

Source: Child Domestic Labour in Haiti Child Domestic Labour in Haiti Characteristics, Contexts and Organisation of Children's Residence, Relocation and Work

- Though children are accorded the protection in earlier legal documents, the juridical protection of children in domesticity did not come into force till some 20 years ago. In 1984, Haiti adopted a Labour Law (Code du Travail), which prohibits the placement in a family of children under the age of 12 years for domestic work (article 341). It further specifies that children above 12 years, working in domestic service, are entitled to decent lodging, clothes, sufficient and healthy nutrition, and that they must be enrolled in school or to professional training (cf. Joanis 1996: 12; Ngom 1999: 23). It states that children shall not work during the hours that the school to which they are enrolled give classes, during Sunday afternoons or on public holidays, or during night. The children are furthermore entitled to 10 hours of uninterrupted rest daily. Finally, from the age of 15, children in domestic service should be regarded as paid domestic servants, and shall be given a salary equivalent to salaries paid other [adult] servants (article 345, 346, 347, 350 in the Haitian Labour Law, cf. Joanis 1996: 12). However, even though Haitian law thus attributes legal rights to children, they are seldom enforced (Joanis 1996: 12). (9)
- As mentioned, more international attention has been accorded children's labour in industry and manufacture than their labour in household settings, and international conventions partly reflect this fact. Nonetheless, the UN Convention on the Rights of the Child (1989), ILO Convention 138 (1973) and, more recently, ILO Convention 182 (1999) can be applied to child domestic labour. Haiti has ratified the UN Convention on the Rights of the Child (ratification in effect from 1995, see Danroc 1996: 35). The UN Convention establishes that children are entitled to protection from economic exploitation and hazardous work, and that work must not deprive them of education or be harmful to their development. It further calls for countries to specify a minimum age for admission to employment. The ILO C138 stipulates that the minimum age for admission to employment is 14 years (for developing countries). The ILO C182, on the "worst forms of child labour", defines a child as a person under the age of 18 years. The age limit for introduction to the labour market of 12 years defined in the Haitian Labour Law is thus lower than age limits in international conventions, which use either 14 or 18 years. (10)

Source: Protecting Human Rights in Haiti

- PADF Pan American Development Foundation carried out the program with a professional and diversified team that included doctors, psychologists, and lawyers, complemented by a communications team, an institutional development specialist, grassroots-level community organizers, and data collection and M&E specialists. (17)
- Forty-three participants from human rights organizations participated in these sessions, eight of them women. Most of them were from ANAREDH (Association Nationale de Recherche et de Défense des Droits de l'Homme), a young organization of lawyers and future law school graduates dedicated to offering free legal assistance to the local population. The training covered general human rights principles, national and

international protection mechanisms, trafficking in persons, observation and data collection on human rights violations, case filing and reporting, and advocacy. (31)

- Historically, PADF has an excellent record of GOH relations and capacity-building, and the PHR program was no exception. The Haitian government has the responsibility of protecting the rights of its citizens and enforcing the international and national laws that govern human rights. The GOH entities mandated to protect the Haitian people from trafficking, torture, organized violence and other abuses are charged with providing services such as security, protection of vulnerable populations, law enforcement, prosecution, reunification of trafficked or separated children with families, education, health services, and other social services. (33)
- The GOH is also responsible for establishing policies, laws, norms, and regulations and ensuring an environment in which human rights are respected and enforced. PADF had a clear strategy to strengthen the GOH agencies responsible for human rights protection, enforcement, and service provision. Most Haitian government institutions created to address human rights issues were less than two decades old at the start of the PHR program. Due to being under-staffed and underfunded, they have never had an effective decentralized presence outside of Port-au-Prince, nor resources—office equipment, vehicles, fuel, personnel, training, etc.— to carry out their basic mandates, not even in critical areas such as border regions and cities with high levels of violence and child exploitation. (33)
- When the PHR program started, two key instruments had been ratified by the GOH, but no implementing legislation had been passed in order for them to become an integral part of Haitian law: 1) The Inter-American Convention on Trafficking of Minors; and 2) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. PHR's goal was to coordinate follow-up on these and other legislative efforts with other programs working with the GOH on judiciary reform and human rights legislation. The PHR team supported and participated in regular meetings of the Collectif contre la Traite et le Trafic des Personnes, a group of professionals and institutions working in anti-trafficking, particularly on policy and legislative initiatives. Although modest progress was made to increase political support within some constituencies and to strengthen GOH agency capacity and political will to push these initiatives, efforts were ultimately less than successful: neither of the two measures have been fully adopted and implemented. (33)
- Perhaps the greatest constraint to stronger enforcement and deterrence of human rights abuse in Haiti is the broken judicial system and exceedingly weak rule of law. Although strengthening these areas and directly supporting stronger law enforcement and prosecution was outside the scope of the PHR program, PADF was tasked with working with the BPM unit of the Haitian National Police to strengthen its ability to protect children and enforce anti-trafficking laws. (34)

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- Haiti has signed a number of international conventions. Currently, instruments of international law relevant to child domestic workers in Haiti are: . (12)
 - Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), ratified in 1957, which covers Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour (United Nations 1956, Art. 1, paragraph d).
 - The Convention on the Rights of the Child (United Nations 1989), ratified by Haiti in 1994, which requires States to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child (Article 19). Article 32 recognises "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development" (UN 1989).
 - ILO Convention 138 (International Labour Organization 1973) which sets the minimum age for work at 15 years, ratified by Haiti in 2009. However, the Convention opens for a minimum age of 14 for developing countries (cf. Article 2), and Haiti ratified the convention with this specification, thus setting the minimum age to 14. Importantly, ILO C138 permits children (as from the age of 12 or 13, depending on the general minimum age declared) to perform "light work" (Article 7) but requires national authorities to determine the kinds of activities that should be permitted and prescribe the number of hours and the conditions under which such light work can be undertaken.
 - ILO Convention 182 (International Labour Organization 1999) on the Worst Forms of Child Labour, ratified by Haiti in 2007, which, among other, prohibits all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced or compulsory labour, and work likely to harm the health, safety or morals of children. Member states are required to take measures to secure the prohibition and elimination of the worst forms of child labour. A list of hazardous work developed in accordance with this agreement will be an integral part of the new Child Protection Code which is waiting to be approved by the Haitian Parliament (see below).
 - The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol, United Nations 2000), ratified by Haiti in 2009. The Palermo Protocol, article 3a, states that: '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 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 (UN 2000, Article 3a). In article 3c, it further states that: «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». Finally, in article 3d: «'Child' shall mean any person under eighteen years of age» United Nations (2000).

- The International Covenant on Social, Economic and Cultural Rights (United Nations 1966), ratified by Haiti by decree in 2012. Among its provisions, Article 10 states that "The widest possible protection and assistance should be accorded to the family ... while it is responsible for the care and education of dependent children " (Art. 10.1) and that Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health 14 or dangerous to life or likely to hamper their normal development should be punishable by law (article 10.3). This treaty from 1966 also states that "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" (Article 11.1), and that "primary education shall be compulsory and available free to all; secondary education ... including technical and vocational secondary education, shall be made generally available and accessible to all" (Article 13.2).
- The Labour Code of 1961, amended in 1984, defines and prohibits forced labour in general (art. 4) and sets the minimum age for employment at 15 years for industrial, agricultural and commercial work and 14 for entry into apprenticeships (see e.g. ILO n.d.).²⁴ Until it was repealed by a law of June 3rd 2003 (see below), Chapter 9 established the conditions for the employment of children in domestic work. The minimum age at the time was 12 years and IBESR was to oversee and control that standards were respected. Today, facing a void concerning minimum age for domestic work in national legislation, it is the ILO Convention 138 which provides the legal standard. (102)
- The Law of September 2001 prohibiting corporal punishment against children. (102)
- The Law of June 5th 2003 (La Loi relative à l'interdiction et à l'élimination de toutes formes d'abus, de violences, de mauvais traitements ou traitements inhumains contre les enfant) on the prohibition and elimination of all forms of abuse, violence, ill treatment or inhuman treatment against children (see Le Moniteur 2003)
- The law of 2003 provides that a child may be "given to a foster family in the context of a helping relationship and solidarity. It should enjoy the same privileges and the same rights as other children of the family. It must be treated as a member of the family"

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(Article 3). The text does not provide for penalties for those who do not comply with its provisions. However, it is under revision to correct this deficiency. (103)

- The Law on Trafficking in Persons, enacted June 2, 2014 (Le Moniteur 2014a),²⁵ which penalizes all parties involved in “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation” by imprisonment to life imprisonment. The law does not refer directly to child domestic work but employs the term “servitude” to mean the submission of a person to a state or condition of dependency to provide a service; unlawfully forced or coerced (“l’état de soumission ou la condition de dépendance d’une personne illicitement forcée ou contrainte par une personne de fournir un service”). 103
- The Law of 4 June 2014 on paternity, maternity and filiation, which specifies that filiation creates moral and financial rights and obligations of the parents (Le Moniteur 2014b). This law, which establishes the obligation to provide for offspring, is seen as an intervention on the issue of child domestic work all the while seeking to prevent child abandonment.
- In addition, a considerable amount of new legal texts is underway. A Child Protection Code has been developed, adopted by the Government in August 2014, and is waiting for a vote in Parliament. This text includes provisions on protection against labour exploitation and abusive conditions in child placements. The same law prohibits child abandonment. A framework law that reforms the functions of the IBESR and strengthens the functions of the IBESR was also adopted by the Government in August 2014. Moreover, the Labour Code is currently being revised and the process of a revision of the Penal Code has been initiated. (104)
- The priorities of the Haitian government are presented in the Haiti Strategic Development Plan (Government of the Republic of Haiti, 2013), operationalized in the Triennial Investment Framework 2014-2016. Among the five main defined priorities are access to education and basic social services (including universal education as a fundamental right, the generalization of school canteens and social welfare), creating jobs (with a strong impetus on the development of the agricultural sector) and the promoting of the rule of law (with a strong emphasis on the decentralisation of services and local development). Overall, these actions are aimed at the whole population and may address the causes of child domestic work, thus contributing to curbing the sending of children into domestic work. Although it is a matter of promoting social inclusiveness, measures specifically targeted at child domestic workers are not identified. A series of social programs for poor families have nevertheless been introduced and are presented in the section “The government's social programs (Ede Pep)”, included below. (105)
- The MAST Labour Directorate has inspectors who are supposed to implement employment legislation by making inspection visits to workplaces in order to ensure the workers’ safety. However, their responsibilities are limited to employees only (ILO 2014), which would mean they are not empowered to control the labour of child domestic workers. The Directorate has however a Woman and Child Labour Department which, under Article 32 of the Organic Law of MAST, will ensure the application of legal provisions relating to living and working conditions of women and children. The Department coordinates the “Sectoral Table against domesticity” (see “Coordination

platforms" below) and is responsible for raising awareness and training officials on child trafficking and labour. This Department is, however, not very active on other levels and few complaints have been received.³² A grey area persists in terms of coordination on the issue of domestic child labour between this office and IBESR (World Vision 2013). (106)

- Under the new law on the subject, a National Committee to Combat Human Trafficking will be soon constituted and will provide a potential space for acting on issues relating to the exploitation of child domestic workers. The Committee is responsible for defining the relevant public policies and ensuring the application of the law, for establishing procedures for the identification of victims, for ensuring that the services necessary to trafficking victims are available (such as health, housing, legal assistance and reintegration) and for launching awareness-raising programs for the public. It is chaired by MAST, and also includes the MJSP, MCFDF, MICT, the MAEC, the MSPP, MENFP, IBESR, ONJ, 2 representatives of human rights organizations and, as an observer, the OPC. It is supposed to be funded through the State treasury but may receive grants. At the time of writing this institutional analysis, the Presidential Order for the appointment of the committee members had not yet been issued. 123
- A solid legal framework on the issue of child domestic labour, which has been lacking for a long time, is being gradually established. The new law on trafficking and the anticipated approval of the new Child Protection Code are milestones in this direction. However, a number of weaknesses and ambiguities still persist. A revision of the 2003 law on abuse that should include adequate penalties is a priority. In addition, it is important to clarify how certain aspects of international conventions signed by Haiti should be translated into Haitian law, particularly the minimum age at which children can take on full time domestic work. In addition, an understanding of the various intricacies related to what can be considered legitimate work according to the age of the child or the number of hours worked is generally lacking. A greater public awareness of the diversity of situations faced by child domestic workers must be conducted in order to help people distinguish between authorized situations and those that are not. (155)

Source: Haiti's Model Communities Ending Restavèk Child Domestic Servitude

- Haiti is party to the Universal Declaration on Human Rights and the Convention on the Rights of the Child. Haiti has also ratified the International Labor Organization (ILO) Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (Convention 182), and the ILO Minimum Age Convention (Convention 138). Each of these conventions prohibits child slavery and servitude and provides for children to have the right to education and the right to be free from degrading and inhumane treatment. In accordance with these international conventions, in 2003 Haiti passed the Act on the Prohibition and Elimination of All Forms of Abuse, Violence, Ill Treatment or Inhumane Treatment against Children, which prohibits servitude, forced or compulsory labor, and the use of children in criminal activities or armed conflict. The act also criminalizes child trafficking and the recruitment of children for sexual exploitation, such as pornography, and for illicit activities. However, there are

no penalties established for committing abuse and violence against children through any of the crimes discussed in the act. It should be noted that the first article in the act annuls Chapter 9 of the Haitian Labor Code, which contained specific stipulations guiding the treatment, rights and privileges of a child working in domestic service. The intent was to make illegal any child domestic service, but as a result, there are no longer minimum guidelines for what a child deserves when working in domestic service. (9)

Source: Urban Child Labor in Port-au-Prince, Haiti

- Haiti's Labor Code sets the minimum age for work in industrial, agricultural, or commercial enterprises at age 15. (7) Children age 15 to 18 must obtain work authorization from the Ministry of Labor to be employed.(8) Children are prohibited from night work in industrial jobs and from work that is likely to harm their health, safety, or morals. (3)
- Governmental policies and laws attempt to protect urban child workers in several ways. These laws would apply mainly to urban child laborers outside the focus of this study. The minimum age for apprenticeships is 14 years old.(39)
- Haiti's Act on the Prohibition and Elimination of All Forms of Abuse, Violence, Ill Treatment or Inhuman Treatment Against Children protects children from trafficking and prohibits servitude and forced labor. The 1987 Haitian Constitution (amended in 2011) recognizes the family as the basis of society. Articles 259 to 262 offer a legal basis to protect the child. Haitian law establishes the parents' responsibility vis-à-vis the child. The adult responsible for a child must feed him, send him to school, and provide a suitable environment for his development. The Criminal Code provides penalties for anyone who abandons or gives up a child. 34
- Haiti is signatory to all fundamental human rights conventions concerning child labor, including:
 - ILO Convention 29–Forced Labor Convention
 - ILO Convention 105–Abolition of Forced Labor Convention
 - ILO Convention 138–Minimum Age Convention
 - ILO Convention 182–Worst Forms of Child Labor Convention
 - UN 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime (Palermo Protocol)
 - UN Convention on the Rights of the Child and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
- There is a "National Plan for the Protection of Haitian Children." This plan, funded by United Nations Children's Fund (UNICEF), is the Ministry of Social Affairs and Labor's (MAST's) basic document in terms of child protection public policy. This legislation also provides that no child has the right to work until the age of 15 years, in accordance with ILO Convention 138.

Source: Child Labor in Domestic Service (Restavèk) in Port-Au-Prince, Haiti

Legal Protections

- According to Haiti's Labor Code, the minimum age for work in industrial, agricultural, or commercial enterprises is 15.(27) The minimum age for apprenticeships is 14. (28) Children ages 15 to 18 must obtain work authorization from the Ministry of Labor to be employed.(29) Children are also prohibited from night work in industrial jobs, and from work that is likely to harm their health, safety, or morals.(30) Haiti's Act on the Prohibition and Elimination of All Forms of Abuse, Violence, Ill Treatment or Inhuman Treatment Against Children protects children from trafficking and prohibits servitude and forced labor. USDOL reported in its 2010 Findings on Worst Forms of Child Labor Report that no evidence indicated that the Government of Haiti has established a coordinating mechanism to combat the worst forms of child labor. While the Ministry of Social Affairs is tasked with enforcing child labor laws, it is hindered by understaffing and a lack of equipment. The Brigade for the Protection of Minors within the Haitian National Police is tasked with investigating crimes against children.(31) This agency has 35 officers and maintains a system to refer exploited children to protective services and has the authority to apprehend perpetrators, but its mandate is limited because of the lack of legal penalties for child labor offenses. 6
- The efforts that have been developed are bureaucratic. Colloquiums, major declarations are not really directed towards the concerned parties: families of origin and receiving families. ... In terms of recommendation, we must implement accountability policies for host families to negotiate the departure of the child. The state must be present as in the case of adoption; enact necessary laws, while taking care to enforce the laws that already exist; revise policy institutions working in the child protection [services]; engage children in schools and former restavèks in the fight against this phenomenon. (Formal Expert). 38
- Neither formal nor informal experts identified any particular laws, policies, or institutions that support or maintain the practice. One formal expert explicitly ruled out the possibility, indicating that the restavèk phenomenon was exclusively the result of socio-economic factors: The factors that enable the perpetuation of this problem are of socio-economic order. They are not cultural, nor legal. There is no institutional mechanism. (Formal Expert).(39)
- It was on the other hand recognized that the institutional, policy and legal framework was insufficient to combat the problem, although some formal experts were of the opinion that the legal framework was sufficient, but the laws were not being enforced. 39