

BACKGROUND ON THE LEGAL RECOGNITION OF CHILDREN'S RIGHTS IN HAITI

Internationally, more attention has traditionally been accorded to children's labour in industry and manufacture than their labour in household settings. During the past decades, however, child domestic labour has become recognized and referred to as a form of child labour. Moreover, no international conference on child labour can avoid the issue. The current attention to child domestic labour in Haiti is partly a reflection of this fact. (1)

On the other hand, it is important to note that the attention to the issue in Haiti is not only a reflection of international discourses in UN and non-governmental organizations. Nor are Haitians' negative descriptions of some practices of child relocation simply an expression of political correctness of recent date, or of a will to conform to alien ideals on the upbringing of children in the face of outsiders. Melville Herskovits, who conducted fieldwork in Mirebalais as early as in the 1930ies, describes the "giving" of children, and "'ti moun qui 'reté à caille 'oun – small folk who stay at your house', or more briefly, 'ti moun'". It becomes apparent that stories of child abuse were discussed among Haitians already at this time: "To what extent this relationship offers a means for the exploitation of children ... cannot be said, though tales of abuses of it, especially in Port-au-Prince, are heard." (1)

However, it is important to point out that it is not until recently that the issue has entered into the formal political discourse on a more regular basis, and that evaluations from this discourse are reflected in Haitian law. Though children are accorded 10 protections in earlier legal documents, the juridical protection of children in domesticity did not come into force until 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. 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). However, even though Haitian law thus attributes legal rights to children, they are seldom enforced. (1)

ISSUES HINDERING LEGAL REFORM OF THE RESTAVEK PRACTICE

Despite Haitian law and Haiti's signature on international codes that specifically prohibit the practice, Restavek continues largely unchecked. Haiti is party to the Universal Declaration on Human Rights and the Convention on 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. (3)

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. (3)

Despite the existence of these measures, which should assure the eradication of Restavek and the protection of all children, the Restavek practice continues largely unchecked. The continued lack of legislation prohibiting all forms of human trafficking, as well as a lack of formal protections for trafficking victims, remain serious problems. An anti-trafficking bill has been introduced, but has not passed the Haitian parliament. However, there are indications of the government of Haiti's commitment to building upon existing efforts. The Haitian Ministry of Social Affairs and Labor-led working group on Restavek (Table Sectorielle Sur Les Enfants en Domesticité) launched a process to develop a national plan to eradicate Restavek in Haiti by 2030. This plan will extend over 15 years and is aligned with the national strategic plan for Haiti's development. The working group has completed a draft of the national plan. In addition, the creation of an inter-ministerial group to address human trafficking and officials' stated commitment to passage and implementation of anti-trafficking legislation may lead to improved results in the future (3).

The country's economic conditions also put children in a precarious situation. It is customary for a Haitian child, usually around the age of six, to begin serving adults within his/her household and contributing to the family's livelihood. Haiti's Labor Code sets the minimum age for work in industrial, agricultural, or commercial enterprises at age 15. Children age 15 to 18 must obtain work authorization from the Ministry of Labor to be employed. Children are prohibited from night work in industrial jobs and from work that is likely to harm their health, safety, or morals. (4)

Governmental policies and laws attempt to protect urban child workers in several ways. According to Haiti's Labor Code, the minimum age for work in industrial, agricultural, or commercial enterprises is age 15. These laws would apply mainly to urban child laborers outside the focus of this study. The minimum age for apprenticeships is 14 years old. Children age 15 to 18 must obtain work authorization from the Ministry of Labor to be employed. Children are prohibited from night work in industrial jobs and from work that is likely to harm their health, safety, or morals. 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. (4)

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 (4).

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. MAST is tasked with enforcing child labor laws, but it is hindered by understaffing and a lack of equipment. (4)

DISCUSSION OF INTERNATIONAL CONVENTIONS THAT HAITI HAS SIGNED RELATED TO CHILD DOMESTIC WORKERS (5):

CONVENTION	DATE RATIFIED IN HAITI	DESCRIPTION
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	1957	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)	1994	<p>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).</p> <p>Further: Article 32 recognizes "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).</p>
ILO Convention 138 (International Labour Organization 1973)	2009	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.

<p>ILO Convention 182 (International Labour Organization 1999) on the Worst Forms of Child Labour</p>	<p>2007</p>	<p>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.</p>
<p>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)</p>	<p>2009</p>	<p>Trafficking in persons' shall mean the recruitment, transportation, transfer, harboring 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).</p> <p>In article 3c, it further states that: "The recruitment, transportation, transfer, harboring 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).</p>

<p>The International Covenant on Social, Economic and Cultural Rights (United Nations 1966)</p>	<p>201 2</p>	<p>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 or dangerous to life or likely to hamper their normal development should be punishable by law (article 10.3).</p> <p>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).</p>
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Haiti has not yet ratified the ILO Convention 189 on Domestic Workers (ILO 2011), (5) which provides for a minimum of 24 consecutive hours of time off per week, minimum wage, and gives the right to choose where workers reside and spend their time off. It also gives workers the right to information on terms and conditions of employment. Further, it respects the minimum age laws, and it also recognizes that every domestic worker has the right to a safe and healthy working environment (Art. 13) and requires Members are to take effective measures to ensure the occupational safety and health of domestic workers. (http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170438.pdf?)

The various legal instruments listed in the above table also do not outlaw the performance of household tasks by children in their own homes, which is considered an aspect of children’s socialization to adulthood. As noted above, with reference to ILO C138, “light work” for children aged 12 to 14 is also allowed, as long as it does not impact negatively on the child’s health, development and education (Article 7). The age normally allowed by Convention 138 for light work is 13 to 15 years. However, given that Haiti took advantage of the provision that allows 14 as a minimum age for work (Article 2) upon ratification, the stipulated age for light work is affected accordingly (Article 7.4). Thus, from the age of 14, children are allowed to work in a household or elsewhere unless conditions fall under those defined as worst forms of child labour (slavery alike situations and work that by its nature of the conditions in which it is carried out is likely to harm the health, safety or morals of children). (5)

The ILO's Statistical Information and Monitoring Program on Child Labour (SIMPOC) has attempted to develop criteria for measuring “light work”. Edmonds reviews the different criteria, and refers to 14 hours

of work per week in order to define child labour globally for children below the age of 14 (Edmonds 2008: 19). Thus, more than 14 hours of work per week is considered “child labour” for this age group and less than 14 hours per week considered “light work.” For a child under the age of 12, however, one hour or more of similar economic activity is considered child labour. (5)

However, “child labour” in this context is understood as “market work” (and less preferably as “non-economic work”) that does not automatically include domestic work. With reference to unpaid domestic work, Edmonds writes that “non-economic work is sometimes used to denote participation in the provision of goods and services to family members or other members of the community that fall outside of the scope of the official definition of economic goods and services” (2008: 8, emphasis in original). Domestic work, he continues, “includes domestic chores such as caring for family members, cooking, cleaning, or shopping” and “is used in reference to non economic work exclusive of community service and volunteer work” (2008: 8). Edmonds emphasises that the term “non-economic” with respect to domestic work is unfortunate, considering the importance of these activities. With respect to children performing domestic work outside of their own households, he concludes that “child domestic servants working outside of their family will be grouped with market work and domestic work will be used to reference non-economic work exclusive of community service and volunteer work” (Edmonds 2008: 9). In turn, arrangements are distinguished on the basis of whether they are paid and unpaid. (5)

In accordance with ILO C182 (and on an ILO mandate), and in order to operationalize the ban of forms of labour to be considered “worst forms” in Haiti, a list of work prohibited for children was developed by a Tripartite Committee that brought together representatives of the Government, unions and employers. The list was approved by the Ministry of Social Affairs and Labour (MAST) and incorporated into the text of the new [Child Protection Code](#). In order to support its implementation, the content of this list should be popularized and developed into a work plan. If the working conditions of a child domestic worker do not meet the requirements stipulated here, the case is to be considered as illegal child labour and will be penalized by law. (5)

EFFORTS TO REFORM THE LEGAL SYSTEM

A study commissioned by the United States Department of Labor noted that while laws and policies are in place to address the issue of urban child labor, the issue remains a significant problem. It seems unlikely that any policy or program would make a significant improvement in the situation without addressing the [root causes of child labor, most importantly, poverty](#). (4)

However, there are some organizations in place to help children. The Institute for Social Well-being and Research (IBESR) is a technical and administrative organ of the Ministry of Social Affairs and Work and has three main missions: prevention, treatment, and advocacy. It has two major departments: the Directorate of Social Services and the Directorate of Social Defense, whose responsibilities include ensuring the sustainability of the social order by focusing on preventive policies. That second branch works with groups of children living in extreme vulnerability. (4)

There is only one residential center (in Carrefour) that receives street children and is supervised by the IBESR, but it is completely full. In addition, IBESR estimates that 722 private centers (welcoming about 50,000 street children) have also emerged in an unsupervised manner, due to the weakness of the government. IBESR argues that it is necessary to evaluate them in order to ensure that those centers respect the standards. (4)

The centers that have emerged are generally religious or humanitarian in nature. They may offer children a place to sleep, food, or training. For example, the “[Foyer Don Bosco](#)” or “[Foyer Lakay](#)” welcomes

many children in the area of Port-au-Prince and offers them training in various fields such as cooking, sewing, cosmetology, and other manual occupations. Staff are trained in various fields enabling them to work to support the needs of these children. The Foyer Lakay also offers assistance and temporary shelter for street children, as does the **Foyer CAFA**, located in Carrefour-Feuilles. The **TIMKATEC** in Pétiön-Ville, as well, provides a range of services, including basic education, shelter, and vocational training to street children of this commune. Several of the children interviewed for this study sleep in centers such as these. (4)

However, policies and programs aimed specifically at combating urban child labor are unlikely to be effective in an environment where the root causes of child labor are so important. A governmental crackdown on children working in the streets might temporarily reduce the phenomenon but would not solve the underlying issues of poverty and social upheaval. Additionally, the government does not have the capacity for an extended campaign of this type. Increasing access to free schooling and lengthening the school day could help to reduce child labor. The government is attempting to expand access to free schooling; this is one of the major campaigns of the current president. Reducing unemployment of adults could potentially improve the situation of children because many children work to help support their families. This is another goal of the government, but such changes occur slowly. (4)

MAJOR UNDERTAKINGS BY NGOS

From October 27 to 29, 2009, the Pan American Development Foundation (PADF) convened a conference in partnership with the Ministry of Social Affairs and Labor. A large group of human rights institutions, both from GOH (Government of Haiti) agencies and civil society, service providers, media, and international agencies, was mobilized to examine the Restavek system and explore strategies and tools to eradicate it. (2)

Several guest speakers from different perspectives shared their various approaches to the issue and covered its various aspects: foundations and characteristics of the Restavek system; its relationship to child trafficking and the legal instruments governing it; institutional frameworks for child protection; the role of local and international agencies, NGOs, and the private sector in protecting the child; and building consensus around the eradication of the practice and the systems that feed it. (2)

Perhaps one of the most surprising outcomes of the event was a speech by the Minister of Social Affairs and Labor, who publicly denounced the practice saying “We seek a Haiti free of Restavek.” This was the first time a Haitian public official ever explicitly made this statement. With the GOH officially acknowledging that the Restavek practice violates the rights of children, the door was opened for official engagement in its eradication and the attendant promotion of children’s rights and protection. Qualitative data, based on interviews and personal testimonies, indicate that opinion leaders impacted by the Protecting Human Rights (PHR) in Haiti campaign have continued to openly condemn the Restavek practice in the media, church, community forums, and in other public spaces. This was a major positive impact of the PHR program on advancing the human rights of children in Haiti. (2)

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 under-funded, 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. (2)

PADF’s goal for PHR’s institution-building processes was to enhance the capacity of the lead agencies and their personnel tasked with protection and enforcement— OPC, BPM/HNP, IBESR/MAST, ONM,

MSPF, and MCFDF—and reinforce their presence in the field to help them better serve their constituents. Based on the assessments done in Result 1, strengthening activities included technical assistance (institutional assessments, needs analysis, strategic and operational planning, etc.), training of personnel in a range of administrative and technical areas, targeted material assistance, and linkages with USAID and other programs in sectors not covered by PHR. (2)

When the PHR program started, two key instruments had been ratified by the government of Haiti (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. (2)

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. (2)

PADF also worked with the Office of Citizen Protection on the ratification of the Convention against Torture, an important step in the protection of human rights in Haiti. Although collaboration with OPC has been outstanding, the Convention is still not ratified, and will require strong advocacy with the new government elected in 2011. (2)

At the local level, there was a focus on increasing awareness and understanding of the issues related to TOV and TIP. The PHR program conducted a series of trainings and working sessions for local elected officials in collaboration with the Institut Mobile d'Education Democratique (IMED). On several fronts, the team also worked with parliament, GOH ministries, mayors, and other authorities to advance legislation to protect Haitians from human rights abuse and redress victims. (2)

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. During PADF's TIP program (2003-2007), the BPM force was new and heavily recruiting; it increased to 30 agents, all of whom were trained by PADF on anti-trafficking laws, basic human rights concepts, and related issues. (2)

PADF hosted many workshops, including some with legal foci:

- **Human Rights, TIP, TOV, and Advocacy Training in Cité Soleil:** 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.

- **Human Rights and Advocacy Training for Cap Haïtien Women's Organizations:** A total of 72 women participated in this training, representing 10 local organizations. The training covered human rights violations, gender-based violence, women's rights, protection mechanisms, and advocacy for the respect of women's rights. The women attending the training were particularly interested in knowing more about existing procedures in the justice system.

PADF also supported the building of a new BPM headquarters in Port-au-Prince, complete with administrative offices and a temporary shelter for trafficked children and children in conflict with the law. During the PHR program, 50 additional officers were recruited and trained. Material support, for example, motorcycles, was provided to strengthen BPM's ability to deploy its personnel to the border to monitor child trafficking. PADF trained all agents prior to their deployment outside of Port-au-Prince. (2)

In addition to PADF's efforts, ~~Free the Slaves~~, a non-profit that supports community-driven interventions in partnership with local groups to help people obtain sustainable freedom and dismantle a region's system of slavery, began a 3-year project in 2011 in partnership with Fondasyon Limye Lavi that was funded by the U.S. State Department Office to Monitor and Combat Trafficking. Their project aimed, among other objectives, to strengthen advocacy for passage of an effective legislative framework to combat restavèk slavery by perspectives and priorities from communities and individuals most affected by the restavèk system. In particular, they focused their efforts on shifting community attitudes and developing committees for returned children in each community. (3).

References

- 1) ICF International. (2012). *Child Labor in Domestic Service ("Restaveks") in Port-au-Prince, Haiti: Mixed Methods Research on Child Labor and Forced Child Labor in the Production of Goods.* (Rep.). (<https://www.haiti-now.org/resources/about-restavek/>)
- 2) The Pan American Development Foundation, U.S. Agency for International Development. (2011) *Protecting Human Rights in Haiti.* (Rep.). Port-au-Prince. (<https://www.haiti-now.org/resources/about-restavek/>)
- 3) Free the Slaves. (2014). *Haiti's Model Communities: Ending Restavek Child Domestic Servitude.* (Rep.).(<https://www.haiti-now.org/resources/about-restavek/>)
- 4) ICF International. (2012). *Urban Child Labor in Port-Au-Prince, Haiti.* (Rep.). (<https://www.haiti-now.org/resources/about-restavek/>)
- 5) Sommerfelt , T. (Ed.). (2015). *Child Domestic Workers in Haiti 2014: Analytical Report.* (Rep.). (<https://www.haiti-now.org/resources/about-restavek/>)
- 6) Sommerfelt , T. (Ed.). (2005). *Life as a Child Domestic Worker in Haiti: Characteristics, Contexts and Organisation of Children's Residence, Relocation and Work.* (Rep.). (<https://www.haiti-now.org/resources/about-restavek/>)