

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

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I. INTRODUCTION

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,¹ 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.² The quake's epicenter was only ten miles from Port-au-Prince, Haiti's capital and most densely populated area.³ The earthquake's damage was unprecedented – officials now estimate that approximately 230,000 people were killed⁴ and over 250,000 injured, while some 3 million remain in dire need of assistance.⁵

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.”⁶ 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.”⁷ 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.⁸ In 2009, the U.S. Department of State

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1. CENTRAL INTELLIGENCE AGENCY, *THE WORLD FACTBOOK, CENTRAL AMERICA AND THE CARIBBEAN: HAITI*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last updated Aug. 29, 2010) [hereinafter CIA: HAITI].

2. Simon Romero & Marc Lacey, *Fierce Quake Devastates Haitian Capital*, N.Y. TIMES, Jan. 13, 2010, <http://www.nytimes.com/2010/01/13/world/americas/13haiti.html?scp=2&sq=January%2013,%202010&st=cse>.

3. *Id.*

4. Associated Press, *A Glance at Developments 28 Days after Haiti Quake*, NEWSWIRE, February 9, 2010, available at <http://abcnews.go.com/International/wireStory?id=9790332>.

5. *A Plan for Haiti*, THE ECONOMIST (London), Jan. 23, 2010, at 13.

6. David Rothkopf, *Averting Disaster*, NEWSWEEK, Jan. 25, 2010, at 28.

7. Bryan Walsh, Jay Newton-Small & Tim Padgett, *Aftershock*, TIME, Jan. 25, 2010, at 34.

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.⁹ Its real GDP growth rate for 2009 was estimated at 2.3%.¹⁰ Despite these deplorable statistics, there was evidence that the Haitian economy was actually on the rise before the earthquake struck.¹¹

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.¹² A third of the population lacked sanitary facilities.¹³ The life expectancy for Haitians was only fifty-nine years.¹⁴ Less than one-quarter of rural children attended elementary school.¹⁵ Even more, almost half the population was illiterate.¹⁶ 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.¹⁷ This system operates as follows: children from mostly poor, rural families are sent to cities to live with wealthier¹⁸ host families.¹⁹ The children work for these host families, purportedly in exchange

[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.

9. U.S. DEP'T OF STATE, BACKGROUND NOTE: HAITI (2010), <http://www.state.gov/r/pa/ei/bgn/1982.htm> [hereinafter BACKGROUND: HAITI]. The United States GDP is roughly 14.1 trillion dollars; the Dominican Republic's GDP is 79.65 billion dollars. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK (2010), available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html>.

10. BACKGROUND: HAITI, *supra*, note 9. For a cross-country comparison of GDP, see CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, (2010), available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html?countryName=Haiti&countryCode=ha®ionCode=ca&rank=144#ha>.

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

12. TERRY F. BUSS, HAITI IN THE BALANCE 11 (The Brookings Institution 2008).

13. *Id.*

14. CIA: HAITI, *supra* note 1.

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.

19. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 306 (2009) [hereinafter TIP REPORT 2009].

food, shelter, and education.²⁰ In reality, however, these children are treated like domestic slaves²¹ by their host families; they are often abused and denied any education.²² These child victims²³ are called “restaveks” which, in Haitian Creole, literally means “to stay with,” or “someone who lives with another.”²⁴ 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.”²⁵

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.²⁶ In addition to an already inaccessible education system, ninety-percent of the schools in Port-Au-Prince were destroyed or damaged.²⁷ 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.²⁸ 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.²⁹ Although child welfare organizations within Haiti have

20. *Id.*

21. There is a distinction between domestic servants and domestic workers; this distinction is based upon the worker's age, number of hours worked, how they are paid, and if the pay is appropriate when considering the services provided. C. NANA DERBY, RESEARCHING CHILD DOMESTIC SERVITUDE 20 (2009). Domestic workers are “legitimate worker[s] who [are] mature enough to understand the conditions of [their] employment, old enough to enter into contracts with their employers, and can seek recourse through the court's if unduly mistreated by their employers. Moreover, domestic workers exercise control over the ultimate decision to remain a service provider in the specific household.” *Id.*

22. TIP REPORT 2009, *supra* note 19, at 306 (noting that the expectations of families who send their children to work in domestic service in exchange for food, shelter, and education are often unmet); Mike Thomson, *The Brutal Life of Haiti's Child Slaves*, BBC NEWS (Dec. 3, 2009) http://news.bbc.co.uk/today/hi/today/newsid_8390000/8390444.stm.

23. It is unclear whether all restaveks are victims; however, the focus of this comment is on the *abuses* of the restavek system and those children that are abused as a result of their placement in the system.

24. GLENN R. SMUCKER & GERALD F. MURRAY, THE USES OF CHILDREN: A STUDY OF TRAFFICKING IN HAITIAN CHILDREN 21 (2004), *available at* http://pdf.usaid.gov/pdf_docs/Pnadf061.pdf [hereinafter STUDY OF TRAFFICKING IN HAITIAN CHILDREN].

25. STUDY OF TRAFFICKING IN HAITIAN CHILDREN, *supra* note 24, at 21.

26. Deborah Sontag, *Haiti's Children Adrift in World of Chaos*, N.Y. TIMES, Jan. 26, 2010, at A1, *available at* <http://www.nytimes.com/2010/01/27/world/americas/27children.html>.

27. *Id.*

28. Ginger Thompson, *Case Stokes Haiti's Fear for Children, and Itself*, N.Y. TIMES, Feb. 1, 2010, *available at* <http://www.nytimes.com/2010/02/02/world/americas/02orphans.html?scp=1&sq=New%20Life%20Children's%20Refuge&st=cse>.

29. Frank Bajak, *AP Finds All Baptist Group's 'Orphans' Had Parents*, ABC NEWS, Feb. 21, 2010, <http://abcnews.go.com/International/wireStory?id=9899843>.

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.³⁰ 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.³¹

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.³² From its beginning, Haiti's economy relied on the importation of African slaves from Portugal and Spain.³³ Throughout the late 1700s, slaves in Haiti became increasingly dissatisfied with their inferior treatment

30. *Id.*

31. See Tim Padgett, *1/29/10: Haiti*, 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.").

32. FED. RESEARCH DIV., DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES 263 (Helen Chapin Metz ed., 3rd ed., Library of Congress 2001) [hereinafter DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES]. Christopher Columbus claimed Hispaniola for Spain in 1492 and it shortly thereafter became known as Santo Domingo. *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. *Id.* at 266.

33. *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. *Id.*

and statuses.³⁴ This unrest culminated in a slave rebellion which successfully overthrew the French government and established the present day nation of Haiti.³⁵

Since its independence, Haiti has been perpetually plagued with political and economic instability.³⁶ Haitian leaders have been predominantly short-lived, violent dictators.³⁷ Of the few leaders that were popularly elected, only one completed his term and left voluntarily.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."³⁹ Because of this instability, foreign involvement in Haiti has been relatively commonplace.⁴⁰

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.⁴¹

The restavek system has existed since Haitian independence.⁴² During the period when Haiti's economy relied on slavery, children were thought to be of little value beyond their economic potential.⁴³ Although its exact origin is unclear,

34. DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES, *supra* note 32, at 267-68. Haiti's class structure was hierarchical based on color, class and wealth. Whites and people of color had separate hierarchies. For whites, the upper class included wealthy merchants, high officials, and plantation owners. *Id.* at 267. Below this class, were the shopkeepers. *Id.* The top of the class structure for those of color were mulattos that were neither whites nor slaves. Below the free mulattos were, in descending order, mulatto slaves, creole slaves who were born in Saint-Domingue, and field laborers recently imported from Africa. *Id.*

35. DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES, *supra* note 32, at 268-72.

36. *Id.* at 263.

37. *Id.* Terry Buss of the Brookings Institution has described the history of Haiti's presidency:

[T]here have been fifty-five 'presidents' of Haiti since 1804, when the country gained its independence . . . [o]f these, three were assassinated or executed, seven died in office (one by suicide), and twenty-three were overthrown by the military or paramilitary groups. Two . . . were overthrown twice. Only nine completed full presidential terms. Thirty-one held office for two years or less. In 1946 and again in 1988, a military junta ruled without a president. Nearly all presidents either were military officers or were closely affiliated with the military.

BUSS, *supra* note 12, at 21.

38. DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES, *supra* note 32, at 263.

39. BUSS, *supra* note 12, at 21.

40. See discussion *infra* Part III-C.

41. STUDY OF TRAFFICKING IN HAITIAN CHILDREN, *supra* note 24, at 25-26.

42. Tim Padgett, *Of Haitian Bondage*, TIME, Feb. 25, 2001, available at <http://www.time.com/time/magazine/article/0,9171,999363,00.html> [hereinafter Padgett, *Bondage*].

43. *Id.*; see also E. BENJAMIN SKINNER, A CRIME SO MONSTROUS: FACE-TO-FACE WITH MODERN DAY SLAVERY 21 (Free Press 2008) (illustrating the general attitude toward restaveks

the practice of restavek mirrors other systems of child domestic servitude throughout the African continent.⁴⁴ Throughout the Caribbean, children commonly live without their parents for portions of their childhood, instead staying with extended family members.⁴⁵

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.”⁴⁶ A restavek child is not legally owned by her host family and may run away or return to her parents.⁴⁷ Additionally, even though restaveks are under the dominion of their host families, they will only remain restaveks for the duration of their childhoods, not for their entire lives.⁴⁸ Despite these technical distinctions, status as an unpaid child servant is presently recognized as a contemporary form of slavery.⁴⁹

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.⁵⁰ 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.

46. THE OXFORD ENGLISH DICTIONARY 664 (2d ed. 1989).

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).

48. See generally BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, HAITI 2619 (2007) [hereinafter BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI 2007] (distinguishing between the internal trafficking of restavek children and adults).

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).

50. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, HAITI (2005), <http://www.state.gov/g/drl/rls/hrrpt/2005/61731.htm> (last visited Oct. 31, 2010) [hereinafter, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI 2005]. The Bureau of Democracy, Human Rights and Labor, is a division of U.S. Department of State, supervised by the Under Secretary of State for Democracy and Global Affairs. U.S. DEP’T OF STATE, UNDER SECRETARY OF STATE FOR DEMOCRACY AND GLOBAL AFFAIRS, <http://www.state.gov/g/index.htm> (last visited Oct. 31, 2010). It leads U.S. efforts to promote democracy, protect human rights, and advance labor rights. U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, <http://www.state.gov/g/drl/index.htm> (last visited Oct. 31, 2010); see also NAT’L COAL. OF HAITIAN RIGHTS, RESTAVEK NO MORE: ELIMINATING CHILD SLAVERY IN HAITI (2007), available at http://www.nchr.org/hrp/restavek/report_es.htm [hereinafter RESTAVEK NO MORE] (estimating that one in every ten Haitian children is a

anywhere between 90,000 and 300,000 restaveks in Haiti.⁵¹ The children work long hours, are denied the opportunity for education, and are often physically and sexually abused.⁵² After the age of fifteen, restaveks often become street children, leading to involvement in prostitution or violent crime.⁵³ Estimates reveal that annually two to three thousand restavek children are trafficked as slave labor to the Dominican Republic.⁵⁴ In fact, restaveks comprise the majority of trafficking victims in Haiti.⁵⁵

Typically, restaveks come from rural families with five to ten children.⁵⁶ 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.⁵⁷

Females are particularly vulnerable; the majority of restaveks are girls between the ages of six and fourteen.⁵⁸ UNICEF highlighted the plight of one girl, Celine, who was sexually abused and burned by the men who "owned" her.⁵⁹ 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."⁶⁰ This study also revealed that: (1) restaveks accounted for 36.2%

restavek).

51. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI, 2007, *supra* note 48, at 2619.

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, at 2457.

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.

59. *Child Alert: Haiti*, UNICEF, Mar. 2006, at 3, available at [http://www.unicef.org/childalert/haiti/content/Child%20Alert%20Haiti%20\(En\).pdf](http://www.unicef.org/childalert/haiti/content/Child%20Alert%20Haiti%20(En).pdf); Benedetta Faedi, *The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti*, 44 STAN. J. INT'L L. 147, 168 (2008).

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.*

64. Mike Thomson, *Haiti: After the Storm*, BBC NEWS, Dec. 4, 2009, http://news.bbc.co.uk/today/hi/today/newsid_8393000/8393135.stm.

65. *Orphaned Haitian Children to be Allowed into U.S.*, BBC NEWS, Jan. 19, 2010, <http://news.bbc.co.uk/2/low/americas/8465392.stm>.

66. See discussion *infra* Part II-B-2.

67. TIP REPORT 2009, *supra* note 19, at 16.

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.

71. 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) reports⁷² throughout the last decade. TIP reports break down countries into three tiers.⁷³ Tier one countries have substantially complied with the minimum standards of the Trafficking in Victims Protection Act (TVPA).⁷⁴ Tier two countries are those making significant efforts toward meeting the minimum standards.⁷⁵ 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.⁷⁶

Tier three countries are those that (1) do not comply with the minimum standards and (2) are not making significant efforts toward compliance.⁷⁷ 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.⁷⁸

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.⁷⁹ The TIP reports in 2001-2002 considered Haiti a tier two country.⁸⁰ In 2003, Haiti was named a tier three country.⁸¹ However, this was later changed by then President Bush to tier two.⁸² 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.⁸³ 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.”⁸⁴ 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.”⁸⁵

The United Nations (U.N.) also noted two disturbing new trends which have emerged within the restavek system.⁸⁶ The first trend is the emergence of recruiters, who earn income by recruiting children from rural families to work for city families.⁸⁷ The second is that the demand for restaveks has shifted from wealthy families to poor families.⁸⁸

79. *See infra* text accompanying notes 88-91.

80. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, HAITI 48 (2001) [hereinafter TIP REPORT 2001], *available at* <http://www.state.gov/documents/organization/4107.pdf>.

81. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 21 (2003) [hereinafter TIP REPORT 2003], *available at* <http://www.state.gov/documents/organization/21555.pdf>.

82. *Id.*

83. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 250 (2004); U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 268 (2006); U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 216 (2007); U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 270 (2008); TIP REPORT 2009, *supra* note 19, at 306; *see* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 118 (2005) (showing that Haiti was not considered a special case in the 2005 TIP report).

84. Press Release, Office of the High Comm'r for Human Rights, UN Expert on Slavery Expresses Concern Over 'Restavek' System in Haiti (June 10, 2009) [hereinafter UN Expert on Slavery], *available at* <http://www.unhchr.ch/Hurricane/Hurricane.nsf/28f56e49269b20fc8025660c004864f5/557b30d84ac74d65c12575d10045af85?OpenDocument>.

85. *Id.*

86. UN Expert on Slavery, *supra* note 84.

87. *Id.*; *see* SKINNER, *supra* note 43, at 1-12 (detailing an account of a businessman on the streets of Port-au-Prince who recruits restavek children for negotiated prices). This trend is consistent with a study showing movement of the Haitian population out of rural areas and into

a. Recruitment of Restaveks

The emergence of recruitment has led to an increase in the internal trafficking of restavek children.⁸⁹ Recruitment is “a consensual relationship between the sending [those giving away the child] and receiving [those taking the child into their home] households.”⁹⁰ 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.”⁹¹

Haitian children have even been recruited for Haitian families residing in the Dominican Republic who are willing to pay smuggling and travel costs.⁹² Recruited children are physically trafficked by career smugglers who earn their livelihood by transporting people across the border between Haiti and the Dominican Republic.⁹³ 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.⁹⁴ 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.⁹⁵

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.⁹⁶ In fact, there is evidence that wealthy families in Haiti no longer condone the practice of restavek:

metropolitan areas. STUDY OF TRAFFICKING IN HAITIAN CHILDREN, *supra* note 24, at 14. This migration led to an increase in the annual growth rate of Port-Au-Prince to 4.4%, nearly double the national rate of population growth. *Id.* Seventy-percent of these internal migrants age from ten to twenty-nine years; this suggesting that the departure of rural children has had a significant impact on the rapid urban population growth in Haiti. *Id.* This growth has: (1) dramatically increased the population in urban slums; and (2) further exacerbated the political crisis in Haiti. *Id.*

88. UN Expert on Slavery, *supra* note 84; see SKINNER, *supra* note 43, at 7 (“normally, [a] client is lower middle class”).

89. See STUDY OF TRAFFICKING IN HAITIAN CHILDREN, *supra* note 24, at 36 (explaining that the class of people looking for a child servant these days cannot afford a maid, so they settle for a child servant).

90. *Id.*

91. *Id.*

92. *Id.* at 37.

93. STUDY OF TRAFFICKING IN HAITIAN CHILDREN, *supra* note 24, at 55 (these smugglers are called “boukong” in Haiti).

94. *Id.* at 63.

95. TIP REPORT 2009, *supra* note 19, at 306. In 2005, it was estimated that the number of children trafficked to the Dominican Republic and the Bahamas was around 2,500 to 3,000 children. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 118 (2005), available at <http://www.state.gov/documents/organization/47255.pdf>.

96. STUDY OF TRAFFICKING IN HAITIAN CHILDREN, *supra* note 24, at 29.

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 *restavèk*. 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 *restavèk* children in affluent households has significantly declined.⁹⁸

The *restavèk* 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 Restavèk System

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

Because of Haiti’s heavily impoverished condition, the majority of *restavèks* 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 *restavèks* 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 *restavèks*. The *restavèk* 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 *restavèk* system).

101. *Id.* at 14.

102. *Id.*

103. *Id.*

104. *Id.* at 13.

105. *See* STUDY OF TRAFFICKING IN HAITIAN CHILDREN, *supra* note 24, at 116 (“The problem of *restavèk* children... is intimately linked to poverty on the part of both sending and receiving households.”); Kathryn Wescott, *Protecting Haiti’s children from ‘cowboy adoptions’*, BBC NEWS, Feb. 1, 2010, <http://news.bbc.co.uk/2/hi/8491981.stm> (stating that “families [act] out of desperation” when sending their children into domestic servitude).

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.¹⁰⁶ 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,¹⁰⁷ 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.'"¹⁰⁸

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.¹⁰⁹ Usually around age six, when children are old enough to work, they are expected to do both domestic and agricultural labor.¹¹⁰ The amount of work expected of children increases in poorer households.¹¹¹

At around the same time they begin working, Haitian children are taught the importance of discipline and respect for their elders.¹¹² Traditionally, this is developed by the imposition of strict standards of obedience and respect towards a child's older siblings and other adults.¹¹³ In Haiti, corporal punishment within families remains a common method of enforcement of these stringent standards.¹¹⁴

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.

107. See TIP REPORT 2001, *supra* note 80, at 48 ("[T]he [Haitian] Government has acknowledged its internal [child] trafficking problem.").

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.¹¹⁵

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.¹¹⁶ The Haitian constitution has several provisions which are in direct conflict with a system of domestic servitude. Article 261 states that "the law ensures protection for all children."¹¹⁷ Article 35-6 provides that "[t]he minimum age for employment is governed by law. Special laws govern the work of minors and servants."¹¹⁸ Furthermore, the law prohibits forced or compulsory labor,¹¹⁹ and sets the minimum age for employment at fifteen

115. See discussion *infra* Part V.

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. *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. *Id.* The justice system in Haiti has been known for its corruption for over 200 years. *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. *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. *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. *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. *Id.* at 431-32. As of 1999, the judicial system remained weak and corrupt. *Id.* at 487. At the end of 1999, 80% of the incarcerated population were unsentenced and awaiting trial. *Id.*

117. CONSTITUTION 1987, art. 261 (Haiti).

118. *Id.*, art. 35-6.

119. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: HAITI (Mar. 6, 2007), <http://www.state.gov/g/drl/rls/hrrpt/2006/78895.htm> [hereinafter BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI 2006].

years, with the exception of domestic employment, where the minimum age is twelve.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).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.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.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.¹²⁴ To evade this requirement, host families often dismiss restaveks before they reach the age of fifteen.¹²⁵

The Haitian government has acknowledged the seriousness of the restavek problem, but has done little to address it.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.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.¹²⁸ Haiti’s lack of domestic enforcement reflects its endemic instability.¹²⁹ Thus, despite repeated

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI 2006, *supra* note 119.

125. *Id.*

126. TIP REPORT 2009, *supra* note 19, at 306; TIP REPORT 2001, *supra* note 80, at 48; *see also* RESTAVEK NO MORE, *supra* note 50 (describing the Haitian government’s failure to provide adequate resources to remedy the restavek problem).

127. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI 2005, *supra* note 50.

128. *Id.*; *see* 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 restav[e]k abuse reports, and galloping to the rescue.” *Id.* However, the unit’s phone lines were often down, and it only had one car. *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. *Id.* at 25.

129. *See* discussion *supra* Part II-A.

attempts, Haiti has had little success in controlling or eliminating the restavek system.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.¹³¹ However, “the lack of resources, training, and institutionalized procedures [in the BPM] remain a barrier to its operational capacity.”¹³² Moreover, the BPM does not pursue any trafficking cases as Haiti still has no penalty against trafficking.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,¹³⁴ ILO Convention No. 29 on Forced Labour,¹³⁵ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹³⁶ International Covenant on Civil and Political Rights (ICCPR),¹³⁷ Convention on the Rights of the Child (CRC),¹³⁸ and

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 *restavèk* system, which it promotes in law and deeds even as it claims to do otherwise.”).

131. TIP REPORT 2009, *supra* note 19, at 306.

132. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HAITI 2007, *supra* note 48.

133. *Id.*; TIP REPORT 2009, *supra* note 19, at 306.

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].

135. Convention Concerning Forced or Compulsory Labour, June 28, 1930, 39 U.N.T.S. 55.

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. *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.” *Id.*

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. *Id.* art. 24.

138. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

ILO Convention No. 182 on the Worst Forms of Child Labor.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 1958.¹⁴⁰ 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.¹⁴¹

Haiti also ratified ILO Convention No. 29 in 1958.¹⁴² This Convention prohibits government imposition of forced or compulsory labor for the benefit of private individuals.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.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.¹⁴⁵ The survival and development rights category of articles are described as

139. Convention (ILO No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, T.I.A.S. No. 13,045, 2133 U.N.T.S. 161 [hereinafter Worst Forms of Child Labour Convention].

140. Supplementary Convention on the Abolition of Slavery, *supra* note 134, art. 1.

141. *Id.*

142. Convention (No. 29) Concerning Forced or Compulsory Labour, as modified by the Final Articles Revision Convention, 1946, UNITED NATIONS TREATY COLLECTION, <http://treaties.un.org/pages/showDetails.aspx?objid=08000002801611d8> (last visited Nov. 2, 2010).

143. Convention Concerning Forced or Compulsory Labour, *supra* note 135, art. 4(1).

144. Convention on the Rights of the Child, *supra* note 139; *Rights Under the Convention on the Rights of the Child*, UNICEF, http://www.unicef.org/crc/index_30177.html (last updated Feb. 26, 2008) [hereinafter *Rights Under the CRC*].

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) censure 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.

[E]ach Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.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.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.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.¹⁵⁶ The Haitian government has never had the sort of stability needed in order to ensure domestic implementation and enforcement of its treaty obligations.¹⁵⁷ However, by signing onto these treaties, Haiti is obligated to work toward their enforcement.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.¹⁵⁹ Historically, domestic law existed to regulate

153. *Id.*

154. See TIP REPORT 2009, *supra* note 19, at 306 (noting that most restavek children are trafficked within Haiti as involuntary domestic servants).

155. RICHARD B. LILICH 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.").

156. *Id.* ("This duty is at least implicit in human rights treaties and is similarly discernible in customary human rights law.").

157. See discussion *supra* Part II-A.

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." 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. *Id.* at 9.

159. See LILICH 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.”¹⁶⁰

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.¹⁶¹ 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.¹⁶² 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.”¹⁶³

The IOM has made efforts toward combating the internal trafficking and abuse of restavek children.¹⁶⁴ 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].”).

163. *A Plan for Haiti*, THE ECONOMIST, Jan. 21, 2010, at 13, available at http://www.economist.com/opinion/displaystory.cfm?story_id=15330453.

164. INT’L ORG. FOR MIGRATION, *supra* note 108, at 1.

families.¹⁶⁵ Thus far, the IOM has been able to assist around 300 restavek children in finding their families.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.¹⁶⁷

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

C. *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 Aristide¹⁷³ 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.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

165. *Id.*

166. *Id.* at 2.

167. *Id.*

168. Some more NGOs involved include Save the Children and Amnesty International. *See Haiti*, SAVE THE CHILDREN, <http://www.savethechildren.org/countries/latin-america-caribbean/haiti.html> (last visited Oct. 2010); *see also* AMNESTY INTERNATIONAL OVERCOMING POVERTY AND ABUSE: PROTECTING GIRLS IN DOMESTIC SERVICE IN HAITI (2009), <http://www.amnesty.org/en>.

169. Tim Padgett & Bobby Ghosh, *Human Predators Stalk Haiti's Vulnerable Kids*, TIME, Jan. 27, 2010, available at http://www.time.com/time/specials/packages/article/0,28804,1953379_1953494_1957160,00.html.

170. *See id.* (mentioning the foundation's efforts to raise awareness and give refuge to restaveks); RESTAVEK FREEDOM FOUNDATION, <http://www.restavekfreedom.org> (last visited Oct. 31, 2010) (describing the foundation's efforts to provide education).

171. Padgett & Ghosh, *supra* note 169.

172. *Id.*

173. Jean-Bertrand Aristide was elected president of Haiti in December of 1990. BUSS, *supra* note 12, at 29.

174. *United Nations Stabilization Mission in Haiti*, UNITED NATIONS, <http://www.un.org/en/peacekeeping/missions/minustah/background.shtml> (last visited Oct. 31, 2010).

and promoting the rule of law.¹⁷⁵ In addition to the multinational force, the U.N. launched several peacekeeping operations.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.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.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.¹⁷⁹ Overall, however, the United States has not considered Haiti a high priority in matters of foreign policy; its policy towards Haiti may have reflected domestic politics more than concerns for Haiti.¹⁸⁰

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

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.¹⁸¹

He further noted that:

[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.¹⁸²

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

175. *Id.*

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.*

177. *Id.*

178. BUSS, *supra* note 12, at 74.

179. BUSS, *supra* note 12, at 74.

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.").

181. Rothkopf, *supra* note 6, at 28.

182. *Id.*

(MINUSTAH).¹⁸³ 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.¹⁸⁴ In 2005, a U.N. report on MINUSTAH observed the following:

[T]he 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[,] . . . [t]he 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.¹⁸⁵

A subsequent mission of the Security Council determined that Haiti was in a "deep political, social and economic crisis."¹⁸⁶ Despite their efforts to address the problems in Haiti, none of the U.N.'s missions created any lasting political or economic stability.¹⁸⁷

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.¹⁸⁸ Haiti receives little investment because of its instability and lack of infrastructure.¹⁸⁹ This, coupled with a large trade deficit,¹⁹⁰ 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,¹⁹¹ much of

183. BUSS, *supra* note 12, at 54.

184. MINUSTAH *Mandate*, UNITED NATIONS, <http://www.un.org/en/peacekeeping/missions/minustah/mandate.shtml> (last visited Oct. 31, 2010).

185. LILLICH ET AL., *supra* note 155, at 837 (quoting U.N. Secretary-General *Rep. of the Secretary-General on the United Nations Stabilization Mission in Haiti*, U.N. Doc. S/2005/313 paras. 4, 12, 29 (May 13, 2005)).

186. *Id.* (quoting *Rep. of the Security Council mission to Haiti, 13 to 16 April 2005*, U.N. Doc. S/2005/302, paras. 11, 12, 42 (May 6, 2005)).

187. LILLICH, *supra* note 155, at 837 (quoting Tim Howland, *In Haiti, Rhetoric Trumps Human Rights*, BOSTON GLOBE, Aug. 16, 2005, at A15) ("The US-inspired peacekeeping approach being utilized by the United Nations in Haiti is a failure."); *United Nations Stabilization Mission in Haiti*, *supra* note 174 ("Owing to the continuing political crisis and concomitant lack of stability in the country, serious reforms never took hold.")

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.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.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.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.¹⁹⁵ Heightened risk factors for Haitian children include: (1) death or illness of a parent; (2) access to education; and (3) being orphaned.¹⁹⁶

Where young children are recruited or forced to work in host families' homes, they are victims of trafficking.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)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.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>.

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.

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.”).

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 children’s agency Unicef says, but that number is expected to have increased in the wake of the earthquake.”).

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

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

197. See discussion *infra* Part III-A.

198. STUDY OF TRAFFICKING IN HAITIAN CHILDREN, *supra* note 24, at 28-30.

199. Padgett & Ghosh, *supra* note 169 (reporting recruiters scouring the broken streets for potential restaveks and promising children food 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.²⁰⁰

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).²⁰¹ 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.²⁰² 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.²⁰³

As previously discussed, trafficking pursuant to the TVPA does not require physical transportation – victims of trafficking include those exploited in private homes.²⁰⁴ Each of the TIP reports in the past decade has discussed the restavek system as a form of trafficking.²⁰⁵

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

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.

202. Trafficking in Victims Protection Act, 22 U.S.C. § 7101 (2000).

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.²⁰⁶ 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.²⁰⁷

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.²⁰⁸ 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.²⁰⁹

B. Anti-Trafficking Programs in Africa

Anti-Trafficking programs focused on protection and prevention have led to a reduction of trafficking in Africa.²¹⁰ 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 \$1,200.²¹¹ Thirty five percent of the population is below the poverty line.²¹² In Uganda, USAID funded a program entitled "Community Resilience and Dialogue" (CRD).²¹³ This program provided assistance to trafficking victims in areas controlled by the militant group the Lord's

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.

210. *See* USAID, USAID ANTI-TRAFFICKING IN PERSONS PROGRAMS IN AFRICA: A REVIEW 7-8 (2007), available at http://pdf.usaid.gov/pdf_docs/PDACJ521.pdf [hereinafter USAID PROGRAMS IN AFRICA] (summarizing the various anti-trafficking programs in Africa funded by USAID and Trafficking in Persons Fund, and presenting recommendations and best practices for reducing human trafficking).

211. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, AFRICA: UGANDA, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html> (last updated Oct. 19, 2010) (information listed under Economy).

212. *Id.*

213. USAID PROGRAMS IN AFRICA, *supra* note 210, at 52.

Resistance Army (LRA).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.²¹⁵ The centers provide treatment, family tracing, and preparation for returning people to their families.²¹⁶ Usually, children are placed in an internally displaced persons (IDP) camp, though occasionally they are reintegrated into local communities.²¹⁷ Leaders from the shelters often educate children on cleanliness, HIV/AIDS prevention, and life skills as they attempt to reintegrate them into communities.²¹⁸

In evaluating this program, USAID found that meetings of IDPs allowed organizations to collaborate and receive community input for their projects.²¹⁹ Further, a major strength of the program was that it provided an excellent transition environment for formerly abducted children.²²⁰ Uganda also had a lot of success in reaching victims through public awareness activities that detailed the risks of trafficking.²²¹ However, it underperformed in reintegrating victims into their previous communities.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.²²³ As a result, the 2009 TIP report placed Uganda on tier two.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,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.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

214. *Id.*

215. *Id.*; *Children of Uganda: Facts About the Children of Uganda*, CHILDREN OF AFRICA, http://www.uccf.org/facts/facts_about_the_children_of_uganda.cfm (last visited Sep. 26, 2010).

216. USAID PROGRAMS IN AFRICA, *supra* note 210, at 52.

217. *Id.*

218. *Id.* at 53.

219. *Id.*

220. *Id.*

221. *Id.*

222. USAID PROGRAMS IN AFRICA, *supra* note 210, at 53.

223. *Id.* at 53-54.

224. TIP REPORT 2009, *supra* note 19, at 50.

225. *See supra* text accompanying notes 50-61.

226. CIA: HAITI, *supra* note 1 (Haiti has the 28th highest percentage of adults with HIV/AIDS in the world).

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 \$2,300.²²⁷ Seventy percent of the population is below the poverty line.²²⁸ The country also has serious problems with poverty and unemployment among its youth.²²⁹ Children are denied access to education, and instead are trafficked in and out of Nigeria for labor.²³⁰ Any wages they earn are taken by their agents, acting as the child's next of kin.²³¹ These children, similar to the restaveks, suffer physical and mental abuse at the hands of their agents.²³² 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.²³³

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.²³⁴

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.²³⁵ 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.²³⁶

In the 2009 TIP report, Nigeria was ranked as a tier one country.²³⁷ 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

227. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, AFRICA: NIGERIA, available at, <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html> (last updated Oct. 19, 2010) (information listed under Economy).

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.²³⁸

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.²³⁹ 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.²⁴⁰ Such emphasis is 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.²⁴¹ 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.²⁴² 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.²⁴³ 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.

239. Barack Obama, *Why Haiti Matters*, NEWSWEEK, Jan. 25, 2010 (noting that the United States government has pledged to do all it can to help the Haitian recovery); *see also* *Missions*, JEAN R. CADET RESTAVEK ORGANIZATION, <http://jeanrcadet.org/mission.aspx> (explaining the mission of the Jean. R. Cadet Restavek Organization, an NGO aimed at ending the Haitian restavek system) (last visited Oct. 29, 2010); *see generally* Executive Board of the U.N. Children's Fund, *UNICEF Child Protection Strategy*, U.N. Doc. E/ICEF/2008/5/Rev.1 (May 20, 2008) (explaining UNICEF's commitment to and strategy for protecting children from violence and exploitation), available at [http://www.unicef.org/protection/files/CP_Strategy_English\(2\).pdf](http://www.unicef.org/protection/files/CP_Strategy_English(2).pdf).

240. *See supra* text accompanying notes 238-39.

241. TIP REPORT 2009, *supra* note 19, at 306.

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/breakdownofruleoflawputshaiti_svulnerablechildrenatincreasedriskforhumantrafficking (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 \$900.²⁴⁴ Nearly 39% of the population falls below the poverty line.²⁴⁵ In Ethiopia, women and children are trafficked for domestic labor and prostitution.²⁴⁶ These women are typically coerced by people promising jobs, education, or foster parents.²⁴⁷ Typically, trafficking is from rural areas into urban areas.²⁴⁸ Victims range in age from 10 to 18 years old and 50% of the time they lack any education past primary school.²⁴⁹

The IOM has an established counter-trafficking program in Ethiopia.²⁵⁰ 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.²⁵¹ There is also a hotline available for counseling.²⁵²

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.²⁵³

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 redrafting

244. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, AFRICA, ETHIOPIA (2010), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/et.html> (last updated Oct. 19, 2010) (information listed under Economy).

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.²⁵⁴ In the 2009 TIP report, Ethiopia was a tier two country.²⁵⁵

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.²⁵⁶

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 replacement 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.

257. Barack Obama, *supra* note 239, at 24.