“THE KIDS AREN’T ALRIGHT”: USING A COMPREHENSIVE ANTI-TRAFFICKING PROGRAM TO COMBAT THE RESTAVEK SYSTEM IN HAITI

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A. January 12, 2010

When I began this comment, Haiti, a country only slightly larger than the state of Maryland and the poorest country in the western hemisphere, was hardly more than a blip on the world’s radar. But on January 12, 2010, the world was forced to take notice of Haiti as it suffered the worst natural disaster it had ever faced in its 200-year history: a catastrophic 7.0 magnitude earthquake. The quake’s epicenter was only ten miles from Port-au-Prince, Haiti’s capital and most densely populated area. The earthquake’s damage was unprecedented — officials now estimate that approximately 230,000 people were killed and over 250,000 injured, while some 3 million remain in dire need of assistance.

These numbers are staggering, yet they overshadow another, perhaps more shocking, aspect of the tragedy: the humanitarian situation in Haiti before this ill-fated quake struck. Many have argued that the devastation in Haiti was the “predictable” result of “poverty and the forces of nature [meeting] with foreseeably tragic consequences.” Further, it was recently stated that “the catastrophic death toll was a result not so much of the earthquake’s strength but of Haiti’s history of corruption, its shoddy buildings and ultimately its poverty.” With even a cursory look at Haiti’s troubling history, it is hard to argue against these assertions.

Even before the 2010 earthquake, 80% of Haitians lived under the poverty line — 54% lived in abject poverty. In 2009, the U.S. Department of State


3. Id.


8. CIA: HAITI, supra note 1. The term “abject poverty” is often used interchangeably with “absolute poverty” which is defined as living on less than one dollar per day. THE WORLD BANK, SOCIAL RESILIENCE AND STATE FRAGILITY IN HAITI: A COUNTRY SOCIAL ANALYSIS 68 (2006), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/06/07/000160016_20060607092849/Rendered/PDF/360690HT.pdf. The UN defines absolute poverty as "a condition
estimated Haiti’s Gross Domestic Product (GDP) at somewhere between 6.5 and 12 billion dollars. Its real GDP growth rate for 2009 was estimated at 2.3%. Despite these deplorable statistics, there was evidence that the Haitian economy was actually on the rise before the earthquake struck.

Regardless of this apparent upswing, Haiti remained significantly behind the rest of the world in many aspects. Only half of Haiti’s population had access to clean water. A third of the population lacked sanitary facilities. The life expectancy for Haitians was only fifty-nine years. Less than one-quarter of rural children attended elementary school. Even more, almost half the population was illiterate. These unfortunate statistics make it clear that the earthquake of January 12, 2010 was simply added fuel – albeit a lot of added fuel – to a nation already engulfed in the flames of poverty.

B. Child Labor Exploitation in Haiti

Haiti’s perpetual poverty gives rise to a number of unfortunate consequences. Perhaps the most prevalent and disturbing of these is the exploitation of children within the restavek system of child labor. This system operates as follows: children from mostly poor, rural families are sent to cities to live with wealthier host families.

[characterized] by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to services. DAVID GORDON, UN DEP’T OF ECON. & SOC. AFFAIRS, INDICATORS OF POVERTY AND HUNGER 3 (2005), http://www.un.org/esa/socdev/unyin/documents/ydiDavidGordon_poverty.pdf.


11. Walsh et. al., supra note 7, at 37; see also Bill Clinton, Many Hands Lighten the Load, NEWSWEEK, Jan. 25, 2010, at 30.


13. Id.


15. BUSS, supra note 12, at 11.

16. CIA: HAITI, supra note 1.

17. See discussion infra Part II-B.

18. Wealthier here denotes wealthier than the poor, rural families. Families who house restaveks are typically poor; however, less poor than the families who give away the children. See discussion infra Part II-B-2-b.

In reality, however, these children are treated like domestic slaves by their host families; they are often abused and denied any education. These child victims are called “restaveks” which, in Haitian Creole, literally means “to stay with,” or “someone who lives with another.” Used in everyday language, “restavek” is categorically demeaning – it “has the effect of putting that person down, relegating him or her to the lowest possible servile status in a social order based on hierarchy and domination.”

C. Turning Disaster into Opportunity for Haiti’s Children

For the children of Haiti, the recent earthquake has transformed the already poor living environment into an abysmal disaster. Many Haitian children have lost their parents and homes. In addition to an already inaccessible education system, ninety-percent of the schools in Port-Au-Prince were destroyed or damaged. The Haitian children’s plight became all too clear when, on January 29, 2010, ten Americans from the organization New Life Children’s Refuge in Idaho were arrested for attempting to transport thirty-three Haitian children across the Dominican border. The group alleged they were transporting these “orphan” children to an orphanage to give them better lives; however, none of these children were actually orphans. Although child welfare organizations within Haiti have
attempted to protect children affected by the quake by registering orphans and establishing interim care centers, the possibility remains that organizations like the New Life Children’s Refuge will continue to disregard the laws and take matters into their own hands.\footnote{It is clear that an immediate, comprehensive response is necessary to protect Haitian children from the possibility of being recruited into and trafficked within the restavek system.} It is clear that an immediate, comprehensive response is necessary to protect Haitian children from the possibility of being recruited into and trafficked within the restavek system.\footnote{This comment suggests that the best way to work toward elimination of the restavek system and immediately protect Haiti’s vulnerable children is through an anti-trafficking program. This program would help to prevent Haitian children from being recruited and trafficked as restaveks. It would also educate the community on the abuses of the restavek system. Immediate eradication of the restavek system is an unrealistic goal in light of the multi-faceted nature of the problem; however, an anti-trafficking program could produce more immediate results by attacking the issues that face the most at-risk children.}

The first part of this comment provides a brief history of Haiti and a detailed introduction to the practice of restavek and recent trends in the system. The second part describes the underlying causes, as well as recent domestic, NGO, and international responses to the restavek system. The third part compares anti-trafficking programs in other countries and what effects, if any, similar programs might have in limiting the trafficking and recruitment of restavek children within Haiti. The fourth and final part of this comment suggests a program which will: (1) combat trafficking and recruitment of restavek children; and (2) educate the Haitian people about the risks and abuses inherent in the restavek system.

**II. HAITIAN HISTORY AND AN INTRODUCTION TO THE RESTAVEK SYSTEM**

**A. Haiti’s Tumultuous History**

Haiti is part of the island of Hispaniola, which includes present day Haiti and the Dominican Republic.\footnote{From its beginning, Haiti’s economy relied on the importation of African slaves from Portugal and Spain.} Throughout the late 1700s, slaves in Haiti became increasingly dissatisfied with their inferior treatment

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\footnote{Christopher Columbus claimed Hispaniola for Spain in 1492 and it shortly thereafter became known as Santo Domingo. \textit{Id.} at 264. Following the War of the Grand Alliance, Spain ceded the territory located on the west side of Hispaniola to France; this area became known as Saint-Domingue. \textit{Id.} at 266.}

\footnote{In 1789, the population of Saint-Domingue was estimated at around 520,000; of this 520,000, 452,000 were slaves, 40,000 were white, and 28,000 were free men and women of color. \textit{Id.}}


\footnote{\textit{Id.} at 266. In 1789, the population of Saint-Domingue was estimated at around 520,000; of this 520,000, 452,000 were slaves, 40,000 were white, and 28,000 were free men and women of color. \textit{Id.}}

\footnote{\textit{Id.} at 1/29/10: Haiti, \textit{TIME}, Feb. 15, 2010, at 13 (stating that the arrest of Baptist missionaries who illegally attempted to remove children from Haiti was a “reminder that the best way to help Haiti’s children may not be plucking them from their country but helping rebuild it as a safer place for them to grow up.”).}

\footnote{\textit{Id.} at 266. In 1789, the population of Saint-Domingue was estimated at around 520,000; of this 520,000, 452,000 were slaves, 40,000 were white, and 28,000 were free men and women of color. \textit{Id.}}
and statuses.\textsuperscript{34} This unrest culminated in a slave rebellion which successfully overthrew the French government and established the present day nation of Haiti.\textsuperscript{35}

Since its independence, Haiti has been perpetually plagued with political and economic instability.\textsuperscript{36} Haitian leaders have been predominantly short-lived, violent dictators.\textsuperscript{37} Of the few leaders that were popularly elected, only one completed his term and left voluntarily.\textsuperscript{38} “Every [Haitian] president has exploited Haiti’s impoverished people and its resources, for political gain or personal aggrandizement or both. There have been very few months in its history when Haiti went without revolt, uprisings, riots, political murders, or mass killings.”\textsuperscript{39} Because of this instability, foreign involvement in Haiti has been relatively commonplace.\textsuperscript{40}

\textbf{B. The Restavek System}

A restavek child is a child who goes to live with someone who does whatever they like with her. She is under absolute command, not a family member, no salary. Children do not have a choice. A restavek child is not purchased, but it almost gives you the right of life and death.\textsuperscript{41}

The restavek system has existed since Haitian independence.\textsuperscript{42} During the period when Haiti’s economy relied on slavery, children were thought to be of little value beyond their economic potential.\textsuperscript{43} Although its exact origin is unclear,
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the practice of restavek mirrors other systems of child domestic servitude throughout the African continent. While the practice of restavek in many ways seems indistinguishable from child slavery, restaveks are not slaves in the traditional sense – a slave is “one who is the property of, and entirely subject to, another person, whether by capture, purchase, or birth; a servant completely divested of freedom and personal rights.” Despite these technical distinctions, status as an unpaid child servant is presently recognized as a contemporary form of slavery.

1. Children at Risk

While the exact population of restavek children is unknown, a 2003 study found that 173,000 Haitian children (8.2%) between the ages of 5 and 17 were restaveks. In 2007, the Haitian government and UNICEF estimated there were

by reciting in Haitian: “[y]our child is not my child, and I don’t have to do anything for him because he’s not mine”).

44. See Ticky Monekosso, West Africa’s Child Slave Trade, BBC News, August 6, 1999, http://news.bbc.co.uk/2/hi/africa/412628.stm; see also Derby, supra note 21, at 28 (estimating that about 41% of African children between ages five and fourteen are victims of child labor exploitation).

45. STUDY OF TRAFFICKING IN HAITIAN CHILDREN, supra note 24, at 15.


47. STUDY OF TRAFFICKING IN HAITIAN CHILDREN, supra note 24, at 24 (suggesting that a restavek child is an “abused child” but not a “slave child” because the children are not bought and sold as private property).


49. Included among contemporary forms of slavery are: (1) child labor and child servitude; (2) the exploitation of prostitution; and (3) trafficking of persons. OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, Fact Sheet No. 14, Contemporary Forms of Slavery (June 1991).

anywhere between 90,000 and 300,000 restaveks in Haiti. The children work long hours, are denied the opportunity for education, and are often physically and sexually abused. After the age of fifteen, restaveks often become street children, leading to involvement in prostitution or violent crime. Estimates reveal that annually two to three thousand restavek children are trafficked as slave labor to the Dominican Republic. In fact, restaveks comprise the majority of trafficking victims in Haiti.

Typically, restaveks come from rural families with five to ten children. Besides family size, a number of other factors create a heightened risk for placement of children outside of the home. These are: (1) death or illness of a parent; (2) lack of access to education; (3) being orphaned; (4) lack of access to water in areas close to children’s homes; (5) having only one parent; (6) being born outside marriage; (7) having access to urban based family members.

Females are particularly vulnerable; the majority of restaveks are girls between the ages of six and fourteen. UNICEF highlighted the plight of one girl, Celine, who was sexually abused and burned by the men who “owned” her. In 2006, a survey of 1,260 households in Port-au-Prince revealed that between 2004 and 2006, “35,000 women were sexually assaulted, half of whom were under the age of eighteen.” This study also revealed that: (1) restaveks accounted for 36.2% restavek).

52. Id.; see also BUSS, supra note 12, at 13 (noting that approximately “[o]ne-third of Haiti’s female population has been violently sexually abused, the highest percentage in the hemisphere.”).
53. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI, 2007, supra note 48, at 2620-21 (because Haiti’s labor laws require that domestic workers over the age of fifteen be paid, it is at this age that restaveks are typically released by their host families). Release from the restavek system often makes the child’s situation worse. For example, “Port-au Prince’s large population of street children included many domestic servants, who were released from or fled employers’ homes.” Id. at 2619. In October 2004, UNICEF issued a statement denouncing a campaign of violence specifically targeting these street children, after four of their bodies turned up in the morgue; two had been decapitated. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI (2004), http://www.state.gov/g/drl/rls/hrrpt/2004/41764.htm. UNICEF suspected that these children were used for “target practice” by assailants roaming the capital. Id.; STUDY OF TRAFFICKING IN HAITIAN CHILDREN, supra note 24, at 34; see BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI 2005, supra note 50.
54. BUSS, supra note 12, at 12; BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI 2005, supra note 50.
55. TIP REPORT 2009, supra note 19, at 306.
56. STUDY OF TRAFFICKING IN HAITIAN CHILDREN, supra note 24, at 37.
57. Id. at 37-38.
58. TIP REPORT 2009, supra note 19, at 306.
60. Faedi, supra note 59, at 169 (citing Athena R. Kolbe & Royce Hutson, Human Rights Abuse and Other Criminal Violations in Port-Au-Prince, Haiti: A Random Survey of Households,
of sexual violence victims; (2) 9.6% of all female restaveks had been sexually abused; and (3) that female restaveks had a 4.5 times greater chance of being sexually assaulted than non-restavek females.61

A significant reason for the continued existence of the restavek system is the large population of rural, orphan children in Haiti. Haiti is a very young society with around 42% of the population under 15 years of age.62 In December 2009, some 650,000 children were not living with either of their parents.63 This number was likely attributable to the aftermath of four hurricanes that struck Haiti in 2008.64 Even before the 2010 earthquake, around 380,000 of these children were orphans.65 Although it is unclear what portion of these children are currently restaveks, those that are not face a heightened risk of recruitment into the system.66

2. The Restavek System over the Last Decade

The restavek system is a multi-faceted problem. The system, on its own, is not inherently abusive: it purports to place children who would not otherwise be properly fed or educated in homes that are willing to take on these responsibilities. However, in practice, the system breeds exploitation. This exploitation creates a number of problems – one of which is child trafficking.

Trafficking is often a confused concept. While trafficking may be the physical transportation of a person or persons, this definition is under-inclusive.67 Trafficking is also “the use of force, fraud, or coercion to exploit a person for profit.”68 Prominent examples include sex trafficking69 and trafficking for the purpose of obtaining a person for labor or services.70 It is considered a form of modern-day slavery and includes individual exploitation of victims in private homes.71 The abuse of children, either sexually or physically, and the deprivation of education in the restavek system clearly falls under the modern definition of trafficking.

368 The Lancet 863, 870-71 (2006)).

61. Id.
62. Id.
63. Id.
66. See discussion infra Part II-B-2.
68. Id. at 7.
69. Sex trafficking is any situation wherein “a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such an act has not attained 18 years of age.” TIP Report 2009, supra note 19, at 6.
70. Trafficking for labor exploitation is “the form of trafficking claiming the greatest number of victims [and] includes traditional chattel slavery, forced labor, and debt bondage.” TIP Report 2009, supra note 19, at 7.
Although precise data on the numbers of restaveks is unavailable, the United States has monitored the system in its Trafficking in Persons (TIP) reports throughout the last decade. TIP reports break down countries into three tiers. Tier one countries have substantially complied with the minimum standards of the Trafficking in Victims Protection Act (TVPA). Tier two countries are those making significant efforts toward meeting the minimum standards. Countries may also be placed on a tier two watch list if:

a. The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;

b. There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, [including increased investigations, prosecutions, and convictions of trafficking crimes; increased assistance to victims; and decreasing evidence of complicity in severe forms of trafficking by government officials]; or

c. The determination that a country is making significant efforts to bring [itself] into compliance with the minimum standards was based on commitments by the country to take additional steps over the next year.

Tier three countries are those that (1) do not comply with the minimum standards and (2) are not making significant efforts toward compliance. The minimum standards are as follows:

1. The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

2. For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

3. For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

4. The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

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72. See id. at 5. The Department of State issues TIP reports each year to, among other reasons, “encourage foreign governments to take effective action against all forms of trafficking in persons.” Id.

73. Id. at 5, 49.

74. Id.

75. Id.

76. TIP REPORT 2009, supra note 19, at 5, 49

77. Id.

78. Id.
Each of the TIP reports in the last decade has highlighted the existence of the restavek system in Haiti as a significant problem. The TIP reports in 2001-2002 considered Haiti a tier two country. In 2003, Haiti was named a tier three country. However, this was later changed by then President Bush to tier two. Each year since 2003, with the exception of 2005 (where Haiti was placed on the tier two watch list), it has been considered a special case in the TIP report. A country is typically considered a special case when accurate data compilation is unavailable.

3. New Trends in the Practice of Restavek

The Special Rapporteur on Contemporary Forms of Slavery recently articulated her concern over the restavek system in Haiti, stating that the “practice is a severe violation of the most fundamental rights of the child – the foundation of society – and reinforces a vicious cycle of violence – it should be stopped immediately.” She further stated that the system “deprives children of their family environment and violates their most basic rights such as the rights to education, health, and food as well as subjecting them to multiple forms of abuse including economic exploitation, sexual violence and corporal punishment, violating their fundamental right to protection from all forms of violence.”

The United Nations (U.N.) also noted two disturbing new trends which have emerged within the restavek system. The first trend is the emergence of recruiters, who earn income by recruiting children from rural families to work for city families. The second is that the demand for restaveks has shifted from wealthy families to poor families.
a. Recruitment of Restaveks

The emergence of recruitment has led to an increase in the internal trafficking of restavek children. Recruitment is “a consensual relationship between the sending [those giving away the child] and receiving [those taking the child into their home] households.” However, three notable effects have emerged from this new dynamic: (1) an increase in rural children being placed in big cities “under circumstances which allow little or no ongoing contact” with their parents; (2) the increased placement of children with strangers; and (3) placement of children with strangers “facilitated by intermediaries and payment of fees.”

Haitian children have even been recruited for Haitian families residing in the Dominican Republic who are willing to pay smuggling and travel costs. Recruited children are physically trafficked by career smugglers who earn their livelihood by transporting people across the border between Haiti and the Dominican Republic. This trafficking of restavek children to the Dominican Republic has occurred both for: (1) sex trafficking – where Haitian minors are recruited for sex work; and (2) typical restavek placement as child domestic servants. Just last year, the U.S. Department of State confirmed a sharp increase in the number of children trafficked from Haiti to the Dominican Republic.

b. Shifting Demand for Restaveks

Children are now more likely to move from a very poor family to a slightly less poor one; this shifting demand is likely to exacerbate the situation of restaveks. In fact, there is evidence that wealthy families in Haiti no longer condone the practice of restavek:
If you visit Haitian families you will see that the privileged classes that used to have “servant children” living with them, for years now, at least in principle, families with self-respect no longer have what you’d call restavék. Use of servant children is not well regarded in bourgeois homes. It is almost an evil behavior. You don’t want to have anything to do with it.97

In Port-Au-Prince, placement of restavek children in affluent households has significantly declined.98

The restavek system may have benefitted some children who otherwise would have lived without access to food, water, or education. However, these new trends suggest that any positive benefits for children placed within the system have essentially disappeared. Therefore, elimination of the system should be a major priority both within the nation of Haiti and internationally.

4. The Economic and Social Causes of the Restavek System

In order to successfully move toward reducing the numbers of restaveks and eventual abolition of the system, it is necessary to assess the system at its roots. The restavek system exists for two overarching reasons: poverty and cultural acceptance of the practice.99 These underlying causes help to explain the reasons that the restavek system has moved away from its purportedly innocent premise.100

Because of Haiti’s heavily impoverished condition, the majority of restaveks come from rural families with five to ten children.101 Rural Haiti has a poverty rate over 80%.102 Its population also has a substantially higher fertility rate than urban Haiti.103 Children in rural Haiti have little access to schools; thus, parents who seek to educate their children are often convinced that sending their children to urban Haiti to become restaveks is the only way to do so.104

As a result, some effort must be made to reduce poverty throughout rural Haiti in order to adequately protect children vulnerable to becoming restaveks. The restavek system would not exist in its current form without the overabundance of poor families that are unable to feed their children.105

97. Id. at 30.
98. Id.
99. See STUDY OF TRAFFICKING IN HAITIAN CHILDREN, supra note 24.
100. See id (opining that these underlying causes must be dealt with to abolish the restavek system).
101. Id. at 14.
102. Id.
103. Id.
104. Id. at 13.
An inherent problem in developing a solution is balancing the cultural traditions of Haiti with the need to reduce poverty. One possibility lies in a reduction of Haitian family size through birth control or other methods; however, this may be at odds with the society’s practice of having large families where children contribute to household economies.  

But when, as now, rural families are forced to send one or more of their five to ten children away in order to ensure that a child’s most basic needs are met, the availability and use of birth control becomes a necessary consideration.

The restavek system is also deeply entrenched in Haitian social norms. While the Haitian government recognizes the seriousness of child exploitation within the restavek system, many Haitians are accustomed to the practice. According to the International Organization for Migration (IOM), “[e]very person in Haiti thinks it is [okay], it’s not a problem to have a servant in my house; ‘it’s [okay] I am helping him.’”

Compounding this is the Haitian conception of childhood, which is markedly different from that of most western societies. In Haiti, children have significant economic value and are expected to make contributions to their households at a young age. Usually around age six, when children are old enough to work, they are expected to do both domestic and agricultural labor. The amount of work expected of children increases in poorer households.

At around the same time they begin working, Haitian children are taught the importance of discipline and respect for their elders. Traditionally, this is developed by the imposition of strict standards of obedience and respect towards a child’s older siblings and other adults. In Haiti, corporal punishment within families remains a common method of enforcement of these stringent standards.

The economic value placed on children and the general acceptance of child labor in Haitian society perpetuates the abuses of the restavek system. To change these perceptions, the institution of wholesale public awareness programs to educate Haitians, especially those in rural areas, on the importance of childhood

106. See STUDY OF TRAFFICKING IN HAITIAN CHILDREN, supra note 24, at 11.
108. INT’L ORG. FOR MIGRATION, CHILD TRAFFICKING AND ABUSE IN HAITI- IOM EFFORTS TO RESCUE RESTAVEKS, INFORMATION SHEET, (2008), available at http://www.iom.int/unitedstates/Home/Restavek%20info%20sheet.pdf; see also Padgett, Bondage, supra note 42(noting that “[c]hild slavery is an entrenched tradition in [Haiti].”).
109. STUDY OF TRAFFICKING IN HAITIAN CHILDREN, supra note 24, at 11.
110. Id. at 13.
111. Id.
112. Id. at 12.
113. Id.
114. Id. Corporal punishment is defined as “physical punishment; punishment that is inflicted upon the body (including imprisonment).” BLACK’S LAW DICTIONARY 1353 (9th ed. 2009).
development and the treatment of children within the restavek system might help to reduce the numbers of restaveks in Haiti.\footnote{See discussion infra Part V.}

III. HAITIAN, NGO, AND INTERNATIONAL RESPONSE TO THE RESTAVEK SYSTEM

A. Haiti’s Domestic Response

Haiti’s domestic response to the abuses of the restavek system has been very limited. The restavek system itself is not illegal under Haitian law. However, if current laws were domestically enforced they would seemingly prohibit the slavery-like practices within the system. Nonetheless, Haiti’s internal law inadequately addresses the exploitation of children that occurs within the system, especially in light of the fact that Haiti lacks any statutory penalty against trafficking.

1. Domestic Law and Enforcement

The practice of exploiting and abusing children as unpaid domestic workers is illegal under the Constitution of Haiti.\footnote{The 1987 Constitution of Haiti is the mechanism which established the current governmental system in Haiti today. DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES, supra note 32, at 427. Its 298 articles were drafted by an independent commission and ratified by a referendum. \textit{Id.} This constitution served not only to reduce the executive’s constitutional powers, but also to establish the segregation of police and army functions, and an independent judicial system. \textit{Id.} The justice system in Haiti has been known for its corruption for over 200 years. \textit{Id.} at 486. A UN report noted that judges, prosecutors, and lawyers had been threatened, beaten and killed for attempting to uphold the rule of law. \textit{Id.} The civil law system is based on the Napoleonic code (the French civil code developed under Napoleon Bonaparte) and the Criminal Code was developed in 1832. \textit{Id.} The judiciary is based on an ascending order of courts, which begin at the municipal level, with the Court of the Justice of the Peace, and rise to the Supreme Court, called the Court of Cassation. \textit{Id.} at 431. To become a judge in a Haitian court, a person must be at least twenty-five years old, with a law degree and good legal standing. \textit{Id.} at 431-32. As of 1999, the judicial system remained weak and corrupt. \textit{Id.} at 487. At the end of 1999, 80\% of the incarcerated population were unsentenced and awaiting trial. \textit{Id.}} Article 261 states that “the law ensures protection for all children.”\footnote{CONSTITUTION 1987, art. 261 (Haiti).} Article 35-6 provides that “[t]he minimum age for employment is governed by law. Special laws govern the work of minors and servants.”\footnote{\textit{Id.}} Furthermore, the law prohibits forced or compulsory labor,\footnote{\textit{Id.}, art. 35-6.} and sets the minimum age for employment at fifteen

\footnotetext[115]{See discussion infra Part V.}

\footnotetext[116]{The 1987 Constitution of Haiti is the mechanism which established the current governmental system in Haiti today. DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES, supra note 32, at 427. Its 298 articles were drafted by an independent commission and ratified by a referendum. \textit{Id.} This constitution served not only to reduce the executive’s constitutional powers, but also to establish the segregation of police and army functions, and an independent judicial system. \textit{Id.} The justice system in Haiti has been known for its corruption for over 200 years. \textit{Id.} at 486. A UN report noted that judges, prosecutors, and lawyers had been threatened, beaten and killed for attempting to uphold the rule of law. \textit{Id.} The civil law system is based on the Napoleonic code (the French civil code developed under Napoleon Bonaparte) and the Criminal Code was developed in 1832. \textit{Id.} The judiciary is based on an ascending order of courts, which begin at the municipal level, with the Court of the Justice of the Peace, and rise to the Supreme Court, called the Court of Cassation. \textit{Id.} at 431. To become a judge in a Haitian court, a person must be at least twenty-five years old, with a law degree and good legal standing. \textit{Id.} at 431-32. As of 1999, the judicial system remained weak and corrupt. \textit{Id.} at 487. At the end of 1999, 80\% of the incarcerated population were unsentenced and awaiting trial. \textit{Id.}}
years, with the exception of domestic employment, where the minimum age is twelve.\textsuperscript{120}

Although on the surface these laws might suggest that the restavek system is illegal under Haitian domestic law, this is not exactly the case. While the law ensures protection for all children, “protection” is not defined. As for the minimum age for employment, restavek children are not technically employed, thus this provision is not applicable. The internal law prohibiting forced or compulsory labor would seemingly prohibit the restavek system. However, this law remains unenforced with regard to restaveks.

In order for a minor to work as a domestic servant, the child’s employer technically must obtain a permit from the Ministry of Labor and Social Affairs’ Social Welfare and Research Institute (IBESR).\textsuperscript{121} The IBESR is designated as the mechanism to enforce child labor laws and regulations; however, it lacks adequate resources to actually enforce the laws.\textsuperscript{122} In addition, the employer of the domestic worker is responsible for preserving the welfare of the child until he or she is fifteen years old.\textsuperscript{123} The employer is also required to provide domestic workers age of fifteen or older with room and board, and further, the employer is not permitted to pay minor domestic workers over the age of fifteen less than half of what he/she would pay an adult domestic worker.\textsuperscript{124} To evade this requirement, host families often dismiss restaveks before they reach the age of fifteen.\textsuperscript{125}

The Haitian government has acknowledged the seriousness of the restavek problem, but has done little to address it.\textsuperscript{126} In May 2003, Haiti created the Brigade de Protection des Mineurs (BPM), the child protection division of the Haitian National Police charged with investigating cases of child trafficking and monitoring the movement of child victims to the Dominican Republic.\textsuperscript{127} The BPM has trained government officials to prevent and punish the possession of restavek children and acts of trafficking, but their effectiveness is limited.\textsuperscript{128} Haiti’s lack of domestic enforcement reflects its endemic instability.\textsuperscript{129} Thus, despite repeated

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{120} \textit{Id}.
\item \textsuperscript{121} \textit{Id}.
\item \textsuperscript{122} \textit{Id}.
\item \textsuperscript{123} \textit{Id}.
\item \textsuperscript{124} \textsc{Bureau of Democracy, Human Rights, and Labor, Haiti} 2006, \textit{supra} note 119.
\item \textsuperscript{125} \textit{Id}.
\item \textsuperscript{126} \textsc{TIP Report} 2009, \textit{supra} note 19, at 306; \textsc{TIP Report} 2001, \textit{supra} note 80, at 48; see also \textsc{Restavek No More}, \textit{supra} note 50 (describing the Haitian government’s failure to provide adequate resources to remedy the restavek problem).
\item \textsuperscript{127} \textsc{Bureau of Democracy, Human Rights, and Labor, Haiti} 2005, \textit{supra} note 50.
\item \textsuperscript{128} \textit{Id}; see \textsc{Skinner, supra} note 43, at 24-25. Skinner recounts a conversation with Renel Costumé, the head of the BPM, and notes that the unit was essentially “the first-response agency, fielding restavek abuse reports, and galloping to the rescue.” \textit{Id}. However, the unit’s phone lines were often down, and it only had one car. \textit{Id}. Even when the BPM could conduct investigations, it could not arrest the owners of restaveks, only punish them for the mistreatment of the children. \textit{Id} at 25.
\item \textsuperscript{129} See discussion \textit{supra} Part II-A.
\end{enumerate}
\end{footnotesize}
attempts, Haiti has had little success in controlling or eliminating the restavek system.\textsuperscript{130}

Even before the January 2010 earthquake, there were a significant number of orphaned children in Haiti. This created a need for the national government to develop programs to protect these vulnerable children. Despite a steady population of orphaned children, Haiti has failed to develop facilities to house these orphans; this leaves these children highly vulnerable to recruitment into the restavek system. Recently the BPM has had marginal success in shutting down a number of orphanages where children have been historically vulnerable to recruitment in the restavek system.\textsuperscript{131} However, "the lack of resources, training, and institutionalized procedures [in the BPM] remain a barrier to its operational capacity."\textsuperscript{132} Moreover, the BPM does not pursue any trafficking cases as Haiti still has no penalty against trafficking.\textsuperscript{133}

2. Haiti’s International Treaty Obligations

Haiti is a party to a number of treaties which, although not expressly prohibiting the restavek system, would prohibit the trafficking and abuse of children within the system if domestically enforced. Haiti is a party to: the U.N. Supplementary Convention on the Abolition of Slavery,\textsuperscript{134} ILO Convention No. 29 on Forced Labour,\textsuperscript{135} Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),\textsuperscript{136} International Covenant on Civil and Political Rights (ICCPR),\textsuperscript{137} Convention on the Rights of the Child (CRC),\textsuperscript{138} and

\begin{itemize}
  \item \textsuperscript{130} See generally, RESTAVEK NO MORE, supra note 50 ("The government of Haiti’s long-standing practice of investing little in programs and initiatives that promote good governance... permeates its response to the restavek system, which it promotes in law and deeds even as it claims to do otherwise.").
  \item \textsuperscript{131} TIP REPORT 2009, supra note 19, at 306.
  \item \textsuperscript{132} BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI 2007, supra note 48.
  \item \textsuperscript{133} Id.; TIP REPORT 2009, supra note 19, at 306.
  \item \textsuperscript{134} Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sep. 7, 1956, 18 U.S.T. 3201, 266 U.N.T.S. 3 (hereinafter Supplementary Convention on the Abolition of Slavery).
  \item \textsuperscript{135} Convention Concerning Forced or Compulsory Labour, June 28, 1930, 39 U.N.T.S. 55.
  \item \textsuperscript{136} Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18 1979, 1249 U.N.T.S. 13. CEDAW is essentially an international bill of rights for women. In accepting CEDAW, parties are required to take several measures to ensure the end of discrimination against women. \textit{Id.} art. 2. Parties must undertake to "embody the principle of equality of men and women in their national constitutions or other appropriate legislations...[t]o establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination," and "to take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise." \textit{Id.}
  \item \textsuperscript{137} International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171. Article 24 of the ICCPR requires that the state and society ensure all children the right to protection. \textit{Id.} art. 24.
\end{itemize}
ILO Convention No. 182 on the Worst Forms of Child Labor.\textsuperscript{139} These treaties articulate both the development of international human rights norms which call for the abolition of contemporary forms of slavery (e.g. child servitude, forced labor, sex servitude, trafficking in persons) and also the protection of the rights of children (e.g. the right to survival, development, and education). These norms stand in direct conflict with the abuses against children caused by the restavek system.

Haiti ratified the U.N. Supplementary Convention on the Abolition of Slavery in February of 1958.\textsuperscript{140} The Convention states, in relevant part, that:

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

* * *

(d) 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.\textsuperscript{141}

Haiti also ratified ILO Convention No. 29 in 1958.\textsuperscript{142} This Convention prohibits government imposition of forced or compulsory labor for the benefit of private individuals.\textsuperscript{143}

The Convention on the Rights of the Child (CRC) consists of fifty-four articles which can be grouped under four general categories: (1) guiding principles; (2) survival and development rights; (3) protection rights; and (4) participation rights.\textsuperscript{144} Guiding principles of the Convention include non-discrimination, promotion of the best-interests of the child, the rights to life, survival and development, and the right to participate.\textsuperscript{145} The survival and development rights category of articles are described as


\textsuperscript{140} Supplementary Convention on the Abolition of Slavery, \textit{supra} note 134, art. 1.

\textsuperscript{141} Id.

\textsuperscript{142} Convention (No. 29) Concerning Forced or Compulsory Labour, as modified by the Final Articles Revision Convention, 1946, \textit{UNITED NATIONS TREATY COLLECTION}, http://treaties.un.org/pages/showDetails.aspx?objid=080000002801611d8 (last visited Nov. 2, 2010).

\textsuperscript{143} Convention Concerning Forced or Compulsory Labour, \textit{supra} note 135, art. 4(1).


\textsuperscript{145} Id.
rights to the resources, skills and contributions necessary for the survival and full development of the child. They include rights to adequate food, shelter, clean water, formal education, primary health care, leisure and recreation, cultural activities and information about their rights. These rights require not only the existence of the means to fulfill the rights but also access to them. Specific articles address the needs of child refugees, children with disabilities and children of minority or indigenous groups.146

Protection rights under the CRC include the right to be free from abuse, neglect and exploitation.147 Finally, participation rights refer to the right to be heard, the right to information, and freedom of association.148 Haiti signed onto the CRC in June of 1995.

The restavek system is entirely contrary to the goals contemplated by the CRC. Specifically, the right to survival and development is heavily compromised by the restavek system. Restaveks are not informed of their rights as children and are typically denied education, leisure, and recreation.149 Furthermore, restavek children are denied the rights protected by the CRC, as they are typically physically abused, neglected, and exploited.150

Haiti ratified ILO convention No. 182 on the Worst Forms of Child Labor in July of 2007. In its definition of the worst forms of child labor, the convention includes “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour;” and “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”151

In order to end the worst forms of child labor, article seven of ILO Convention No. 182 requires that member states “take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions.”152 This article also states:

Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:

(a) prevent the engagement of children in the worst forms of child labour;
(b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;

146. Id.
147. Id.
148. Id.
149. See Study of Trafficking in Haitian Children, supra note 24, at 26-27 (discussing denial of restavek children’s education and loss of childhood).
150. See id. at 113 (noting that restavek children are “vulnerable to mistreatment” and are “subject to trafficking, kidnapping, and placement for a fee as domestic servants”).
151. Worst Forms of Child Labour Convention, supra note 139, art. 3.
152. Id. art. 7.
(c)ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
(d) identify and reach out to children at special risk; and
(e) take account of the special situation of girls.

Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.\footnote{153}

Despite this ratification, restavek children are still exposed to the worst forms of child labor as defined by this convention, as they are internally trafficked for the purpose of forced domestic labor.\footnote{154}

Signing these treaties is a positive step by the government of Haiti. It shows Haiti’s acknowledgement of international human rights norms with respect to children. However, merely acknowledging these norms does nothing to quell the restavek practice in Haiti.\footnote{155} By themselves, these treaties are essentially idealistic statements of what should be. In reality, they do little to actually combat the restavek system, especially because they provide no guidance for attacking its root causes.

These treaties, on their own, are ineffective to combat the restavek system because the international legal system relies on states to secure, protect, and promote human rights; and to provide remedies when there are violations within its borders.\footnote{156} The Haitian government has never had the sort of stability needed in order to ensure domestic implementation and enforcement of its treaty obligations.\footnote{157} However, by signing onto these treaties, Haiti is obligated to work toward their enforcement.\footnote{158} The incorporation of international legal obligations into domestic law is not an easy task, largely because of the nature of international law as compared to domestic law.\footnote{159} Historically, domestic law existed to regulate

\footnote{153. \textit{Id.}}\footnote{154. \textit{See TIP REPORT 2009, supra note 19, at 306 (noting that most restavek children are trafficked within Haiti as involuntary domestic servants).}}\footnote{155. \textit{RICHARD B. LILlich ET AL., INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE 440 (4th ed. 2006) ("In all too many parts of the world, an enormous gap persists between internationally recognized rights and their enjoyment in practice.").}}\footnote{156. \textit{Id.} ("This duty is at least implicit in human rights treaties and is similarly discernible in customary human rights law.").}}\footnote{157. \textit{See discussion supra Part II-A.}}\footnote{158. Treaties may be self-executing “[w]hen domestic courts apply treaty law and other rights established by express accord . . . [i]f [ ] an intent [to enforce the norms involved locally] exists, these agreements are regarded as self-executing.” \textit{UN DEP’T OF ECON. AND SOC. AFFAIRS, INTERNATIONAL NORMS AND STANDARDS RELATING TO DISABILITY} 8 (2003), http://www.un.org/esa/socdev/enable/comp101.htm. Otherwise, treaties are non self-executing, meaning that legislation must be developed domestically before the treaty is considered effective. \textit{Id.} at 9.}}\footnote{159. \textit{See LILlich ET AL., supra note 155, at 440 ("In all too many parts of the world, an enormous gap persists between internationally recognized rights and their enjoyment in practice. . . . In order for . . . human rights norms to be effective, those norms must be – in one way or another – incorporated into states’ domestic law and enforced by courts or other authorities with power to mandate corrective action.”)}}
conduct of its own citizens, whereas international law was a “law of nations . . . concerned only with the rights and duties of states, not of individuals.”

Although treaties are important instruments for the establishment of international human rights norms, they have no present impact on the restavek system in Haiti. High levels of support for eliminating the restavek system do not necessarily lead to any change in its practice at ground level. While international law should play a role in the elimination of the restavek system, it is by no means able to effectively address the issue alone. International law, as expressed in the treaties Haiti has signed onto, prohibits the trafficking of children, forced labor, and the denial of education for children. These prohibited practices occur with frequency in the restavek system. However, as of yet, the international community has taken only limited interest in its elimination. As I will discuss later, the cooperation of the international community is vital in developing programs which combat the abuses of the restavek system.

B. NGO Efforts

NGOs have had success in increasing awareness of the restavek system. However, they focus mostly on protection of the children already in the restavek system. Although this is extremely important, Haiti also needs a program which works to attack the root causes of the restavek system, while at the same time implementing measures to protect current restaveks. This likely will require increased cooperation between NGOs, U.N. agencies, and others working toward the elimination of the system. Given the tragic condition of Haitian society following the 2010 earthquake, NGOs are in a better position than ever to raise funds and develop comprehensive programs aimed at eliminating the restavek system altogether. However, NGOs must be aware that “time is short before the world’s generosity turns to cynicism.”

The IOM has made efforts toward combating the internal trafficking and abuse of restavek children. The IOM funds both the Center for Action and Development (CAD) and L’Escale in Port-Au-Prince, both of which give shelter, food, and medical and psychological support to restavek children who have escaped from their host families, while they wait to be reunited with their

160. Id. at 441.

161. See HOLLY CULLEN, THE ROLE OF INTERNATIONAL LAW IN THE ELIMINATION OF CHILD LABOR 41–42 (2007) (“[A] high level of support for the elimination of slavery and forced labor has . . . meant that the prohibition on slavery is considered a customary norm of international law and possibly a peremptory norm. High levels of support for the norm, however, do not necessarily lead to complete observance of the norm.”).

162. See id. at 1 (“Undeniably, legal responses alone are insufficient to address such a multi-faceted problem [as child labor].”).


164. INT’L ORG. FOR MIGRATION, supra note 108, at 1.
families.\textsuperscript{165} Thus far, the IOM has been able to assist around 300 restavek children in finding their families.\textsuperscript{166} IOM receives funding from the United States Bureau for Population, Refugees, and Migration (PRM) and the United Nations Central Emergency Response Fund (CERF), as well as Canada.\textsuperscript{167}

Several other NGOs have attempted to increase knowledge of the abuses of the restavek system.\textsuperscript{168} Jean Robert Cadet, author of the book \textit{Restavec}, which chronicles his childhood experiences as a domestic servant in Haiti, heads the Restavek Foundation.\textsuperscript{169} The Restavek Foundation raises awareness of the system and works toward a solution by providing relief and education to restaveks.\textsuperscript{170} In 2009, the Restavek Foundation participated in a conference with Haitian leaders to discuss the restavek system and its impact on Haitian society.\textsuperscript{171} At the conference, over 500 leaders agreed to make the protection of restavek children a priority.\textsuperscript{172}

\section{International Response}

While neither the U.N. nor the United States have developed programs which specifically target the restavek system, they have both continually intervened in Haiti in attempts to stabilize and reduce poverty within the country. They both, however, have been largely unsuccessful. Because the restavek system continues to exist largely as a result of Haiti’s instability and poverty, efforts by the U.N. and the United States in Haiti deserve consideration.

In 1993, after Jean-Bertrand Aristide\textsuperscript{173} was ousted by a military coup, the U.N. and Organization of American States (OAS) became involved in the stabilization of Haiti, organizing the International Civilian Mission in Haiti mission.\textsuperscript{174} In June 1994, the U.N. Security Council authorized the entry of a 20,000 person multinational force into Haiti, with the goal of securing the country

\begin{flushleft}
\textsuperscript{165} \textit{Id}.
\textsuperscript{166} \textit{Id.} at 2.
\textsuperscript{167} \textit{Id}.
\textsuperscript{168} Some more NGOs involved include Save the Children and Amnesty International. See \textit{Save the Children}, \url{http://www.savethechildren.org/countries/latin-america-caribbean/haiti.html} (last visited Oct. 2010); see also \textit{Amnesty International Overcoming Poverty and Abuse: Protecting Girls in Domestic Service in Haiti} (2009), \url{http://www.amnesty.org/en}.
\textsuperscript{170} See \textit{id.} (mentioning the foundation’s efforts to raise awareness and give refuge to restaveks); \textit{Restavek Freedom Foundation}, \url{http://www.restavekfreedom.org} (last visited Oct. 31, 2010) (describing the foundation’s efforts to provide education).
\textsuperscript{171} Padgett & Ghosh, \textit{supra} note 169.
\textsuperscript{172} \textit{Id}.
\textsuperscript{173} Jean-Bertrand Aristide was elected president of Haiti in December of 1990. \textit{Buss}, \textit{supra} note 12, at 29.
\end{flushleft}
and promoting the rule of law.\textsuperscript{175} In addition to the multinational force, the U.N. launched several peacekeeping operations.\textsuperscript{176} Although the U.N. had marginal success in thwarting widespread violence and restoring democratic rule, it was unable to fashion a permanent remedy for Haiti’s perpetual instability.\textsuperscript{177}

After the coup, President Clinton authorized intervention in Haiti by the United States, with the goal of restoring Aristide to his position as President.\textsuperscript{178} Following the invasion of Haiti by the United States in 1996, USAID programs were expanded to include health, nutrition, agriculture, natural resources, education, and microcredit.\textsuperscript{179} Overall, however, the United States has not considered Haiti a high priority in matters of foreign policy; it’s policy towards Haiti may have reflected domestic politics more than concerns for Haiti.\textsuperscript{180}

David Rothkopf, former U.S. Deputy Undersecretary of Commerce for International Trade, stated this of United States’ efforts during the Clinton administration:

\begin{quote}
We tried to help, to organize business missions, to mobilize funding of local projects, to apply comparatively low-voltage policy paddles to the heart of a nearly lifeless economic victim. But given the island’s manifold, often heartbreaking, problems—weak governance, feeble infrastructure, illiteracy—it was clear that our efforts would likely be only palliative.\textsuperscript{181}
\end{quote}

He further noted that:

\begin{quote}
[I]t was . . . clear that America’s interest would wane and Haiti would remain on life support. Year to year, such countries receive just enough aid for them to fade from our consciousness and consciences. Development dollars seem to have two purposes: buying friends we may need to advance specific national interests and renting a little peace of mind by postponing calamity. But inevitably the money is too little, and countries like Haiti come crashing into our lives with the next crisis—almost invariably a crisis that is more costly in human and financial terms than the steps we might have taken to prevent or mitigate it in the first place.\textsuperscript{182}
\end{quote}

Again, after violence erupted and threatened Port-au-Prince in 2004, the U.N. Security Council established the U.N. Stabilization Mission in Haiti

\begin{notes}
\textsuperscript{175} Id. \\
\textsuperscript{176} These missions included: (1) the UN Support Mission in Haiti (UNSMIH); (2) the UN Transition Mission in Haiti (UNTMIH); and (3) the UN Civilian Police Mission in Haiti (MIPONUH). Id. \\
\textsuperscript{177} Id. \\
\textsuperscript{178} BUSS, supra note 12, at 74. \\
\textsuperscript{179} BUSS, supra note 12, at 74. \\
\textsuperscript{180} See id. at 73 (“Critics of Clinton’s Haiti policy explain its shifting direction mostly as a reaction to domestic politics, rather than as arising out of foreign policy concerns for Haiti.”). \\
\textsuperscript{181} Rothkopf, supra note 6, at 28. \\
\textsuperscript{182} Id.
\end{notes}
(MINUSTAH). MINUSTAH’s mandate includes securing and stabilizing Haiti, supporting principles of democratic government and institutional development, and also supporting Haitian human rights organizations in their missions to promote and protect human rights. In 2005, a U.N. report on MINUSTAH observed the following:

"The political discourse has yet to address concretely the substantive concerns facing the country or to offer a clear vision for the future of Haiti beyond the upcoming elections. As a result, the political class remains polarized[,] ... the security situation in Port-Au-Prince remains volatile[,] ... [and the] Human rights situation remained alarming. Cases of summary execution, prolonged pre-trial detention, arbitrary arrest, disregard for due process, ill-treatment, and rape continued to be reported." A subsequent mission of the Security Council determined that Haiti was in a “deep political, social and economic crisis.” Despite their efforts to address the problems in Haiti, none of the U.N.’s missions created any lasting political or economic stability.

Efforts by both the United States and the U.N. have failed to improve the economic and social situation in Haiti; the Haitian economy continues to rely on international economic assistance in order to sustain itself. Haiti receives little investment because of its instability and lack of infrastructure. This, coupled with a large trade deficit, leaves Haiti with few resources to combat the poverty which underlies the restavek system.

Effective United States and U.N. involvement in Haiti will be crucial in efforts to reduce poverty. Haiti faces monumental challenges in simply rebuilding after the severe destruction caused by the earthquake in January of 2010. However, combating the endemic poverty will be even more difficult. Fortunate for Haiti, the earthquake has transformed the country into an international priority. Haiti received an outpouring of aid in response to the earthquake, much of

183. BUSS, supra note 12, at 54.
188. CIA: HAITI, supra note 1.
189. Id.
190. Id.
191. USAID and DOD humanitarian assistance totals $522,609,506. The total amount of
which will be used for water, food, supplies and, most importantly, to maintain peace and order.\textsuperscript{192}

The issue of how to address the large number of orphans in Haiti is one that the United States and U.N. must deal with immediately. The complexity of this task is now amplified, as the U.N. lost vital buildings and staff in the recent earthquake.\textsuperscript{193} Additionally, the situation in Haiti is especially unique and complex because, even before the earthquake, Haiti struggled with finding homes for its high population of orphans.\textsuperscript{194} The earthquake, while tragic in its own right, inflamed an already endemic orphan problem. Now, faced with not only the need to rebuild, but the tools to do so, Haiti must address and eliminate the roots of its orphan situation. As this comment makes clear, those roots pre-date the tragic events of January 2010. Indeed, they are fundamentally tied to the restavek system. Those orphaned either by or prior to the earthquake now run an even greater risk of falling prey to trafficking in the restavek system.\textsuperscript{195} Heightened risk factors for Haitian children include: (1) death or illness of a parent; (2) access to education; and (3) being orphaned.\textsuperscript{196}

Where young children are recruited or forced to work in host families’ homes, they are victims of trafficking.\textsuperscript{197} Because the large orphan population of children in Haiti has essentially no place to go, they are at a substantial risk for recruitment. The trends evolving before the earthquake (e.g. both recruitment into poor families by paid recruiters and recruitment from rural to urban areas)\textsuperscript{198} are likely to be exacerbated now that resources have become increasingly scarce. Since the earthquake, there have already been instances of Haitians scouring the streets promising poor, starving children safe homes and food in exchange for labor.\textsuperscript{199}

uncommitted pledges is $802,296,651. International contributions and commitments total $1,554,992,908. Thus, the total amount of aid so far is near 2.9 billion dollars. The Magnitude of Haiti’s New Reality, CNN, (Feb. 12, 2010), http://www.cnn.com/2010/WORLD/americas/02/12/haiti.by.numbers/index.html?iref=allsearch.

\textsuperscript{192} Walsh et al., supra note 7, at 34. Despite the outpouring of aid, in the week after the earthquake workers were only able to provide 250,000 food rations for hundreds of thousands without access to food. Id. I will not address the question of how Haiti is to be rebuilt as it is beyond the scope of this comment.

\textsuperscript{193} United Nations Stabilization Mission in Haiti, supra note 174 (“MINUSTAH was . . . decimated. The loss of UN staff, including the Special Representative and his principal Deputy, was by far the greatest for any single event in UN peacekeeping’s 62-year history.”).

\textsuperscript{194} See supra text accompanying notes 62-66; Orphaned Haitian Children to be Allowed into U.S., supra note 65 (“Haiti has some 380,000 orphans, the UN's childrens' agency Unicef says, but that number is expected to have increased in the wake of the earthquake.”).

\textsuperscript{195} See STUDY OF TRAFFICKING IN HAITIAN CHILDREN, supra note 24, at 113 (listing heightened risk factors for recruitment).

\textsuperscript{196} See Padgett & Ghosh, supra note 169 (describing how child traffickers are taking advantage of the confusion and devastation caused by the earthquake).

\textsuperscript{197} See discussion infra Part III-A.

\textsuperscript{198} STUDY OF TRAFFICKING IN HAITIAN CHILDREN, supra note 24, at 28-30.

\textsuperscript{199} Padgett & Ghosh, supra note 169 (reporting recruiters scouring the broken streets for potential restaveks and promising children safe homes in exchange for their labor).
The next portion of this comment will suggest a program to reduce the trafficking of children within Haiti. Before discussing this however, it is necessary to note that the United States and U.N. may be able to take some preliminary steps toward ensuring that desperate rural families are not turning their children over to the restavek system. Providing aid to rural Haitians in the form of basic needs such as food, water, and clothing will help to ensure that families are not pressured into giving their children to recruiters.  

IV. ANTI-TRAFFICKING PROGRAMS IN THE UNITED STATES AND AFRICA

Successful elimination of the restavek system requires three things: (1) a reduction in poverty; (2) measures to stop recruitment and internal trafficking; and (3) a change in the cultural understanding of childhood and child labor. The reduction in poverty must be achieved through the process of rebuilding infrastructure, creating jobs, and maintaining general stability throughout Haiti. However, the second and third requirements are best addressed by the development of a comprehensive anti-trafficking program. In developing this program, it is necessary to look toward programs in other countries and consider what impact similar measures might have if instituted within Haiti.

A. The United States’ Trafficking in Victims Protection Act

In 2000, the United States passed the Trafficking in Victims Protection Act (TVPA). The TVPA is the statutory mechanism used by the United States to: (1) combat trafficking in persons; (2) punish traffickers; and (3) protect trafficking victims who are predominately women and children. The TVPA defines severe forms of trafficking as:

a. sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or

b. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

As previously discussed, trafficking pursuant to the TVPA does not require physical transportation – victims of trafficking include those exploited in private homes. Each of the TIP reports in the past decade has discussed the restavek system as a form of trafficking.

Each year, pursuant to the requirements of the TVPA, the United States issues a report ranking countries into three tiers gauging their compliance with the

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200. Wescott, supra note 105 (noting that aid to communities and families may save them from giving up their children out of desperation).
201. TIP REPORT 2009, supra note 19, at 5.
203. 22 U.S.C. § 7102 (8) (A) - (B).
204. TIP REPORT 2009, supra note 19, at 7.
205. See discussion supra Part II-B-2.
TVPA’s minimum standards. These Trafficking in Persons (TIP) reports are a tool the United States uses to encourage dialogue with other countries and to encourage the use of resources toward prosecution, protection, and prevention programs and policies.

In Haiti, the enactment and enforcement of comprehensive legislation like the TVPA is currently unrealistic in light of the Haitian government’s limited power and resources, especially when compared with those of the United States. However, prosecution, protection, and prevention are the three goals of the TVPA, and there are elements of each of these that could be utilized in creating a program to combat the restavek system. Developing effective criminal penalties needed to prosecute abuses of the restavek system, particularly trafficking (including for purposes of forced labor in private homes), sexual abuse, and physical abuse, is vital. Unfortunately, development of an effective means of prosecution will no doubt be a long-term process, as the Haitian government’s first priority is the rebuilding of its capital. However, protection and prevention are problems which can be addressed immediately by NGOs and international actors working in Haiti, specifically the United States and the U.N.

B. Anti-Trafficking Programs in Africa

Anti-Trafficking programs focused on protection and prevention have led to a reduction of trafficking in Africa. Those with an interest in eliminating the restavek system should look at anti-trafficking initiatives in these comparably poor countries in order to develop a comprehensive plan of action in Haiti. For this reason, I focus on three countries with economic situations comparable to Haiti’s: Uganda, Nigeria, and Ethiopia.

1. Uganda

Uganda has a per capita GDP of $1,200. Thirty five percent of the population is below the poverty line. In Uganda, USAID funded a program entitled “Community Resilience and Dialogue” (CRD). This program provided assistance to trafficking victims in areas controlled by the militant group the Lord’s

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206. TIP REPORT 2009, supra note 19, at 11.
207. Id. at 14.
208. See discussion supra Part I-A.
209. See discussion infra Part IV.
212. Id.
213. USAID PROGRAMS IN AFRICA, supra note 210, at 52.
Resistance Army (LRA).\textsuperscript{214} CRD funds four centers within the country and commuter shelters for children – these children are vulnerable to abduction by the LRA as they travel from rural to urban areas for work.\textsuperscript{215} The centers provide treatment, family tracing, and preparation for returning people to their families.\textsuperscript{216} Usually, children are placed in an internally displaced persons (IDP) camp, though occasionally they are reintegrated into local communities.\textsuperscript{217} Leaders from the shelters often educate children on cleanliness, HIV/AIDS prevention, and life skills as they attempt to reintegrate them into communities.\textsuperscript{218}

In evaluating this program, USAID found that meetings of IDPs allowed organizations to collaborate and receive community input for their projects.\textsuperscript{219} Further, a major strength of the program was that it provided an excellent transition environment for formerly abducted children.\textsuperscript{220} Uganda also had a lot of success in reaching victims through public awareness activities that detailed the risks of trafficking.\textsuperscript{221} However, it underperformed in reintegrating victims into their previous communities.\textsuperscript{222} The weaknesses were that: (1) follow up with reintegrated victims proved difficult; (2) security at IDP camps was poor; (3) the nature of the conflict in Uganda with the LRA made implementation difficult; and (4) the inability to find mental health assistance.\textsuperscript{223} As a result, the 2009 TIP report placed Uganda on tier two.\textsuperscript{224}

Although the situation of internal conflict in Uganda is markedly different than that in Haiti, it would be beneficial to Haiti to develop centers, much like those established by the CRD in Uganda. These centers could provide treatment and family tracing for both current and former restaveks. Also, because restavek children are frequently abused,\textsuperscript{225} these centers could provide the medical and psychological treatment that will be necessary to ensure that the children are ready for reintegration in the community, either back to their families or on their own. Furthermore, as HIV/AIDS is a major problem within Haiti, these centers could provide crucial education in this area.\textsuperscript{226} If given adequate resources in implementing these centers, the weaknesses of the CRD program in Uganda – namely poor security and lack of ability to find mental health assistance – may be avoided. If properly implemented, these centers will provide vital services to

\begin{flushleft}\textsuperscript{214} Id. \\
\textsuperscript{216} USAID PROGRAMS IN AFRICA, supra note 210, at 52. \\
\textsuperscript{217} Id. \\
\textsuperscript{218} Id. at 53. \\
\textsuperscript{219} Id. \\
\textsuperscript{220} Id. \\
\textsuperscript{221} Id. \\
\textsuperscript{222} USAID PROGRAMS IN AFRICA, supra note 210, at 53. \\
\textsuperscript{223} Id. at 53-54. \\
\textsuperscript{224} TIP REPORT 2009, supra note 19, at 50. \\
\textsuperscript{225} See supra text accompanying notes 50-61. \\
\textsuperscript{226} CIA: HAITI, supra note 1 (Haiti has the 28th highest percentage of adults with HIV/AIDS in the world).\end{flushleft}
restaveks, while also educating the Haitian public on the abuses inherent in the system. Consequently, such centers will both (1) protect restavek children from significant health problems; and (2) significantly deter families from giving their children to recruiters.

2. Nigeria

Nigeria has a per capita GDP of $2,300. Seventy percent of the population is below the poverty line. The country also has serious problems with poverty and unemployment among its youth. Children are denied access to education, and instead are trafficked in and out of Nigeria for labor. Any wages they earn are taken by their agents, acting as the child’s next of kin. These children, similar to the restaveks, suffer physical and mental abuse at the hands of their agents. The severe poverty and scarcity of resources in Nigeria has created an environment of rampant internal violence, a situation that further increases vulnerability to trafficking for Nigerian children.

USAID implemented a four year trafficking in persons program with the 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.

In assessing the program, USAID determined: (1) the vulnerable groups in Nigeria most subject to trafficking; and (2) that an integrated approach with long term funding is needed to fight trafficking problems. It further found that “the successful reintegration of victims depends on viable economic alternatives to re-trafficking” and that working closely with law enforcement and sharing information is essential to an anti-trafficking program.

In the 2009 TIP report, Nigeria was ranked as a tier one country. Although there are still instances of trafficking, the report found that:

Over the last year, the government more than doubled the number of trafficking offenders convicted, while it improved assistance given to victims, demonstrated strong awareness-raising efforts, and increased funding to its anti-human trafficking organization, the National Agency

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228. Id.
229. USAID PROGRAMS IN AFRICA, supra note 210, at 44.
230. Id. at 44.
231. Id.
232. Id.
233. Id. at 44-45.
234. Id. at 45-46.
235. USAID PROGRAMS IN AFRICA, supra note 210, at 46.
236. Id.
237. TIP REPORT 2009, supra note 19, at 50.
for the Prohibition of Trafficking in Persons (NAPTIP). Nigeria’s strengthened anti-trafficking record over the last year reflects the cumulative impact of progressively increasing efforts made by NAPTIP over the last several years. 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 restaveks. 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 restaveks. The weakness of the Nigerian program also provides an important insight for Haiti. In Nigeria, a large emphasis was placed on prosecution – this is likely why Nigeria moved to tier one status in the 2009 TIP report. Such emphasis in not appropriate in Haiti because of the recent earthquake; Haiti’s government does not have the resources or strong centralized control to develop a comprehensive enforcement program. The Nigerian example makes it clear that this task cannot be delegated to NGOs or international actors, as doing so would likely infringe on Haiti’s national sovereignty. For these reasons, this aspect should currently be minimized in Haiti.

The finding that “[t]he successful reintegration of victims depends on viable economic alternatives to re-trafficking” is of special significance to Haiti. A program in Haiti which forces reintegration of restavek children with their families will have little success if these families remain impoverished. An assessment of each family’s ability to supply food and clothing for their children should occur prior to re-integration. If it is determined that they are unable to adequately

238. _Id_. at 226.


240. _See supra_ text accompanying notes 238-39.


242. _See USAID PROGRAMS IN AFRICA_, _supra_ note 210, at 44-46 (some of the elements of the Nigerian program, such as law enforcement, are functions that fall under a government’s sovereign powers); _but cf. Breakdown of Rule of Law Puts Haiti’s Vulnerable Children at Increased Risk For Human Trafficking_, _INTERNATIONAL JUSTICE MISSION_ (Jan. 22, 2010), http://www.ijm.org/ijmnews/breakdownofruleoflawputshaitisvulnerablechildrenatincreasedriskforhumantrafficking (president of International Justice Mission explains the need for regional countries, including the U.S., to support a civilian police force in response to the breakdown of the rule of law in Haiti after the 2010 earthquake).

243. _See USAID PROGRAMS IN AFRICA_, _supra_ note 210, at 46 (describing the success of a Nigerian anti-trafficking program).
provide for their children, some financial assistance should be provided. This will prevent the children from immediately returning to the restavek system. Any reintegration must also be coupled with educational programs to inform families about the abusive situations their children will likely face if sent away. Economic assistance, coupled with informing parents about the physical and sexual abuse, and the likely possibility that they will never see their children again, could significantly deter them from placing their children in the restavek system.

3. Ethiopia

Ethiopia has a per capita GDP of $900. Nearly 39% of the population falls below the poverty line. In Ethiopia, women and children are trafficked for domestic labor and prostitution. These women are typically coerced by people promising jobs, education, or foster parents. Typically, trafficking is from rural areas into urban areas. Victims range in age from 10 to 18 years old and 50% of the time they lack any education past primary school.

The IOM has an established counter-trafficking program in Ethiopia. This program attempts to aid the government of Ethiopia in preventing trafficking by: (1) counseling migrants, returnees, and their families; (2) assisting, training, and counseling victims of trafficking; and (3) raising awareness of the problems of trafficking through radio, television, billboards, and information booklets. There is also a hotline available for counseling.

USAID noted that the following lessons were learned through the IOMs program: (1) a significant challenge to implementing the program is a lack of job opportunity; (2) reunification of minors was difficult as it was hard to trace families; (3) counter-trafficking programs should be designed for specific genders – especially where women are specifically targeted; and (4) where a government is weak and unable to enforce existing legal regulations, trafficking is more prevalent.

As for its successes, USAID noted that: (1) information booklets were successful in increasing public awareness; (2) IOM’s engagement with the government to combat trafficking in developing “a National Taskforce to combat Trafficking in Persons” has engaged the government in enforcing and drafting

245. Id.
246. USAID PROGRAMS IN AFRICA, supra note 210, at 32.
247. Id.
248. Id.
249. Id.
250. Id.
251. Id. at 32-33.
252. USAID PROGRAMS IN AFRICA, supra note 210, at 33.
253. Id.
criminal laws in Ethiopia; (3) training and building government and non-
governmental organizations has increased awareness of the crimes; and (4) 
collaborating with agencies working on behalf of trafficking victims helped 
promote sustainability. In the 2009 TIP report, Ethiopia was a tier two 
country.

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

IV. A SUGGESTED ANTI-TRAFFICKING PROGRAM TO COMBAT THE RESTAVEK 
SYSTEM IN HAITI

The lessons learned in Africa demonstrate that NGOs and international actors 
such as the United States and U.N. should cooperate to develop an anti-trafficking 
program which: (1) establishes several well-funded interim care centers for 
children vulnerable to recruitment in the restavek system, as well as past and 
present restaveks; (2) monitors the reintegration of restavek children with their 
families; and (3) uses advertising to educate the public on the abuses of the 
restavek system and the risks facing Haitian children.

The interim care centers should be located around major metropolitan centers 
and in between those centers and rural areas – where the majority of restaveks are 
recruited from. These centers should be able to supply food and clothing, while 
also housing both orphan and restavek children. Furthermore, these centers should 
provide comprehensive education programs for children who are unable to attend 
school or have been denied the opportunity for education by virtue of their 
domestic servitude. A way to accomplish this, while also working towards the 
reduction of poverty, is to use a portion of the vast amounts of monetary aid 
donated as a result of the 2010 earthquake to train Haitian teachers for these 
children.

There should also be a focus on facilitating the return of restavek children to 
their real families. However, this must be carefully monitored so as to avoid re-
placement of the child into the restavek system. By ensuring that the families of 
returning children have adequate financial resources to care for them, this 
unfortunate consequence can be avoided. This can be accomplished by allocating 
a significant amount of the aid recently sent to Haiti specifically to families with 
large numbers of children. Furthermore, giving aid to these families will also help 
combat rural poverty – albeit in small steps.

254. USAID PROGRAMS IN AFRICA, supra note 210, at 33-34.
255. TIP REPORT 2009, supra note 19, at 50.
256. See supra text accompanying notes 107-115.
The last feature of the anti-trafficking program will be a public advertising campaign that educates Haitians about the abuses inherent in the restavek system, the vulnerability of orphaned children in Haiti, and the importance of childhood development. The best way to do this is through advertising on television, radio and billboards, and in information booklets to be mass-dispersed in both rural and urban areas. While this advertising may not have an immediate effect, it will initiate a cultural reformation of both the conception of childhood and the nature of the restavek system.

In the long term, the Haitian government should work towards developing a statutory penalty against trafficking and effective law enforcement to encourage compliance with Haiti’s labor laws. However, due to the government’s necessary preoccupation with rebuilding efforts following the January 2010 earthquake, the measures detailed above will have a more immediate effect on relieving the plight of restavek and orphan children in Haiti. Children of Haiti have suffered for long enough – we must be cognizant that “in the months and years to come, as the tremors fade and Haiti no longer tops the headlines or leads the evening news, our mission will be to help the people of Haiti to continue on their path to a brighter future.”[^257] A brighter future can be achieved through restoring hope and prosperity for Haiti’s children. Hope and prosperity begins with the elimination of the restavek system and its debilitating legacy.