



About the Working Paper Series

The Center for Human Rights and Legal Pluralism (CHRLP) Working Paper Series

International Human Rights Internship Program. Through the program, students complete placements with NGOs and tribunals where they gain practical work experience in human rights investigation, monitoring, and reporting. Students then write a research paper through a peer review and support process while participating in a seminar that critically engages with human rights discourses.

course have the right to submit in English or in French any written work that is to be graded. Therefore, papers in this series may be published in either language.

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Introduction

In underdeveloped countries, children are often subjected to abuse through 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 -

are strangers to the receiving family and have been trafficked across borders from other

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i. Condition of Restavèk Children and the case of Cynthia

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

, which despite several follow ups did not show any signs

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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%

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 an rights problems, including the critical *restavèk* condition.¹⁷

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 fo

Part III. Access to justice for *Restavèk* Children

In the General Comment No. 5, The CRC Committee reminded
avenue for children to have access to justice is to ensure that good laws that exist on paper are

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

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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* ed, to use to make public
awareness about their rights either through routine legal services and personal advice or through
the courts and trib

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Looking into the current instability of the judicial

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

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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 *restavèks*. 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

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.*

Part IV. Enforcement and

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

SOS

Timoun program

unemployment among its youth.⁴³ Children are denied access to education, and are instead
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

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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 organizati

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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

because of economic and financial reasons. Victims

The Anti-

- (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

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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