

**Restavek:**  
**Child Domestic Labor in Haiti**

August 1990

A report of the  
Minnesota Lawyers International Human Rights Committee  
Minneapolis, Minnesota

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## PREFACE

Since the February 1986 departure of Jean-Claude Duvalier for France, Haitians have suffered continued political and economic turmoil. The initial hope that, with Duvalier's departure, Haiti would finally have a representative government that strove to meet the needs of its people rather than to exploit them has not to date been realized. Instead, Haiti has endured three military dictatorships, a crescendo of human rights abuses, lawlessness that has created a profound sense of insecurity, and near economic collapse.

As this report goes to press, Prosper Avril, head of the third military government to rule Haiti since the fall of Duvalier, has left Haiti and there is a provisional civilian government preparing for national elections. Once again there is the hope that meaningful elections will lead to a civilian government that can begin the daunting task of addressing Haiti's very great social, political and economic problems. Among those problems which the Minnesota Lawyers International Human Rights Committee ("Minnesota Lawyers Committee" or "Committee") hopes the new government will address is *restavek* -- the use of children as unpaid domestic labor.

This report, based primarily upon information gathered during a December 1989 mission, was written by Leslie Anderson, E.J. Kelley and Zara Kivi Kinnunen, three members of the Minnesota Lawyers Committee. The Committee has had an active sub-group focusing on human rights issues affecting children in Haiti since 1988. The Committee sent two fact-finding missions to Haiti, in December, 1988 and December, 1989.

The Minnesota Lawyers Committee would like to thank the many Haitians who assisted us in gathering information for this report. Although December 1989 was a tense and troubled month in Haiti, our sources were uniformly generous with their time and also assisted us in making other contacts and obtaining additional information. We would especially like to thank Jean-Jacques Honorat, of the Centre Haitien des Droits et Libertés (CHADEL), for his invaluable assistance. This report was made possible largely with the support of the Dorsey & Whitney law firm, for which the Committee is enormously grateful.



## SUMMARY AND RECOMMENDATIONS

During its 1988 mission to Haiti, the Minnesota Lawyers Committee learned of a common practice of domestic child labor in Haiti, known in Creole as “restavek” (derived from the French words “rester avec” -- “to stay with”). The restavek child is given by his or her (usually rural) parents to an urban family, to perform household labor. While in some instances the placement is an informal adoption that allows the rural child to be brought up in a higher socio-economic setting than would otherwise be possible, in its more typical form the child is totally cut off from his or her natural family and viewed as a source of labor, not as a child, by the “employing” family.<sup>1</sup> Indeed, various Haitians have characterized the practice of restavek as a vestigial form of slavery.

After further discussion about restavek with Haitians living in the United States, the Minnesota Lawyers Committee decided to focus its second mission to Haiti on restavek children. The Committee made this decision for several reasons. First, it regards the practice of restavek as a serious human rights issue that violates a number of international legal conventions, including several to which Haiti is a party. By failing to enforce existing legislation or enact appropriate safeguards against restavek, the Haitian government violates both national and international legal obligations to prohibit forced labor and slave-like practices, and to uphold the rights of children. Second, there has been virtually no discussion of restavek outside of Haiti, and only limited attention to this issue within Haiti. The information obtained about the plight of many restavek children suggested the need for Haitian and international scrutiny and

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<sup>1</sup> The term “employing” family is used in this report to designate the family to whom the restavek child is given. It is not an entirely satisfactory term, as it implies, for example, a salary, when in fact the restavek child receives none. It does, however, accurately reflect that the typical restavek child is obtained by a family as a source of labor, not as a child to be raised and nurtured.

concern. Third, restavek is a particular manifestation of the condition of the majority of children in Haiti. Most Haitian children lack basic economic and civil rights, victims not only of their country's turbulent political history but of its crushing poverty as well.<sup>2</sup> By focusing on the restavek child, one can appreciate more concretely the effect of past Haitian governments' inability, or unwillingness, to provide for the most basic needs of the most vulnerable component of its population -- its children.

The three authors of this report visited Port-au-Prince, the capital of Haiti, in December, 1989. The delegation interviewed present and former restavek children, governmental officials, Haitian experts on restavek, human rights workers, staff from non-governmental international organizations interested in children's issues, and church workers. The delegation also obtained what is believed to be the only written study of restavek, a report issued after a 1984 conference on "Child Domesticity" which assembled Haitian government officials, sociologists, psychologists, educators, lawyers and clergy to address the subject of restavek.<sup>3</sup>

Substantial evidence exists showing that restavek is a prevalent feature of Haitian life. Large numbers of children, some at very young ages, are given by impoverished parents to more affluent families who use them as domestic servants. In many instances the restavek child has no further contact with her<sup>4</sup> real family after the initial placement.

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<sup>2</sup> For a general survey of human rights issues affecting Haitian children, see Minnesota Lawyers International Human Rights Committee, Children's Rights in Haiti, February 1989.

<sup>3</sup> The reports or statements of the various contributors to this government and UNICEF supported conference were published as Colloque Sur L'Enfance en Domesticité, subsequently referenced as "1984 Conference Report."

<sup>4</sup> The use of the feminine throughout the report includes the masculine; the Committee selected feminine forms because the majority of restaveks are girls.

Restavek children usually perform the bulk of the household labor, without pay. Working as a servant is the primary function of the restavek: typically she is not treated like a family member. She is therefore unlikely to attend school, even if the family's children attend school; to eat with the family; or to eat the same quality diet as the family. The evidence suggests that most restaveks are beaten, and girls may be sexually abused.

Many of the children presently living in the streets of Port-au-Prince have fled restavek situations. Children who flee, or are dismissed from, restavek situations often have no means to contact or return to their original homes.

Restavek children do not remain the "property" of the restavek families forever. When they become teenagers or reach adulthood, they may work for the same family or other families as cooks, drivers, maids, or similar positions, for pay. In most cases, the adult who grew up as a restavek has extremely limited opportunities to change the circumstances of her life as she grows older because of the limitations on education and development inherent in restavek situations. Similarly, there is a social and class stigma attached to being a restavek child.

The Minnesota Lawyers Committee believes that the Haitian practice of restavek should be abolished. The Committee appreciates that complex economic, cultural and historical forces in Haiti have contributed to the existence of restavek; that because it exists in a variety of forms it is not uniformly abusive and exploitative; and that it is difficult to analyze from a strictly legal viewpoint. In its typical form, however, restavek deprives a child of the most basic economic and civil rights: rights to family, education, health care, childhood and leisure, and in many cases, adequate shelter and nutrition.

The practice of restavek violates international prohibitions against practices similar to slavery, forced labor and the exploitation of children. These prohibitions are enumerated in the

Universal Declaration of Human Rights, as well as the following treaties to which Haiti is a party: the American Convention on Human Rights; the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; and International Labour Organization (ILO) Convention No. 29 on Forced Labour.

The Haitian government's attempts to regulate restavek have failed and, even if enforced, are not adequate to satisfy Haiti's legal obligations or to end the exploitation inherent in restavek placements. Therefore, Haiti should within the shortest possible period take all necessary steps to bring about the complete abolition of restavek. The government should ensure that present and former restavek children are returned to their own families or, if that is impossible, placed in an environment in which the children's interests are paramount. International organizations and non-governmental organizations should take appropriate measures to ensure Haiti's compliance with international law and to aid Haiti in its efforts to address the roots and consequences of restavek.

## INTRODUCTION

This report will present a brief background on Haiti and the conditions of children in Haiti. The report will also analyze restavek in light of relevant international legal standards, the Haitian Constitution, and pertinent Haitian law. Finally, it will offer recommendations directed toward the abolition of restavek.

### I. BACKGROUND ON RESTAVEK AND HAITI

#### A. Description of Restavek

Restavek is a prevalent feature of Haitian society. The 1984 Conference Report estimated that 109,000 Haitian children worked as restaveks, 65,000 girls and 44,000 boys.<sup>5</sup> If 109,000 children is an accurate figure today, five percent of Haitian children between the ages of five and eighteen work as domestics. Another contributor to that report thought the 109,000 figure far too low, with 240,000 a better estimate.<sup>6</sup>

There has been little written in or outside Haiti about restavek, other than the 1984 Conference Report. Haitian sources stated that restavek dates back to the nineteenth century, and that it occurs throughout the country. In its most typical form, a poor rural child is given to a family living in one of the larger cities, such as Port-au-Prince, Les Cayes or Gonaives, but the

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<sup>5</sup> These figures were provided by the Institut Haitien de Statistiques et d'Informatique and the Institut du Bien-Etre Social et de Recherches. *See* R. Dorelien, Interprétation des données statistiques relatives à l'enfance en domesticité, recueillies à partir des résultats d'un échantillon, tiré du recensement de 1982, p. 3, Table 9, 1984 Conference Report.

<sup>6</sup> E. Clesca, La domesticité juvénile est-elle une conséquence du sous-développement ou le produit de la mentalité d'un peuple?, p.1, 1984 Conference Report.



*Restavek children in Port-au-Prince*

movement of children is not exclusively rural-urban. For example, some peasant families may have restavek children. The 1984 Conference Report estimated that 64 percent of restaveks lived in the Port-au-Prince area, 21 percent in towns of 5,000 or more, and 15 percent in the rest of the country.<sup>7</sup>

Rural Haitians often have great difficulty providing their children with enough food. Access to health care and schools is also extremely limited. Some rural parents, feeling they cannot provide for all their children, give one or more away as restavek children to more affluent families. Usually either a member of the employing family, or an intermediary, travels to the countryside to locate restaveks. Ordinarily the child is given away, not bought. If money does change hands, it is likely to be a very small gift to the child's natural family.

Restavek has deep and complex roots in Haitian culture and history. Restavek in part is a result of Haiti's traditional extended family structure. In this form, restavek is a sort of informal

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<sup>7</sup> R. Dorelien, *supra* note 5, p. 2.

adoption where poorer branches of a family send some of their children to live with wealthier ones. The Committee was repeatedly told, and the 1984 Conference Report states, that the child fares the best when the restavek placement is to a relative.<sup>8</sup> The employing family will have more of a personal interest in the restavek in this situation, and the child is far more likely to have continued contact with her immediate family. Sometimes, even though there is no blood relationship, an urban family will repeatedly return to the same rural family for restavek children over a period of several generations. Because there is a real connection between the placing and the employing family, and on-going contact between the restavek child and her parents, a restavek child in this situation may be relatively well off.

There is however a much less benign source of restavek rooted in Haiti's colonial experience. There has been a long history of exploitation of the many by the few in Haiti, starting with the French slave-owners and unfortunately, in some respects, continuing to the present.<sup>9</sup> Many Haitians interviewed confirmed that, in the more exploitative form of restavek, the employing family simply does not view the restavek child as a person whose rights and needs are equal to -- or approach -- those of the members of the employing family. Instead, the child is viewed as a source of manual labor. According to the Committee's sources, this exploitative form is the predominant form of restavek today,<sup>10</sup> and this report focuses on the abuses that sometimes occur in these sorts of restavek placements.

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<sup>8</sup> E. Clesca, *supra* note 6, p. 3. Haitians interviewed stated that even in this form of restavek, however, there are still sharp distinctions between the treatment of the restavek children and the real children of the employing family. While the restavek child will perform the household labor, the natural child will not. The restavek child will be less likely to attend school, and school for the restavek child may be subordinated to the work schedule.

<sup>9</sup> See, e.g., M. Lundahl, Peasants and Poverty: A Study of Haiti (1979), p. 23.

<sup>10</sup> See generally F. Fontus, Etude Comparée de la Domesticité Juvenile dans Quelques Pays du Tiers-Monde, 1984 Conference Report.

The restavek child may be as young as four or five when given to the employing family.<sup>11</sup> Usually she has no further contact with her family.<sup>12</sup> Quite likely, the restavek child has only a vague notion of where she comes from, her age, or her family surname.

Because the placement of the child with the employing family usually severs the child's contact with her own family, her subsequent welfare is wholly dependent upon the urban family. The rural family doubtless hopes that the employing family will feed and clothe the child, send her to school, provide her with medical care, and treat her as one of the family. These hopes are not generally realized. In most instances, the restavek child is poorly fed and clothed, does not attend school, does not receive medical care, and is definitely not one of the family.<sup>13</sup> Instead she is the family's servant, waiting not only on the adults but on the family's children.

If the restavek child is unhappy with the urban family, mistreated, beaten, or sexually abused, there is no effective mechanism to assist the child. While Haiti has enacted regulatory legislation intended to protect the restavek child,<sup>14</sup> no Haitian, including governmental officials, suggested that the existing laws are enforced. In fact, the unhappy or abused restavek child is left to solve her own problems. If she runs away, her choices are few. She can join Haiti's street children living in the slums of Port-au-Prince, find another restavek placement for herself or, perhaps, find an orphanage that will shelter her. The dislocation and uncertainty of restavek is likely to traumatize the child psychologically.

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<sup>11</sup> The 1984 Conference Report projected that seven percent of restaveks are under the age of five. R. Dorelien, *supra* note 5, p. 10.

<sup>12</sup> D. Devesin, Profil Social de l'Enfant en Domesticit , p. 16, 1984 Conference Report.

<sup>13</sup> *See generally* Section II below.

<sup>14</sup> This legislation is discussed at Section III below.

The typical restavek child thus grows up bearing emotional scars from the sense of abandonment by her real family and subservience to the new family. She also lacks education and any skilled training. Instead of the restavek placement breaking the cycle of poverty, as the rural family hoped, the cycle is perpetuated.

In the words of Haiti's former Minister of Social Affairs, the practice of restavek is "unacceptable."<sup>15</sup> It violates basic legal pronouncements of the rights of children and has characteristics both of forced labor and slavery.<sup>16</sup>

### B. Roots of Restavek

The practice of restavek in Haiti results from historical, cultural and economic causes. As a French colony after 1697, Haiti had a wealthy, productive export economy, its wealth deriving from large plantations worked by African slaves. By the end of the eighteenth century, Haiti's population consisted of 40,000 French colonists and 500,000 slaves, two-thirds of whom had been born in Africa. The French minority treated the slaves with great brutality.

In 1804 Haitian slaves succeeded in expelling the French colonists after a protracted rebellion. The new republic, the second in the new world, was isolated by European nations and

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<sup>15</sup> Minnesota Lawyers Committee interview with M. Arnault Guerrier, Port-au-Prince, Dec. 4, 1989.

<sup>16</sup> Several contributors to the 1984 Conference Report noted similarities between restavek and slavery. *See, e.g.*, E. Clesca, *supra* note 6, p. 3; A.M. Dolce, L'Enfance en domesticité peut-elle être considérée comme une nouvelle forme d'adoption?, p. 3, 1984 Conference Report; J.S. André, Efforts entrepris par l'état Haïtien en faveur de l'enfant en domesticité, p. 2, 1984 Conference Report. One Haitian interviewed expressed his opinion that Haiti today has two forms of slavery: restaveks and Haitian sugar cane cutters working in the Dominican Republic. (The condition of the latter has been investigated by the International Labour Organization and non-governmental organizations. *See, e.g.*, Americas Watch, National Coalition for Haitian Refugees, Caribbean Rights, Haitian Sugar Cane Cutters in the Dominican Republic (Nov. 1989)).

by its fellow new world republic, the United States, for much of the nineteenth century. With slavery still prevalent in many of its states, the United States did not even recognize Haiti until mid-way through the American Civil War.

At independence in 1804, the oppressive Haitian plantation system was ruined, with many plantations burned to the ground during the previous fifteen years of revolutionary turmoil. The environmental degradation caused by deforestation, which has reached almost catastrophic proportions in Haiti today, began in this period. Some of Haiti's post-colonial rulers initially tried to resurrect the plantation system by use of forced labor that bore many resemblances to slavery. These efforts to reinstate forced plantation labor failed and subsequent land reforms distributed land to the masses. Most Haitians became what most remain today: small landholders living in isolated rural communities.

Haitian society has, for at least the past 300 years, been divided into two strata: a tiny, affluent, urban elite and the rural peasants, many of whom in the last 20 years have migrated to the cities where by and large they live marginal lives in the slums.<sup>17</sup> The elite runs the government, and "(g)overnment in Haiti [has]... evolved as a huge extractive mechanism, sucking funds from the masses in the countryside and channelling them to the elite in the cities."<sup>18</sup> The various governments of Haiti have done little for the rural populace in return: on average, less than ten percent of public expenditures have been devoted to the countryside.<sup>19</sup>

More recent economic and ecologic trends have exacerbated rural poverty and made it

<sup>17</sup> Haiti's population remains predominantly rural, notwithstanding this rural exodus.

<sup>18</sup> M. Danner *Beyond The Mountains*, The New Yorker (Dec. 4, 1989), p. 78 (initial periodical publication).

<sup>19</sup> M. Lundahl, *supra* note 9, p. 23.

more difficult for rural families to provide for their children. Haiti has one of the highest ratios of population to arable land in the Caribbean.<sup>20</sup> At least three inter-related factors contribute to this ratio. First, Haiti has an extremely mountainous terrain. Second, Haiti's growing rural population led to repeated subdivision of plots of land and increasingly intensive cultivation. This more intensive farming, in turn, led to a third major cause of rural poverty: Haiti's massive deforestation and soil erosion.<sup>21</sup> Despite recent internationally funded reforestation efforts, Haiti's ecological crisis continues to pose huge problems for the rural economy.<sup>22</sup> For example, while U.S. AID has sponsored a program in which seven million trees are planted a year, rural Haitians are cutting trees at a rate of more than 20 million per year.<sup>23</sup> Haitian sources universally agreed that rural poverty is the root cause of restavek.



*Street children in the slums of La Saline, Port-au-Prince*

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<sup>20</sup> *Id.* at 17.

<sup>21</sup> *See generally*, U.S. AID/Haiti, Strategy paper for Fiscal Year 1989/1990 (Jan. 1989).

<sup>22</sup> The U.S. AID Strategy Paper notes that “(t)he misuse and mining of the natural resource base, unless arrested, will lead to environmental catastrophe.” *Id.* at 11.

<sup>23</sup> A. Wilentz, The Rainy Season (1989), p. 266.

### C. General Condition of Children in Haiti

The existence of *restavek* is only one example of the many problems that face Haitian children. When measured against virtually any indicator, the situation of children in Haiti is bleak. For example, in Haiti, only 82.6 percent of children born survive to age five.<sup>24</sup> This statistic, known as the under five mortality rate, is considered by UNICEF to be one of the best indicators of the overall condition of children in a country, and Haiti's under five mortality rate is classified by UNICEF as "very high".<sup>25</sup> Seventeen percent of Haitian babies are born with a low birth weight, and it was estimated in 1986 that five percent of Haitians under five suffer from severe malnutrition, a condition that is often fatal.<sup>26</sup> Fifty-two percent of Haitian children between the ages of two and five years are stunted by some degree of malnutrition.<sup>27</sup> In 1985, among Haitians generally, daily caloric intake was only 79 percent of minimum daily requirements.<sup>28</sup> Less than 50 percent of Haitian children complete primary school and only 18 percent attend secondary school.<sup>29</sup> In the rural areas, 80 percent of Haitians lived below the absolute poverty level in the period 1977-86.<sup>30</sup>

The great majority of Haitian children are thus extremely vulnerable economically. It is important to stress the general poverty of Haiti's children to avoid any suggestion that the

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<sup>24</sup> J. Grant, The State of the World's Children 1989 (UNICEF 1989), p. 80.

<sup>25</sup> *Id.* at 78.

<sup>26</sup> *Id.* at 96.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 100.

<sup>30</sup> *Id.* at 104.

elimination of restavek would end the restavek child's problems. The typical restavek child's present alternative to urban child labor and exploitation is a life of extreme rural poverty. While the existence of poverty among children and the general public in Haiti does not justify the practice of restavek, it is clear that it will be extremely difficult to stop restavek as long as Haitians in general - and particularly those living in the rural areas - remain as poor as they are now.



## II. CONDITIONS OF RESTAVEK

We need to sensitize all involved to protect those children whose parents, for over a century out of economic necessity, have placed them in domesticity with the hope of offering them a chance -- but what a chance! A chance that three-fourths of the children never get, because they are subjected to terrible treatment that is analogous, with some exceptions, to that inflicted on our ancestors by the colonialists.

Jacques Thesée, former Head of the Social Protection Division of the Institute of Welfare and Social Research (Haiti)<sup>31</sup>

### A. Testimonials

The stories of two restavek children, Marie<sup>32</sup> and Jean, are summarized below. Their accounts are included, before undertaking the legal analysis of restavek that follows, as specific examples of the cumulative effect on restavek children of the loss of the natural family and the exploitation by the employing family.

The household for which Marie worked consisted of a husband and wife, their three children, three other restaveks, and several boarders who, like the Committee's source,<sup>33</sup> were finishing high school in Port-au-Prince while their parents lived elsewhere. Marie, who was about seven years old, came from the countryside, although she had no precise knowledge of where. She had no continuing contact with any of her original family.

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<sup>31</sup> Allocution de Bienvenue par Jacques Thesée, p. 2, 1984 Conference Report.

<sup>32</sup> The children's first names have been changed, but the accounts are otherwise factual.

<sup>33</sup> This account was provided to the Committee by a Haitian woman now living in the United States.

As a restavek, Marie rose at 5:00 a.m. Her first job was to fetch water from a nearby well. After returning to the house balancing the heavy jug on her head, she prepared breakfast and served it to the members of the household, including the boarders. She next walked the five-year-old son of the employing family to school. While both of the employing family's children went to school, none of the restaveks did. Marie's next jobs were to buy food in the markets and run various errands, such as collecting debts owed her employer by various neighbors, who purchased from the employing family's store on credit.

Marie was also responsible for starting and tending the charcoal fire behind the house, sweeping the yard, washing some of the clothes, carrying snacks to the family's children at school, washing the mother's feet at least once a day, washing dishes and cleaning the outside kitchen.

At noon she would bring the five-year-old boy home from school and assist him in changing his clothes. She would then set the table for lunch, assist in the preparation and service of lunch and return the boy to school after lunch. She was then to return to the house to be available for errands until it was time to prepare supper.

Marie was harshly treated by the employing family. The mother regularly beat her with a leather strap if she was thought to be slow to respond to a request or if she was considered disrespectful. While the mother occasionally hit her three children, the four restaveks were much more severely disciplined, and the discipline was designed to create and maintain a subservient attitude. For example, when one of the older restavek girls ran away, she was pursued and found by the mother, and then severely beaten. It was the only time the child tried to run away.

The other restaveks (two girls and a boy) performed similar jobs to Marie's, except the older girls were more involved in the actual cooking and the boy performed rougher, heavier work,

such as cutting wood and cleaning open sewers in the backyard. The boy was also more involved in the family businesses. The boy and one of the restavek girls were siblings.

Rigid distinctions were maintained between the restaveks and the family's children. The restaveks did not go to school, ate leftovers or cornmeal rather than sharing in the family's meals, had ragged clothes and no shoes, slept outside or on the floor rather than in beds, and were not even allowed to bathe in the water they brought to the household. In contrast, the family's children went to school, ate with their parents, were well dressed, slept inside on beds and bathed regularly.

The restaveks performed all the physical labor in the household, at the direction of its various members, including the five-year-old boy. The employing family seemed to view the restaveks as a different species from themselves. Eventually the employing family moved to Montreal, Canada. The four restaveks, by then teenagers, were simply put out onto the street.

The second child, Jean, said he was twelve, but looked much younger.<sup>34</sup> He came from the North, near Cap-Haitien, and thought his parents were living, but had had no contact with them for several years. Two or three years earlier a woman he had never seen before came to his village and chose him to be her restavek child. She took him, by himself, to Port-au-Prince. The woman beat him frequently; he felt scared of and trapped by her.

Eventually the woman "fired" Jean, told him to leave her house and suggested he return to his rural home. He had no means to return home, or even a precise idea as to where his home was. He lived on the streets in Port-au-Prince for a time, eventually befriending a boy about his own age. The boy's mother let him move into her house. He now cares for the family's five

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<sup>34</sup> The delegation interviewed Jean in Port-au-Prince through a Creole interpreter.

children and does not go to school (the family's children go to school.) Jean does, however, have time to play, gets adequate food and is not beaten. He feels that his situation is much better than it was. Jean nevertheless said that he would like to go back to his real family, if he knew how. When asked if he thought his parents would help him if they knew his wish to return, he began to cry.

These accounts of the restavek's work day and general living conditions are typical of those heard from other restavek children and from other Haitians. In such conditions, the child is clearly exploited, her basic needs to develop as a person fundamentally ignored.

#### B. The Restavek Placement

Various international instruments establish the importance of the family as the fundamental unit of society, and the rights of children to remain with their parents. Article 16, Sec. 3 of the Universal Declaration of Human Rights<sup>35</sup> and Article 17(1) of the American Convention on Human Rights<sup>36</sup> state that "(t)he family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Article 7 of the Convention on the Rights of the Child ("Children's Convention")<sup>37</sup> guarantees the child's right, "so far as possible, . . . to

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<sup>35</sup> Universal Declaration of Human Rights *adopted* Dec. 10, 1948, GA res. 217A (III), UN Doc. A/810, at 71 (1948). The Universal Declaration of Human Rights has been repeatedly recognized as a binding enunciation of the basic human rights obligations of all U.N. members.

<sup>36</sup> American Convention on Human Rights, OAS Doc. OEA/Ser.L/V/II.65, doc. 6 (1985), *entered into force* July 18, 1978. Haiti deposited its instrument of accession to the American Convention on Human Rights on Sept. 27, 1977.

<sup>37</sup> Convention on the Rights of the Child *adopted* Nov. 20, 1989, GA res. 44/25, UN Doc. A/44/736, at 5-26 (1989). The former Minister of Social Welfare, Arnault Guerrier, told the Committee in December 1989 that Haiti intended to ratify the Convention. Lt. General Prosper Avril, former President of Haiti, signed the Convention on the Rights of the Child on January 26, 1990. According to the United Nations treaty office, Haiti has not yet submitted its

know and be cared for by his or her parents.”<sup>38</sup> Article 18 states that parents or legal guardians have the primary responsibility for the upbringing of the child and “(t)he best interests of the child will be their basic concern.” Article 18 obligates parties to “render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities” and to “ensure the development of institutions, facilities and services for the care of children.”

Article 21 of the Children’s Convention states that, if a party permits a system of adoption, the best interests of the child must be the paramount consideration. Parties also undertake to ensure that all adoptions are authorized by competent authorities.

In contrast to the provisions of the various international instruments cited above, the *restavek* placement denies the child her fundamental right to be raised by her family, without any competent decision that it is in her best interests to be raised by others. In the typical *restavek* placement it is furthermore impossible for the child to reestablish contact with her parents once she moves to the employing family. Once Haiti has ratified the Convention on the

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instrument of ratification. Furthermore, the 1987 Haitian Constitution clearly gives the authority to approve or reject international treaties to the National Assembly (Art. 98-3(3)); the proper exercise of the ratification power is dependent upon the majority of both houses being present (Art. 102). The President only has the authority to negotiate and sign all international treaties, conventions and agreements and submit them to the National Assembly for ratification (Art. 139). The National Assembly is not currently a functional institution in Haiti and thus not able to ratify the Convention.

The Convention on the Rights of the Child requires that "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation." *Id.*

<sup>38</sup> Article 4 of the Convention on the Rights of the Child requires that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.” *Id.*

Rights of the Child, it will be obligated to take all available measures to enforce the treaty, including assisting rural parents so that they keep and raise their children, and assisting displaced restavek children.

The placement of a restavek child with an employing family can originate in several different ways. A person seeking a restavek child may go to the countryside where he or she has some family or other connections to find, by word of mouth, a family willing to part with a child. More typically, an intermediary for the employing family travels to the countryside, finds parents who will give their children away and brings the children to the city. Some rural families bring children to Port-au-Prince or other cities and place them with urban families, although this method of placement is the least common method. We heard no reports of any government involvement in the placement of the restavek child. There is no evidence of any official coercion encouraging restavek.

Because the restavek placement is informal, there is no determination concerning the suitability of the employing family, how the interests of the restavek child are best served, or the willingness of the child to become a domestic laborer. There is also, in practice, no registry or any kind of official record of restavek placements.<sup>39</sup> Therefore, there is no effective mechanism for the child to find, return to and/or have continued contact with her parents, or for the parents to find the child. A Haitian psychologist who worked at an orphanage stated that most of the girls in the orphanage were former restavek children who had run away or been dismissed from restavek placements. According to the psychologist, the sense of abandonment felt by the girls was severe and most wished to return to their natural families. In almost all instances, however, the girls' information about their home was so scanty that it was impossible to reunite them with

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<sup>39</sup> As discussed below at Section III, existing Haitian regulations do provide for registering restavek children with the Institute for Welfare and Social Research. These regulations, however, are wholly unenforced.

their families. The Committee's experience interviewing restavek children was consistent with this information. None of the children interviewed had any precise knowledge of where they came from: they would simply say, for example, they were from the North or from near a particular provincial city.

According to the 1984 Conference Report, there is usually no blood relationship between the restavek child and the urban family.<sup>40</sup> After the initial restavek placement, the child normally has no further contact with her family of origin. In fact, at the 1984 Conference it was reported that, in a survey of former restavek children at the Centre d'Accueil (Haiti's only state orphanage) 94 percent of the former restavek children at the orphanage had no contact with their families after the restavek placement.<sup>41</sup> In a survey of children working as restaveks in Petionville (an affluent district of Port-au-Prince), 76 percent reported no contact with their families and 14 percent reported one or two visits only.<sup>42</sup> When the Committee posed this question to children, it found that none had further contact with their families in the countryside after coming to Port-au-Prince, although one girl had an adult brother in the city who kept in touch with her.

All Haitians with whom the Committee spoke confirmed that the children are given away, not sold, to the urban families.<sup>43</sup> Quite likely the urban family will pay to transport the child to the city. One source stated that occasionally the urban family will give the rural family a very

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<sup>40</sup> See F. Fontus, *supra* note 10, p. 1.

<sup>41</sup> D. Devesin, *supra* note 12, p. 16.

<sup>42</sup> *Id.*

<sup>43</sup> The 1984 Conference Report mentioned one situation in which the children were sold. One contributor stated that children may be given away to satisfy a family's debts. E. Clesca, *supra* note 6, p. 3. No other references to this practice are known.

small amount of money, such as five gourdes (one U.S. dollar at the official exchange rate). The money is given as a gift to the family, not payment for the child per se. Profit to the child's real parents does not seem to be a motivating force -- or feature -- of restavek.

### C. Work Performed by Child Domestics

A number of treaties to which Haiti is a party prohibit forced labor and slavery in all its modern forms. These treaties not only condemn forced labor and slavery but place affirmative obligations upon Haiti to take all steps necessary to end forced labor and slavery.

Haiti has ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery ("Supplemental Convention of Slavery"), thereby agreeing to

take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of certain institutions and practices . . . [including] [a]ny 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.

Article I(d)(emphasis supplied).<sup>44</sup>

Haiti has also ratified the International Labour Convention (ILO) Convention (No. 29) Concerning Forced Labour.<sup>45</sup> As a party, Haiti has pledged "to suppress the use of forced or compulsory labour in all its forms within the shortest possible period." Article 1(1). Article 4

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<sup>44</sup> 18 U.S.T. 3201, T.I.A.S. No. 6418, 266 U.N.T.S. 3, *entered into force* Apr. 30, 1957.

<sup>45</sup> 39 L.N.T.S. 55 (1930), *entered into force* May 1, 1932.

forbids the Haitian government from permitting “the imposition of forced or compulsory labour for the benefit of private individuals . . . .” Article 2(1) of Convention No. 29 defines “forced or compulsory labour” as “work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Article (2). It is never acceptable to extract forced or compulsory labor from people under the age of 18. Article 11(1).

The American Convention on Human Rights, in Article 6, recognizes the rights of individuals to be free from both slavery and forced or compulsory labor.<sup>46</sup> Haiti as a party must ensure that its citizens enjoy those freedoms and adopt “such legislative or other measures as may be necessary to give effect to those rights or freedoms.”<sup>47</sup>

Article 32 of the Convention on the Rights of the Child confirms the rights of children to protection from economic exploitation. The provision requires ratifying states to take legislative, administrative, social and educational measures to supplement its terms and to set a minimum age for employment, regulate the hours and conditions of employment, and institute penalties for violations.<sup>48</sup>

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<sup>46</sup> American Convention on Human Rights, *supra* note 36.

<sup>47</sup> *Id.* at Art. 2.

<sup>48</sup> The International Covenant on Civil and Political Rights (“ICCPR”), and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) contain similar prohibitions against slavery-like practices (ICCPR Article 8), and exploitation of children (ICESCR Article 10). International Covenant on Civil and Political Rights, Dec. 16, 1966, GA res. 2200A (XXI), 21 UN GAOR, Supp. (No. 16) at 52, UN Doc. A/6316 (1966) *entered into force* Mar. 23, 1976; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, GA res. 2200A (XXI), 21 UN GAOR, Supp. (No. 16) at 49, UN Doc. A/6316 (1966) *entered into force* Jan. 3, 1976. Haiti has not ratified these covenants, but former President Avril announced in December 1988 that Haiti would adhere to them. To date, Haiti has taken no action to sign or ratify these two important covenants.

The common element in these treaties is the prohibition of economic exploitation of children and of forced labor, in any form. Restavek constitutes both a practice similar to slavery under the Supplemental Convention of Slavery and a type of forced labor under the ILO Convention Concerning Forced Labour. As a party to both, and other similar, treaties, Haiti is obligated to suppress restavek as soon as possible by legislative and other measures.<sup>49</sup>

To most families with restaveks, the children are present for one purpose: to perform, for no pay, the domestic work of the employing family. If the family is affluent enough, it may have paid maids who assist the restavek child. The family members, however, are unlikely to assist in performing, as opposed to directing, domestic labor. There is thus a strict division between the serving and the served.

Often the first to rise and the last to go to bed in the household, restaveks spend most of their waking hours working or on call to work at the demand of the adults and the families' natural children.<sup>50</sup> Their work can include washing dishes and clothes, sweeping the house and yard, going to the market, preparing meals, cleaning, tending charcoal fires, and fetching water from wells.

If the employing family has natural children attending school, it often requires the restavek child to accompany and carry the books for the family's children to and from school. At noon,

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<sup>49</sup> Haiti has attempted to regulate specific aspects of the practice of restavek. Haitian Labor Code, Articles 341-355. However, as discussed in Section III of this report, the Haitian government does not enforce these provisions. Even if Haiti were to enforce the existing regulations, however, the Haitian government would not satisfy its obligations under the international treaties referenced in the text. To do so, Haiti must bring about the "complete abolition or abandonment" of any practice similar to slavery and must "suppress the use of forced or compulsory labour." Slavery Convention, *supra* note 44, Art. 1(d); ILO Convention No. 29, *supra* note 45, Art. 1(1).

<sup>50</sup> Some families reportedly have restaveks wait by the door to open it for family members coming in late at night.

the restavek may return to the school with lunch for the family's children. The Committee received a report of one child domestic who routinely followed the natural child into the classroom to wash the child's feet before returning home.

If the employing family has its own business or trade, it may use restaveks in the business. These children, who are not paid for their labor, may sell produce on the street or in the market.

The employing family's interest in the restavek, therefore, appears to be fundamentally exploitative. The family uses the child for her labor with little regard to her basic needs and development. The employing family is able to exploit the restavek's labor because of the inherently forced and coercive nature of the relationship. The restavek is a child, most likely cut off from any assistance from or contact with her family. The restavek child never chose to work for the employing family, but was given away. In the new setting with the employing family, the restavek has no practical choice --- other than to run away --- except to perform the work demanded of her. In addition to profiting from the inherently coercive nature of the relationship, some employing families force compliance with their demands through punishments, such as beatings.



#### D. Physical and Emotional Treatment

The Convention on the Rights of the Child obligates Haiti 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,” whether the child is in the care of parents, legal guardians or others. (Article 19) Article 20 affords special protection and assistance by the state to children temporarily or permanently deprived of their families. The Haitian Constitution provides, in Article 19, that the state has “the absolute obligation to guarantee the right to life, health and respect of the human person for all citizens” in conformity with the Universal Declaration of Human Rights. Abuse of some restavek children by employing families implicates Haiti’s obligations under these instruments.

Of restavek children surveyed for the 1984 Conference Report, three-quarters reported that they had been beaten by the employing families.<sup>51</sup> The Committee heard similar reports of widespread corporal punishment, including reports that attempted runaways may be beaten severely. The accounts of physical punishment varied from slapping children with leather straps to deliberately cutting a child with a broken glass bottle. The 1984 Conference Report survey also found that most restaveks who are beaten are beaten routinely.<sup>52</sup> Haitian interviewees stressed that the beatings are sparked by perceived deficiencies in the restavek’s work or attitude toward work, not as a component of child rearing.

The physical mistreatment of restaveks who are girls is not limited to beatings. Repeated and credible, although not first hand, reports were given to the Committee that some girls are sexually abused by fathers and sons of the employing families. One source who had counseled

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<sup>51</sup> D. Devesin, *supra* note 12, p. 20.

<sup>52</sup> *Id.*

former restaveks reported that a family had employed a series of girls as restaveks specifically to provide sex for the family's sons. Although the 1984 Conference Report did not provide data on the incidence of sexual abuse, its occurrence was referenced by two contributors.<sup>53</sup> One contributor described the vulnerability of restavek girls as follows:

Exploited, ridiculed, lost in the big city, girls who are totally cut off from their parents are the most victimized [by the practice of restavek.] Without any options, they are led to prostitution. After being abused by the sons of the house and then its master, the family throws them out. To survive, they become prostitutes and later they become abandoned single mothers.<sup>54</sup>

Besides physical mistreatment, restaveks are also vulnerable to psychological and emotional trauma. Haitian psychologists and sociologists who contributed to the 1984 Conference Report stressed the emotional toll of restavek. Many restaveks feel they belong nowhere. They have been abandoned by their own families, but they are not part of the employing families.<sup>55</sup> They are made to feel inferior and subservient. The employing families have no long-term obligations to care for the restavek children. Haitian psychologists who have worked with restaveks describe resulting depression, passivity, sleep and eating disorders, chronic fear and anxiety.<sup>56</sup>

One of the most striking attributes of the restavek's condition is that typically there are extreme differences between how the restavek is treated and how the employing family's children are treated. It is not just that the restavek may lack certain basic economic and social rights,

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<sup>53</sup> See A.M. Dolce, *supra* note 16, p. 4; Luce, p. 5.

<sup>54</sup> L. DeVastey, L'Enfant en Domesticité et la Santé, p. 5, 1984 Conference Report.

<sup>55</sup> K. Derenencourt, Le petit enfant domestique: cet inconnu, p. 2, 1984 Conference Report.

<sup>56</sup> See E. Clesca, *supra* note 6, p. 6; C. Douyon, Approche psychologique de l'Enfant en Domesticité, pp. 3-6, 1984 Conference Report.

such as adequate food or schooling, but that she may be living with children who receive those benefits she lacks. The restavek is typically discriminated against by the employing family. The sections that immediately follow describe various aspects of the discrimination.

#### E. Education

Article 27 of the Convention on the Rights of the Child recognizes a child's right to education and mandates free primary education. The Haitian Constitution guarantees the right to education (Article 32) and requires schooling to be free of charge, with the state assuming the costs of classroom facilities and teaching materials (Articles 32-1 and 32-30).

As discussed earlier in this report, educational opportunities in Haiti generally are limited. For the restavek child, education is even more restricted. A governmental statistician at the 1984 Conference estimated that 75 percent to 90 percent of child domestics are illiterate.<sup>57</sup> This compares to a 62.5 percent adult illiteracy rate in Haiti in 1985.<sup>58</sup> The 1984 Conference Report estimated that in 1982 thirteen percent of restaveks attended school overall,<sup>59</sup> and less than four percent reached secondary school.<sup>60</sup> In contrast, in 1987 twenty-nine percent of Haiti's urban children generally attended secondary school. This contrast supports the statement of Haiti's former Minister of Social Welfare that the rural family's hope that by sending a child to the city she will be educated is not generally realized.<sup>61</sup>

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<sup>57</sup> R. Dorelien, *supra* note 5, pp. 27-29.

<sup>58</sup> UNICEF, *supra* note 24, p. 100.

<sup>59</sup> R. Dorelien, *supra* note 5, p. 20.

<sup>60</sup> *Id.* at 27-29.

<sup>61</sup> Minnesota Lawyers Committee interview with M. Arnault Guerrier, Port-au-Prince, Dec. 4, 1989.

Education provided to restaveks by the employing families tends to be minimal and subordinate to the work schedule imposed for domestic labor. Yet, based on the anecdotal information gathered by the Committee, it appears that employing families are generally able to educate their own children.<sup>62</sup> The employing families do not feel obligated to educate restavek children either in return for the children's free labor or because the families feel child-rearing responsibilities for the restaveks.<sup>63</sup> In interviews of restaveks, the Committee was repeatedly told that the employing families' children went to school, while the restaveks did not.

#### F. Food

The right to be free from hunger is set forth in, or can be derived from, a number of international conventions and declarations.<sup>64</sup> Although Haiti's 1987 Constitution recognizes the right of its citizens to food, Haiti clearly does not, and probably cannot, guarantee this right presently. Malnutrition among Haitian children is widespread.

The Committee does not know of any statistics comparing the nutritional sufficiency of the

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<sup>62</sup> In practice in Haiti, notwithstanding Article 32 of the Haitian Constitution, education is not free. The family must buy the child's books and, in most cases, a school uniform - at a cost of approximately \$20 a month. Another practical obstacle for restavek children is that schools require birth certificates as a prerequisite to enrollment. Restaveks are unlikely to bring their birth certificate with them to the cities, even if their families obtained certificates at their birth.

<sup>63</sup> In fact, the 1984 Conference Report found an inverse relationship between the education level of the head of the employing household and that provided to the restavek child by the employing family. R. Dorelien, *supra* note 5, p. 27.

<sup>64</sup> The Convention on the Rights of the Child requires parties to take appropriate measures to diminish infant and child mortality and to combat disease and malnutrition. Article 24. The International Covenant on Economic, Social and Cultural Rights affirms the right to adequate food and to be free from hunger. Article 11. The United Nations Human Rights Committee has commented that the right to life, enunciated in Article 6 of the International Covenant on Civil and Political Rights should be read broadly, so as to suggest "it would be desirable for states parties to place responsibilities on parties to take all possible measures . . . to adopt measures to eliminate malnutrition . . ." UN Doc. CCPR/SR. 222 para. 59 (1980).

diets of restavek children either to Haitian children generally or to the diets of the children of the employing families. The 1984 Conference Report did, however, include one startling figure: when the height and weight of fifteen year-old restavek children and non-restavek children living in the same neighborhood were compared, the restavek children were on average four centimeters shorter and 40 pounds lighter.<sup>65</sup>

The statements in the 1984 Conference Report and the Committee's interviews support the proposition that in many instances the restavek child eats an inferior diet to that enjoyed by the employing family. The restavek child typically does not eat with the family, although she shops for and prepares the meals. In many instances, she eats either the family's leftovers or different food of inferior quality -- particularly in protein content. One restavek child mentioned that he ate cornmeal, when the family ate meat. Others reported that while the employing families ate three meals a day, they ate at most two. This anecdotal data suggests that many restaveks are not provided with either adequate or sufficiently nutritious food, or comparable diets to those of employing families.

#### G. Health Care

Article 23 of the Convention on the Rights of the Child provides that "the State has the obligation to ensure for all citizens . . . appropriate means to ensure the protection, maintenance and restoration of their health by establishing hospitals, health centers and dispensaries." Article 24 further recognizes the right of the child to "the highest attainable standard of health." This right requires the state "[t]o ensure the provision of necessary medical assistance and health care to all children" and to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children." The right to adequate

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<sup>65</sup> E. Clesca, *supra* note 6, p. 6.