

SAVING HAITI'S CHILDREN FROM HELL

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Introduction

Haiti's devastating earthquake in January 2010 left thousands of children orphaned and tens of thousands separated from their families. Following the earthquake, foreign militaries, non-governmental agencies, humanitarian aid workers, missionaries, and volunteers descended en masse on the poorest country in the Western Hemisphere to help the victims, especially children, in the midst of the disaster. Unfortunately, some of those who came to help Haiti's children showed little regard for the domestic and international legal protections in place to protect child victims of disaster. As a result, these individuals, organizations, and governments added additional layers of chaos and alienation to these children's lives. This article explores the international legal protections in place at the time of the earthquake, and the ways in which they were violated in order to "save" Haiti's children from their families, their religion, their culture and their poverty as much as, if not more than, the earthquake itself.

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The earthquake that leveled Port-au-Prince and devastated the surrounding area on January 12, 2010, only registered 7.0 on the Richter scale.¹ However, it caused the fifth-highest death toll from a natural disaster in recorded history.² The United Nations (U.N.) estimates that 220,000 people died.³ When one considers that nearly half (46%) of Haiti's population is comprised of children,⁴ one realizes that Haiti's earthquake created an unprecedented "children's emergency."⁵ Indeed, nearly half of those killed by the earthquake were children.⁶ The media initially reported that up to two million children were orphaned or separated from their parents shortly after the earthquake struck.⁷ It is also estimated that 2.1 million people were displaced.⁸

¹ U.N. Office for the Coordination of Humanitarian Affairs, Evaluation of the OCHA Response to the Haiti Earthquake, (July 22, 2010), *available at* <http://www.alnap.org/pool/files/haiti-tor.pdf>.

² *Id.*

³ U.N. Press Conference on Haiti's Reconstruction, One Year After the Earthquake, 2 (Jan. 10, 2011), *available at* http://www.un.org/News/briefings/docs/2011/110110_Fisher.doc.htm [hereinafter U.N. Press Conference One Year after the Earthquake].

⁴ UNICEF Children Of Haiti: Milestones And Looking Forward At Six Months, 4 (2010), *available at* http://www.unicef.org/emerg/files/UNICEF_Haiti_-_Six_Months_Report_Final.pdf [hereinafter UNICEF Children of Haiti at Six Months].

⁵ UNICEF, Report 2010, UNICEF Humanitarian Action: Partnering For Children In Emergencies, Midyear Review, 117 (2010), *available at* www.unicef.org/har2010/files/HAR_Mid_Year_Review_2010.pdf [hereinafter 2010 UNICEF Humanitarian Action Mid-year Review].

⁶ UNICEF Children of Haiti at Six Months, *supra* note 4.

⁷ *Two Million Orphan Children at Risk after Haiti Earthquake*, NEWS MIRROR, Jan. 15, 2010, <http://www.mirror.co.uk/news/top-stories/>.

⁸ 2010 UNICEF Humanitarian Action Mid-year Review, *supra* note 5.

A. The Vulnerability of Haiti and Its Children Historically

This level of devastation would have a significant impact on any country, but Haiti and its children were especially vulnerable to the crippling effects of a natural disaster because of Haiti's long history of poverty, political instability, and more recently, food insecurity.⁹ Even before the earthquake, Haiti ranked 149th out of 162 countries on the Human Development Index.¹⁰ It is the poorest country in the Western Hemisphere with 70% of Haitians living on less than two U.S. dollars per day.¹¹ Indeed, more than half the population lives below the extreme poverty line of one U.S. dollar per day.¹² Eighty-six percent of Port-au-Prince residents lived in slum conditions before the earthquake.¹³ Fifty percent had no access to toilets and only one-third had access to tap water.¹⁴

The statistics for Haitian children before the earthquake are even more depressing. According to the Pan-American Health Organization, Haiti has the highest mortality rates in the Region of the Americas.¹⁵ Indeed, one of every twelve children died before her

⁹ Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences, *Rep. on Mission to Haiti* (June 1-10, 2009), Human Rights Council, ¶ 44, U.N. Doc. A/HRC/12/21/Add.1 (Sept. 4, 2009) (by Gulnara Shahinian), <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G09/152/70/PDF/G0915270.pdf?OpenElement> [hereinafter Report of the Special Rapporteur].

¹⁰ UNICEF, *Children in Haiti: One Year After—The Long Road from Relief to Recovery*, 5 (2011), available at [http://www.unicef.org/republicadominicana/english/Children_in_Haiti_One_Year_After_-_The_Long_Road_from_Relief_to_Recovery\(3\).pdf](http://www.unicef.org/republicadominicana/english/Children_in_Haiti_One_Year_After_-_The_Long_Road_from_Relief_to_Recovery(3).pdf) [hereinafter, UNICEF *Children in Haiti: One Year After*].

¹¹ U.N. Dev. Programme, *Human Development Report 2007-2008, Fighting Climate Change: Human Solidarity in a Divided World* (2007), available at http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf.

¹² Pan American Health Organization, *Haiti Population Health Assessment Prior to the 2010 Earthquake, HEALTH INFORMATION & ANALYSIS: HEALTH SURVEILLANCE, DISEASE CONTROL AND PREVENTION*, 1 (Jan. 21, 2010) [hereinafter PAHO Health Assessment].

¹³ Disasters Emergency Committee: *Haiti Earthquake-Facts and Figures*, 1 (Oct. 7, 2010), <http://www.dec.org.uk/item/425>.

¹⁴ *Id.*

¹⁵ PAHO Health Assessment, *supra* note 12.

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or his first birthday.¹⁶ Thirty percent of young children were chronically undernourished,¹⁷ and over half of school-age children did not attend school.¹⁸ Four out of five children living in rural areas had no access to sanitation facilities.¹⁹ No wonder the leading causes of death for children under five years of age were diarrhea and respiratory infections, and the leading causes of death for children five to nineteen years of age were HIV/AIDS, malaria, tuberculosis, and malnutrition.²⁰

B. Haiti's History of Economic Orphans and Child Slavery

Learning of Haiti's economic, health, and infrastructure challenges helps one to understand the reality underlying the widespread phenomena of economic orphans and child slavery in Haiti. Even before the earthquake struck, Haiti had 380,000 children in orphanages,²¹ or approximately 9% of its total population of children. This is a phenomenally high number for a total countrywide population of 9.6 million adults and children before the earthquake.²² Not surprisingly, many of the children placed in orphanages had one or more living parents, but were surrendered to institutional care because their parents were unable to care for them.²³ Another 300,000 children worked in domestic servitude,

¹⁶ *Id.* at 3.

¹⁷ 2010 UNICEF Humanitarian Action Mid-year Review, *supra* note 5.

¹⁸ Joel Brinkley, Op-Ed., *Child Slavery Both Common and Legal in Haiti*, PROVIDENCE J., Feb. 9, 2010, available at http://www.projo.com/opinion/contributors/content/CW_brinkley9_02-09-10_D2HBR24_v7.3f8e6c6.html.

¹⁹ UNICEF Children in Haiti: One Year After, *supra* note 10, at 7.

²⁰ PAHO Health Assessment, *supra* note 12, at 1.

²¹ 2010 UNICEF Humanitarian Action Midyear Review, *supra* note 5 at 117.

²² Report of the Special Rapporteur, *supra* note 9, ¶ 8.

²³ David Gauthier-Villars, et al., *Missionary Case Illuminates Plight of Haiti's Orphans*, WALL ST. J., Feb. 3, 2010, available at <http://online.wsj.com/article/SB10001424052748704259304575043691704446642.html>. However, the number of children who have lost one or both of their parents is also surprisingly high. The Pan American Health Organization estimates that

most as restaveks.²⁴ Some non-governmental organizations (NGOs) place the number of restaveks as high as half a million.²⁵ An additional 2,000 children were estimated to be trafficked out of the country every year.²⁶ Thus, 15-20% of Haiti's children were either living in orphanages, working as domestic servants, or being trafficked out of Haiti, even before January 12, 2010.

Indeed, long before the earthquake, Haiti already had established itself as home to one of the worst child slavery problems in the Western Hemisphere because of its restavek population. Under the restavek system, thousands of desperately poor families give their children to wealthier families who are expected to feed, clothe, and educate the child. In exchange, the child is supposed to work around the house for the wealthier family, without direct compensation.²⁷ These children are as young as five years old and many are turned into house slaves.²⁸ Nearly two-thirds of restaveks are girls.²⁹ Rape is commonplace.³⁰ Jean R. Cadet, a former restavek who immigrated to the United States and is now a middle-class U.S. citizen, wrote an autobiography about his brutal experience growing up as a restavek that many believe first brought international attention to this modern slavery practice.³¹ Since Cadet's autobiography was published, the restavek problem has repeatedly been investigated by representatives of the United

eleven percent of the school-age population in Haiti is orphaned from one or both parents. PAHO Health Assessment, *supra* note 12, at 2.

²⁴ Report of the Special Rapporteur, *supra* note 9, ¶ 16. "Restavek" is a Creole term that refers to children given or sold as domestic slaves in Haiti. It is taken from the French "rester avec," which means "to stay with." See Ian Atzet, *Post-Crisis Actions to Avoid Child Trafficking*, 12 J. L. & FAM. STUD. 499, n. 3 (2010).

²⁵ Report of the Special Rapporteur, *supra* note 9, ¶ 16.

²⁶ Brinkley, *supra* note 18.

²⁷ Report of the Special Rapporteur, *supra* note 9, ¶ 16.

²⁸ *Id.* ¶ 24.

²⁹ Brinkley, *supra* note 18.

³⁰ *Id.*

³¹ JEAN-ROBERT CADET, *RESTAVEC: FROM HAITIAN SLAVE CHILD TO MIDDLE-CLASS AMERICAN* (Univ. of Texas Press, 1998).

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Nations; additionally the Committee on the Rights of the Child recommended a variety of measures to end the practice, including legislation, development of a comprehensive strategy, undertaking investigations, punishing perpetrators, and providing services to victims of the restavek practice including caring for their physical well-being and facilitating their psychological recovery and social reintegration, with full access to education.³²

However, rather than improve in response to international pressures and support, the restavek situation worsened with the economy in recent years.³³ A system of recruiters, or *koutchye*, evolved into existence, adding an element of trafficking to the restavek practice.³⁴ Moreover, it appeared that the wealthy were reducing their reliance on restavek labor and the working poor were increasingly the ones utilizing children as restaveks. Thus, just before the earthquake, it was even less likely that restavek children would receive proper care, nutrition, and education because the families who exploited them were already struggling to provide for their own children.³⁵ Finally, the restavek system in recent years moved beyond the placement of one's child with extended family or community members so that placement with strangers became commonplace, increasing the likelihood that the child would be alienated from family and friends, making the child even more vulnerable to abuse and exploitation.³⁶

C. The U.N.'s Study of Child Slavery in Haiti on the Eve of the Earthquake

In light of the worsening situation for Haiti's children, the United Nation's Human Rights Council sent Gulnara Shahinian, the

³² Comm. on the Rights of the Child, Rep. on its 32d Sess., ¶¶56, 57, U.N. Doc. CRC/C/15/Add.202 (Mar. 18, 2003). Cited in Report of the Special Rapporteur, *supra* note 9, ¶ 16.

³³ *Id.* ¶ 18.

³⁴ *Id.* ¶ 19.

³⁵ *Id.* ¶ 16.

³⁶ *Id.* at ¶¶ 19-20.

Special Rapporteur on contemporary forms of slavery, including its causes and consequences, to Haiti to investigate the problem of child slavery in Haiti in June 2009, just months before the earthquake.³⁷ The Special Rapporteur's report highlights the pervasive nature of child slavery in Haiti and the limited ability of the government to tackle it. That was, of course, before the earthquake struck and brought governmental operations to a virtual standstill.³⁸

Even before the earthquake, Haiti's governmental agencies charged with dealing with vulnerable children were fragmented and minimally funded.³⁹ They lacked any significant institutional capacity and were highly fragmented.⁴⁰ There was no social protection system and almost no programs that dealt with child labor.⁴¹ There was no national legislation protecting the rights of especially vulnerable children, such as *restaveks*.⁴² Even those laws that were on the books were difficult to enforce since the judicial system was weak and unable to ensure prosecution. There was no guarantee of a fair trial or that perpetrators would be adequately punished, assuming they were punished at all.⁴³ Of course, there has long been a presence of international agencies in Haiti even before the earthquake; however, those agencies normally were not focused on the issue of child slavery, and the limited efforts they made were not coordinated and their programs were fragmented.⁴⁴

Thus, the Special Rapporteur urged Haiti's government to take a number of steps to begin to tackle the country's widespread child slavery problem. Specifically, she urged the Haitian

³⁷ *Id.* at 2 (Summary).

³⁸ According to the United Nations, the Haitian government lost 40% of its civil servants. U.N. Press Conference One Year after the Earthquake, *supra* note 3.

³⁹ Report of the Special Rapporteur, *supra* note 9, ¶ 61.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

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government to establish a “National Commission on Children,” which would primarily focus on especially vulnerable children and would work to ensure protection of their rights. She also urged the government to determine what resources were needed to protect Haitian children adequately, presumably so that those funds could be raised and allocated accordingly.⁴⁵ She reminded everyone of the importance of registering each and every child since it is much easier to traffic children for whom there is no official record of their existence.⁴⁶

The Special Rapporteur also recommended general improvements for children and their families including stimulating the economic well-being of families and providing free, compulsory education, and free health care for children.⁴⁷ She emphasized the need to provide training on issues related to child slavery to government employees who deal with vulnerable children such as teachers, police, doctors, and officers in the Brigade for the Protection of Minors.⁴⁸ Finally, the Special Rapporteur urged the Haitian government to “take urgent measures to bring local legislation in conformity with international legal instruments ratified by Haiti.”⁴⁹

*D. The Unprecedented Humanitarian Response to Haiti’s
“Children’s Emergency”*

The Special Rapporteur’s report was published on September 4, 2009. One hundred and thirty days later, the earthquake struck. Almost immediately, thousands of volunteers descended on Port-au-Prince to help the earthquake victims, in addition to the employees of

⁴⁵ *Id.* at ¶ 63.

⁴⁶ *Id.* ¶ 65. In Haiti, it is very common for children living in rural areas never to have birth registration. *Id.* ¶ 34.

⁴⁷ *Id.* ¶ 65.

⁴⁸ *Id.* The Brigade for the Protection of Minors (BPM) is a police corps of seventy-five officers that focuses specifically on children. They are trained in social work. *Id.* About half were stationed in Port-au-Prince before the earthquake. *Id.* at ¶¶ 47, 48.

⁴⁹ *Id.* ¶ 66.

numerous international governmental agencies, hundreds of non-governmental agencies, and various militaries. The United Nations Stabilization Mission in Haiti (MINUSTAH), which was the stabilization force charged by the United Nations Security Council “to support continuation of a peaceful and constitutional political process and the maintenance of a secure and stable environment,”⁵⁰ found itself once again focused on humanitarian relief in the wake of one of Haiti’s natural disasters.⁵¹

In addition to the near one-quarter of a million people who were killed,⁵² and the approximately one million children who were orphaned,⁵³ another 1.5 million people were left homeless.⁵⁴ Countless children were separated from their parents, many in the 1,100 camps that came to populate Port-au-Prince and the surrounding areas.⁵⁵ With approximately 5,000 schools damaged or destroyed, 1,347 teachers killed and another 180 education personnel killed, almost three million children either had their education interrupted or continued to be denied access to education.⁵⁶ Because of poor sanitation and lack of infrastructure after the earthquake, many children faced a heightened risk of dehydration, mortality, and morbidity due to diarrhea and water-borne diseases.⁵⁷ Finally, a nation that already was facing a significant challenge in eliminating child slavery suddenly was faced with a “perfect storm” that would

⁵⁰ S.C. Res. 1529, ¶ 2, U.N. Doc. S/RES/1529 (Feb. 29, 2004).

⁵¹ Report of the Special Rapporteur, *supra* note 9, ¶ 54.

⁵² UNICEF Children of Haiti at Six Months, *supra* note 4, at 2.

⁵³ David Pilditch, *One Million Children Left Orphans in Haiti Horror*, THE EXPRESS (Jan. 20, 2010), available at <http://www.allbusiness.com/print/13754370-1-22eeq.html> (last visited Jan. 23, 2011).

⁵⁴ U.N. Evaluation Group, Paul Harvey et al., *Haiti Earthquake Response: Context Analysis 7* (July 2010), <http://www.alnap.org/pool/files/haiti-context-analysis-final.pdf>.

⁵⁵ Approximately fifty-four of these camps had populations of 5,000 or more residents.

⁵⁶ 2010 UNICEF Humanitarian Action Mid-year Review, *supra* note 5, at 117.

⁵⁷ *Id.*

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lead to an even greater number of children being sold, trafficked, or given into domestic and/or sexual slavery.

Thus, human rights experts, including Gulnara Shahinian, the Special Rapporteur, who just months prior had outlined a blueprint on how Haiti could finally make inroads to reduce child slavery in its society, issued an urgent warning that unaccompanied children in Haiti, including orphans and restaveks, ran a greater risk of “being abducted, enslaved, sold or trafficked” in the chaos after the earthquake.⁵⁸ They urged that the protection of children be placed at the heart of the international relief operation, and that all unaccompanied children be registered, traced and reunited with their families, whenever possible.⁵⁹ Indeed, the United Nations promptly set up a “Child Protection Sub-Cluster,” which focused on protecting children’s rights, preventing violence, abuse, and exploitation, and worked to set up a rapid registration system for unaccompanied children.⁶⁰

The international community, as well as Haiti’s domestic community, did, in fact, give child victims high priority in the relief effort. Thousands of children were registered,⁶¹ and hundreds of children were reunited with their families.⁶² Interim care centers were set up to provide twenty-four hour care to children who were separated from their families and were unaccompanied by an adult caregiver.⁶³ “Safe Spaces” were set up “to provide nutritional and

⁵⁸ UN News Centre, *Haiti’s Children at Increased Risk of Abduction, Slavery, and Trafficking, UN Experts Warn*, Feb. 2, 2010, <http://www.un.org/apps/news/story.asp?NewsID=33650&Cr=haiti&Cr1#>. The group of human rights experts also included the Special Rapporteur on the sale of children, child prostitution and child pornography, (Najat M’jid Maalla), the Special Rapporteur on trafficking in persons, especially in women and children (Joy Ngozi Ezeilo), and the Special Representative of the Secretary General on Violence against Children (Marta Santo Pais).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ UNICEF Children of Haiti at Six Months, *supra* note 4, at 10.

⁶² *Id.*

⁶³ USAID Public Statement, *Operation Protect Children: A Whole of*

psychosocial support and activities for displaced children living in camps.”⁶⁴ The Haitian National Police deployed twenty Child Protection Brigades to the airport and borders to try to prevent child trafficking.⁶⁵ Child protection systems were expanded and training was provided to combat trafficking.⁶⁶

Of course, the focus on children in the Haiti relief effort was not simply limited to reunification of children with their families and the prevention of child slavery and trafficking; the Haiti earthquake relief effort became the largest food distribution ever undertaken in an urban setting. Food and nutritional packets were widely distributed to children and their families and 2,000 severely malnourished children were treated.⁶⁷ Baby-friendly tents were set up to support nursing and proper care and nutrition for babies and toddlers.⁶⁸ Supplemental nutrition was provided to young children and nursing mothers.⁶⁹ Even seeds and fertilizer for crops were distributed.⁷⁰ Indeed, at the end of the first phase of the relief effort, “the nutritional status of those in the earthquake zone was better than those outside.”⁷¹

Emergency shelter was provided for close to 1.5 million people,⁷² and 330,000 people were reached with clean water every day.⁷³ Millions were provided with medical care,⁷⁴ including

Government Response to Haiti's Most Vulnerable Children, Jan. 27, 2010, <http://www.usaid.gov/helphaiti/opc.html>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ 2010 UNICEF Humanitarian Action Midyear Review, *supra* note 5, at 118.

⁶⁷ UNICEF Children of Haiti at Six Months, *supra* note 4, at 10.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ U.N. Food and Agric. Org. & World Food Programme, Special Report: FAO/WFP Crop and Food Security Assessment Mission to Haiti 5 (Sept. 21, 2010), available at <http://www.fao.org/docrep/012/ak353e/ak353e00.pdf>.

⁷¹ U.N. Press Conference One Year after the Earthquake, *supra* note 3, at 1.

⁷² *Id.*

⁷³ UNICEF Children of Haiti at Six Months, *supra* note 4, at 7.

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275,000 children who were immunized against deadly diseases.⁷⁵ Eighty percent of schools in Port-au-Prince reopened with an adapted curriculum within months of the quake;⁷⁶ 185,000 children were reached with basic educational materials,⁷⁷ and hundreds of teachers were provided training in psychosocial support for their students.⁷⁸

E. Child Trafficking after the Earthquake

Despite the monumental relief effort that placed so much emphasis on meeting the needs and protecting the rights of children, child trafficking in Haiti after the quake appeared to be worse than ever. Haiti has long been recognized as “a source, transit and destination country for men, women and children trafficked for the purposes of forced labor and sexual exploitation.”⁷⁹ Trafficked persons are taken to the Dominican Republic, the Bahamas, the United States, Europe, Canada, and Jamaica.⁸⁰

Prior to the earthquake, UNICEF conducted a study indicating that approximately 2,500 children were being trafficked across Haiti’s border into the Dominican Republic every year.⁸¹ UNICEF believes that number has climbed since the earthquake.⁸²

⁷⁴ *Id.*

⁷⁵ *Id.* at 5.

⁷⁶ *Id.*

⁷⁷ 2010 UNICEF Humanitarian Action Midyear Review, *supra* note 5, at 6, 117.

⁷⁸ *Id.*

⁷⁹ Office To Monitor And Combat Trafficking In Persons, U.S. Dep’t. of State, *TRAFFICKING IN PERSONS REPORT: 2009, Haiti*, D.C., June 16, 2009, available at <http://www.state.gov/g/tip/rls/tiprpt/2009/123140.htm> (U.S. Dep’t. of State is obligated to compile an annual country report on human trafficking pursuant to the Trafficking Victims Protection Act of 2000 §104(d), 22 U.S.C. 7101 (2000), available at <http://www.state.gov/documents/organization/10492.pdf>).

⁸⁰ *Id.*

⁸¹ UNICEF, M.P. Nunan, *Protecting Haiti’s Border against Child Trafficking*, Oct. 21, 2010), <http://www.unicefusa.org/news/news-from-the-field/haiti-protects-its-border.html>.

⁸² *Id.*

Thus, an unprecedented effort has been made to fan Haiti's 230-mile border with the Dominican Republic and intercept children being trafficked. BPM officers are partnered with an NGO, Heartland Alliance for Human Needs and Human Rights, which recently received a grant from the United States' Department of State to fund its efforts to stop every child attempting to cross at one of the four major border crossings, and ascertain whether the child is traveling with a parent or legal guardian.⁸³ If the crossing appears to be illicit, efforts are made to register the child and reunify the child with his or her family.⁸⁴

Despite these efforts, one media investigation indicates that more than 7,300 children were trafficked out of Haiti into the Dominican Republic in the first ten months following the earthquake.⁸⁵ This increase is a near eight-fold increase from the entire prior year.⁸⁶ "You choose the age, what sex, skills of the Haitian you want,' one smuggler told an *El Nuevo Herald* reporter."⁸⁷ Once ferried across the border, many of these children are in turn forced into the sex industry.⁸⁸

During their investigation, the newspaper reporters regularly watched traffickers transport children across the border without any

⁸³ *Id.*; see also Media Note, Office of the Spokesman, U.S. Department of State, State Department Awards Grants to Fight Human Trafficking in Haiti (Jan. 21, 2011), <http://www.state.gov/r/pa/prs/ps/2011/01/155110.htm>.

⁸⁴ See UNICEF, Statement of Concern on Child Protection in Haiti (Jan. 25, 2010), <http://oneresponse.info/Disasters/Haiti/Protection/Child%20Protection/publicdocuments/UNICEF%20Statement%20on%20Child%20protection%20in%20Haiti%5B1%5D.doc>.

⁸⁵ Gerardo Reyes & Jacqueline Charles, *Trafficking, Sexual Exploitation of Haitian Children in the Dominican Republic on Rise*, MIAMI HERALD, Oct. 23, 2010, available at <http://www.miamiherald.com/2010/10/23/1888703/earthquake-survivors-are-being.html>; see also Stephen Thorne, *Smugglers Use Haitian Orphans as Sex Slaves in Dominican Republic*, MYAYITI.COM (May 28, 2010), <http://myayiti.com/2010/05/smugglers-use-haitian-orphans-as-sex-slaves-in-dominican-republic/>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Reyes & Charles, *supra* note 85.

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interference by either Haitian or Dominican Republic officials.⁸⁹ Indeed, the investigation indicated that widespread corruption of border officials was rampant in both countries.⁹⁰ Not a single child trafficking case was prosecuted since the earthquake in any one of the main border crossing towns as of October 2010.⁹¹ According to a prosecutor for the Adolescent Children's Court in the Dominican Republic, "[t]he CESFRONT is not doing its job and I cannot go down to the river and arrest people."⁹²

The U.S. State Department recently issued a report that criticized the Dominican Republic government for not prosecuting a single person since 2007 for trafficking, or government officials for accepting bribes from traffickers.⁹³ According to the U.S. State Department report, the Dominican Republic "does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so."⁹⁴

Unfortunately, even the United Nations has been implicated in the trafficking and exploitation of Haitian children, at least historically. In February 2008, the United Nations Office of Internal Oversight Services released its investigation into allegations that Sri Lankan MINUSTAH⁹⁵ troops were sexually abusing children. The

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Office to Monitor and Combat Trafficking in Persons, U.S. Dep't. of State, *TRAFFICKING IN PERSONS REPORT: 2010*, Dom. Rep., D.C., 134, June 14, 2010, available at <http://www.state.gov/documents/organization/142982.pdf>.

⁹⁴ *Id.*

⁹⁵ The Security Council adopted resolution 1529 in 2004 to deploy a United Nations stabilization force to support continuation of a peaceful and constitutional political process and the maintenance of a secure and stable environment, creating the Multinational Interim Force. See S.C. Res. 1542, ¶ 1, U.N. Doc. S/RES/1542 (Apr. 30, 2004). The Multinational Interim Force's authority was subsequently transferred to the United Nations Stabilization Mission in Haiti (MINUSTAH). *Id.* The mandate of MINUSTAH is to support the political process, to secure and stabilize the environment and to monitor and report on the human rights situation. *Id.* ¶ 7. However, much of MINUSTAH's efforts have been devoted to responding

investigation found that the exploitation of children by the troops was “frequent” and occurred “at virtually every location where the contingent personnel were deployed.”⁹⁶ Because of the scandal, a zero-tolerance policy for sexual exploitation and abuse by MINUSTAH has been implemented.⁹⁷ The Special Rapporteur also encouraged MINUSTAH to develop a zero-tolerance policy to prohibit the use of child labor by national and international staff as well.⁹⁸

F. The Baptist Missionaries Debacle

Ironically, the trafficking of thousands of vulnerable Haitian children across international borders has garnered very little attention from the international community, (including its media) both before and after the earthquake. What did rivet the attention of millions by contrast was the attempt of ten self-appointed Baptist missionaries to take thirty-three Haitian children across the border illegally, to populate an orphanage they planned to establish in the Dominican Republic.⁹⁹

The ten Americans were mostly members from a Christian

to natural disasters, such as the 2010 earthquake. *Id.*; see also Report of the Special Rapporteur, *supra* note 9, ¶ 54.

⁹⁶ Bureau of Democracy, Human Rights and Labor, U.S. Dep’t. of State, HUMAN RIGHTS REPORT: 2008, Feb. 25, 2009, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119163.htm>; see also *Haiti: Events of 2008*, HUMAN RIGHTS WATCH, <http://hrw.org/en/node/79214>.

⁹⁷ Report of the Special Rapporteur, *supra* note 9, ¶ 69, as well as related measures described in the Secretary General’s report to the Security Council of March 2009. U.N. Secretary-General, *Report of the Secretary-General on the United Nations Stabilization Mission in Haiti*, ¶¶ 71-72, U.N. Doc. S/2009/129 (Mar. 6, 2009). The U.N. Secretariat has taken special measures for protection from sexual exploitation and abuse. U.N. Secretary-General, *Bulletin: Special measures for protection from sexual exploitation and sexual abuse*, U.N. Doc. ST/SGB/2003/13 (Oct. 9, 2003).

⁹⁸ S.C. Res. 1840, ¶ 22, U.N. Doc. S/RES/1840 (Oct. 14, 2008).

⁹⁹ Associated Press, *Haiti: U.S. Missionary Convicted in Orphanage Case is Freed*, NY TIMES, May 17, 2010, available at <http://www.nytimes.com/2010/05/18/world/americas/18briefs-HAITI.html> [hereinafter *U.S. Missionary Freed*].

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congregation in suburban Idaho, and affiliated themselves as “New Life Children’s Refugee.”¹⁰⁰ According to their website, the Baptists planned to “gather 100 orphans from the streets” of Haiti, and “help each child find healing, hope, joy, and new life in Christ.”¹⁰¹ Although they only found thirty-three children (none of whom were orphans), had no orphanage yet and very little money, they planned eventually to provide the Haitian children to “loving Christian parents who would otherwise not be able to afford to adopt.”¹⁰² The group’s attempt to whisk away children, all of whom had at least one living parent, in the chaos immediately following a disaster, struck a raw nerve with the international public and the Baptists were widely condemned for cultural imperialism and “kidnapping for Jesus” in the weeks following their arrests.¹⁰³

Initially, the Baptist missionaries were charged with child abduction and criminal association,¹⁰⁴ but eight of the ten were released almost two weeks later, while the charges were still pending.¹⁰⁵ The court held two of the Baptist missionaries, including the leader, Laura Silsby and her nanny, Charisa Coulter, for questioning.¹⁰⁶ Although the nanny was subsequently released in March, Ms. Silsby was held until May 17, 2010.¹⁰⁷ In the meanwhile, the kidnapping and criminal charges were dropped and she was instead convicted of arranging illegal travel.¹⁰⁸ She was

¹⁰⁰ Timothy Egan, *The Missionary Impulse*, N.Y. TIMES, Feb. 24, 2010, <http://opinionator.blogs.nytimes.com/2010/02/24/the-missionary-impulse/>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Marc Lacey, *Haiti Charges Americans with Child Abduction*, N.Y. TIMES, Feb. 4, 2010, available at <http://www.nytimes.com/2010/02/05/world/americas/05orphans.html>.

¹⁰⁵ Simon Romero & Ian Urbina, *Judge Releases Eight Americans Jailed in Haiti*, N.Y. TIMES, Feb. 18, 2010, available at <http://www.nytimes.com/2010/02/18/world/americas/18haiti.html>.

¹⁰⁶ *Id.*

¹⁰⁷ *U.S. Missionary Freed*, *supra* note 99.

¹⁰⁸ *Id.*

sentenced to the time she already served in jail.¹⁰⁹

The case is remarkable for a multitude of reasons. First, it highlighted just how easy it is to abscond with children in Haiti. As already mentioned, virtually all thirty-three children had at least one living parent who handed their children over to the missionaries (or an intermediary) willingly, hoping the child would have a better life.¹¹⁰ The second reason why the case is remarkable is the tremendous amount of limited resources that were consumed. Even before the earthquake, Human Rights Watch reported that Haiti suffered from “an ineffective justice system plagued by politicization, corruption, and a lack of personnel, training, and resources. In 2008 Haiti was ranked 177 out of 180 on Transparency International’s Corruption Perceptions Index, which serves as a recognized standard for international corruption comparisons.”¹¹¹

The 2010 earthquake caused further damage to an already compromised judicial system. The Ministry of Justice and the Palace of Justice were both destroyed and at least ten members of the judiciary were killed.¹¹² Numerous legal documents were destroyed and the Supreme Court was still not functioning as of September 2010.¹¹³ Nonetheless, the Haitian government devoted a relatively substantial share of its resources to the imprisonment of the Baptist missionaries and prosecution of the case, allegedly as a warning to others. However, one child protection group in Haiti alleged that in the month immediately following the arrests of the Baptist missionaries, traffickers moved 1,411 children out of the country,¹¹⁴ attracting virtually no attention from the international media, or the Haitian judiciary.

¹⁰⁹ Archive of People by N.Y. Times, *Laura Silsby*, N.Y. TIMES, updated May 18, 2010, available at http://topics.nytimes.com/top/reference/timestopics/people/s/laura_silsby/index.html (follow “Times Topics,” then follow “People” hyperlink, follow “Laura Silsby”).

¹¹⁰ *U.S. Missionary Freed*, *supra* note 99.

¹¹¹ *Haiti, Events of 2008*, *supra* note 96.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Reyes & Charles, *supra* note 86.

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The Baptist missionaries debacle is remarkable for the additional reason that an alleged human trafficker aligned himself with the missionaries and represented them publicly in the media for several days even though he was wanted by three different countries (the United States, Canada, and El Salvador) for such egregious crimes as human trafficking, and exploitation of minors for pornography and prostitution.¹¹⁵ The amount of media attention Jorge Anibal Torres Puello attracted was miniscule compared to the Baptist missionaries even though his alleged crimes were far more egregious than theirs.

Was it really the trafficking aspect of the incident that so offended the international community? If so, then why do the crimes of people like Mr. Torres and the other traffickers who ferry thousands of Haitian children across the borders and force them into sex slavery and other forms of servitude not generate any significant amount of media attention? Why does the enslavement of hundreds of thousands of Haitian children in the restavek system remain ignored by millions both in Haiti and beyond its borders?

II. Legal Overview and Analysis

One year after the earthquake, the United Nations reports that the “rule of law in Haiti is somewhere between weak and non-existent.”¹¹⁶ Given the tremendous poverty of Haiti and its highly limited resources, this fact is hardly surprising. How does a country like Haiti aspire to maintain some semblance of legal order? One relatively cost-effective way is to rely very heavily on international agreements.

Especially under President Jean-Bertrand Aristide, Haiti became party to numerous human rights treaties. Under Haiti’s constitution, these treaties became part of the country’s domestic

¹¹⁵ Marc Lacey & Ian Urbina, *Adviser to Americans Jailed in Haiti is Arrested*, N.Y. TIMES (Mar. 19, 2010), available at <http://www.nytimes.com/2010/03/20/world/americas/20puello.html>.

¹¹⁶ U.N. Press Conference One Year after the Earthquake, *supra* note 3.

legislation.¹¹⁷ The constitution goes further in establishing the significance of international law in Haiti's domestic legal order by providing that ratified international treaties and agreements abrogate any domestic laws in conflict with them.¹¹⁸

Because of Haiti's party status to these treaties and their empowerment under Haiti's constitution, the nation is not lawless. Moreover, the treaties are especially relevant under the circumstances dominating Haiti's existence today where so many individuals, organizations, and governments are playing such an active role in the maintenance and rebuilding of the society because, in many circumstances, the treaties apply to both Haiti and the countries represented; thus, they constitute, at a minimum, shared values that should help define the rebuilding effort and future of Haiti. Because Haiti's legal system relies so heavily on international

treaties, it is critical to be familiar with key international treaties that protect the rights of Haiti's children.

A. The Convention on the Rights of the Child

Haiti was one of the first countries to sign the United Nations Convention on the Rights of the Child (the Convention) on January 26, 1990.¹¹⁹ The Convention is the most widely ratified human rights treaty in the history of the world.¹²⁰ Indeed, every recognized

¹¹⁷ CONSTITUTION DE LA REPUBLIQUE D'HAÏTI, Mar. 29, 1987, art. 276-2, available at <http://www.unhcr.org/refworld/type,LEGISLATION,,HTI,3ae6b542c,0.html>.

¹¹⁸ *Id.*

¹¹⁹ Archive of Status of Treaties, *Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (follow "Databases", then follow "Status of Treaties" hyperlink, then follow "Chapter IV: Human Rights" hyperlink, then follow "*Convention on the Rights of the Child*").

¹²⁰ See Jill Marie Gerschutz & Margaret B. Karns, *Transforming Visions into Reality: The Convention on the Rights of the Child*, CHILDREN'S HUMAN RIGHTS 31 (Mark Ensalaco et al., eds., 2005) (noting that the endorsement and ratification were near universal); see also David Weissbrodt, *Prospects for Ratification of the*

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country in the world has ratified the Convention, except the United States and Somalia.¹²¹ Haiti ratified the treaty on June 8, 1995.¹²² The Preamble of the Convention expressly envisions that the need for the protection of children's rights arises from events such as the Haiti earthquake by stating its profound concern that the situation of children in many parts of the world "remains critical as a result of inadequate social conditions, *natural disasters*, armed conflicts, exploitation, illiteracy, hunger and disability, and [is] convinced that urgent and effective national and international action is called for"¹²³

This statement in the preamble makes clear that children's rights are not luxuries that can be readily surrendered during times of crises, rather, these rights need to be protected by the government and other parties who are assisting in responding to an emergency. In light of the fact that 66.5 million children every year were impacted by natural disasters in the first decade after the Convention on the Rights of the Child entered force, it is clear that the world's children cannot afford to have their rights suspended in times of distress.¹²⁴

The 1924 Declaration of the Rights of the Child also recognized the inherent rights of children in crises, and, in fact, provided that "[t]he child must be the *first* to receive relief in times of distress."¹²⁵ The protections outlined in the 1924 Declaration of

Convention on the Rights of the Child, 20 EMORY INT'L L. REV. 209 (2006).

¹²¹ See Jisha S. Vachachira, *Report 2002: Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 18 N.Y.L. SCH. J. HUM. RTS. 543, 544 (2002). Of course, Somalia has no organized government and so cannot ratify it at this time. See generally, Maro Silva, *Somalia: State Failure, Piracy, and the Challenge to International Law*, 50 VA. J. INT'L L. 553 (2010).

¹²² United Nations Treaty Collection, *supra* note 119.

¹²³ Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989)[hereinafter CRC]; see also Comm. on Human Rights, E.S.C., Rep. on its 45th Sess., Jan. 30-Mar. 10, 1989, U.N. Doc. E/1989/20, chap. II §A (1989).

¹²⁴ The International Federation of Red Cross and Red Crescent Societies, *World Disaster Report of 2001: Focus on Recovery* (2001), available at <http://www.ifrc.org/publicat/wdr2001/index.asp> [hereinafter IFRC].

¹²⁵ *Geneva Declaration of the Rights of the Child*, League of Nations O.J.

the Rights of the Child were based on the belief that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”

The 1959 Declaration of the Rights of the Child also recognized that children must be given priority but expanded the context to “all circumstances.”¹²⁶ At the same time, the 1959 Declaration recognized that there were others who should also be given priority in emergencies (presumably doctors and other adults who were needed to provide care to children): “The child shall in all circumstances be *among the first* to receive protection and relief.”¹²⁷ Thus, all three of the major general children’s rights treaties adopted in the 20th century recognized that children are entitled to special priority during crises such as the aftermath of the Haiti earthquake.

The Convention is broadly organized around three clusters of rights commonly referred to as provision, protection, and participation. Health care, education, and play and recreation comprise the provision cluster. The protection cluster includes the child’s rights to be free from abuse, neglect, exploitation, and discrimination, as well as the right to be allowed to be kids and enjoy developmentally appropriate activities and to occupy “safe places.” The child’s rights to participation under the Convention recognize the child’s right to be an active member of the community. In recent years, this has come to be interpreted as including and recognizing children’s participation in relief efforts during and after disasters.¹²⁸ The empowerment of children that occurs when their active response to a crisis is recognized is increasingly seen as facilitative of their healing and recovery process.¹²⁹

Spec. Supp. 21 (1924) [hereinafter 1924 *Geneva Declaration*].

¹²⁶ Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/RES/1386 (XIV) (Nov. 20, 1959) [hereinafter 1959 Declaration].

¹²⁷ *Id.* (*emphasis added*).

¹²⁸ See Angela Penrose & Mie Takaki, *Children’s Rights in Emergencies and Disasters*, 367 THE LANCET 698 (2006), available at [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(06\)68272-X/full text#article_upsell](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(06)68272-X/full text#article_upsell).

¹²⁹ *Id.*

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Many provisions of the Convention on the Rights of the Child directly relate to the trafficking, enslavement, and illegal adoptions of children, such as that witnessed after Haiti's earthquake. At a foundational level, the Convention's Preamble recognizes the critical importance of children being raised in a family environment:

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.¹³⁰

Of course, the Convention was not the first international treaty to recognize the family as the fundamental group of society. This enduring principle in international human rights law was first established in 1948 in Article 16(3) of the Universal Declaration of Human Rights: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."¹³¹

Recognizing that family is the foundational social unit in society, the Convention goes to great lengths to limit the circumstances under which children may be separated from their legal parents. For example, Article 7 of the Convention requires that children be registered at birth, and entitles them to be cared for by their parents. Similarly, Article 8 of the Convention entitles children to preserve their identities "including nationality, name and family relations." When a child must be "temporarily or permanently deprived of his or her family environment" the child is "entitled to

¹³⁰ CRC, *supra* note 123, at Preamble.

¹³¹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III), art. 16(3) (Dec. 10, 1948). Haiti endorsed the declaration on August 26, 1953.

special protection and assistance provided by the State.”¹³² At all times that children are not residing with their parents, the best interests of the child will be paramount and due regard will be given to “the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural, and linguistic background.”¹³³

In addition to the fundamental right of children to live with their parents under the near global authority of the Convention, other provisions of the treaty are implicated explicitly and specifically in the attempts by some to further victimize children in the wake of Haiti’s earthquake. For example, Article 35 of the treaty requires States Parties to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, sale of or traffic in children for any purpose or in any form.”¹³⁴ Even under circumstances, such as those of the Baptist missionaries, where more honorable intentions may have been involved, Articles 9 and 10 of the Convention make clear that the illegal transfer and adoption of children are prohibited, and Article 11 requires States Parties to “take measures to combat the illicit transfer and non-return of children abroad.”¹³⁵

The Convention recognizes that both domestic and international adoptions may at times be necessary, thus, accordingly, Article 21 addresses legal adoptions, making clear that “improper financial gain” should not occur and, critically, that adoptions out of a child’s home country may occur only when “the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin.”¹³⁶

International adoption procedures were subsequently outlined in detail in the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption.¹³⁷ However, Haiti is

¹³² CRC, *supra* note 123, at art. 20.

¹³³ *Id.* at arts. 20 and 21.

¹³⁴ *Id.* art. 35.

¹³⁵ *Id.* at arts. 9-11.

¹³⁶ *Id.* art. 21.

¹³⁷ Convention on Protection of Children and Cooperation in Respect of

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not a party to the Hague Adoption Convention,¹³⁸ and so those procedures do not apply here. Nonetheless, Haiti's own unique domestic adoption laws would have applied to all adoptions following the earthquake except during the period when the government granted exemptions.¹³⁹

The Convention provides further protection to Haiti's children under the circumstances discussed here because it recognizes the child's right to be free from economic exploitation as well as to be protected from work that is hazardous or harmful to the child's health or "physical, mental, spiritual, moral or social development."¹⁴⁰ Moreover, it places significant obligations on the States Parties, requiring them to protect children "from all forms of sexual exploitation and sexual abuse,"¹⁴¹ and to "take all appropriate legislative, administrative, social and educational measures to protect" children from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse."¹⁴² When children are victimized, the government must "take all appropriate measures to promote physical and psychological recovery and social reintegration" of the child.¹⁴³

In light of the comprehensive provisions embodied in the Convention and Haiti's state party status, there is no question that it was appropriate for the Haitian government to take a strong stand against the attempts of the Baptist missionaries to remove Haitian children, regardless of whether the children were intended for foreign

Inter-Country Adoption, HAGUE CONFERENCE ON PRIVATE INT'L LAW (May 29, 1993), <http://www.hcch.net/upload/conventions/txt33en.pdf>.

¹³⁸ *Id.*

¹³⁹ See Intercountry Adoption: Haiti, UNITED STATES DEPARTMENT OF STATE, <http://adoption.state.gov/> (follow "Country Information" hyperlink, then follow "Haiti" hyperlink) (last visited May 2, 2011) [hereinafter Intercountry Adoption: Haiti].

¹⁴⁰ CRC, *supra* note 123, art. 32.

¹⁴¹ *Id.* art. 34.

¹⁴² *Id.* art. 19.

¹⁴³ *Id.* art. 39.

adoptions or exploitation even more nefarious. The more pressing issue is why Haiti has not taken a more aggressive stance against the sale and trafficking of its children.

*B. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*¹⁴⁴

Because of the incessant worldwide phenomena of trafficking in children, especially for the purposes of sexual exploitation and adoption,¹⁴⁵ the United Nations General Assembly adopted the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography on May 25, 2000.¹⁴⁶ The Optional Protocol came into force on January 18, 2002,¹⁴⁷ and today there are 141 states parties and 21 signatories.¹⁴⁸ Haiti signed the treaty on August 15, 2002, but has failed to ratify it.¹⁴⁹ Being a signatory indicates intent to refrain from activities that would defeat the purpose of the

¹⁴⁴ Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, Annex II, U.N. Doc. A/RES/54/263 (May 25, 2000) [hereinafter *Optional Protocol*].

¹⁴⁵ See generally Silvia Scarpa, *Child Trafficking: International Instruments to Protect the Most Vulnerable Victims*, 44 FAM. CT. REV. 429 (2006). An estimated one million children are forced into the multi-billion dollar sex industry each year where they are routinely raped and exploited. *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, UNICEF, http://www.unicef.org/crc/index_30204.html [hereinafter *UNICEF Optional Protocol*].

¹⁴⁶ *Optional Protocol*, *supra* note 144.

¹⁴⁷ *Id.* 101 instruments of ratification of the Protocol on the Sale of Children were delivered to the Secretariat of the United Nations. *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ See Archive of Status of Treaties, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, UNITED NATIONS TREATY COLLECTION, (follow “Databases”, then follow “Status of Treaties” hyperlink, follow “Chapter IV: Human Rights” hyperlink, then “*Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*”), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

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treaty.¹⁵⁰

Although the Convention requires governments to protect children from sexual exploitation and abuse and to take the steps necessary to ensure that they are not abducted, sold, or trafficked,¹⁵¹ some believed that an additional protocol was necessary to provide detailed requirements to combat the sexual abuse and commercial exploitation of children.¹⁵² It was also deemed necessary to ensure that children were adequately protected from non-sexual exploitation such as forced labor, illegal adoption, and organ harvesting.¹⁵³ In addition, the Optional Protocol on the Sale of Children defines key terms for offenses such as “sale of children”, “child prostitution”, and “child pornography,”¹⁵⁴ and obligates governments to punish both those offering or delivering children for these purposes, as well as those receiving them.¹⁵⁵

The Optional Protocol also adds another layer of protection (beyond the Convention on the Rights of the Child) to child victims, obligating governments to provide child victims with legal and support services.¹⁵⁶ It requires the best interests of the child to be given a primary consideration in the treatment of the child victim by the criminal justice system¹⁵⁷ and governments to “take all feasible measures” to ensure the “full social reintegration” and “full physical and psychological recovery,”¹⁵⁸ as well as to provide access for child victims to seek damages from those legally responsible for harm to the victims.¹⁵⁹

¹⁵⁰ See generally, Curtis A. Bradley, *Unratified Treaties, Domestic Politics, and the U.S. Constitution*, 48 HARV. INT’L L.J. 307 (2007).

¹⁵¹ CRC, *supra* note 123, at arts. 34 and 35.

¹⁵² UNICEF Optional Protocol, *supra* note 145.

¹⁵³ *Id.*

¹⁵⁴ Optional Protocol, *supra* note 144, art. 2.

¹⁵⁵ *Id.* art. 3.

¹⁵⁶ *Id.* art. 8.

¹⁵⁷ *Id.* art. 8.3.

¹⁵⁸ *Id.* art. 9.3.

¹⁵⁹ *Id.* art. 9.4.

It is assumed that the reason that Haiti does not ratify the Optional Protocol is the prevalence of restavek children in society. Without a doubt, the restavek system is an insidious practice in Haitian society and the earthquake appears to have worsened the circumstances of restavek children even further. However, there is no real hope of ending the trafficking and enslavement of hundreds of thousands of children if the Haitian government is unable or unwilling to take a firm stand against the exploitative practice. Similarly, Haiti must also take a stronger stance against the trafficking of children across its border, especially in light of the numerous additional relevant international treaties to which Haiti is a party, which also compel the ratification of the Optional Protocol.

C. Slavery and Child Labor Treaties

Throughout the 20th century, a series of treaties have been adopted to combat trafficking in humans. In light of Haiti's history as a nation of descendants of freed slaves, it is not surprising that Haiti is a party to most of these treaties. Many of these treaties, at least in theory, provide legal protections for child victims of trafficking, slavery, and sexual exploitation, such as that witnessed after the 2010 earthquake.

For example, the 1949 Convention on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others was ratified by Haiti on August 26, 1953.¹⁶⁰ It consolidated four other treaties and obligates States parties to punish "any person who, to gratify the passions of another, procures, entices or leads away another person for purposes of prostitution," or "exploits the prostitution of another person, even with the consent of that person."¹⁶¹ The treaty is significant under the circumstances in Haiti today because it establishes that offenses under the treaty are extraditable and can be punished by the home state of the

¹⁶⁰ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, July 25, 1951, 96 U.N.T.S. 271, http://treaties.un.org/doc/Treaties/1951/07/19510725%2010-37%20PM/Ch_VII_11_a_bp.pdf.

¹⁶¹ *Id.* art. 1.

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offender.¹⁶² Thus, even though Haiti's judicial system is barely functioning, the international community can provide support to Haiti by prosecuting foreigners in their home countries who traffic Haitian children.

Haiti is also party to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery (Slavery Convention).¹⁶³

Article 1, paragraph (d) of the Slavery Convention refers to:

Any institution or practice whereby a child or young person under the age of eighteen 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.¹⁶⁴

This provision was included in the treaty because of the increasing practice of "sham adoptions" used to traffic children, but the language is broad enough to cover a much wider range of practices. Indeed, the Slavery Convention can be relied on to prosecute anyone using restaveks or other domestic slaves or unpaid servants. It can also be used to prosecute traffickers whether for the purpose of sexual exploitation, child labor, or exploitative adoptions.¹⁶⁵

International Labour Organization (ILO) Convention No. 29

¹⁶² *Id.* art. 9.

¹⁶³ Archive of Status of Treaties, *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, UNITED NATIONS TREATY COLLECTION, (follow "Databases", then follow "Status of Treaties" hyperlink, then follow "Chapter XVIII: Penal Matters" hyperlink, then follow "*Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*"), http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=UNTSOnline&mtdsg_no=XVIII~4&chapter=18&Temp=mtdsg3&lang=en.

¹⁶⁴ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Apr. 30, 1957, 266 U.N.T.S. 3, <http://www2.ohchr.org/english/law/pdf/slaverytrade.pdf>.

¹⁶⁵ Report of the Special Rapporteur, *supra* note 9, ¶ 22.

(1930) on Forced or Compulsory Labour¹⁶⁶ and ILO Convention No. 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour¹⁶⁷ also provide protections to restaveks, child slaves, and other child trafficking victims. Haiti is a party to both.¹⁶⁸ ILO Convention No. 29 makes the extraction of forced labor punishable as a criminal offense,¹⁶⁹ while Article 3(d) of ILO Convention 182 defines “the worst forms of child labour” as including “work which, by its nature of the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”¹⁷⁰ There can be no question that this description applies to the vast majority of the child victims of trafficking and the restavek system in Haiti, providing them with further protections.

Additional protections are found in ILO Convention 138 (1973), which calls for the establishment of a minimum age for employment.¹⁷¹ Following the ratification of ILO Convention 138, Haiti did, in fact, establish the minimum work age for children as fourteen years of age,¹⁷² and it is illegal to have a child work and not receive paid compensation if the child is fifteen years of age or older.¹⁷³ This law has caused many families to evict restaveks when they turn fifteen years of age and, unable to return to their legal

¹⁶⁶ Int'l Labor Org. [ILO], *Convention concerning Forced or Compulsory Labor*, ILO C29 (May 1, 1932), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105> [hereinafter ILO C29].

¹⁶⁷ Int'l Labor Org. [ILO], *Worst Forms of Child Labour Convention*, ILO C182 (Nov. 19, 2000), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182> [hereinafter ILO C182].

¹⁶⁸ Haiti ratified C29 on March 4, 1958 and C182 on July 19, 2007. *Ratification Information: Haiti*, INT'L LABOR ORG., <http://www.ilo.org/ilolex/english/index.htm>.

¹⁶⁹ ILO C29, *supra* note 166, art. 25

¹⁷⁰ ILO C182, *supra* note 167, art. 3(d).

¹⁷¹ Int'l Labor Org. [ILO], *Convention Concerning Minimum Age for Admission to Employment*, ILO C138 (June 19, 1976), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>.

¹⁷² Report of the Special Rapporteur, *supra* note 9, ¶ 46.

¹⁷³ *Id.*

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families, the former restaveks become homeless and become vulnerable to further trafficking and enslavement, which compounds the problem.¹⁷⁴

III. Looking Forward

Although Haiti is party to a variety of international treaties that provide a framework for protecting the country's children and for prosecuting those who would exploit them, there can be no doubt that much more needs to be done. Even before the devastating earthquake that struck on January 12, 2010, Haiti struggled to provide even the most minimal protections to nearly half of its population. Indeed, many legal protections do not exist beyond the words of the treaties to which Haiti is a party.

At the same time, Haiti's constitution has a mechanism that integrates ratified treaties into Haiti's domestic law, so that at least in the abstract, these values become norms to which Haitian society can aspire. Although Haiti has ratified numerous treaties already, additional treaties should be ratified to ensure that children have the fullest protection possible, at least within the international legal framework that Haiti has already begun to assemble.

For example, Haiti has signed, but still not ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. To leave no doubt that Haiti is fully committed to eliminating the sale and sexual exploitation of children, the Haitian government should ratify that treaty immediately as a show of strength to the traffickers who are dealing in thousands of Haitian children. Other treaties Haiti should become party to include the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, as well as the Hague Convention on Intercountry

¹⁷⁴ Report of the Special Rapporteur, *supra* note 9, ¶ 68.

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SAVING HAITI'S CHILDREN

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Adoption.

As Haiti takes a stand publicly in the international arena in support of these international laws to protect children and advance human rights, even in the face of the country's recent devastation and challenges, the international community should support Haiti by providing aid for social programs that will help implement these values. Haiti must join with its international partners to commit itself to the protection of its most vulnerable children. It must decide once and for all to eliminate the restavek system and economic orphanages. Awareness about child trafficking must be raised. Special hotlines and services should be set up to report potential abuses. Safe places should be expanded and multiplied to provide children shelter and age-appropriate activities to keep them off the streets, protected from exploitative elements.

Reviving the Haitian judiciary should be made a high priority in the reconstruction of the nation so that the rule of law can govern Haitian society actually and permanently – not just in an abstract commitment to the international treaties that Haiti has ratified. Finally, the judiciary should receive special training so that they become knowledgeable about the crimes against children and appropriate ways to interact with child victims so that they are not further traumatized by participation in legal proceedings. It is not until Haiti's protection of children exists beyond the four corners of the treaties it joins and until it develops a strong legal system committed to protect children, that the country will finally be able to save Haiti's children.