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Children's Legal Rights in Haiti

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Executive Summary

The areas of principle concern for children's rights in Haiti are in labour rights, family law and juvenile criminal justice. A significant number of children are without the benefit of *any* child protection system, and only 1/2 of children (or so) are reached by the education system (thus an imperfect 'point of entry' at which to provide assistance). Child protection efforts will need to reach street children and domestic workers, colloquially known as *restaveks*, in order to be effective.

In the labour rights regime, the minimum working age depends on the type of industry in which a child is working. Children can begin apprenticeships at age 14, and the minimum working age for children in industrial, agricultural or commercial enterprises is 15 years old. A 2003 law addressing the situation of *restaveks* repealed earlier provisions that set the minimum age for such work at age 12. However, this law did not impose a new minimum working age, and so there is no legal minimum age for *restaveks*. Children are often trafficked by their parents or others into work as *restaveks*.

The family law regime views the family as a source of protection for children, and the state does not intervene in family situations on behalf of children.

Adoption laws are severely restrictive of who may adopt, but do not have strict criteria about the circumstances of the child being put up for adoption. Most Haitians are disqualified to become adoptive parents. Adoptions laws that allow for almost any child to be put up for adoption has lead to concerns that children are being trafficked into international adoptions. Haiti's rate of international adoptions per capita is higher than the global average.

There are also serious concerns about the status of children born outside marriage, since they may not have the same legal status as children born within marriages. Children also do not have the right to know the identity of their fathers, resulting in disentitlement to child support and inheritance in certain circumstances.

In the arena of juvenile criminal justice, a complicated legal regime in place exists only on paper. Children do not have access to the juvenile courts established in law, often spend long periods of time in pre-trial detention, and are detained in the same facilities, including the same cells as adult offenders. The circumstances of Haitian prisons are deplorable, and children, who require special attention, receive none.

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I. Traditional Customary Laws

Customary laws in Haiti reflect social norms and beliefs that continue to influence formal law practiced by the Justices of the Peace, who deal with more than 80% of the cases in the country.² However, in general, customary laws are not codified and recognized in the formal legal system, thus lacking in “safeguards to ensure the protection of the rights of women, the poor, or other marginalized groups (ILAC 2005)”³.

Customary laws continue to play a significant role in the Haitian legal system in such areas, among others, as property law, the treatment of women, marriage, the penal system, and business transactions. Generally, in the context of the social, political, and economic crises in which the Haitian population is situated, informal laws are an expression of self-regulation in the face of the failure of the formal systems of governance.

1.1 Current Duality of Systems of Law

Currently, there is a dual society in Haiti that reflects the dual system of law: One system is urban with a hierarchical social structure regulated by Napoleonic law, mainly Catholic, and with French as the official language.

The other Haitian system is rural, comprising two-thirds of the country’s population, and has a segmented social structure and an autonomous economy based on extended family kinship ties. Within this system, Creole is the popular language and Voodoo is the popular religion. Eighty percent of the rural population live in extreme poverty.⁴ Within these rural communities, every *lakou*, or kinship group, constitutes a miniature polity with its own customs that regulate intragroup and intergroup interactions.⁵

1.2 Historical Context

Historically, Haiti’s legal system was an “amalgamation of three principal social forms: (1) a tribal social form that existed prior to the arrival of Christopher Columbus in 1492, (2) slavery and (3) colonialism”⁶.

Before the arrival of African slaves and French colonialism, the tribal people of Tainos had a distinct conception of justice that emphasized the community and valued inclusion. This

² Jamal Benomar, “Rule of Law Technical Assistance in Haiti: Lessons Learned” (Paper presented to the World Bank Conference “Empowerment, Security and Opportunity Through Law and Justice”, Saint Petersburg, Russia, 8-12 July 2001) [unpublished] at 11. [Benomar]

³ Carribean Country Management Unit, “Haiti: Social Resilience and State Fragility in Haiti, A Country Social Analysis” (Report No. 36039-HT, 27 April 2006) at 53.

⁴ Benomar, *supra* note 2 at 11.

⁵ Louis Naud Pierre, “La juridicisation de la vie sociopolitique et économique en Haïti : Enjeux et limites” (2007) *E.J.A. Droit et société* 65, 123 at 310. [Pierre]

⁶ Mildred Aristide, “A historical and dignity-centred perspective on Haiti’s struggle for justice” (2006) 1(2) *International Journal of African Renaissance Studies* 265 at 269. [Aristide]

conception of justice reflected their hospitality and generosity, as well as the active participation of their chiefs or *caciques*, and their valorisation of the environment.⁷

European colonialism in the 16th century brought with it an influx of millions of African slaves in order to “fill the Haiti labour void”⁸. The African justice system is more “community-based” and “human-centred” in which the dialogue between victims and offenders is central “in defining the harm as well as the repair, and where conflict provides an opportunity to examine and bring about changes to the society’s social, institutional and economic structures”⁹. As well, there was no separation of powers (i.e. judicial independence) in the traditional African societies.¹⁰

During colonialism, these alternative systems were in constant tension with the French colonial civil law system. The newly centralised government in the urban capital was met with much resistance. The Rural Code codified the rural-urban divide by establishing the “minority class of merchants, government officials and military officers who lived in the cities”¹¹ as the legally established ruling class.

Together, the beliefs and values of these three cultural groups contributed to the collective definition of justice in Haiti.

1.3 In what areas do customary laws govern?

1.3.1 Land Tenure System

The duality of legal systems also applies to land, the most significant tangible asset of the rural household economy. While the two systems are interactive, in general, peasant land transactions reflect scepticism of agents of the state, including the judiciary.

Informal tenure arrangements are usually self-regulatory among peasant farmers. “In the customary system, people make land available in response to family obligations, special ties to fictive kin (godparenthood), and various forms of clientship (e.g., labour relations, personal loans, banking of favors)” which are not regulated by law.¹²

“In the Haitian context of legal pluralism, formal title is not necessarily more secure than informal arrangements, although it is demonstrably more expensive and considerably less flexible than the informal system”¹³.

⁷ *Ibid.* at 272.

⁸ *Ibid.*

⁹ *Ibid.* at 275.

¹⁰ *Ibid.* at 278.

¹¹ *Ibid.* at 269.

¹² Glenn R. Smuker, T. Anderson White, & Michael Bannister, “Land Tenure and the Adoption of Agricultural Technology in Haiti” (CAPRI Working Paper No. 6, CGIAR System-wide Program on Property Rights and Collective Action October 2000) at 11. [Smuker]

¹³ *Ibid.* at 12.

In both formal and customary law, all recognized children have equal rights to the inheritance of the parental land holdings. Furthermore, all members of the family are potentially entitled to access to land, but in practice, only family members who stay on the land acquire the rights to the land.¹⁴

1.3.2 Treatment of Women

Common law union and polygamy are the most common conjugal patterns in Haiti. However, religious/legal marriage confers prestige on the peasant couple. This prestige is especially important for women, for which there is a social hierarchy. Distinctions are made between spouse, house women, and garden women.¹⁵

Customary norms also dictate that women who marry outside of the kinship group lose their entitlement to their share of the family's land to which a child is usually entitled.¹⁶

Haitian tradition continues to value the virginity of a woman as the determinant of her honour, despite the prevalence of prostitutions in urban areas. Thus, rape is often used by military gangs as a political tool to humiliate and silence dissenters.¹⁷

1.3.3 Marriage

Customary marriages are more flexible than civil marriages. In contrast to civil marriages that limit obligations to one's immediate household, customary marriages extends relations of mutual support across kinship lines to include neighbours, co-worshippers and friends. The support networks created through customary marriages allow for the mutualization of risk and responsibility, which can be fundamental to survival in the context of dire poverty.¹⁸

1.3.4 Informal Penal System

In the penal domain, the principal subject areas covered by customary laws are blows and injuries, domestic theft, and rape. The informal criminal procedure reflects the formal criminal justice system from requiring evidence in order to secure a conviction, to holding a trial process before condemnation as guilty. Penalties range from simply establishing fault to reparations. For example, a man convicted of rape or seduction may be compelled to live with the woman he has violated; a thief might be required to return the object that he had stolen.¹⁹

1.3.5 Business Transactions

Bureaucratic corruption in civil administration encourages small-scale merchants, artisans and farmers to resort to informal practices (such as verbal contracts and other forms of contracts), governed by mutual trust and by the threat of reprisals in the case of breaches of contract, to conduct their business affairs.²⁰

¹⁴ *Ibid.*

¹⁵ Marie-José N'Zengou-Tayo, "‘Fanm Se Poto Mitan’" Haitian Woman, the Pillar of Society" (Summer 1998) 59 *Feminist Review* 118 at 122. [N'Zengou-Tayo]

¹⁶ Smuker, *supra* note 12 at 12.

¹⁷ N'Zengou-Tayo, *supra* note 15 at 129.

¹⁸ Pierre, *supra* note 5 at 131 [translated by author].

¹⁹ *Ibid.* at 134 [translated by author].

²⁰ *Ibid.* at 133 [translated by author].

Further Readings

Jacquelin Montalvo-Despeignes, *Le Droit Informel Haïtien: Approche socio-ethnographique* (Paris: Presses Universitaires de France, 1976).

Benomar's World Bank Conference article indicates that a report on customary law in Haiti by the UNDP in collaboration with the University of Haiti was compiled, but we were unable to find it.

Furthermore, the "Haiti Rule of Law Project" Quarterly Report No. 9 of the National Center for State Courts of USAID reported that a report on "Customary Justice" was reviewed and will be submitted to USAID in the next reporting period.²¹

Acknowledgment

Finally, we would like to thank Shana Hofstetter, Draper Scholar of William & Mary Law School, for her help in directing us to useful resources.

1.4 Follow-Up Questions

1. Are there compendia of customary laws available?
2. How are the new judicial education and vetting programs addressing the application of customary laws by Justices of the Peace?

²¹ U.S., National Center for State Courts, "Haiti Rule of Law Project" (Quarterly Report No.9, USAID, Task Order No. DFD-I-02-04-00176-00, 1 October to 31 December 2007).

II. Children's Legal Rights

Children's rights are set out through the Haitian hierarchy of laws, which places the Constitution foremost, and in which international law trumps national statutes if and where they conflict.

2.1 The Constitution of 1987

There are three Articles in Haiti's Constitution that specifically pertain to children.

Article 35.6 provides:

The minimum age for gainful employment is set by law. Special laws govern the work of minors and servants.

Article 260:

[The State] must also protect all families regardless of whether they are constituted within the bonds of marriage. It must endeavor to aid and assist mothers, children and the aged.

Article 261:

The law ensures protection for all children. Any child is entitled to love, affection, understanding and moral and physical care from its father and mother.²²

This Constitution provides other significant human rights guarantees, including economic and social rights guarantees of particular consequence for children with HIV/AIDS:

Article 19:

The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Right of Man.

Article 22:

The State recognizes the right of every citizen to decent housing, education, food and social security.

Article 23:

The State has the obligation to ensure for all citizens in all territorial divisions appropriate means to ensure protection, maintenance and restoration of their health by establishing hospitals, health centers and dispensaries.²³

2.2 International Conventions, Protocols, and Commitments

²² Haiti *Constitution of 1987*, accessible at <http://www.haiti.org/constitu/constabl.htm> (Accessed November 28, 2008). [Constitution]

²³ *Ibid.*

Haiti is a monist system, wherein international conventions have pre-eminent authority. Under Haiti's Constitution of 1987, treaties and international agreements rank just below Constitution in the hierarchy of laws. Thus, when laws conflict, international treaties prevail over domestic laws.²⁴ The rights and norms recognized in the Convention on the Rights of the Child (CRC) are thus, in theory, binding, and could have immediate application in the Haitian legal system, subject to the provisions of its Constitution. ("By ratifying the Convention on the Rights of the Child [CRC] in June of 1995, Haiti effectively gave it superior legal authority to all domestic legislation, with the exception of the Constitution.")²⁵

2.2.1 *United Nations Convention on the Rights of the Child and Optional Protocols*

Haiti ratified the UN Convention on the Rights of the Child on July 8, 1995.²⁶ Although Parliament attempted to strengthen the protection offered by the CRC by drafting a Children's Code in 1998, it appears that "the lack of a functioning Parliament has prevented it from making further progress in the legislative process"²⁷

Haiti signed both the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC-OP-AC) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC) on August 15 2002. However, Haiti has not ratified either of these documents.²⁸

2.2.2 *ILO Convention and Recommendation concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*

Haiti ratified ILO Convention 182 on July 19, 2007.²⁹

2.2.3 *Paris Commitments and Paris Principles*

Haiti attended the February 2007 ministerial meeting in Paris, at which Haiti and 58 other states endorsed the Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups, and the Paris Principles and guidelines on children associated with armed forces or armed groups.³⁰ The two documents reaffirmed international standards and operational principles for protecting child soldiers.³¹

²⁴ *Ibid.*, Article 276.

²⁵ Yale Law School, 'Representing Children Worldwide', December 2005. Available at: <http://www.law.yale.edu/RCW/rcw/jurisdictions/caribbean/haiti/frontpage.htm> (Accessed November 28, 2008). [Representing Children Worldwide]

²⁶ United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties as of 09 June 2004*. Available at: <http://www.unhchr.ch/pdf/report.pdf> (Accessed November 28, 2008). [UNHCHR, *Status of Ratifications*]

²⁷ Representing Children Worldwide, *supra* note 25.

²⁸ UNHCHR, *Status of Ratifications*, *supra* note 26.

²⁹ ILO, *Ratification Status of Convention 182*. Available at: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C182> (Accessed November 28, 2008).

³⁰ UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, *Paris Principles: The Principles and Guidelines on Children Associated with Armed Conflict and Armed*

2.3 National Legislation

This section provides some general information on national legislation relating to children. Three following sections on Family Law - State Custody, Juvenile Criminal Justice and Child Labour laws, and these issues are not addressed at length here.

2.3.1 Juvenile Justice Laws

There are three special laws governing juvenile justice in Haiti, the *Act of 16 July 1952*³², the *Act of 7 September 1961*³³ and the *Decree of 20 November 1961*.³⁴

The *Act of 16 July 1952* instituted in each civil court “une section de la jeunesse délinquante” which assumes jurisdiction over acts committed by minors under 16 years of age.

The *Act of 7 September 1961* (“*La Loi du 7 septembre 1961 sur le mineur en face de la loi pénale et des tribunaux spéciaux pour enfants*”) and the *Decree of 20 November 1961* established a juvenile court within the jurisdiction of each appeal court to try the crimes of all children between the ages of 13 and 16. A minor offence incurs a reprimand and/or a fine. A serious offence is punishable by an educational measure or in some cases a criminal sentence. Children below the age of 13 are exempt from criminal liability.

The juvenile justice system is described at greater length below in section VI.

2.3.2 Family law

Despite the following laws, in its report to the CRC Committee in 2001, Haiti admitted that “The State does not intervene directly in family life in order to safeguard the best interests of the child, owing partly to the opposition of families themselves and partly to the State’s own lack of resources.”³⁵

Children born outside marriage

The *Décret du 27 janvier 1959 mettant fin à toute inégalité entre la condition juridique des enfants naturels et celle des enfants légitimes* removed some of the legal disabilities facing children born outside marriages.³⁶ Prior to the enactment of this law, “enfants naturels” did not possess rights

Groups, February, 2007. Available at: <http://www.un.org/children/conflict/english/parisprinciples.html> (Accessed November 28, 2008).

³¹ Coalition to Stop the Use of Child Soldiers, “Child Soldiers Global Report 2008: Haiti.” Available at: <http://www.childsoldiersglobalreport.org/content/haiti> (Accessed November 28, 2008).

³² Published in *Moniteur* N° 66 du 31 juillet 1952. Published in Ertha Pascal-Trouillot, *Code de lois usuelles mis à jour Haiti* (Port-au-Prince, Haiti: Editions H. Deschamps, 1989). [*Code des Lois Usuelles*]

³³ Published in *Moniteur* N° 94 du 2 octobre 1961. Published in *Code des Lois Usuelles*, supra note 32.

³⁴ Published in *Moniteur* N° 108 du 20 novembre 1961. Published in *Code des Lois Usuelles*, supra note 32.

³⁵ Committee on the Rights of the Child, 32d Sess., *Concluding Observations: Haiti*, U.N. Doc.

CRC/C/15/Add.202 (2003), at para. 55. Available at:

<http://www1.umn.edu/humanrts/crc/haiti2003.html> (Accessed November 28, 2008). [CRC Concluding Observations]

³⁶ Published in *Moniteur* N° 19 du jeudi 29 janvier 1959. Published in *Code des Lois Usuelles*, supra note 32.

equal to those of “legitimate” children (enfants légitimes) or “legitimized” children (“enfants naturels reconnus”).³⁷ This decree eradicated the legally inferior position of “enfants naturels.” Article 1 provides:

La filiation naturelle engendre les mêmes droits et les mêmes obligations que ceux dérivant de la filiation légitime. [“enfants naturels” possess the same rights and are under the same duties as legitimate offspring.]

It appears that “enfants naturels” under this decree are not the same as children born out of wedlock. Under Haiti's *Civil Code*, children born out of wedlock (“adulterine children”) continue to possess differentiated legal status from those born in wedlock. Haiti reported to the Committee on the Rights of the Child in 2001 that children born out of wedlock “may not, for example, inherit from the father and do not bear the father's name. As a result they have no right to financial support and therefore no right to maintenance.”³⁸

Child Support

The *Décret du 14 septembre 1983 instituant et réglementant la procédure de recouvrement de créances d'aliment et celle relative à la garde des enfants*³⁹ sets out the procedure for child support payments. Article 1 provides that judges have the competence to award child support payments. Imprisonment may be imposed on parents who do not comply with court orders to pay child support.

Registration of children in orphanages

The *Décret du 3 décembre 1973 régissant le statut des mineurs dans les maisons d'enfants*⁴⁰ governs the legal status of children living in children's homes/orphanages (“les maisons d'enfants”). It gives the Magistrate (“magistrat communal”) of the IBESR (social welfare agency responsible for children, see section 4.3.2) the legal responsibility for making provisional declarations of birth for abandoned children.

Adoption

The *Décret du 4 avril 1974 sur l'adoption renforçant les droits de l'adopté dans sa nouvelle famille*⁴¹ governs adoption in Haiti. Article 1 provides that adoption is a solemn act which creates a legal relationship between a person and a child who is not that person's biological child analogous to the bond resulting from paternity and filiation. Article 2 stipulates that only

³⁷ These legal disabilities were ingrained in the legal system, including in article 33 of Code of Civil Procedure, 1943, which expressly prohibited judges from examining any claims to prove the paternity of any “enfant naturel” or to establish such a child's right to property. A. Rigal, *Code de Procédure Civile avec des derniers modifications*, Imprimerie A. P. Barthelemy, Port-au-Prince, 1943. Available online at the Digital Library of the Caribbean: <http://www.dloc.com/?m=hd24J&i=62682> (Accessed November 23, 2008).

³⁸ CRC Concluding Observations, *supra* note 35 at para. 44.

³⁹ Available at: http://www.crijhaiti.com/fr/?page=pension_alimentaire (Accessed November 28, 2008).

⁴⁰ Published in *Moniteur* N° 2 du lundi 7 janvier 1974. Published in *Code des Lois Usuelles*, *supra* note 32.

⁴¹ Published in *Moniteur* N° 32 du 18 avril 1974. Accessible at : www.crijhaiti.com/fr/?page=adoption (Accessed November 28, 2008).

persons over the age of 35 may adopt. Persons who at the time of adoption have either decendants or birth children may not adopt. Article 13 provides that adoption furnishes the same rights and obligations as natural and legitimate filiation. A more extensive discussion of adoption is in section 4.1.3.

2.3.3 Corporal Punishment

The *Law of 24 September 2001* prohibits the use of corporal punishment in families and schools.⁴² In its Concluding Observations on Haiti's implementation of the CRC as of June 2003, the Committee on the Rights of the Child notes: "The Committee welcomes the Act prohibiting corporal punishment (August 2001) within the family and at schools, but remains concerned at the persistent practice of corporal punishment by parents or teachers and the ill-treatment of child domestics (restaveks). The Committee is further deeply concerned about instances of ill-treatment of street children by law enforcement officers."⁴³

2.3.4 Standing in Civil Courts

We were unable to determine whether children have legal standing in the civil courts of Haiti.⁴⁴ The Convention on the Rights of the Child, article 12, states that "the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

In their report to the CRC, Haiti states that "there are a number of administrative procedures that bear witness to the Government's desire to respect children's views. Separation from parents, for example, is never a decision guided purely by the objective interests of the child, but usually occurs with the agreement and consent of the child in particular. The IBESR (national social welfare agency, described below) and the juvenile court take account of children's preferences in this regard."⁴⁵ Neither of these systems are currently implemented.

As will be discussed in the following two sections, the Juvenile courts do not operate outside Port-au-Prince, and the IBESR does not appear to operate effectively.

⁴² Library of Congress, Global Legal Information Network, "Summary: Law of 24 September 2001". Available at: <http://www.glin.gov/view.action?glinID=82531> (Accessed November 28, 2008). The 2001 law "prohibits the inhuman treatment of any nature, including corporal punishment, of children; [provides a] definition of the concept of 'inhuman treatment'; [delineates] obligation of persons and institutions involved in the care of children to help them in their development and safety; establishment of a code of conduct with list of sanctions in case of indiscipline and of violation of the regulations; role of the "Ministere de l'Education Nationale"; intervention of the 'Ministere des Affaires Sociales' ",

⁴³ CRC Concluding Observations, *supra* note 35.

⁴⁴ There is an outdated, unappendixed version of the Code of Civil Procedure available online which could provide some guidance on this point. See : A. Rigal, *Code de Procédure Civile avec des derniers modifications*, Imprimerie A. P. Barthelemy, Port-au-Prince, 1943. Available at the Digital Library of the Carribean: <http://www.dloc.com/?m=hd24j&i=62682> (Accessed November 23, 2008).

⁴⁵ Committee on the Rights of the Child, *Initial reports of States parties due in 1997: Haiti*, Jun. 21, 2002, at para. 12, U.N. Doc. CRC/C/51/Add. 70.

2.3.5 HIV/AIDS

Haiti has not yet enacted any legislation specifically addressing the rights of people living with HIV/AIDS. In recent years, the Haitian parliament has indicated that it intends to pass legislation to guarantee the rights of people living with HIV/AIDS to seek and access health care, to acquire education, to be free from discrimination in employment, and to address the stigma that continues to be attached to the disease.⁴⁶

Haiti's constitution contains an entrenched right to health, which states:
The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Right of Man.⁴⁷

Despite this broad protection of the right to health without discrimination, equitable access to health care for people with HIV/AIDS is guaranteed only by broad policy statements contained in the Haiti's National Health Policy.⁴⁸ The policy is nominally built around the values of "equity, solidarity and social justice"⁴⁹ and includes goals for controlling the transmission of the disease, goals for improving outcomes for people living with HIV/AIDS, and services for people living with HIV/AIDS in the basic package of health care services. However, these policy statements are not currently codified in the laws of Haiti.

Similarly, the National Strategic Policy for the Prevention and Control of STIs and HIV/AIDS in Haiti⁵⁰, a policy plan promulgated by the Haitian Ministry of Public Health and Population, recognizes the need for increased legal capacity to address HIV/AIDS. The policy plan acknowledges the need to enact legislation dealing with increased rights protection for women and children, advancing women's economic position, protecting equal rights to education, housing, and employment for people living with HIV/AIDS, and increasing protection against sexual violence, a major cause of the disease's spread in Haiti. The policy also recognizes the need for developing sensitivity within the legal system, including police officers, judges, and lawyers, to ensure the equitable treatment of people living with HIV/AIDS within the legal system. However, as of now, these legislative objectives remain broadly aspirational and have not been codified in the laws of Haiti.

⁴⁶ "Haiti: Proposed law would be weapon against stigma," and "Gen Espwa – a new hope dawns" IRIN/PlusNews Global HIV/AIDS news and analysis, November, 2007. Available at: <http://www.plusnews.org/Report.aspx?ReportId=75049> (Accessed November 28, 2008).

⁴⁷ Constitution, *supra* note 22, Ch. II.A.

⁴⁸ Haiti, Ministry of Public Health and Population, *Strategic Plan for Health Sector Reform*, March 2004. Available online: http://www.lachealthsys.org/index.php?option=com_docman&task=doc_download&gid=203 (Accessed November 28, 2008).

⁴⁹ *Ibid.*

⁵⁰ Ministry of Public Health and Population, *Plan Strategique National pour la Prevention et le Controle des IST et du VIH/SIDA en Haiti 2002-2006*, March 2002. Available at: www.ilo.org/public/english/protection/trav/aids/laws/haiti1.pdf (Accessed November 28, 2008).

2.3.6 *Children's Code and Other Future Developments*

The idea of a Children's Code "to strengthen the implementation of the Convention" has a long legislative history, with a draft first presented to Parliament in 1998. Further progress on the Code was halted at least to 2005 by the "lack of a functioning Parliament," prior to the return to constitutional governance in 2006.⁵¹

UNICEF supported the development of a *Plan national de protection* by the Government of Haiti, described as "the first effort to harmonize and coordinate all interventions oriented to vulnerable children in Haiti," in an effort to improve their outcomes.⁵² There is also a **draft action plan** (un *plan cadre de prise en charge*), [being] developed by UNICEF in collaboration with the Government of Haiti, civil society and other international organizations, to 'take charge' of orphans and vulnerable children in Haiti, particularly those living with, or whose families have been affected by, HIV/AIDS.⁵³ Neither the text of these legislative frameworks, nor precise information on the status of their drafting and implementation, seems to be publicly available.

2.4 Follow-Up Questions

1. What is the status of UNICEF's two draft action plans?
2. What is the status of the Children's Code?
3. What is the status of the Family Code (which is provided for in the Constitution)?
4. What are the details of the differentiated status for "adulterine children" under the Civil Code? Are there any advocacy campaigns addressing this?

⁵¹The Committee on the Rights of the Child (the Committee) observed in 2003 "that domestic legislation still does not fully reflect the principles and provisions of the Convention" and urged Haiti to "adopt, as a matter of urgency, a comprehensive code on children that will reflect the general principles and provisions of the [CRC]." CRC Concluding Observations, *supra* note 35.

⁵² UNICEF –Haiti. "Comment intervient l'UNICEF". Available at: http://www.unicef.org/haiti/french/protection_8819.htm (Accessed November 1, 2008).

⁵³ UNICEF-Haiti, 'Enfants vulnérables infectés ou affectés par le SIDA.' http://www.unicef.org/haiti/french/protection_8778.htm (Accessed November 1, 2008).

III. Responsible Agencies and Accountability

Though Haitian law has established several governmental agencies to provide social assistance, including for the protection to children, very little of the system is functioning as a result of a lack of resources and political upheaval. Two agencies run by the Ministry of Social Affairs are responsible for aiding parents with their parental responsibilities: The Social Welfare (alternatively, 'well-being') and Research Institute (IBESR) and the Social Welfare Fund.⁵⁴

3.1 IBESR (The Institut de Bien-Etre Social et de Recherche)

In June 2000 the IBESR opened a service called SOS Timoun (SOS Child). This service puts a phone number at the disposal of children who are victim of or witness to violence.⁵⁵

In its Concluding Observations on Haiti's implementation of the CRC as of June 2003, the Committee on the Rights of the Child voiced concern that the IBESR—"a key institution in the implementation of the [CRC]"—is not fully operational (for lack of financial and human resources).⁵⁶

There was particular concern "that the Social Welfare and Research Institute does not carry out a periodic review of placement of all children separated from their parents."⁵⁷

3.2 The Ombudsman's Office (Office du Protecteur du Citoyen)

Children may have recourse to help (e.g. where they experience violence in custody) from a Citizen's Protector.⁵⁸ The Office of Citizen Protection is an ombudsman organization established under the Constitution of 1987 to protect citizens against abuse *by the government*.⁵⁹

⁵⁴ Representing Children Worldwide, *supra* note 25.

⁵⁵ The Panos Institute of the Caribbean, 'Productions: Briefing on Haiti'. Available at: <http://www.panosinst.org/productions/haitibriefings/h-07-e.php> (Accessed November 28, 2008). [Panos Institute]

⁵⁶ CRC Concluding Observations, *supra* note 35.

⁵⁷ *Ibid.* at para. 38.

⁵⁸ Panos Institute, *supra* note 55.

⁵⁹ See Chapter IV 'Protection of Citizens' Constution, *supra* note 22.

Article 207:

An office known as the OFFICE OF CITIZEN PROTECTION is established to protect all individuals against any form of abuse by the Government.

ARTICLE 207-1:

The office is directed by a citizen bearing the title of PROTECTOR OF CITIZENS. He is chosen by consensus of the President of the Republic, the President of the Senate and the President of the House of Deputies. His term is seven (7) years and may not be removed.

ARTICLE 207-2:

In its Concluding Observations on Haiti's implementation of the CRC as of June 2003, the Committee on the Rights of the Child found that this body is not fully operational and that there is no independent monitoring mechanism with a mandate that includes the power to receive and address individual complaints of violations of the rights of the child.⁶⁰

Appeals and complaints to the Ombudsman are unlikely to apply in cases where children's rights are infringed by foster parents or other privately run facilities, but could potentially be a mechanism for recourse where they are harmed in state custody facilities run directly by the government. In its Concluding Observations on Haiti's implementation of the CRC as of June 2003, the Committee on the Rights of the Child voiced concern 'at the high incidence of violence against and abuse of children within the family environment, including sexual abuse and neglect of children, and that insufficient efforts have been made to protect children.'⁶¹

3.3 Police Services: Brigade de protection des mineurs (BPM)

The *Brigade de protection des mineurs* (BPM), a 15-person unit within the Police National d'Haiti specialized in child protection, is currently active in the Département de l'Ouest (which includes Port-au-Prince).

1. The BPM is a focal point in the PNH for all matters in which a minor is involved and receives training by the Government of Haiti, assisted by UNICEF.
2. There are current plans to create BPMs (of 5 officers each) in the other 9 Départements of Haiti.⁶²

3.4 Follow-Up Questions

1. What is the current status of IBESR, and are activities such as "SOS Timoun" still running?
2. Can children, though without standing, access the protection ostensibly afforded by the Ombudsman's Office?
3. What is the current status of the Ombudsman's Office in Haiti? Have any monitoring mechanisms regarding children's rights been instituted since 2003?

His intervention on behalf of any complainant is without charge, whatever the court having jurisdiction might be.

ARTICLE 207-3:

A law sets the conditions and regulations for the operation of the Office of Citizen Protection.

⁶⁰ CRC Concluding Observations, *supra* note 35.

⁶¹ *Ibid.*

⁶² UNICEF-HAITI (Centre de presse), "L'UNICEF sensibilise les policiers haitiens sur la protection des mineurs." Available at: http://www.unicef.org/haiti/french/media_11413.htm (Accessed November 1, 2008).

IV. Child Labour and the *Restaveks*

4.1 The Labour Code

Chapter VIII of the *Labour Code* (Articles 332-340) regulates the labour of minors, establishing, *inter alia*, minimum ages for particular forms of employment. In particular, Article 335 of the *Labour Code* provides that children below the age of 15 may not work in industrial, agricultural or commercial enterprises. Article 73 provides that the minimum age for entry into apprenticeship is 14 years. Chapter IX, which established the minimum age for children working in domestic service, was abolished by the Law of June 5, 2003.⁶³

4.2 The 2003 Law

The newest domestic law addressing the rights of children is *La Loi relative à l'interdiction et à l'élimination de toutes formes d'abus, de violences, de mauvais traitements ou traitements inhumains contre les enfants* enacted on June 5, 2003 [the 2003 law].⁶⁴

This law is directed expressly to address the notorious and burgeoning situation of child domestic workers (*restaveks*). Severe economic hardship drives many households to hand off their children to wealthier families, where ostensibly their domestic labour is traded for food, shelter, and the opportunity to go to school. However, the possibilities of exploitation and abuse in such situations are enormous and have been well-documented. The CRC Committee noted in its 2003 report that “these children, most of them girls, are forced to work long hours under harsh conditions and without any financial gains, and are subjected to ill-treatment and abuse, including sexual abuse.”⁶⁵

4.2.1 Lack of Minimum Age for Domestic Work

Article 1 of this law repealed Chapter IX (Articles 341-356) of Haiti's *Labour Code*. Chapter IX pertained to children's work (“des enfants en service”) and included an Article allowing children to work as domestic employees as of age 12, which was highlighted as a concern by the UN Committee on the Rights of the Child (CRC Committee) in its 2003 Concluding Observations regarding Haiti.⁶⁶ However, this new law does not stipulate a new minimum age for child domestic workers, resulting in a legislative gap.

4.2.2 Soft Standards

Article 2 of the 2003 law on child labour sets out a “soft” provision regarding the status of *restaveks*:

⁶³ Labour Code, available at: http://www.crijhaiti.com/fr/?page=droit_travail (Accessed November 28, 2008).

⁶⁴ Published in Le Moniteur N° 41 du jeudi 5 juin 2003. Accessible at: www.crijhaiti.com/fr/?page=loi_interdiction (Accessed November 28, 2008).

⁶⁵ CRC Concluding Observations, *supra* note 35, at para. 56.

⁶⁶ *Ibid.*, at para. 57.

Un enfant peut être confié à une famille d'accueil dans le cadre d'une relation d'aide et de solidarité. Il doit jouir des mêmes privilèges et des mêmes prérogatives que les autres enfants de cette famille. Il doit être traité comme membre de cette famille.

[A Child may be entrusted to a host family in a relationship of assistance and solidarity, benefiting from the same rights and privileges as the other children in the family. The child should be treated as a member of the host family.]

The effect of this “soft” provision on the welfare of restavek children is dubious.

4.2.3 Prohibition on Trafficking

Article 2 of the 2003 law also prohibits, *inter alia*, the trafficking and use of children for the purposes of sexual exploitation, prostitution, pornography, criminal activities, and the recruitment and use of children in armed conflicts. It is not clear that this provision is effective, as there are no mechanisms established for enforcement in the 2003 Law.

4.3 Follow-Up Questions

1. What is the enforcement regime for labour standards under the Labour Code? In particular, what agency is responsible for enforcement of the minimum working ages, and how effective are their efforts?
2. Is there any enforcement mechanism for the trafficking prohibition?

V. Family Law – Adoption and Custody

5.1 Sources of law governing state custody of children

5.1.1 *The Constitution of 1987*

This area of law is distinctly underdeveloped. The *Constitution of 1987* set out a structure for family law that has not been realized to date. In particular, the Constitution establishes that:

Article 259. The State must protect the family, the fundamental basis of society.

Article 260. The State owes equal protection to all families, whether they be created through marriage or not. It must provide aid and assistance to mothers, to children and to the elderly.

Article 261. The law assures protection to all children. Every child has the right to love, to affection, to understanding and to the moral and material care of his father and mother.

Article 262: A 'Code la Famille' must be drafted to assure the protection and respect of the rights accorded to families and to define procedures for the search for [paternal] affiliation. Courts and other Government agencies charged with the protection of these rights must be accessible free of charge at the level of the smallest territorial division.⁶⁷

5.1.2 *Law No. 9 on Minors, Custodianship, and Emancipation (C. c.H. art. 336 (1931))*

The 1931 law provides for the appointment of a guardian, by joint decision of a family council, for orphaned [and perhaps, separated] children. The council may be convoked at the request of the parents of the minor, his creditors or other interested parties, or be formed by a justice of the peace in the area where the minor is a resident.⁶⁸

Further research on the evolution of this law, or its recent use, was unfruitful, and it may be 'dead letter' law given its origins in 1931 and the parliamentary upheaval / disintegration of local community structures since then.

5.1.3 *Adoption Laws*

The current legislative framework governing adoption in Haiti (domestic or international) dates back to April 4, 1974. As highlighted above, at section 2.3.3, only childless couples over age 35 are legally able to adopt children in Haiti.

UNICEF and the Committee on the Rights of the Child have criticized the 1974 law for:

1. failing to meet the new principles and standards of child protection in international law;
2. being silent on questions relating to the criteria for children's eligibility for adoption, on follow-up of the child in her new family and on failing to create a central agency that would be responsible for the respect of standards and the setting of rules and procedures.

⁶⁷ Constitution, *supra* note 22, Chapter X : articles 259-262.

⁶⁸ Representing Children Worldwide, *supra* note 25.

The current procedures do not allow authorities to verify *le bien fondé* (the good faith or presence of) parental consent, placing children at additional risk for unregulated international adoption and/or child trafficking. UNICEF notes Haiti has one of the highest per capita rates of adoption.

The IBESR assisted by UNICEF and Terre des Hommes (INGO), began a process of legal and regulatory reform concerning adoption in 2007. A new law on adoption, providing procedures for a 'real' control & follow-up at all stages of the adoption process in line with the Hague Adoption Convention of 1993, is said to be forthcoming (draft text, unavailable).

5.2 When will a child commonly be reprimanded to state custody?

Neither the law nor 'current practice' is sufficiently established to provide a guide to when children will be commonly remanded to state custody. The materials from UNICEF suggest the acute underdevelopment of both the legal and institutional child protection framework in Haiti.

There is thus some minimal legislative framing of child protection in Haiti, most of it co-developed by UNICEF and still forthcoming. War Child Canada's description of the child protection system as "virtually absent" is also accurate in terms of *institutions* that would have the day-to-day care or guardianship (temporary or permanent) of children in Haiti.

5.2.1 Overview of Child Protection Needs

The following sketch offers an overview of the particular contexts in which children are in need of protection and assistance by the State.

The constituency:

- Only a little over half of primary school-age children are enrolled in school. Less than 2 per cent of children finish secondary school.⁶⁹
- Approximately 1,000 children are working as messengers, spies and even soldiers for armed gangs in Port Au Prince.⁷⁰
- As many as 2,000 children a year are trafficked to the Dominican Republic, often with their parents' support.⁷¹
- There is also considerable concern for children who work as *restaveks* (domestic servants), "most of them girls", who "are forced to work long hours under harsh conditions and without financial gain, and are subjected to ill-treatment and abuse, including sexual abuse."⁷²
- The Committee also expressed "its concern at the increasing number of street children and at the lack of a systematic and comprehensive strategy to address this situation and provide the children with adequate protection and assistance. ... The Committee is concerned that these children are used for the perpetration of offences and that some of them have disappeared."⁷³

⁶⁹UNICEF. 'At a Glance: Haiti: Issues Facing Children in Haiti'. Available at <http://www.unicef.org/infobycountry/haiti.html> (Accessed November 1, 2008).

⁷⁰*Ibid.*

⁷¹ *Ibid.*

⁷² CRC Concluding Observations, *supra* note 35, at para. 56.

⁷³ *Ibid.*, at para. 58.

A significant number of children are thus without the benefit of *any* child protection system, and only 1/2 of children (or so) are reached by the education system (thus an imperfect 'point of entry' at which to provide assistance). Child protection efforts will need to reach street children and domestic workers in order to be effective.

5.2.2 *Children infected with, or affected by HIV/AIDS, are also particularly vulnerable.*

UNICEF has identified the protection of HIV-positive children, or those whose families are affected by HIV-AIDS, to be an "absolute priority" on their agenda.⁷⁴

- Almost 19,000 children are estimated to be HIV-positive in Haiti.
- Stigma and discrimination remains "terribly high" in Haiti, and thus the loss of a protective family environment for HIV-positive or orphaned children, is particularly grave.
- UNICEF notes that while "some" children are taken in by members of their extended families or their communities, "most of the time" the foster family "lacks the necessary resources to assume the care of the child." The risk that she "be abandoned, without access to education, health care or psychosocial support [is] very high." (my translation)
- UNICEF is thus currently working to put in place a community-support system to allow parents with HIV-AIDS, as well as foster families, to care for children as long as possible.
- This page alludes to the existence of *centres d'accueil* for HIV/AIDS orphans, but there is no specification of whether they are publicly or privately run (or regulated). UNICEF's strong preference for supporting extended families to allow them to maintain the primary care & residence of the child, suggests these *centres d'accueil* are far from the ideal.⁷⁵

5.3 Follow-Up Questions

4. Has there been any progress since December 2005 on either the Children's Code or the Family Code in Haiti?
5. To what extent, if any, does the 2001 Law against corporal punishment apply to children in custody, e.g. to children in foster families?
6. What is the status of the proposed revisions to adoption laws undertaken by IBESR, Terre des Hommes and UNICEF (see above)?

⁷⁴ UNICEF – Haiti. 'Enfants vulnérables et affectés par le SIDA.' Available at: http://www.unicef.org/haiti/french/protection_8778.htm (Accessed November 1, 2008)

⁷⁵ *Ibid.*

VI. Juvenile Criminal Justice

6.1 Statutory regime governing juvenile justice in Haiti

In Haiti, 16 years old is the age of criminal majority. Young offenders and the juvenile justice system are regulated primarily by the *Penal Code* of Haiti, including the special provisions under articles 50, 51 and 52. These articles have been implemented by the *Act of September 7, 1961* and the *Decree of November 20, 1961*.

The *Act of July 16, 1952* mandates the creation of a section for juvenile delinquency in every Haitian civil court. The *Act of September 7, 1961* and the *Decree of November 20, 1961* created the Children's Court within the jurisdiction of the Court of Appeal and regulated the establishment of penal responsibility for minors by modifying the dispositions 50, 51 and 52 of the *Penal Code*. It also specified the functioning rules of the Children's Court.

6.1.1 Special Courts Established in Law

According to the *Act of September 7, 1961*, minors suspected of infractions or offences are subject to trial before a Justice of the Peace, the Juvenile Court, or the Cour d'assises des mineurs. The information in this section, except where stated, is drawn exclusively from the information provided by the Centre de Recherche et d'Informations Juridiques (CRIJ-Haiti).⁷⁶

Justices of the Peace (Cours de police)

Justices of the Peace have jurisdiction to try criminal cases of youths from 13-16 years. These courts do not, however, have jurisdiction to sentence children either by fine or imprisonment. Sentencing and all appeals from the Justice of the Peace are taken to the Juvenile Court.

Juvenile Court (Tribunal pour enfants)

Juvenile Judges and the Juvenile Court have exclusive jurisdiction to conduct criminal trials for minors 16-18 years old, with the exception of charges of murder. Juvenile Courts also hear appeals and conduct sentencing for children convicted of criminal offenses by a Justice of the Peace.

Though article 50 of the *Penal Code* introduces the principle of criminal irresponsibility of minors younger than 13 years old, there some provisions for sentencing children as young as 11 years old to educational measures, according to the

⁷⁶ Centre de Recherche et d'Informations Haiti, "Tribunal pour enfants." Available at: http://www.crijhaiti.com/fr/?page=trib_enfant (Accessed November 28, 2008). See also Centre de Recherche et d'Informations Haiti, "Cour d'assises des mineurs." Available at: http://www.crijhaiti.com/fr/?page=cour_assises (Accessed November 28, 2008).

Minors who are found guilty of an offence can only be sentenced to educational measures such as education, monitoring, protection, assistance and surveillance. These measures include:

- Admonition;
- Return of the minor to his parents, tutor or person having custody,
- Transportation to a private or public Medical Educational Institute (Institut Médico-pédagogique);
- Foster family or other corrective institution where the minor can receive moral, civil or professional instruction;
- Release on probation

These protective measures apply until the minor reaches the age of 21.

Cours d'assises de mineurs

The Cour d'assises de mineurs has exclusive jurisdiction to try juveniles charged with murder, under provisions 240, 241, 242 and 243 of the *Penal Code*. Juries at this court are to be composed of both men and women, and to be drawn from the educational, charitable and social work communities.⁷⁷

The sentence for youths convicted of murder are: (a) up to 8 years of imprisonment in a "Centre d'Éducation Corrective de l'État," or (b) no more than 3 years imprisonment in a "Centre Professionnel Spécialisé de l'État."

Article 51 of the *Penal Code*, however, grants a sentencing judge the authority to "withdraw the mitigating excuse of minority" in the most serious cases⁷⁸. It remains at the discretion of judges to sentence a child older than 13 years of age to the same punishment as an adult⁷⁹.

6.2 Implementation of juvenile justice in Haiti

Independent reports universally acknowledge that the statutory regime addressing juvenile justice has not been implemented. The Juvenile Court system applies only to major cities and minors are commonly detained in adult prisons,⁸⁰ contrary to both national and international laws.

⁷⁷ *Ibid.*

⁷⁸ World Organization Against Torture, *Children's rights in Haiti*, October 2002, at 22. Available at: http://www.omct.org/pdf/cc/Haiti_Web_GB.pdf (Accessed November 28, 2008). [World Organization Against Torture]

⁷⁹ *Ibid.*

⁸⁰ MINUSTAH, *Haiti: L'application des lois pour mineurs entre réalités et perspectives*, June 25, 2007. Available at: <http://www.minustah.org/articles/431/1/Haiti--lapplication-des-lois-pour-mineurs-entre-realites-et-perspectives/25-juin-2007.html> (Accessed November 28, 2008).

Haiti admitted in its initial report to the CRC Committee in 2001 that “there is only one juvenile court and only three examining magistrates for minors have been appointed for the entire country.”⁸¹ The CRC Committee in its 2003 report on Haiti noted that despite these special laws, “a juvenile justice system does exist only in Cap Haitien and Port-au-Prince.”⁸²

6.2.1 Juvenile and Children’s Courts

The special court system for minors does not exist in reality, with the exception of Port-au-Prince⁸³. There is a need for further training and recruitment of judges and staff for specialized detention centres geared towards the juvenile population.

6.2.2 Juvenile Detention Facilities

Only Cap Haitian and Port-au-Prince currently possess proper facilities to accommodate the needs of juvenile offenders⁸⁴.

The official rehabilitation center for children, the *Institut de Bien Etre Social*, under the mandate of the Ministry of Social Affairs, was formally inaugurated in at the end of 2004⁸⁵. However, this center has never been operational, as a result of lack of funds.

In the absence of an appropriate facility to house and rehabilitate them, juvenile offenders are systematically detained in adult prisons, often without being charged, and in the majority of cases for minor offenses⁸⁶. Reports also indicate that minors are frequently kept in the same cell as adults⁸⁷. The lack of separation is also aggravated by larger structural problems of prison overpopulation and inadequate facilities in general.⁸⁸

The manner in which children are in detained exposes them to the systemic problem of prolonged pre-trial detention⁸⁹. The World Organization Against Torture has highlighted many cases of children remaining in extended pre-trial detention⁹⁰. These conditions have a

⁸¹ CRC Concluding Observations, *supra* note 35, at para. 268.

⁸² *Ibid.* at para. 62.

⁸³ Organization of American States, Inter-American Commission on Human Rights, , *Haiti: Failed Justice of the Rule of Law? Challenges ahead for Haiti and the international community*, 26 October 2005, OEA/Ser/L/V/II.123, doc.6 rev 1, page 92. Available at: <http://www.cidh.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf> (Accessed November 28, 2008). [Inter-American Commission on Human Rights]

⁸⁴ CRC Concluding Observations, *supra* note 35

⁸⁵ Inter-American Commission on Human Rights, *supra* note 83, at 91.

⁸⁶ *Ibid.*

⁸⁷ International Crisis Group, *Reforming Haiti’s Security Sector*, Latin America/Caribbean Report N°28, 18 September 2008, at 20. Available at: <http://www.crisisgroup.org/home/index.cfm?id=5681&l=1> (Accessed November 28, 2008).

⁸⁸ UNICEF, Haiti, Protection de l’enfant, *Enfants en conflit avec la loi*. Available at: http://www.unicef.org/haiti/french/protection_9117.htm (Accessed November 28, 2008). [UNICEF, *Enfants en Conflit*]

⁸⁹ Inter-American Commission on Human Rights, *supra* note 83.

⁹⁰ World Organization Against Torture, *supra* note 78.

negative impact on the social reintegration of youths who are often encouraged to engage in criminal activity by the adult prison population⁹¹.

6.2.3 The New National Prison

The government of Haiti has conceived a three-year plan to build a new national prison. The plans envision four separate facilities, including one dedicated to juveniles⁹². Despite this promising development, further problems of institutional capacity building and specialized training for those working with the juvenile justice system must be resolved before Haiti can be said to comply with its own obligations in the area⁹³.

6.3 International Standards of Juvenile Criminal Justice

The four major sources of international standards below create a unified vision for juvenile justice that is centred on the human dignity of the child, a healthy developmental environment and her/his reintegration in society.

6.3.1 The Convention on the Rights of the Child

The CRC guarantees the right to rest and leisure (article 31); separate facilities and the use of imprisonment as an instrument of last resort (article 37); and alternatives to institutional care, such as probation, foster care and vocational training (article 40.4). Haiti's structural deficit poses a challenge to the country's compliance to these requirements. Haiti ratified the CRC on July 8th, 1995

6.3.2 The Beijing Rules

The Beijing Rules (United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985) have a strong emphasis on the need for specialized police officers, judges and other staff involved in the administration of the juvenile justice system (articles 6.3, 12 and 22). Haiti does not currently possess an adequate strategy to tackle these issues. This problem is especially aggravated by the lack of proper institutional separation of young offenders and adults amongst the prison population, as required by article 26.3 of the Beijing Rules.

It is difficult to find information on whether imprisoned minors have adequate access to specialized health services and educational/vocation training (article 26.2 of the Beijing Rules). Contrary to article 26.4, the Haitian government also does not have any strategy to address the special needs of young female offenders.

⁹¹ Inter-American Commission on Human Rights, *supra* note 83.

⁹² Crisis Group, *supra* note 87, at p. 20.

⁹³ World Organization Against Torture, *Protecting the right of children in conflict with the law*, 26 November 2005. Available at: http://www.omct.org/pdf/cc/2005/Protect_the_rights_of_children_in_conflict_with_the_law.pdf (Accessed November 28, 2008).

6.3.3 United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JDLs)

The JDL also focuses on many aspects of the life of detained young offenders, including access to meaning activities and programmes (article 12), right to education (38), right to counsel and free legal aid (article 18) and respect for international standards applicable to child labour (article 44). It also prohibits the carrying and use of weapons by personnel where juvenile offenders are detained (article 65) and advocates the use of open detention facilities with minimal security measures (article 30). This preliminary research was unable to find any indication that Haiti is in compliance with these requirements.

6.3.4 The Riyadh Guidelines

Lastly, the Riyadh Guidelines (United Nations Guidelines for the Prevention of Juvenile Delinquency 1990) focuses on the preventive aspects of juvenile delinquency. It proposes measures to deal with the root causes of this phenomenon, including social policies (article 10), universal access to public education (article 20) and special training of law enforcement officials (article 58). These preventive measures were beyond the scope of our research, but they indicate an important aspect of the juvenile justice system that requires the attention of the Haitian government.

6.4 Follow-up Questions

1. Where children are held in adult prisons, are there any educational facilities and/or leisure opportunities for them?
2. What are the conditions for women's imprisonment, and do they address the Beijing Rules addressing the special needs of young female offenders (Art. 26.4)?