Traffic in Minors.
- The IAHCR international rapporteur conducted a 2007 visit to Haiti and found the rates of violence against women to be alarmingly high. According to the IACHR's 2008 report, "the Division for Minors of the Haitian National Police reported a national increase in rape cases of young girls between 4 and 17 years of age during the period 2004-2006." The Ministry of Women's Status and the Rights of Women in Haiti reported to IACHR that administrative failures have led to a lack of protection for female victims of rape and domestic violence and a lack of prosecution for these crimes.68
- As of the IACHR's 2008 report, the Ministry of Women's Status and the Rights of Women had submitted three draft laws to Parliament in Haiti, including one on *restavèk*.
- According to the IAHCR website, no further action has been taken by the OAS or the IAHCR in terms of studying and/or combating trafficking and *restavèk* in Haiti.

[67] *See id.*
[68] *See Observations of the Inter-American Commission on Human Rights upon Conclusion of Its April 2007 Visit to Haiti*, Mar. 2, 2008, available at http://www.cidh.org/Haiti07informe.eng.htm (last visited July 26, 2012).