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Restavèk and Access to Justice



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Introduction

In underdeveloped countries, children are often subjected to abuse trough child labor. In Haiti, this form of servitude is named *restavèk* a tradition of informal arrangement where a poor rural family sends their child (*ren*) into the care of a host family with the promise that the child will be provided with an education and subsequently a decent life. This unwritten promise between the two families is often unfulfilled. As a result, the child is exploited and, in extreme case, trafficked as a slave to other countries. This exploitative institution resembles a modern form of slavery, which deprives the child of his basic fundamental rights and dignity as a person. Furthermore, it subjects the child to multiple forms of abuses, including economic exploitation, corporal punishment, psychological trauma and sexual abuse. Actually, this exploitative system does not pertain only to Haiti. It seems to spring its roots from other countries of Africa such as Benin, Nigeria, and Ethiopia.

Children in *restavèk* care rarely experience justice due to inherent weaknesses in the regulatory framework of this institution as well as the lack of resources available to children in situations of vulnerability. The Executive and the Parliament enacted a new legislation which makes it illegal to enter into a *restavèk* arrangement; but due to extreme poverty among the poor rural families, and proactive efforts by recruiters of *restavèk,* the institution continues to exist. The exploitation of children continues amidst a system that turns a blind eye to the plight of the children it is supposed to protect. Even in cases where the perpetrators are apprehended by the authorities, the case rarely makes it to court, and the imposed monetary fine is not proportional to the gravity of the crime.

This new law « Loi sur la Lutte contre la Traite des Personnes» also known as the “Anti-trafficking Law” was enacted in June 2014. In Article 1-1, it defines trafficking in persons as “the recruitment, transportation, force, coercion or abuse of authority or by position of vulnerability.”[1] This law outlines many forms of trafficking, but particularly forced labor and servitude, and declares that the recruitment and the hosting of a child for the purpose of exploitation shall be

[1] *Loi sur la lutte contre la traire des personnes*, République d’Haïti, July 2014, online < http://www.healthpolicyproject.com/pubs/740_HaitiAntiTraffickingLawFINAL.pdf>

considered as trafficking in persons. Additionally, this law addresses punishments for trafficking in persons, but its implementation and enforcement have yet to be addressed.

The aim of this paper is to explore the access to justice issues related to the human rights violations committed within the *restavèk* institution. Access to Justice in this context is defined by "the ability to obtain a just and timely remedy for the violation of rights as put forth in the national and international norms and standards."[2] Thus, access to justice should translate into the abolishment of the *restavèk* system because of the inhumane treatment bestowed upon children and the fact that it contravenes national and the international norms. This paper will argue that the Haitian legislation should be reviewed to implement the new mechanism of enforcement and prevention of abuses against children. We will study the plight of children in Haiti with reference to the socioeconomic and historical context, taking into account the impact of the earthquake on the *restavèk* system. The appropriate domestic and international legislation on children rights will also be taken into account. In addition, we will discuss about the measures to undertake in order to end the *restavèk* system in light of the different stakeholders (parents, foster care family, the NGO and the government), and finally, formulate policies and recommendations about access to justice.

Part I. Overview of the Historical Context of Children's rights in Haiti

A. Historical context of *restavèk*

The term *restavèk* is derived from French "*rester avec"* which means "to stay with" or "to remain with". It is not clear whether the term "stay with" means that *restavèk* becomes the property of the master or that the biological parents still have control over the child. A restakek ultimately becomes a house slave the moment the child is turned over by his parents to the «host» family, which in principle promised to arrange for his education, food, shelter and clothing in exchange for his labor."[3] As such, the *restavèk* is viewed has a mere commodity and remains with the host family for an indeterminate period of time. The child serves at the will of the master,

[2] UNHRC, *Access to justice for children*, A/HRC/25/35 (2013) at 3.
[3] Jocelyn McCalla (National Coalition for Haitian Rights), *Restavèk No More: Eliminating Child Slavery in Haiti* (2002).

receiving no payment for the work done and has a living conditions lesser than what was originally agreed upon, thus limited access to food, clothing and shelter. Some living conditions are so extreme that the only plausible alternative for the child is to abandon the house and live on the street as destitute. *Restavèk* is not too different from modern slavery, as the child is usually dispossessed of his identity. He or she is denied being called by his birth name, as people often call them "*granmoun mwen*" (my grown up), "*la pou sa*" (there for that)[4], "*ti moun ki rete a caille moun*" (children who live in people's houses) implying a so-called form of «illegal adoption» or simply, "*ti moun*" (child)".

Customarily, families in urban areas employ maids called "*bonne*" to perform house chores. The monthly wage of a maid can be substituted by the use of the *restavèk*. The majority of the *restavèk* come from poor rural families which see the uses of child labor in an urban area as a fair market opportunity. Since most schools are privately owned and located in urban areas, poor rural families resort to these types of arrangements with the hope to provide a better future for their children through the access to a better education. Unfortunately, the expectations of these parents and these children are rarely fulfilled. Instead, the *restavèk* spends his childhood abandoned, away from the love and care of his family as any decent child should be entitled to. He is deprived of schooling and subjected to long hours of work with no pay, the *restavèk*'s living conditions are inferior to those of the host family. Furthermore, the *restavèk* performs all the services of the host family under constant pressures and verbal abuse which often amounts to physical and psychological trauma.

Child labor is deeply rooted in the Haitian culture, but this practice does not only pertain to Haiti. It has sprung from countries with extreme poverty. The ILO reports that "Nigeria may have the largest number of child domestic workers in the world today, with one child in nearly every household, many of them exploited and abused in the same way as the *restavèk*."[5] Consequently, Antislavery International describes the African child domestic labor similar to the *restavèk* practice.[6] However, they observed one major difference in cases of Nigeria and Ethiopia: "children

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[4] *Ibid.*
[5] McCalla, *supra* note 3 at 14.
[6] *Ibid.*

are strangers to the receiving family and have been trafficked across borders from other countries, often by means of direct payments to their needy families."[7]

i. Condition of Restavèk Children and the case of Cynthia

Haiti's rural area families depend largely on farming and on seasonal agricultural products. The unpredictability of the agricultural output leaves them vulnerable. Some seasons bring a large harvest lasting throughout the year, while in other seasons, they experience periods of drought and loss of income. These farmers use traditional farming techniques, so they can hardly withstand bad weather conditions and drought. In addition, farmers rarely possess the land on which they grow their crops, so the crops harvested are shared with the landowner. The farmer's share of the harvest is sold in the market to help pay for the basic need such as clean water, clothes, and other ingredients for food.

Rural family structure is a determining factor of poverty and a cycle of impoverishment. The typical rural family usually has many kids, partly due to the belief that "timoun se riches" meaning "kids are our future". Women, for the most part, stay at home to do house chores and to raise the kids which prevent them to become economically viable. Men are the breadwinners; they bear the burden of providing for large families by working the land and bringing the harvest home. Consequently, they are, for the most, absent from the kids' upbringing.

The dire economic situation of rural families demonstrates the challenge to raise children, and provide for them. These poor economic conditions force many families to turn their kids over to a host family to provide for their basic needs. The host family can be a relative, a close friend or strangers (recruiters). The arrangement between the two families was never made with the intention to harm the children, but it has become an evil and inhumane vehicle through which harsh treatments are imposed on the children. Furthermore, this arrangement has created a form of trade where a group of people «recruiters» or "Koutchye" in the Haitian language, are paid to find *restavèk* for the host family. Once the children enter the trafficking system, they lose complete contact with their parents.

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[7] McCalla, *supra* note 3.

According to UNPR reports, the lack of public services such as water and electricity in poor neighbourhoods creates a high demand for the services of domestic workers who can fetch water and provide other basic services. Unable to pay for these workers, poor families rely on the free labor of a child for household chores. In addition, the *restavèk*s who usually work from ten to fourteen hours a day do not paid any compensation and hardly make it to school. The *restavèk* wakes up before dawn and before the host family members and is the last one to go to bed. The typical workdays begin with preparing breakfast, washing dishes, cleaning the house and runs other errands for the family. There is no age requirement to become *restavèk*, children enter the system as young as age five because when they reach fifteen the law requires to pay for their services.

ii. Case of Cynthia[8]

Cynthia's story is the typical story of the many *restavèk* girls in Haiti and I got a chance to meet her during my work with a Korean NGO. Cynthia is not her real name but it will be used to protect her identity. Cynthia was five when her mother passed away. She was taken to her mother's oldest sister where she lived for three years and was then sent to live with her godmother. She was never sent to school and remained at home to do all the house chores. For instance, her duties consisted in cleaning the house, fetching clean water, and taking care of the younger children. She was never treated as a child in terms of the Convention of the Rights of Child (CRC). She would be beaten for not working fast enough, not fetching water on time and for things that was misplaced around the house. During an emotional recount of one of the incident she experienced. She described the state of fear that she was when she was sent on a late night to run an errand. The area where she lived is known to house some of the most dangerous gang members and thieves of Haiti, so naturally, as a young girl, she was afraid. Because it was late at night she had difficulty finding the items she was sent to purchase due to the fact that businesses were closed. Upon her return, she was beaten severely and kicked out, left to sleep outside. After several nights on the street, she was picked up by an NGO. A report was filed to the police, but there was no action due to the inefficiency and corruption of the police force. A court application

[8] Facts taken from Restavèk Freedom, *Haiti - Submission to the United Nations Universal Periodic Review - Twelfth Session of the Working Group on the UPR Human Rights Council* (2014).

was all summoned to Haiti's high court, which despites several follow ups did not show any signs of progress in dealing with this case.

Part II. Socio-political Situation and Justice System

The socio-political situation in Haiti has had an enormous and direct impact upon the operation of the justice system. Primarily, a highly controversial and precarious political situation hinders a full and effective exercise of rights by the Haitian people. Furthermore, according to the OAE (Organization of Americas States) Commission's reports, it is only with the implementation of continuous and long term developments that Haiti can move towards a better compliance to international standards.[9]

Haiti suffers from a weak State, lack of resources weak institutional capacity. As such, "Haiti remains one of the planet's most deeply troubled countries."[10] It was ranked eighth in the 2013 Foreign Policy magazine's "Failed State Index". It has a literacy rate of 53%, and with 80% of the population living in poverty, it has recently been recognized as one of the poorest countries in the world. The lack of infrastructure and community services is a direct link to the high rates of unemployment which leads to such poverty. The current situation in Haiti is that an uncountable number of families are poverty stricken and the haves are in need of labor. "*So even though Haiti was founded on the abolition of slavery, another form* — rèstavek — *has persisted in its place*".[11]

A serious earthquake hit Haiti in January 2010. Before the earthquake, steady progress was in motion.[12] In the recent years, improvements were made in promoting the rule of law. In 2006 and 2007 Haiti saw the implementation of important laws to reform the National Police and the Judicial System. Furthermore, the Haitian Government has worked in parallel with the United Nations and other donors to address the issues of serious crime in the country. However, the

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[9] Organization of American States Inter-American Commission on Human Rights, *Haiti: Failed Justice or the Rule of Law? Challenges ahead for Haiti and the International Community*, OEA/Ser/L/V/II.123 (2006).
[10] Restavèk Freedom Foundation, "The Issue - Modern History", online: <http://www.restavèkfreedom.org/the-issue/modern-history>.
[11] *Ibid*.
[12] "The Rule of Law in Haiti After the Earthquake", online: *U S Inst Peace* <http://www.usip.org/publications/the-rule-of-law-in-haiti-after-the-earthquake>.

2010 earthquake struck a heavy blow on Haiti's already crippled justice system. Twenty-seven of the twenty-eight national government buildings were destroyed, including the Ministry of Justice facilities and the Justice Hall, the Police headquarters suffered severe damage and close to 20% of Haiti's civil servants were killed or injured,[13] including those who played a key-role in implementing the above mentioned reforms. The judicial system was thus severely affected in terms of "infrastructure, personnel and core competencies."[14]

The courts that have remained functional are understaffed and under resourced. This lack of legal services limits the access to justice for the majority of the population. An inefficient case management caused mainly by financial and human resource constraints continue to generate an extensive case backlog and overcrowding of prisons. Long delays in criminal processes lead to excessive pre-trial detention, which result in overcrowded prisons.[15] Given this scenario, the government has been unable to undertake structural reforms of the justice system.[16] In particular, the humanitarian crisis caused by the earthquake and the cholera epidemic that followed hindered Haiti's authorities from addressing many of the already existing human rights problems, including the critical *restavèk* condition.[17] As a matter of fact, the use of child domestic workers in Haiti continues and, even though difficult to calculate, has considerably increased after the earthquake. The United Nations estimated the number of *restavèk*s to 250 000 before the earthquake, while the post-quake estimate reaches the 300 000.[18]

Under this framework, access to justice remains a rare commodity that only a few citizens can afford, due to the inaccessible court fees and lawyers. Moreover, proceedings are conducted

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[13] Boston College Law School et al, "Haiti - Submission for the 112th Session of the United Nations Human Rights Committee: Access to Judicial Remedies in Haiti." (2014), online: <http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/HTI/INT_CCPR_CSS_HTI_18243_E.pdf>, at para 14.

[14] Isabelle Fortin, *Security Sector Reform in Haiti One Year After the Earthquake*, SSR Issue Papers No.1 (CIGI, 2011) at 5 ("the HNP as an institution was incapable of providing adequate security in the aftermath of the earthquake, the justice system simply stopped working for weeks, and allegations of complicity on the part of prison guards circulated widely after the escape of large numbers of prisoners").

[15] Keeping Haiti Safe- Justice Reform- Crisis Group- Latin America. <http://www.crisisgroup.org/~/media/Files/latin-america/haiti>

[16] Alternative Chance et al, *Haiti- Submission to the 12th Session of the Working Group on the UPR: Criminal Justice Report* (2014).

[17] "World Report 2014: Haiti | Human Rights Watch", online: <http://www.hrw.org/world-report/2014/country-chapters/haiti?page=2>.

[18] MA Coulter, *Aftershock A Journey of Faith to Haiti* (Bloomington, IN: WestBow Press, 2011) at 10.

in French, while most Haitians can only speak and comprehend Haitian Creole.[19] Furthermore, the chronic corruption and lack of transparency, especially at the level of the prosecutor's office and at the investigatory stage, threatens the independence of the judicial system.[20]

Part III. Legal Framework

A. International Obligations and Applicable Law

i. Status of International law in Haiti

The regulatory framework is very robust in Haiti because the international obligations become part of the domestic law. The Haitian Constitution codifies the 'monist' relationship between international and domestic law. It stipulates that international law is part of domestic law and not a separate body of law. Additionally, the constitution of 1987 under article 276-2 declares that international obligations are binding and enforceable: "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."[21]

ii. International Obligations

Haiti signed the Convention on the Rights of the Child (CRC) in 1990 and ratified the instrument five years later. Haiti made no reservation to any of the provisions of the Convention thus deciding to fully abide by it. This Convention recognizes the fundamental rights of the child and requires that the *best interest of the child* is to prevail over consideration of groups acting on behalf of the child. The Convention strongly advocates, among others: the right to free education, right to have a family, to be free from economic exploitation, or from performing any hazardous work or work that interferes with the child's education.[22] In addition, the convention recognizes

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[19] Alternative Chance et al, *Republic of Haiti- Submission for the 112th Session of the United Nations Human Rights Committee: Prison Conditions and Pre-Trial Detention in Haiti* (2014).
[20] Jean Sénat Fleury, *The Challenges of Judicial Reform In Haiti* (Littleton, MA: ISCS Press, 2007).
[21] *Constitution de la République d'Haïti*, 1987.
[22] Arts 28,32,37 *Convention on the Rights of the Child*, GA Res 4425 20 November 1989.

States Parties' responsibility to take measures against trafficking, sale of children, abuse of children, and to rehabilitate and reintegrate all abused and exploited children into society and family.[23] Furthermore, Haiti signed and ratified the Optional Protocol of the *CRC* on the Sale of Children. This protocol, Articles 3, 8 and 9 in particular, requires the State to promote the Best interest of the Child, to criminalize and to punish the sale of children, to guarantee adequate compensation without discrimination for wrongs inflicted to the child."[24]

In addition, Haiti ratified both the *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, especially Women and Children and made no reservations thus deciding to fully abide by it. Articles 1, 2, and 3 of this Convention require Haiti to combat, prevent, protect, promote cooperation and criminalize the trafficking of children.[25]

Finally, Haiti ratified the International Labor Organization (ILO) Convention on Minimum Age; its provision no. 138, sets its minimum working age to 14 rather than 15, as specified in Article 2. Accordingly, ILO advocates for stronger national laws and enforcement mechanisms within member nations, including prosecution of those who employ workers illegally.[26]

B. Domestic legislation and applicable law

The Labor Code in Haiti regulates working conditions and wages. The minimum age for industrial work is 15 but the minimum for domestic labor is 12.The minimum set age for domestic labor is a violation of the ILO's provision that Haiti ratified. Moreover, Haiti has not only disregarded the minimum wage requirement of the ILO, but the law provides a mere penalty for violators ranging from 3,000 to 5,000 Gourdes (75-126 US Dollars). Accordingly, the labor code provides that domestic workers should be paid wages and sets a maximum of eight working hours

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[23] *Ibid*, arts 34, 35.

[24] *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, GA Res 4425 20 November 1989.

[25] *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, GA Res 317 IV 2 Dec 1949 [*Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*].

[26] For an overview of international instruments signed and ratified by Haiti, see: "Ratifications of ILO conventions: Ratifications for Haiti", online: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102671>.

per day. In 2003, the labor code was amended and prohibits abuse, exploitation, or violence of any kind against children and authorized the *ministry of social affairs* to enforce the employment law in Haiti.

Haiti has recently enacted the anti-trafficking law to comply with its international obligation. This law in article 1-1 translates:

> Trafficking in persons as the recruitment, transportation, harboring or receipt of persons, by means of threat or through the use of force or other forms of coercion, abduction, fraud, deception, abuse of authority or by 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.[27]

This new legislation touches many forms of child domesticity and proposes punishment and penalty for the violators. For example, "punishment for those convicted of trafficking in person includes 7 to 15 years imprisonment and a fine of 200,000 gourdes to 1.5 million" [28] and "persons who are convicted of even attempting to commit any of these offenses shall be punished by a term of three to eight years imprisonment and a fine of 50,000 gourdes to 200,000 gourdes"[29]. This new legislation demonstrates the will of the current government to take affirmative actions against the *restavèk* condition. However, it is too early to claim a victory many hurdles and barriers are to be expected in the implementation and enforcement of this legislation.

Furthermore, the Haitian Constitution under the Article 260 and 261 imposes on the government a duty to protect "all families regardless of whether they are constituted within the bonds of marriage. It must endeavor to aid and assist mothers, children and the aged. [*Sic*]"[30] and ensure protection for all children. Also, "any child is entitled to love, affection, understanding and moral and physical care grow *[sic]* its father and mother."[31] In addition, Article 32-3 formulates a duty on the State to provide free compulsory education for all children.

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[27] *Loi sur la lutte contre la traire des personnes*, *supra* note 1.
[28] Free the Slaves, "Haiti Enacts World's Newest Anti-Trafficking Law", online: <http://www.freetheslaves.net/fts-blog/2014/08/11/haiti-enacts-worlds-newest-anti-trafficking-law/>.
[29] *Ibid*.
[30] *Constitution de la République d'Haïti*, *supra* note 23.
[31] *Ibid.*

Part III. Access to justice for *Restavèk* Children

In the General Comment No. 5, The CRC Committee reminded that "the most important avenue for children to have access to justice is to ensure that good laws that exist on paper are actually enforced in reality"[32] In addition, article 39 of the CRC provides that for rights to have meaning, effective measure must be available to redress violations. Thus, in the presence of a breach, the State should ensure appropriate remedy, compensation and recovery for the victims. Under this light, access to justice can be defined as:

> Access by people, in particular, from poor and disadvantaged groups to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts. This includes the ability of people to seek and obtain a remedy through formal and informal justice systems, and the ability to seek and exercise influence on law-making and law-implementing process and institution."[33]

Also, the United Nations Periodic Report affirms that access to justice for children is not an additional right. It is a prerequisite for the enjoyment and protection of all other rights.[34] It is materialized when these rights are fulfilled: the right to relevant information, to an effective remedy, to a fair trial, to be *heard*, as well as to enjoy these rights without discrimination. Finally, access to justice can be the tools, as far as *restavèk*s' right are concerned, to use "to make public awareness about their rights either through routine legal services and personal advice or through the courts and tribunals."[35]

Looking into the current instability of the judicial system in Haiti, access to justice seems to be very difficult for the *restavèk* children. Here, an effective way to provide access to justice for the *restavèk* will involve not only legal reforms to eliminate the *restavèk* system, but most importantly

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[32] *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5 (2003).
[33] World Bank, *A Framework for Strengthening Access to Justice in Indonesia* (undated), online: http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/A2JFrameworkEnglish.pdf at pp 1-2.
[34] UNHRC, *supra* note 2, para 3.
[35] See e.g. Legal Services Board, *Evaluation: How can we measure access to justice for individual consumers?* (2012).

criminalizing and punishing the violators, ensuring public legal awareness of their rights, and providing legal and informal access to justice.

A. Criminalizing violators and providing adequate compensation to the victims

As mentioned above, the *restavèk* process begins with the transfer of a child from a poor rural family, where the majority are girls, to another family. This transfer often involves recruiters that are paid by the host family to facilitate the transaction. The new enacted legislation sets out the clear guidance to identify and punish violators. Additionally, under the Optional Protocol, which defines the sale of children as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration."[36] Consideration is a bargain for exchange. The parents free themselves of their financial responsibilities to feed, clothes, educate, and shelter their children by an exchange which provides the host family with free labor. This transaction falls into the category of sale of children which is prohibited under the Convention and the Haitian law. Therefore, the Law should criminalize and punish severely the violators such as recruiters, the host families and the biological parents. The current legislation imposes a fine ranging from 5,000 to 30, 000 dollars to violators for the years of exploitation of the *restavèk*s. The Convention in its *Optional Protocol* stipulates that the punishment should be proportional to the gravity of the harm done to the child. Thus, we find this provision to be degrading, insignificant in comparison with the *grave nature* of standard because of all the years of abuse this amount is insignificant as a punishment.

The *restavèk* usually spends more than ten years serving the host family and after all those years of exploitations and abuse, after enduring discrimination, the only satisfactory remedy offered is 5000 dollars. Firstly, this law does not really level up to the punishment set by the convention. It does not take into account the grave nature of the acts and does not offer appropriate penalty. Secondly, the compensation set by this law is too light. It doesn't seem to refrain the activities of the violators that are exploiting and trafficking children. It is unjust to remedy the years of physical and psychological abuse to this meagre compensation. Finally, a

[36] *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, *supra* note 26.

just remedy for *restavèk* needs to match the standard provided in the Conventions and impose greater penalties to end the *restavèk*'s system.

Restavèk violators should be prosecuted as kidnapping and abduction. Once the *restavèk* is transferred to the host family, the child loses track and contact with its family. This complete relinquishment of parental control is similar to what occurs during the legal adoption process. The failure to abide by the international and domestic law of adoption should result in punishment for the person who acts as "hosting" (host family) or "recruiters." However, *Restavèk*s children are not adopting children because there is no legal document signed during the exchange. As a result, in the Haitian domestic law, this conduct is similar to kidnapping, abduction or trafficking of person. Therefore, Article 300 of the Haitian penal code on abduction of minors and kidnapping, which imposes punishment from three to twenty-one years shall be enforced and applied to violators.

B. Providing Public Legal Awareness

Access to justice requires the victims (*restavèk*) to know their rights and any person acting on the behalf of the child should primarily consider the child's best interest. The Convention in Article 3 provides:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

This best interest standard evokes the principle that the *restavèk* should know his right and to choose the family to belong, and the right to free and compulsory education. Thus, knowing these guaranteed rights will compel any person acting on their behalf to make sure these rights are not violated. In addition, the Government should enforce these rights by having national programs and activities addressing *restavèk* condition. For example, schools should be encouraged to have in their curriculum materials and discussion on the issue of *restavèk*. Furthermore, schools should overlook the task of informing and educating children of their legal rights and of the Conventions and treaties signed by their government. The media, universities, churches and NGOs should also be included in the effort to create programmes that raise awareness of *restavèk* legal rights.

Part IV. Enforcement and Oversight

Article 39 of the CRC stipulates that physical and psychological recovery and integration of the child victim of exploitation, abuse or torture into the society shall be the responsibility of the State and the State shall assure that such recovery is fostered in a good environment where the health, dignity and self-respect of the victim are protected. Additionally, article 39 encourages the State to join its efforts in cooperation with other institution for the progress of the child." Haiti created some institution to work for the protection for the child, which are analysed below.

A. Brigade of protection of minors

The Protection of Minors brigade (BPM) is a specialized unit of the Haitian national police which is under the supervision of the directorate of judicial police works to tackle the issues of abuse of minors and juvenile delinquency. In fact, the BPM supported by UNICEF carried out public awareness and children in schools, churches and in the streets of sensitive areas. This brigade has been very effective to settle many cases of violations on *restavèk* children. According to the Commissioner of BMP, "runaway children have been returned to home or entrusted to the Social Welfare Agency, prompt investigations have been initiated and with the compilation of reasonable proof, have led to arrests."[37] Despite the success of BMP's teams to hunt *restavèk* recruiters, the BMP are facing many challenges. The number of brigade police is insignificant in comparison to the quantity of children in domesticity. Also, the BMP lacks material resources such as car and other tools. Finally, BMP are not geographically spread throughout the country, they are concentrated in the big cities of Haiti.

B. Institute of Social Welfare and Research

Institute of Social Welfare and Research known as "Institute du Bien-Etre Social et de la Recherche" (IBESR) is an institution under the leadership of the ministry of social affairs which

[37] See "Haiti - Social: More than 200 intervention of the Brigade for the protection of minors - HaitiLibre.com : Haiti news 7/7", online: *HaitiLibre.com* <http://www.haitilibre.com/en/news-11342-haiti-socialmore-than-200-intervention-of-the-brigade-for-the-protection-of-minors.html>.

oversees children in *restavèk condition*. The IBESR is mandated to implement and enforce the law regarding *restavèk*, to assure recovery and the integration of the children into the society, and to assure that violators judged and punished. The IBESR implemented a program called "*SOS Timoun program*", this program aims to withdraw children from abusive households. This service puts a phone number at the disposal of children who are victims or witnesses of violence. Also, the IBESR, working with UNICEF and several NGOs, has launched an awareness campaign on the problems and abuses associated with the *restavèk* system. However, the IBSER falls short of its mandate because of lack of funding and understaffing. According to the UN country report 2011 presented by the Foundation Maurice A. Sixto (FMAS), the institution is not fully operational due to the lack of funding from the government, under-resource and understaffed. It does not produce any comprehensive reports about placement of children in *restavèk* condition.[38] In that report, the director of the IBESR stated that the government hoped to change the cultural acceptance of the *restavèk* system and mitigate child abuse. However, the government timidly intervenes through the IBESR.

C. Office of Citizen Protection

The Office de la Protection du Citoyen (Office of citizen protection: Ombudsman) is an independent institution under the Haitian constitution and its aim is to protect citizens against governmental abuses. This office can serve as recourse to provide help to children who have been subjected to violence and can force the government to respect the constitution and other international obligations. However, this body is not fully operational. There is no independent monitoring mechanism to receive and address individual complaints of violations of the right of the child. Appeals and complaints to the Ombudsman are unlikely to apply in cases where children's rights are infringed by foster parents or other privately run facilities. However, *restavèk* can bring their complaints against the government and argue that the failure of the government to guarantee their protection against their abusers is a violation of their rights.

[38] Canada: Immigration and Refugee Board of Canada, *Haiti: The "restavèks"; state protection provided and support offered by NGOs; Voodoo rites to which parents may subject their children*, HTI104720.FE (2013).

D. Civil society and international organizations

The Civil Society and International NGO have been the most vocal in the fight to end *restavèk* in Haiti. They have played and they continue to play strategically to put pressure on the government to abide by the national and international norms regarding children's rights. Also, they have been instrumental in their ability to network with other human rights NGOs and grassroots organizations from the civil society at large to advocate, influence, mobilize, and lobby to end *restavèk* and assist the integration and recovery of into society.

Global Centurion is an NGO that has been very successful to end child labor by focusing on the demand of the perpetrators, exploiters and buyers. For instance, they implement a program of three pronged approach to combat demand:

1- Developing demand-focused research and programs;
2- Providing cutting-edge education, awareness and advocacy training to communities, civic leaders, NGOs, law enforcement and at-risk populations; and,
3- Establishing partnership and collaborative networks to respond to modern day slavery.[39]

In Haiti, Global Centurion used a similar approach called: Education-Awareness-Advocacy Training. The organization networked with dozens of NGO to form a coalition on human trafficking. In the first phase of their campaign, Global Centurion launched a social marketing and education campaign to raise public awareness and reach the Haitian people by distributing the items with messages printed both in creole and in French to their audience. In the second phase of the project, the NGO trained over 60 Haitians "including health providers, attorneys, teachers, business leaders, pastors, and university students to serve as anti-trafficking trainers in their own communities".[40]

The *Restavèk* Freedom Organization is another similar organization that has implemented a four tier plan to end *restavèk*. First, they advocate to have a society free of *restavèk*. Secondly, they create a transitional home for *restavèk* to have a sense of love and family. Also, they provide

[39] "Global Centurion Foundation - Fighting Modern Slavery by Focusing on Demand", online: <http://www.globalcenturion.org/programs/>.
[40] *Ibid*.

for a more stable setting "whether that means living with their parents, with a foster family and if they are old enough, on their own." [41] Thirdly, they influence decision makers, community leaders, families to end the practice of *restavèk*. In doing so, they work with communities, both in the rural as well as the urban centers to engage in the fight to end *restavèk* practices. Finally, they mobilize all the actors within and outside of the country to stand together for justice. They engage "pastors and teachers, teenagers and grandparents, officials and everyday citizens, all willing to fight for a future in which no child can ever be called *restavèk*". In their task to mobilize and influence the decision makers, *Restavèk* Freedom have scrutinized the government's actions on *restavèk*. For example, Director of *Restavèk* Freedom stated that the government is trying to improve the situation of *restavèk* but in reality the government has been unable to establish any effective protection program for *the restavèk*s. There are a few operational shelters, however they are full and crowded. Therefore, there are no spaces available for children withdrawn from *restavèk* condition. The actions taken by the government are very limited for the *restavèk* reintegration into the society.

Part V. Anti-trafficking program to end child labor

The Anti-trafficking programs focuses on the protection and prevention of children in domesticity. They have demonstrated success and effectiveness to reduce the trafficking of children. For example, Ethiopia and Nigeria have used a community development based approach to tackle poverty and child labor in poor rural areas.

i. Anti-trafficking program in Nigeria

Nigeria is one of the most populated country in Africa. In Nigeria, seventy percent of the population lives under the poverty line.[42] The country has serious problem with poverty and

[41] Restavèk Freedom Foundation, "What we do - Advocacy - Transitional Home", online: <http://www.restavèkfreedom.org/what-we-do/transitional-home>.

[42] "The World Factbook", online: <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>.

unemployment among its youth.[43] Children are denied access to education, and are instead trafficked in and out of Nigeria for labor."[44] The wages they earn are given to their agent. These children, similar to the *restavèk* of Haiti, suffer physical and mental abuse at the hands of their agents."[45]

The USAID has implemented a four years trafficking in person programs following objectives:

(1) To train police and secure prosecutions and convictions of traffickers;

(2)To give social and educational services to trafficking victims; and

(3) To help train civil society organizations to work with trafficking issues."[46]

As a result, the Nigerian government has doubled the number of convictions on trafficking offenders, improved assistance to the victims for their recovery and increased funding for anti-trafficking organization. Similarly, the success of the Nigerian program could apply to Haiti:

> Nigeria provides valuable lessons that can be applied in Haiti because the plight of children and economic situation in the two countries is so similar. The strength of the Nigerian program, which could be successfully implemented in Haiti, lies in providing social and educational services to *restavèk*. It would be possible to immediately implement this program within Haiti because it does not require immediate, comprehensive government action. NGOs and those working on behalf of the United States and U.N. possess the resources to provide social and educational services to *restavèk*."[47]

ii. Anti-trafficking program in Ethiopia

Ethiopia is the second most populated country in Africa. Nearly thirty nine 39% of the population live under the poverty line.[48] In Ethiopia, women and children are trafficked for prostitution and domestic labor. These victims are trafficked from poor rural areas to urban areas

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[43] Jennifer S Abrams, "Kids aren't Alright: Using a Comprehensive Anti-Trafficking Program to Combat the Restavèk System in Haiti, The" (2010) 24 Temp Intl Comp LJ 443 at 471.
[44] *Ibid*.
[45] *Ibid*.
[46] *Ibid* at 471.
[47] Jennifer S. Abrams, supra notes 2, at 472
[48] *Ibid* at 473.

because of economic and financial reasons. Victims range in ages from 10 to 18 years old and 50% of the time they lack any education past primary school.[49] This vulnerable situation creates avenue for recruiters and agents acting on their behalf false to make promises for job security, education and foster parents.[50]

The IMO has established a program to counter the trafficking in person in Ethiopia. This aim is to assist and aid the government to prevent trafficking through:

(1) Counseling migrants, returnees, and their families;

(2) Assisting, training, counseling victims of trafficking and providing a hotline available for counselling;

(3) And raising awareness of the problems of trafficking through radio, television, billboards, and information booklets."[51]

The assessment of this program has demonstrated great success. The USAID the following: Firstly, information booklets were successful to increase awareness of the trafficking problems. Secondly, the IMO worked hand to hand with the government to enforce and redraft the criminal code. Thirdly, the training and building of government and non-governmental organizations have increased awareness of the crime. Finally, the collaboration of agencies working on behalf of the trafficking victims had helped to promote sustainability.[52]

> The IOM program in Ethiopia has a number of positive, attainable aspects which could be applied to combat the *restavèk* system in Haiti. The aspects which would be most useful are: (1) assisting child victims of the *restavèk* system; and (2) raising awareness of the problems of the *restavèk* system through radio, television, billboards, and information booklets. These go directly to the heart of protecting *restavèk* children, and increasing public awareness about the misconceptions of childhood and the maltreatment of children within the *restavèk* system."[53]

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[49] Abrams, *supra* note 47.
[50] *Ibid*.
[51] Abrams, *supra* note 47 at 473.
[52] *Ibid* at 474.
[53] *Ibid*.

The Anti-trafficking programs of USAID in Nigeria and in Ethiopia can serve as a base in the effort to eliminate the trafficking of children in Haiti. The lessons learned from these programs demonstrate that the cooperation of the international community to develop anti-trafficking programs is fruitful. Together, these programs:

i. Establishes several well-funded interim care centers for children vulnerable to recruitment in the *restavèk* system, as well as past and present *restavèk*s;

ii. Monitor the reintegration of *restavèk* children with their families; and

iii. Use advertising to educate the public on the abuses of the *restavèk* system and the risks facing Haitian children."[54]

iii. Haiti community development program

Community engagement to end child labor has demonstrated its effectiveness to reach children in domesticity. For instance, Free the Slaves organization has launched a three year project in cooperation with "***fondasyon limye lavi"*** This program used a holistic community development approach. The objective of this program is to end *restavèk*. As a result, building community consensus against the practice is a strong strategy to prevent and reverse the flow of children into domestic servitude. The program engages in:

(1) Community-based assessment, including social mapping and participatory wealth ranking, to identify children in servitude and those at risk. These methods were designed to provide project staff and community member's baseline information regarding core indicators of the flow of children into and out of servitude.
(2) Open space dialogues to facilitate large-scale community discussion and consensus building a particular theme.
(3) A participatory learning curriculum using illustrated story books that bring to life the trauma experienced by children in slavery.

[54] *Ibid*.

(4) Community-based child protection committees to take preventive action with their neighbors, support the return and reintegration of *restavèk* children, and lead advocate for needed government services.
(5) An accelerated education program designed to allow overage students to complete the standard six-year primary school curriculum in three years.
(6) Livelihoods interventions that integrate food and household security components to match the community's will to protect children while keeping them at home. "[55]

Part VII. Policy and Recommendation

The condition of *restavèk* is very alarming and there is an urgent call for cooperation. The collaborative effort of all the actors is required to work towards the end the *restavèk* condition and to integrate these children into the society. The following recommendations will not be effective and complete if the different actors refuse to engage in this worthy cause. The Haitian people have demonstrated their capacity and involvement to end slavery. For more than two hundred years, we have stood together "Union Makes Strength" is the very motto we embrace. This motto has been significant to advance the course of history. Haitian had said no to the trade slaves that fuelled the economy and power of the European colonizers. Haitian nation was born through the struggle to abolish slavery because we believe that human beings are born equal whatever race, ethnicity or origin. Although, history does not repeat itself, its impact is reflected through the fabric of the society. Today, we believe that a newpage modern of history is about to turn. *Restavèk no more*, because the kids are not alright. *Restavèk*s children have had enough of denial of access to justice: for their pains and suffering, exploitation, abuse, inhumane treatment, shame, discrimination, physical and psychological trauma, deprivation of a family life, poverty stricken, harassment, intimation and threats, sexual abuse and destitution, hunger, denial of free education, denial of adequate compensation. The list can go on and on. We believe and we are confident that root of freedom is springing again. And this time it is for real. The nation and its people will bring down the enemy of prosperity and economic development. Thus, we recommend a joint collaboration and effort of the government, the families the civil society (churches and

[55] Free the Slaves, "Slavery in Haiti - Our solutions in Haiti", online: <http://www.freetheslaves.net/where-we-work/haiti/>.

temples, universities, schools, private sectors), NGO and International NGO, the regional bodies and the large international bodies to stop child labor in Haiti. These recommendations follow:

1- Children in *restavèk* shall not be discriminated against and they shall benefit the same rights of any other children as provided in the Convention.
2- *Restavèk*s shall be aware of the available means at their disposal; they shall be provided with access to information about their rights and allowed to obtain a just remedy. The government shall make free legal assistance available to them to enforce these rights.
3- *Restavèk*s shall have the possibility to complain and initiate legal proceedings in cases of violations of their rights.
4- *Restavèk*s are easily intimated and harassed if ever they try to escape the host family. The government shall monitor and take necessary measures to protect children from the risk of intimidation and harassment.
5- *Restavèk*s and those acting on their behalf should also be provided access to national and regional mechanisms when domestic legal remedies fail to protect their rights.
6- The Haitian government shall work towards developing a more structured statutory penalty against trafficking and effective law enforcement to encourage compliance and implementation with Haiti's labor law"[56]
7- The Government of Haiti shall take into consideration the best interest of *restavèk* in all actions concerning them, including child victims seeking legal redress.
8- The Government of Haiti shall revise their laws, policies and procedures to ensure better compliance with international norms and standards, in particular the Convention on the Rights of the Child, and its Optional Protocols.
9- The government should provide independent, safe, effective, easily accessible and child-sensitive complaint and reporting mechanisms. This should be established by law in compliance with international human rights norms and standards. In this regard, the

[56] Abrams, *supra* note 47 at 475.

Government shall assure that BMP and IBSER, and the Protection of Citizen Office are staffed and equipped to monitor and produce regular reports on *restavèk*.

10- The government shall order the necessary administrative disciplinary actions and criminal justice deployment vis-à-vis the acts and omission of the authorities that contributed to the violations of human rights as found in this report, and to the denial of justice

11- The government should encourage Customary and religious justice systems to help *restavèk* reintegration into the society.

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