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الدورة الثانية عشرة  
البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية  
والسياسية والاقتصادية والاجتماعية والثقافية،  
بما في ذلك الحق في التنمية

تقرير المقررة الخاصة المعنية بأشكال الرق المعاصرة،  
بما في ذلك أسبابه وعواقبه، غولنارا شاهينيان

إضافة\*\*

البعثة إلى هايتي

\* تأخر تقديم هذه الوثيقة. فقد قُدِّم هذا التقرير بعد انتهاء الموعد المحدد لتقديمه وذلك بالنظر إلى قصر الفترة الفاصلة بين بعثة المقررة الخاصة والموعد النهائي المحدد لتقديم تقريرها.

\*\* يُعمَّم موجز التقرير بجميع اللغات الرسمية. أما التقرير نفسه الوارد في مرفق الموجز فيعمم باللغة التي قُدِّم بها وباللغة الفرنسية فقط

## موجز

قامت المقررة الخاصة المعنية بأشكال الرق المعاصرة، بما في ذلك أسبابه وعواقبه، غولنارا شاهينيان، ببعثة رسمية إلى هاييتي في الفترة من ١ إلى ١٠ حزيران/يونيه ٢٠٠٩ وفقاً لولايتها الواردة في قرار مجلس حقوق الإنسان ١٤/٦ وبناءً على دعوة من حكومة هاييتي. وقد تمثل هدفها الرئيسي في إجراء حوار مع الحكومة بغية الوقوف على التحديات المواجهة في معالجة حالة حقوق الإنسان للأطفال الذين يعملون خدماً في المنازل (الرستافيك)، ومناقشة الاستجابات الراهنة إزاء هذه الحالة، وصياغة توصيات محددة في هذا الصدد.

وأطفال الرستافيك هم أطفال تُرسلهم أسرهم للعيش مع أسر ميسورة على أمل تزويدهم بالمأكل والملبس والمأوى والتعليم المدرسي والرعاية الصحية مقابل عملهم في المنازل. وقد التقت المقررة الخاصة بممثلين عن الحكومة ومنظمات المجتمع المدني والأمم المتحدة وغيرها من المنظمات الدولية المعنية بمعالجة مسألة أطفال الرستافيك. ويُقدَّر عدد هؤلاء الأطفال بما يتراوح بين ١٥٠.٠٠٠ و ٥٠٠.٠٠٠ طفل.

وتعتبر المقررة الخاصة أن نظام الرستافيك يمثل شكلاً من أشكال الرق المعاصرة، وذلك بالاستناد إلى الاتفاقية التكميلية المتعلقة بإبطال الرق وتجارة الرقيق والأعراف والممارسات الشبيهة بالرق. وتشعر المقررة الخاصة بالقلق لأن أطفال الرستافيك يعانون من استغلال اقتصادي لأهم لا يحصلون على أجور مقابل ما يقومون به من عمل ولأنهم يؤدون أعمالاً تحول دون حصولهم على التعليم وتضر بنمائهم وصحتهم. وبالإضافة إلى ذلك، تبين للمقررة الخاصة أن الكثير من هؤلاء الأطفال يعانون من نقص في التغذية وأهم لا يحصلون على الغذاء إلا في المدارس، كما أنهم لا يحصلون إلا على القليل من الرعاية الصحية أو لا يحصلون على أية رعاية صحية على الإطلاق. فضلاً عن ذلك، تشعر المقررة الخاصة بالقلق بالغ لأن أطفال الرستافيك يخضعون لأشكال مختلفة من العنف البدني أو النفسي، والإيذاء وسوء المعاملة، والإهمال والمعاملة المهملة وسوء المعاملة أو الاستغلال، بما في ذلك الإيذاء الجنسي أثناء وجودهم في كنف الأسر المضيفة، ولأن هذه الإساءات منتشرة على نطاق واسع كما يُذكر.

وقد نظرت المقررة الخاصة في أسباب هذه الظاهرة وعواقبها، بالإضافة إلى رصد ردود الحكومة والمجتمع الدولي. واستناداً إلى الاستنتاجات التي خلصت إليها المقررة الخاصة، فقد قدمت التوصيات التالية في جملة توصيات أخرى: فهي تحث الحكومة على إنشاء لجنة معنية بالأطفال تهتم اهتماماً خاصاً بالفئات الضعيفة من الأطفال، وبرصد وضمان توفر الحماية لحقوق الأطفال. وتوصي المقررة الخاصة كذلك بأن تقوم الحكومة، في مجال الوقاية، بوضع برامج وقاية استباقية للقضاء على ممارسة الرستافيك. وتعتقد المقررة الخاصة أنه ينبغي لحكومة هاييتي أن تتخذ تدابير عاجلة لجعل تشريعاتها المحلية متوافقة مع الصكوك القانونية الدولية التي صدقت عليها هاييتي؛ وأن تصدق على العهد الدولي الخاص بالحقوق الاقتصادية والاجتماعية والثقافية، والاتفاقية الدولية لحماية حقوق جميع العمال المهاجرين وأفراد أسرهم، وأن تعتمد تدابير فورية وتدابير طويلة الأجل لمعالجة أوجه القصور التي تشوب إقامة العدل في هذا البلد.

وتعتقد المقررة الخاصة أنه ينبغي للمنظمات الدولية أن تقوم، في جملة تدابير أخرى، بإدراج مسألة حماية الفئات الضعيفة من الأطفال وأسرهم في صلب جميع برامج التنمية وأمن الإنسان.

## Annex

**REPORT BY THE SPECIAL RAPPORTEUR ON CONTEMPORARY  
FORMS OF SLAVERY, INCLUDING ITS CAUSES AND  
CONSEQUENCES, GULNARA SHAHINIAN, ON HER MISSION  
TO HAITI**

**(1-10 June 2009)**

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## I. INTRODUCTION

1. In accordance with her mandate contained in Human Rights Council resolution 6/14, and at the invitation of the Government of Haiti, the Special Rapporteur on contemporary forms of slavery, its causes and consequences, Gulnara Shahinian, conducted an official mission to Haiti from 1 to 10 June 2009. Her main objective was to engage in dialogue with the Government with a view to identifying the challenges in addressing the human rights situation of child domestic workers or *restavèk* children, to discuss current responses in addressing the situation and to elaborate concrete recommendations in this regard.

2. During her mission, the Special Rapporteur had meetings in Port-au-Prince with officials of the Ministry for the Status of Women and Women's Rights, the Ministry of Social Affairs and Labour, the Institute for Social Welfare and Research (*Institut du bien-être social et de la recherche* or IBESR) and the Brigade for the Protection of Minors (BPM). She furthermore held meetings with members of the United Nations country team and non-governmental organizations (NGOs). She visited projects and education centres in Port-au-Prince and travelled to Les Cayes and Ouanaminthe, where she met with local authorities, civil society and United Nations representatives. The Special Rapporteur regrets that she was not able to meet with a series of Ministers and Government officials as requested, and hopes that this will not impact on the follow-up to the recommendations in her report.

3. The Special Rapporteur expresses her thanks for the open and frank conversations she was able to have with all of her interlocutors, which enabled her to gain a clearer picture of the situation of *restavèk* children in Haiti and the causes and consequences of this practice, which she considers a contemporary form of slavery that affects the human rights of children, as well as affecting society as a whole. In particular, she would like to thank the United Nations Stabilization Mission in Haiti (MINUSTAH), specifically the human rights component and child protection section, for the logistical support provided throughout the duration of the mission. She is grateful for the information provided to her by representatives of civil society and would like to thank victims and in particular children who were ready to share their experiences with her.

4. The Special Rapporteur shared her preliminary findings with the Government at the conclusion of the visit. She underscores her desire and intention to continue her dialogue with the Government.

## II. GENERAL CONTEXT

### A. Background

5. Haiti shares the island of Hispaniola with the Dominican Republic. Columbus reached the island in 1492 and the part of the island that is now Haiti became a French colony. It was one of the richest colonies in the Caribbean, although its wealth was in large part due to the massive importation and the labour of African slaves.

6. In 1791, an insurrection erupted among the slave population, resulting in a declaration of independence in 1801. Haiti became the world's first independent black republic in 1804.

7. Throughout the nineteenth and twentieth centuries, Haiti was plagued by violence and internal power struggles, which has left the country struggling to fight poverty and violence in its capital, Port-au-Prince.

8. The population of Haiti is estimated at 9.6 million, with 65 per cent of the population living in rural areas.<sup>1</sup> Women comprise 52 per cent of the Haitian population while 40 per cent of the population is under the age of 15. According to a 2003 estimate by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the adult literacy rate is 54.8 per cent. Only 54 per cent of the population has access to clean drinking water and almost 5.5 million Haitians, particularly in rural areas and in provincial cities, have no access to electricity.

9. More than half the Haitian population earns its livelihood from agriculture. However, despite the wide variety of crops that grow in Haiti's various microclimates, agricultural production has stagnated since the 1980s. The hardship of agricultural work combined with the difficulties of earning a living from the land has created a massive influx of migrants to urban areas.

10. At the start of April 2008, a steep rise in the price of essential foodstuffs led to a series of demonstrations against the high cost of living that left several people dead and hundreds of others wounded. In addition, the absence of a Government for several months added pressure in terms of governance and, between September and November 2008, four hurricanes hit the island, leaving 800 dead and destroying 60 per cent of the harvest.

## **B. International legal framework**

11. Haiti is a party to the following international human rights instruments: International Covenant on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child; International Convention on the Elimination of All Forms of Racial Discrimination.

12. Moreover, Haiti is party to the following instruments which expressly prohibit slavery: the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956; International Labour Organization (ILO) Convention No. 29 (1930) on Forced or Compulsory Labour; and ILO Convention No. 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

13. At the regional level, Haiti is a member of the Organization of American States and has ratified the American Convention on Human Rights (Pact of San Jose), as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para).

14. Several treaty bodies have issued observations and recommendations to Haiti on the implementation of their obligations under the above treaties, most recently the Committee on the Elimination of Discrimination against Women.<sup>2</sup> With regard to the situation of child domestic workers (*restavèks*), the Committee on the Rights of the Child has expressed its deep concern at the situation and formulated a series of recommendations pertaining to their situation and different measures to put an end to the *restavèk* practice. Amongst its recommendations were legislative changes, preventive measures through the development of a comprehensive strategy, proper investigations and sanctioning of perpetrators, as well as the provision of services for their physical and psychological recovery and social reintegration, including access to education.<sup>3</sup>

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<sup>1</sup> HRI/CORE/1/Add.113, para. 6.

<sup>2</sup> CEDAW/C/HTI/CO/7.

<sup>3</sup> CRC/C/15/Add.202, paras. 56 and 57.

### C. Child domestic servitude in Haiti

15. Haiti is the poorest country in the Americas and ranks 146th out of 177 countries in the Human Development Index for 2007-2008 of the United Nations Development Programme (UNDP). According to the same source, while about 78 per cent of the population lives below the poverty line, earning less than US\$ 2 a day, women have on average four children.<sup>4</sup>

16. Many families, mainly in rural areas, faced with a dire economic situation give custody of their children to more affluent families, in urban centres, in the hope that they will provide food, clothing, shelter, schooling and health care in return for the child's domestic labour.<sup>5</sup> These children are traditionally called in creole *restavèk* children. The placement of a *restavèk* does not traditionally entail any financial transaction between families and the work is not meant to be rewarded monetarily. In Haiti, a child is generally expected to perform some domestic tasks, however in the case of *restavèks* the host family clearly expects the child to work much harder than the children of the house.<sup>6</sup> In several discussions throughout the visit, it was mentioned to the Special Rapporteur that the placement of a *restavèk* child implies that the host family will provide for the well-being of the child.

17. The Special Rapporteur met with various local civil society organizations and international organizations working on the issue of *restavèks*. Throughout her mission, the Special Rapporteur received varying reports of the number of children currently working as *restavèks*. Interlocutors confirmed that it is difficult to know the exact number of *restavèk* children in Haiti. The estimated number is between 150,000 and 500,000 children. According to reports from international NGOs, the estimated number of children working in domestic service is 300,000. The Special Rapporteur is aware that it can be difficult to estimate the number of *restavèk* children as not all children living outside their parents' home are considered *restavèk* in popular culture.

18. The stakeholders who met with the Special Rapporteur believed that although there are no specific studies on the phenomenon, the number of *restavèks* have probably increased in recent years due to the worsening of the economic situation in the country.

19. The Special Rapporteur has come to the conclusion that two new tendencies have been observed in recent years, when it comes to the *restavèk* issue. Firstly, the direct placement of children from one family to another has been supplemented by the existence of recruiters, who for financial gain recruit children from rural areas to work in urban families as child slaves in domestic work and outside the home in markets. The Special Rapporteur was told that in many cases the recruiters or *koutchye* are paid by the host family to find a *restavèk* and are seen in rural areas where they recruit the children as benefactors. The Special Rapporteur noted that this new tendency has caused many stakeholders to qualify the phenomenon as trafficking, since parents now send their children to strangers, while before they were sent to relatives, potentially resulting in complete loss of contact with the child.

20. Secondly, the Special Rapporteur found that the majority of the demand has shifted from wealthy to poor families. Because of demographic changes, rich families no longer need *restavèks* as they have

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<sup>4</sup> United Nations Development Programme, *Human Development Report 2007-2008. Fighting Climate Change: Human Solidarity in a Divided World*, (New York 2007).

<sup>5</sup> "Restavèk No More: Eliminating Child Slavery in Haiti", National Coalition for Haitian Rights, 2002.

<sup>6</sup> Glenn R. Smucker and Gerald F. Murray, "The uses of children: a study of trafficking in Haitian children", USAID/Haiti Mission, December 2004, p. 26.

paid workers to carry out their domestic chores.<sup>7</sup> However, those same domestic workers now have *restavèk* to take care of their children and their home while they are at work.<sup>8</sup> Often, these families do not have the means to send their own children to school, much less the *restavèk*.

21. The Special Rapporteur concluded that these tendencies certainly contribute to the exploitative nature of the *restavèk* system.

### III. CONTEMPORARY FORMS OF SLAVERY

22. There are many important international legal instruments that classify conditions of *restavèk* children as slavery. Article 1 paragraph (d) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery clearly refers to “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” - situations in which the *restavèk* phenomenon can be considered a modern form of slavery. Two elements of the definition are particularly important to stress with regard to *restavèk* children. First, the act of giving a child to another family other than the biological family, and second the exploitation of the child or his or her labour. As the Convention demonstrates, the condition of “reward” is not critical in this process. As noted by David Weissbrodt in his review of existing treaty and customary law covering all the traditional and contemporary slavery-related practices and relevant monitoring mechanisms, this provision was implemented with the particular practice of “sham adoptions” in mind, but in fact covers a wider range of practices involving the exploitation of children, including the practice of “children being sent to the households of relatives or others who are expected by the child’s parents to give special attention to their education but in reality exploit the child’s labour” - this mostly affects those employed as live-in domestics.<sup>9</sup> Furthermore, article 3 (d) of ILO Convention 182 clearly refers to conditions in which *restavèk* children are living, stipulating that “... the term the worst forms of child labour comprises: ... (d) 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.” Article 32 of the Convention on the Rights of the Child calls for States parties to protect children from economic exploitation and from performing any work which is hazardous or interferes with the child’s education or is harmful to the child’s health or physical, mental, spiritual, moral or social development. Based on information received during the visit, children were not given away by families in order to receive a reward, but families were aware of the fact their child will be paying with his or her work to receive schooling, food, and a place to live.

#### A. Child labour/economic exploitation

23. There is every indication that the largest single sector utilizing child labour in Haiti is unpaid domestic service.<sup>10</sup> Child domestic labour in general is common in Haiti. It is a significant social reality in Haitian society, as approximately one child in ten works as a domestic servant, which means that almost everyone is concerned in this practice.

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<sup>7</sup> Ibid., pp. 28 to 30.

<sup>8</sup> “Rapport de la mission de recherche sur la situation de la traite et le trafic de personnes en Haïti”, Secrétariat général de l’Organisation des États Américains, September 2006, p. 17.

<sup>9</sup> HR/PUB/02/4, para. 129 and footnote 222.

<sup>10</sup> See footnote 6 above, p. 39.

24. During her visit of a shelter and her meetings with *restavèk* children, the Special Rapporteur found that most of the *restavèks* come from poor rural families, who send their children to host families in urban centres in the hope that they will provide food, schooling and health care in return for the child's domestic labour. People met by the Special Rapporteur recounted that children can be as young as five years old when they are sent to become *restavèks* and work as domestic servants.

25. The Special Rapporteur met with *restavèk* children and noted with concern that all of them were being attributed a heavy workload by their host family, which is often inconsistent with their fullest physical and mental development.<sup>11</sup> They were working long hours, often waking up at dawn to perform all their chores. The Special Rapporteur found that the tasks attributed to them in the households were varied and ranged from washing the family clothes, ironing, cooking, cleaning, looking after younger children, fetching and carrying water from the well, burning household rubbish, emptying bedpans, running errands and buying food on market day.

26. The Special Rapporteur also noted the various reports of trafficking of Haitian children to the Dominican Republic for the purpose of exploitation as domestic servants. The Special Rapporteur was informed that recruiters were paid by families across the border to bring *restavèks* to the Dominican Republic. While noting the seriousness of these allegations, the Special Rapporteur was not able to verify this information.

27. The Special Rapporteur is concerned that the *restavèk* children are economically exploited as they are not being compensated for their work and are performing tasks that not only interfere with their education but are also harmful for their development and health.<sup>12</sup> Based on her findings, the Special Rapporteur is deeply concerned over the highly exploitative nature of the *restavèk* system and considers it to be a contemporary form of slavery as stipulated in article 1 (d) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.<sup>13</sup>

## **B. Access to economic, social and cultural rights**

28. As previously stated, in return for the child's free labour, receiving households are expected to fulfil the child's basic rights such as access to food, clothing, shelter and health care in addition to providing an education. Indeed, the Special Rapporteur notes that education is a key factor in the *restavèk* system. During her meetings, she was repeatedly informed that access to education is a dominant motivation for placing rural children in urban households as *restavèks*. However, she also found that, although there is social pressure to send servant children to school, in reality the *restavèk* children have little access to education.

29. Schools catering to the needs of *restavèk* children are available mainly in urban centres.<sup>14</sup> The Special Rapporteur visited such schools and met with the teachers and other stakeholders. She found that all of these schools were run by civil society organizations and highly commends their efforts to provide the best education possible given the circumstances. However, she also notes that these schools were held

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<sup>11</sup> See ILO Convention 138 (1973) concerning the Minimum Age for Admission to Employment, art. 1.

<sup>12</sup> See Convention on the Rights of the Child, art. 32.

<sup>13</sup> "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."

<sup>14</sup> See footnote 6 above, p. 26.



in the afternoon or evening to allow the children to finish their tasks. She was informed that the children were often not allowed to attend school if they did not finish their tasks on time and that most of them had no time in the evenings to do homework. The Special Rapporteur came to the conclusion that due to the reduced hours and the learning conditions, the quality of education given to *restavèk* children is inferior to that provided to other children.

30. The Special Rapporteur found that access to education in rural areas is minimal. She was told that in Haiti education is not free. More than 85 per cent of schools are private and, even the 15 per cent of State-run schools ask for a fee. In addition, parents have to pay for books and school uniforms. The Special Rapporteur shares the concern of various stakeholders in noting that given the economic situation of most families, this constitutes a major obstacle to universal primary education.

31. The Special Rapporteur further noted that in most rural areas school facilities and health services are scarce. Based on the various interviews conducted, she understands that the absence of services is a key motivation for impoverished parents from rural areas to send their children to families in urban centres, in the hope that they will have access to education and health care.

32. The Special Rapporteur met with *restavèk* children and found that many were malnourished and given food only at school, with little or no access to health care.

33. The Special Rapporteur encourages the authorities to take all necessary steps to ensure that all children enjoy access to education and other economic and social rights in accordance with the provisions of the Convention on the Rights of the Child, both as a preventive measure, as well as with respect to addressing the consequences of the *restavèk* practice.

### **C. Civil rights and freedoms**

#### **Birth registration**

34. The Special Rapporteur was told that the births of children in rural areas are often not registered, as registration offices are far away and difficult to access. She is concerned that this situation facilitates the movement of children without private or public control and makes reinsertion of children into their families more difficult. Moreover, undocumented children become easy targets for traffickers.

#### **Protection from all forms of violence**

35. The Special Rapporteur was told during her various interviews that a growing number of *restavèk* children are severely mistreated. Often, the head of the household subjects the child to physical or psychological ill-treatment and physical, psychological and sexual abuses were reported to the Special Rapporteur by stakeholders. A reinsertion project conducted by the International Organization for Migration (IOM) between March 2005 and March 2008, worked with 371 *restavèk* children and found that 70 per cent declared that they had suffered from some form of abuse. Among those, 10 to 15 per cent admitted to having been sexually abused. The Special Rapporteur notes that due to the difficulties of conducting interviews with children and the sensitive nature of sexual abuse, it is likely that the number of victims of abuse in this project is higher than these figures suggest.

36. It is estimated that 80 per cent of *restavèks* are girls. The Special Rapporteur was informed that young boys of the host family often have their first sexual experiences with these girls, who de facto become sexual outlets for the men or boys of the household.

37. The Special Rapporteur was told, by representatives of the Government and civil society, that cases of beatings, burns and sexual abuse were routinely reported. She further found that many *restavèk*

suffer from serious trauma induced by mistreatment: inferiority complex, fear of men, fear of adults and incontinence among other things.

38. The Special Rapporteur is deeply concerned that *restavèk* children are subjected to various forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of their host family<sup>15</sup> and that these abuses are reported as being widespread.

#### **D. Children deprived of a family environment**

39. The Special Rapporteur noted with concern that when taking on a child servant, the host family becomes de facto the guardian of the child and assumes responsibility by default for rearing the child.<sup>16</sup> The Special Rapporteur was informed that families in the countryside often give their children to strangers who look as though they have higher social status, in the hope of providing a better life for them. The Special Rapporteur found that in many cases, children were given away so early that they did not remember their area of origin or their parents' names. According to IOM, and based on their reinsertion project, in 95 per cent of cases, the biological families have lost track of their children and are not aware of the abuses their children are exposed to.

40. The Special Rapporteur noted with concern that, in the case of *restavèk* children, the transfer of parental authority and guardianship is made in the absence of any type of oversight or regulatory framework, which would ensure that the best interests of the child were guaranteed.

41. The Special Rapporteur conducted interviews with stakeholders involved in reinsertion projects and with *restavèk* children and noted that the great majority of children wanted to go back to their family of origin.

42. Finally, during her visit to a shelter and in meetings with civil society, the Special Rapporteur found that many street children are former *restavèks* who have run away. They are reduced to living on the street, as they often do not have the economic means to go back to their area of origin or do not remember their parents.

### **IV. RESPONSES TO CONTEMPORARY FORMS OF SLAVERY**

#### **A. Measures taken by national authorities**

43. Haiti has ratified a wide range of international human rights instruments, including specific treaties on the elimination of slavery and the protection of the rights of the child. The Constitution of Haiti provides that the rights enshrined in ratified international human rights instruments are part of domestic legislation. It further provides that ratified international treaties and agreements abrogate any laws in conflict with them.<sup>17</sup> The Special Rapporteur notes with interest that the ratification of the International Covenant on Economic, Social and Cultural Rights was on the legislative agenda for 2009, however at the time of her visit no progress was reported.

44. Following the recommendation of the Committee on the Rights of the Child<sup>18</sup> and in response to the broad campaign waged by national and international organizations, the Haitian Parliament adopted, in

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<sup>15</sup> See Convention on the Rights of the Child, art. 19.

<sup>16</sup> See footnote 6 above, p. 115.

<sup>17</sup> Article 276-2.

<sup>18</sup> CRC/C/15/Add.202, para. 57.

2003, a law on the prohibition and elimination of all forms of abuse, discrimination, maltreatment or inhumane treatment of children.<sup>19</sup> The Special Rapporteur was informed by Government representatives that the specific goal of this law was to stop legitimate child domestic labour or the *restavèk* system. Consequently, article 1 of the 2003 law annulled chapter 9 of the Labour Code, which previously regulated children in domestic service. The Special Rapporteur shares the concerns raised by many stakeholders to the effect that this amendment created a gap in the law as it did not create mechanisms to address the phenomenon of *restavèk* children or provide for sanctions for offenders.

45. The Special Rapporteur was further informed that the law recognizes that “a child may be entrusted to a host family within the context of a relationship based on aid or solidarity”. It further specifies that “the child must enjoy the same privileges and rights as the family’s other children and be treated as a member of the family”. The Special Rapporteur notes that while domestic labour by *restavèk* children is illegal, the framework of a “relationship based on aid or solidarity” is not defined. While she notes that this provision reflects an attempt to protect the cultural aspect of the issue, the Special Rapporteur expresses serious concerns at the vagueness of the concept of “aid and solidarity” and believes that this article allows for the perpetuation of the *restavèk* practice.

46. The Special Rapporteur was informed that following the ratification of ILO Conventions 138 (1973) concerning the Minimum Age for Admission to Employment and 182, the minimum age for work in Haiti is 14 years and that mandatory education ends at 12 years. Children are allowed to work three hours per day, outside of school hours. Given that education is not free, the Special Rapporteur expresses serious concerns at the failure to take into account the importance of education in eliminating child labour.<sup>20</sup>

47. A law prohibiting corporal punishment was adopted in 2001.<sup>21</sup> The Special Rapporteur was informed that it is on the basis of this law and of the Criminal Code that the Brigade for the Protection of Minors (BPM), a police corps dealing specifically with children, and the Institute for Social Welfare and Research (*Institut du bien-être social et de la recherche* or IBESR), the social services, mostly intervene in cases of *restavèk* children.

48. The Special Rapporteur found that the BPM intervenes in cases of sexual or physical assault against *restavèks*. Its approach is based on law enforcement and social services and BPM officers are trained in social work. They also carry out sensitization activities of the population as most child abuse cases are reported by neighbours. The mandate of the BPM also focuses on children in conflict with the law. The Special Rapporteur expresses concern over the fact that due to a lack of means, child victims are held in the same room as children in conflict with the law while in custody of the BPM. She was, however, impressed at the level of commitment and dedication of the BPM. The Government might consider deploying more BPM officers in rural areas; out of its 75 officers, almost half are in Port-au-Prince.

49. The Special Rapporteur was informed that once in custody of the BPM, a *restavèk* child is then transferred to the care of IBESR. The mandate of IBESR is to protect vulnerable children. IBESR does not have a reinsertion programme for vulnerable children. Given its lack of housing for vulnerable children, the institute places children brought to it by the BPM in shelters run by charities. The Special Rapporteur notes that they do not have a transit house for the children. The Special Rapporteur was told

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<sup>19</sup> “Loi relative à l’interdiction et à l’élimination de toutes les formes d’abus, de violences, de mauvais traitements ou traitements inhumains contre les enfants” of 5 June 2003.

<sup>20</sup> ILO Convention No. 182 (1999), concerning the Prohibition and Immediate Action for the Elimination of the Worst forms of Child Labour, art. 7.

<sup>21</sup> “Loi interdisant les châtements corporels contre les enfants”, *Le Moniteur*, No. 80 of 1 October 2001.

by IBESR that the children often stayed in the vicinity of the institute while waiting for a shelter or for reinsertion into their families. The Special Rapporteur shares the deep concern of many stakeholders at the lack of financial and human resources given to IBESR taking into account the central role that it plays in the protection of children.

50. The Special Rapporteur was informed that the BPM refers all cases of abuse against children to the Prosecutor's office. However, she was concerned at reports of the lack of independence of judges and at the weakness of the judicial system in general. She noted that the population has lost faith in the justice system. Former victims told the Special Rapporteur that they did not report crimes because they expected the judges to be corrupt or feared retribution by the family of the perpetrator. The Special Rapporteur would like to encourage the Haitian Government to continue the reform of the justice system and notes the adoption of the three bills at the core of the reform, namely those on the reform of the judiciary regulations, the reform of the Supreme Council of Justice, and the reform of the Judicial Training College.<sup>22</sup>

51. The Special Rapporteur took note of the various programmes aimed at vulnerable families and tackling poverty, macroeconomic opportunities, food security, social protection and gender equality.<sup>23</sup> She notes, however, that no specific intervention scheme has been outlined for children, in general and vulnerable children in particular. Based on her meetings with Government representatives, the Special Rapporteur would however like to commend the Government on developing programmes to assist vulnerable families after the hurricane, fund microcredit in rural areas, encourage development of local agriculture, and sensitize the population to sending their children to school.

52. The Special Rapporteur was also informed that a bill to combat human trafficking was adopted by the Council of Ministers but has not yet been submitted to Parliament. The Special Rapporteur encourages the speedy adoption of the law, and, in line with the recommendation of the Committee on the Elimination of Discrimination against Women (CEDAW), to ensure that the new law allows prosecution and punishment of perpetrators, effective protection of victims and adequate redress, in line with the Palermo Protocol and article 6 of CEDAW.<sup>24</sup>

### **B. Programmes undertaken by the international community**

53. In 2004, the Security Council adopted resolution 1529 (2004) on the deployment of 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, whose authority was later transferred to the United Nations Stabilization Mission in Haiti (MINUSTAH).<sup>25</sup> 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.

54. The Special Rapporteur met with various components of MINUSTAH in addition to other United Nations actors and international agencies. She noted that given the unstable security situation and the latest natural disasters, the focus of the international community has mainly been on strengthening the rule of law and humanitarian relief.

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<sup>22</sup> See A/HRC/11/5, paras. 16 to 32.

<sup>23</sup> Outlined in the implementation report of the Poverty Reduction Strategy "*Premier rapport annuel de mise en oeuvre du DSNCR (2007-2008)*".

<sup>24</sup> CEDAW/C/HTI//CO/7, para. 27.

<sup>25</sup> See Security Council resolution 1542 (2004).

55. Understanding that these are emergency measures to address the situation in the country, the Special Rapporteur recommends that that these measures should be addressed in a holistic way and all hard security measures should be equally balanced with human security protection measures, including human rights protection, poverty alleviation, education, health and employment programmes.

56. She also noted that the child protection working group and the protection working group are the main United Nations forums to address the issue of *restavèks*.

57. The Special Rapporteur was also informed that the donor community is funding various civil society projects focusing on vulnerable children and *restavèks*. She noted that IOM is working directly on a reinsertion programme and that the United Nations Children's Fund (UNICEF) is working jointly with the BPM and IBESR.

58. The Special Rapporteur noted with concern that the various actors did not agree on the categorization of the *restavèk* issue: some were working under the umbrella of trafficking, others slavery and others adoption.

59. Finally the Special Rapporteur noted that the issue of vulnerable children did not seem to be mainstreamed in the three pillars of the 2009-2011 United Nations Development Assistance Framework for Haiti, namely democratic governance, sustainable human development and management of environment and natural risks.

## V. CONCLUSIONS AND RECOMMENDATIONS

60. **The Special Rapporteur on Contemporary Forms of Slavery, its causes and consequences, acknowledges the efforts of the Government in addressing the issue of *restavèk* children, a practice that constitutes a modern form of slavery, but believes that many challenges remain. Taking into consideration all the difficulties faced by the Government of Haiti, the Special Rapporteur congratulates the Government on all its achievements and its commitment to addressing human rights challenges, in particular those related to children, as they constitute almost half of the population. She strongly believes that the security and protection of rights of each individual in the State enhances the security within the entire nation, making it stronger and equal. In that spirit, she reiterates her desire to continue her dialogue with the Government and, specifically, to cooperate in the protection of vulnerable persons from contemporary forms of slavery in Haiti. In this spirit, she draws the following conclusions and makes the following recommendations.**

61. **The Special Rapporteur believes that the following issues should be addressed as a matter of urgency and priority:**

(a) **The limited application in national law and practice of the international human rights obligation of Haiti, irrespective of the fact that Haiti has ratified many international human rights instruments on the elimination of slavery and the protection of the rights of the child, in particular the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery, ILO Convention No. 29 (1930) on Forced or Compulsory Labour, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and the United Nations Convention against Transnational Organized Crime;**

(b) **The fragmented nature and limited institutional and financial capacities of State agencies dealing with vulnerable children;**

- (c) The limited number of programmes addressing the issue of child labour;
- (d) The limited access to free schooling for children from poor rural communities, as well as the absence of a comprehensive health-care and social protection system;
- (e) The absence of comprehensive legislation protecting the rights of the child, in particular vulnerable groups of children, including *restavèks*;
- (f) The weakness of the judicial system in ensuring prosecution, fair trial and adequate punishment of perpetrators, thus preventing access to justice and the right to an effective remedy;
- (g) Insufficient attention to the issue, limited cooperation and fragmented programmes at the level of international agencies;
- (h) Sporadic and insufficient efforts by the Government to cooperate with and support civil society.

62. In addition, the Special Rapporteur believes that the human security of each individual child is of utmost importance to the sustainable development of a society based on human rights and a precondition for sustainable peace. The Government, in cooperation with the international community, should attribute the highest priority to policies and programmes centred on the protection of human rights, in particular the rights of children.

63. She would urge the Government to establish a national commission on children, with special attention paid to vulnerable children, to monitor and ensure protection of their rights. She encourages the Government to conduct an extensive institutional assessment of the agencies dealing with children, especially vulnerable children, to determine where there are gaps and needs, and the necessary professional knowledge, financial requirements and technical equipment necessary for effective functioning.

64. She would also urge the Government to ensure the disarmament of individuals in Haiti to reduce violence and restore human security and social cohesion.

65. The Special Rapporteur recommends that in the area of prevention, the Government develop proactive complex prevention programmes to eliminate the practice of *restavèk* by:

- (a) Launching a countrywide sensitization campaign, including in border and rural areas, on the dangers for and impact on children and child labour in general of the practice of *restavèk*;
- (b) Facilitating access to and monitoring the registration of children, particularly at birth, throughout the country;
- (c) Providing alternative income-generating programmes for poor families in rural communities to develop agriculture and market their goods through provision of small start-up grants, establishment of revolving funds for small loans, and training programmes, especially for female-headed households;
- (d) Ensuring compulsory and free primary education for children, and increasing access to educational facilities in rural areas, as well as to free health care;
- (e) Training government officials dealing with vulnerable children, including in Government ministries, local Government agencies, the *Brigade de protection des mineurs*, labour inspectors, teachers, doctors and all other relevant professional groups and stakeholders;
- (f) Developing specialist national referral systems and coordinated protection mechanisms for vulnerable children and ensuring their effective functioning;

(g) Ensuring decentralization of Government policies and programmes to relieve existing economic and social patterns.

66. The Special Rapporteur believes that the Government of Haiti should take urgent measures to bring local legislation in conformity with international legal instruments ratified by Haiti. In addition, the Government should ratify 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. Furthermore, the Special Rapporteur considers it necessary to develop and implement national legislation in order to address in a comprehensive way all issues related to specific groups of vulnerable children and mechanisms of implementation. In addition, the Special Rapporteur recommends the adoption of a law on the fight against trafficking in humans and the development of strong mechanisms on child adoption. She also urges the adoption of immediate and long-term measures to address shortcomings in the administration of justice in the country.

67. In order to ensure the safe return and effective reintegration of children into their families and communities, she recommends the Government to:

(a) Develop strong cooperation between State entities (the police brigades dealing with minors, Government departments dealing with children), social workers and NGOs to effectively address these challenges and protect the rights of the child;

(b) Establish special hotlines and services, such as temporary places of safety for *restavèk* children;

(c) Ensure safe return and monitor reintegration and reinsertion into family, schools and community, and provide necessary assistance packages ensuring sustainable protection;

(d) Encourage access to justice and develop special legal protection mechanisms and measures (in conformity with international human rights standards) for the participation of children in judicial proceedings;

(e) Develop special training and sensitization for the judiciary on the rights of the child.

68. The Special Rapporteur believes that international organizations should:

(a) Prioritize the protection of vulnerable children and their families in rural and urban areas in their programmes and assist the Government and NGOs in the implementation of their programmes;

(b) Mainstream protection of vulnerable children and their families in all development and human security programmes;

(c) In cooperation with the Government and NGOs, conduct a study on the nature and incidence of child labour and, based on its findings, develop programmes to address the issue;

(d) Establish special task forces to develop and monitor the effectiveness of special programmes to address the issue.

69. The Special Rapporteur notes the zero-tolerance policy of MINUSTAH with regard to sexual exploitation and abuse, as well as related measures described in the Secretary-General's report to the Security Council of March 2009 (S/2009/129, paras. 71 and 72), as well as training activities to reduce the risk of future incidents of sexual exploitation and abuse. The Special Rapporteur also notes the Secretariat's special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13), as well as its overall policy developed with regard to human

trafficking and United Nations peacekeeping, which highlights the fact that “The trafficking of human beings is a serious crime and a severe form of exploitation and abuse which perpetuates insecurity, vulnerability and grave human rights abuses suffered by post-conflict societies ... In the peacekeeping context, human trafficking is simultaneously a gross violation of individual human rights and an assault on the rule of law.”<sup>26</sup> The policy document outlines programmes in three areas: awareness and training; discipline, accountability and community relations; and support to anti-trafficking activities. It specifies as the two key goals to “establish a system to prevent, monitor, minimize, investigate and punish the involvement of UN peacekeeping personnel in activities that support human trafficking and other sexual exploitation and abuse in support of the Secretary-General’s ‘zero tolerance’ stance”; and “... to have available the tools to establish or to support national efforts ... to prevent and counter human trafficking in post conflict environments, particularly in support of the rule of law”.<sup>27</sup>

70. The Special Rapporteur encourages MINUSTAH to take all necessary steps to ensure full implementation of relevant policies, awareness-raising and training programmes to prevent incidents, and full transparency and accountability for violations, including ensuring effective remedies for victims. A zero-tolerance policy prohibiting the use of child labour by national and international staff should be developed and implemented. Moreover, the Special Rapporteur emphasizes that particular attention should be paid to the practice of *restavèk*, and in this regard, recommends that specific training modules on the issues of trafficking in human beings, combating child labour and children’s rights be developed. These modules should be designed and implemented with the advice of anti-trafficking and children’s rights experts from intergovernmental and non-governmental organizations. A special mechanism should be established to evaluate and analyse progress on combating trafficking and child labour.

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<sup>26</sup> “Human Trafficking and United Nations Peacekeeping”, DPKO Policy Paper, March 2004, paras. 3 and 4.

<sup>27</sup> Ibid., paras. 17 (i) and (ii).