



Rights of the Child
in Haiti

OMCT

OPERATING THE **SOS-TORTURE** NETWORK



Rights of the Child in Haiti



The aim of OMCT country reports are to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

Contents

I. INTRODUCTION	7
II. INTERNATIONAL STANDARDS	8
III. DEFINITION OF THE CHILD	9
IV. PROTECTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	11
V. UNLAWFUL KILLINGSE	13
VI. PROTECTION FROM OTHER FORMS OF VIOLENCE	15
6.1 SEXUAL ABUSE AND EXPLOITATION	15
6.2 CHILD LABOUR AND SLAVERY	17
6.3 CHILD TRAFFICKING	19
VII. CHILDREN IN CONFLICT WITH THE LAW	21
7.1 AGE OF CRIMINAL RESPONSIBILITY	21
7.2 JURISDICTIONS AND PROCEEDINGS	23
7.3 FAIR TRIAL	24
7.4 GROUNDS OF ARREST AND DETENTION	25
7.5 PRETRIAL DETENTION	27
7.6 CONDITIONS OF DETENTION	28
VIII. CONCLUSIONS AND RECOMMENDATIONS	31
CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD	37



COMMITTEE ON THE RIGHTS OF THE CHILD
32nd Session - Geneva, 13-31 January 2003

Report on the implementation of the
Convention on the Rights of the Child
by the Republic of Haiti

Researched and written by Sylvain Vité
Co-ordinated and edited by Roberta Cecchetti
Director of the publication : Eric Sottas

I. Introduction

The implementation of the rights of the child, as a specific aspect of the situation of human rights, cannot be understood without linking it to a broader political, economic and social context. Haiti is one of the most densely populated and poorest countries in the Western Hemisphere. According to the World Bank Group, about 80 percent of the rural population lives below the poverty line. Malnutrition affects about half of all children under the age of five, and half of all Haitian adults are illiterate. Infant mortality was estimated at 71 per 1,000 live births, more than twice the regional average.¹

Haiti also suffers from a recurrent political instability, which has slowed down the democratisation process and constantly threatens the human rights situation². Following its mission in Haiti in August 2002, the Inter-American Commission on Human Rights especially expressed its “deep concern” about the weakness of the rule of law, the lack of independence of the judiciary, impunity, citizens’ insecurity, the existence of armed groups and threats against journalists.³

As children are more vulnerable to the effects of violence than adults and might have limited capacity to understand, as well as to express and defend themselves, they are particularly affected by the crisis in Haiti and its consequences on their rights. With this respect, the UN Independent Expert on the situation of human rights in Haiti has emphasised that the groups which are particularly affected by this situation include street children, orphans, children in domestic service and children in conflict with the law.⁴

OMCT welcomes the first periodic report submitted by Haiti to the Committee on the Rights of the Child (the Committee) in accordance with article 44 (1) b of the Convention on the Rights of the Child.

-
- 1 - The World Bank Group, *Haiti, Country Brief*, <http://wbln0018.worldbank.org/external/lac/lac.nsf>.
 - 2 - *Situation of human rights in Haiti*, Report on the situation of human rights in Haiti prepared by Mr. Adama Dieng, Independent Expert, in accordance with Commission resolution 2000/78, E/CN.4/2001/36, 30 January 2001, par. 5-6.
 - 3 - *La CIDH est préoccupée par le manque de progrès en matière de droits de l'homme en Haiti*, Commission inter-américaine des droits de l'homme, Communiqué de presse, Haiti, 29 août 2002.
 - 4 - *Situation of human rights in Haiti*, Report on the situation of human rights in Haiti prepared by Mr. Adama Dieng, Independent Expert, in accordance with Commission resolution 2000/78, E/CN.4/2001/36, 30 January 2001, par. 49.

OMCT believes that this report is a useful tool in identifying some of the main problems affecting the situation of the rights of the child there. However, OMCT regrets that the Government, instead of proposing concrete measures to solve these problems, seems to adopt an attitude of resignation.

OMCT's alternative report to the Committee covers the provisions of the Convention which fall under the mandate of OMCT, namely the right to life, the right to be protected from torture and other cruel, inhuman, or degrading treatment or punishment, the rights of children in conflict with the law, and the right to be protected from any form of violence.

II. International standards

Haiti ratified the Convention on the Rights of the Child (the Convention) on 9 June 1995, without expressing any declaration or reservation.

Haiti is also a party to other international instruments related to human rights, in particular the International Covenant on Civil and Political Rights, ratified on 6 February 1991, and the International Convention on the Elimination of All Forms of Racial Discrimination, ratified on 19 December 1972.

However, Haiti is still not a party to basic human rights instruments, such as the Convention Against Torture and Other Cruel

Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Therefore, OMCT would urge the Haitian Government to take all the appropriate measures to ratify as soon as possible the aforementioned treaties.

At a regional level, Haiti is a party to the American Convention on Human Rights ("Pact of San Jose"), ratified on 27 September 1977, but not to the Inter-American Convention on the Prevention,

Punishment and Eradication of Violence Against Women (“Convention of Belem do Para”). Therefore, OMCT would also urge the Government to ratify the latter instrument.

Article 276 (2) of the Haitian Constitution of 1987 provides that “(o)nce international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the leg-

islation of the country and abrogate any laws in conflict with them”. Despite this provision, OMCT is concerned by the fact that numerous Haitian laws, which are still in force, are clearly contradictory to the Convention. Therefore, OMCT would recommend that the Government replace these texts with new laws, so as to set up a legislative framework applicable to children, which would be coherent and consistent with the Convention.

III. Definition of the child

Article 16.2 of the Haitian Constitution states that : “The age of majority is fixed at eighteen (18) years of age”. Article 392 of the Civil Code confirms this provision by defining a minor as any person of one or the other sex who did not reach 18 years of age. Beyond this age, individuals acquire civil, political and matrimonial majority.⁵

Regarding child labour, article 35.6 of the Constitution provides that “(t)he minimum age for gainful employment is set by law (...)”. Based on this provision, article 335 of the Labour Code establishes that children

under 15 years of age may not work in industrial, agricultural or commercial enterprises. Article 341 of the Labour Code adds that children are allowed to work as house employees as of age 12, but only with the authorisation of the Institute of Social Welfare and Investigations⁶ (IBESR). Although the State report states that IBESR does not give this authorisation anymore, various sources demonstrate that child domesticity is still widely practiced in Haiti.

5 - See Civil Code, art. 398, and Décret du 8 octobre 1982 sur l'autorité parentale et la majorité civile, art. 16.

6 - Institut du bien-être social et de recherches.

7 - Art. 344 and 345.

8 - See below chapter 5.b.

In this regard, OMCT wishes to recall that ILO Convention 138 provides that the minimum age for admission to employment must not be less than the age of completion of compulsory schooling and, in any case, must not be less than 15 years old.⁹ Although Haiti is not a party to this instrument, OMCT deems that the Government should abide by the standards it provides, since these standards concretise article 32 of the Convention, which requires State Parties to establish a minimum age or minimum ages for admission to employment, in order to protect children from economic exploitation and from any work likely to be hazardous, to interfere with her/his education or to be harmful to her/his development.

Therefore, OMCT would encourage the Government to accede to ILO Convention 138 and to modify article 341 of the Labour Code accordingly.

The only existing governmental force in Haiti is the Haitian National Police (HNP).¹⁰ Recruitment into HNP is voluntary and the minimum age is fixed at 18 years of age.¹¹ However, the institution of military armed forces still exists in domestic legislation. Article 268 of the Constitution states that “military service is compulsory for all Haitian who have attained eighteen years of age”.¹² OMCT welcomes the fact that these provisions are in conformity with article 38 of the Convention.

9 - ILO Convention 138 concerning minimum age for admission to employment, 19 June 1976, art. 2 par. 3.

10 - Police nationale d’Haiti.

11 - The Coalition to Stop the Use of Child Soldiers, *Child Soldiers, Global report*, 2001, p. 189.

12 - “Le service Militaire est obligatoire pour tous les Haitiens âgés au moins de dix-huit (18) ans”.

IV. Protection against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 37 (a) of the Convention provides that “(n)o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”. The Committee, in its examination of State Parties' reports, and other commentaries, has indicated that it regards the United Nations rules and guidelines relating to juvenile justice as providing relevant detailed standards for the implementation of article 37.¹³ These rules and guidelines are: the Beijing Rules¹⁴, the Riyadh Guidelines¹⁵ and the Rules for the Protection of Juveniles Deprived of their Liberty¹⁶.

OMCT believes that the Government report's handling of these issues is insufficient. The report provides almost no information on *de facto* torture or ill-treatment affecting children and *de jure* protection from such practices. Therefore, OMCT believes that the Committee should be provided with further information thereupon.

Haiti's Constitution provides that “(a)ny unnecessary force or restraint in the apprehension of a person or in keeping him under arrest, or any psychological pressure or physical brutality, especially during interrogation, is forbidden”.¹⁷

Article 293 of the Criminal Code specifies that “(i)f the arrested, detained or abducted person is subject to corporal torture, the culprit shall be sentenced to life forced labour. And if death is caused, she/he shall be sentenced to life forced labour” (OMCT's translation).¹⁸

OMCT regrets that this Code does not provide any definition of torture, leaving thus an uncertainty about the kind of protection that individuals are entitled to. OMCT is notably concerned by the reference made to

13 - See for example Report on the tenth session, October - November 1995, CRC/C/46, para. 214. Or see Report on the ninth session, May - June 1995, CRC/C/43, Annex VIII, p. 64.

14 - General Assembly resolution 40/33.

15 - General Assembly resolution 45/112.

16 - General Assembly resolution 45/113.

17 - Article 25.

18 - Code pénal, art. 293 : “Si l'individu arrêté, détenu ou séquestré a été soumis à des tortures corporelles, le coupable sera puni de travaux forcés à perpétuité. Et si la mort s'en est suivie, il sera puni de travaux forcés à perpétuité”.

“corporal torture”, expression which risks to be interpreted as limiting the scope of article 293 to physical suffering. OMCT is also concerned that this provision only mentions torture when it is perpetrated in cases of arrest, detention or abduction. As a result, it would seem that the scope of this provision is too limited, since it may not include other situations of ill treatment. This might lead, for instance, to the impunity of state agents who inflict violence on street children.

Therefore, OMCT suggests that the members of the Committee ask the Government to enact a law defining the crime of torture, with a view to clearly covering mental suffering and to ensuring a broad protection from torture, including to children.

Regarding abuse of power, article 147 of the Criminal Code also provides that “(w)hen a

civil servant or a public official or an administrator or an agent or member of the government or of the police, or a justice mandate or judgment enforcement official, a civil service chief or executive commander, practices violence or allows for violence to be practiced against persons without legitimate purpose, in the exercise of or in the occasion of the exercise of its functions, she/he shall be punished according to the severity of this violence by raising the sentence according to the rule provided by article 159” (OMCT’s translation).¹⁹ Article 159 establishes that the author, when involved in a criminal case (*délit de police correctionnelle*), must be sentenced the maximum punishment provided for a specific offence.²⁰

OMCT deems that this provision does not provide adequate protection against torture and other forms of ill treatment. OMCT is particularly concerned that “a legitimate purpose” may be invoked by a civil servant to justify the use of violence. While recognizing that any State bears the responsibility of maintaining security and order within the limits of its territory, OMCT believes that the use of force necessary to fulfil this obligation must clearly be defined and limited. In the case of Haiti, OMCT deems that the

19 - Code pénal, art. 147: “Lorsqu’un fonctionnaire ou un officier public ou un administrateur ou un agent ou préposé du gouvernement ou de la police, un exécuteur des mandats de justice ou de jugement, un commandant en chef ou en sous-ordre de la fonction publique, aura, sans motif légitime usé ou fait user de violences envers des personnes, dans l’exercice ou à l’occasion de l’exercice de ses fonctions, il sera puni, selon la nature ou la gravité de ces violences, et en élévant la peine suivant la règle posée en l’article 159”.

20 - Code pénal, art. 159 : “Hors les cas où la loi règle spécialement les peines encourues pour crimes ou délits commis par les fonctionnaires ou officiers publics soit civils, soit militaires, ceux d’entre eux qui auront participé à d’autres crimes ou délits qu’ils étaient chargés de surveiller ou de réprimer, seront punis comme il suit:

- S’il s’agit d’un délit de police correctionnelle, ils subiront toujours le maximum de la peine attachée à l’espèce du délit (...)”.

expression “legitimate purpose” is too vague to ensure adequate guarantees against unlawful use of force. Moreover, OMCT wishes to recall that torture and cruel, inhuman or degrading treatment or punishment are prohibited under any circumstance, and thus cannot be justified by any purpose. This rule is clearly established by several binding international instruments, such as the Convention on the Rights of the Child, the International Covenant on Civil and Political

Rights, and the American Convention on Human Rights, to which Haiti is a party.

OMCT also wishes to emphasize that the Haitian Criminal Code does not provide specific protection to child victims of abuse of power as meant in article 147. Thus, OMCT would recommend that the Government amend the Criminal Code with a view to pay particular attention to child victims of ill treatment perpetrated by state agents.

V. Unlawful killings

The protection against unlawful killings is enshrined in article 6 of the Convention, which states that “every child has the inherent right to life”. This notably implies that states must adopt effective and fair responses to protect children from any form of violence which may cause their death, such as extrajudicial, summary or arbitrary executions, or the excessive use of force.

Regarding Haiti, OMCT is seriously concerned by the law enforcement policy of the Government. In a speech addressed to the police in June 2001, President Aristide announced a “zero tolerance” crime policy,

meaning that it was not necessary to bring criminals to court. This statement was widely interpreted by the population as an invitation to “popular justice” and police violence.²¹ As a result, NGOs reported an increase in killings of alleged criminal suspects by law enforcement officials or by the population.

For instance, Amnesty International has reported that Mackenson Fleurimon, aged 16, was reportedly shot dead by the police on 11 October 2001 in the Cité Soleil neighbourhood of Port-au-Prince. According to fam-

21 - See Human Rights Watch, *World Report 2002, Americas, Haiti*, (<http://www.hrw.org/wr2k2/americas7.html>), Amnesty International, Report 2002, Haiti, (<http://web.amnesty.org/web/ar2002.nsf/amr/haiti!Open>).

ily members and witnesses, police officers killed him after failing to find his brother, whom they suspected of gang activity. A police inspector and a commissioner were interrogated on 18 October 2001, but the former apparently went into hiding. A warrant was issued for his arrest.²²

OMCT would recommend to the Government not to leave those responsible for such practices unpunished. Accordingly, OMCT would urge the Government to guarantee a thorough investigation into cases of unlawful killings, in order to identify those responsible, bring them before a competent and impartial civil

tribunal and apply the appropriate penal, civil and/or administrative sanctions.

In order to put an end to this problem, OMCT would also recommend that the Government clearly state that its “zero tolerance” crime policy prohibits any form of unlawful killing by police agents or by the civil population. OMCT would also recommend that the Government elaborate and implement preventive programmes, in particular by ensuring education and training for officials in the armed forces. This should include specific training on international standards on the rights of the child, as well as on the use of force.

VI. Protection from other forms of violence

Article 19 of the Convention requires children's protection "(...) from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

6.1 Sexual abuse and exploitation

In addition to article 19, States parties commit themselves "to protect the child from all forms of sexual exploitation and sexual abuse". For this purpose, they are bound to take all appropriate measures "to prevent:

- a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- b) The exploitative use of children in prostitution or other unlawful sexual practices;

- c) The exploitative use of children in pornographic performances and materials".²³

Haitian law regarding the protection of children against sexual abuse and exploitation is vague. It provides that "anyone who commits indecent assault, by regularly inciting, promoting or facilitating debauchery or corruption of youths of one or the other sex under 21 years of age, shall be punished with six months to two years of imprisonment" (OMCT's translation).²⁴ If the perpetrator is one of the parents of the victim or another person in charge of her/him, the sentence shall be of one to three years' imprisonment.²⁵

OMCT deems that this provision is not adequate, since it establishes the same legal regime for children and for adults up to the age of 21 years. Accordingly, OMCT would suggest that the Government amend this provision so as to provide various levels of protection adapted to the vulnerability of the victims.

23 - Convention on the Rights of the Child, art. 34.

24 - Criminal Code, art. 182 par. 1 : "Quiconque aura tenté aux mœurs, en excitant, favorisant ou facilitant habituellement la débauche ou la corruption de la jeunesse, de l'un ou de l'autre sexe au dessous de l'âge de vingt et un ans, sera puni d'un emprisonnement de six mois à deux ans".

25 - Criminal Code, art. 182 par. 2.

Under the Criminal Code, rape is considered a crime, but not a serious crime, since no jury trial is required.²⁶ Moreover, rape is classified as a crime against morality (atteinte aux bonnes mœurs). As a result, most cases of rape are settled financially out of court, leaving the perpetrators unpunished. In this regard, OMCT would suggest that the Government amend the Criminal Code in order that rape be defined as a serious crime and categorized, as already requested by the Special Rapporteur on violence against women, “as an attack on the victim’s integrity and well-being, as opposed to honour”.²⁷

There exists practically no data on the subject of the sexual exploitation of children, as freely admitted by the government. However, some of the available estimations

imply that the situation is serious.²⁸ According to ECPAT International, approximately 10,000 children are involved.²⁹ However, as sexual exploitation is a hidden phenomenon and often goes unreported, this figure may be higher. According to the Centre of Popular Education,³⁰ 70 % of Haiti’s street girls have been victims of this form of violence.³¹

In her 2000 report on Haiti, the Special Rapporteur on violence against women also deemed that the issue of teenage pregnancies as a result of rape and sexual harassment was a serious problem in Haiti, especially in schools and in the home. More particularly, the Special Rapporteur mentioned a study carried out by the Ministry of the Status of Women between November 1994 and June 1999, according to which 1500 girls between the ages of 6 and 15 years had been victims of sexual abuse and aggression. More recently, in August 2002, the Inter-American Commission on Human Rights also expressed its concern about the increasing reporting of rapes of very young girls.³²

OMCT would call on the Government of Haiti to collect relevant and complete data on child sexual violence and exploitation in

26 - Criminal Code, art. 229.

27 - *Report on the mission to Haiti*, Special Rapporteur on violence against women, its cause and consequences, UN Doc. E/CN.4/2000/68/Add. 3, 27 January 2000, par. 60.

28 - See Coalition Haïtienne pour la Défense des Droits de l’Enfant (COHADDE), *Rapport alternatif au Comité des Droits de l’Enfant*, 1er février 2002, p. 19s.

29 - ECPAT, Online database, Haiti, http://64.78.48.196/eng/Ecpat_inter/projects/monitoring/online_database/index.asp.

30 - Centre d’éducation populaire

31 - ECPAT, Online database, Haiti, http://64.78.48.196/eng/Ecpat_inter/projects/monitoring/online_database/index.asp.

32 - *La CIDH est préoccupée par le manque de progrès en matière de droits de l’homme en Haïti*, Commission interaméricaine des droits de l’homme, Communiqué de presse, Haïti, 29 août 2002. http://erre.org/tr_nr1_2002/snap15.shtml

order to formulate a national policy aimed at preventing such practices and prosecuting perpetrators. OMCT would also call on the Government to seek international assistance in this regard.

6.2 Child labour and slavery

Regarding child labour, article 32 paragraph 1 of the Convention specifically recognizes “the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”. For this purpose, art. 32 par. 2 requires States Parties to “take legislative, administrative, social and educational measures to ensure the implementation of the present article (...)”.

The Haitian special child labour law is embodied in articles 332 to 356 of the Haitian Labour Code. As already mentioned, the minimum age for employment in Haiti is 15 years, with the exception of domestic service, for which the threshold is established at 12 years. Children are legally protected against unhealthy, harsh or dan-

gerous employment, both from a physical or moral point of view, and are not allowed to work in places where alcoholic beverage is sold.³³

Regarding domestic labour, the law specifies that the child shall be treated as a member of the family.³⁴ More particularly, she/he shall not be employed for work beyond her/his strength³⁵ or which might affect her/his health, development or capacity to attend school.³⁶ Furthermore, she/he shall not be subject “to moral torture nor corporal punishment” (OMCT’s translation).³⁷ From the age of 15, domestic children are also entitled to receive a salary.³⁸

The reality of child labour in Haiti however has shown that these legal safeguards are not respected in practice.

33 - Labour Code, art. 333: “Les mineurs ne pourront être occupés à des travaux insalubres, pénibles ou dangereux du point de vue physique ou moral, ni prêter leurs services dans les lieux où se débitent les boissons alcooliques”.

34 - Labour Code, art. 345.

35 - *Ibid.*, art. 341: “Aucun enfant de moins de douze ans ne peut être confié à une famille pour être employé à des travaux domestiques. Il ne devra pas être employé à des travaux domestiques au dessus de ses forces”.

36 - *Ibid.*, art. 346.

37 - *Ibid.*, art. 349.

38 - *Ibid.* art. 350.

Child labour is widespread in Haiti, especially in rural and urban informal activities and in domestic service.³⁹ In 2002, the National Coalition for Haitian Rights (NCHR) published a report on the situation of the “*restavèk*”,⁴⁰ Haitian children who become house slaves when they are turned over by their parents to a family which agrees, in principle, to take care of them, provide them schooling, food, shelter, and clothing in exchange for domestic labour.⁴¹

In practice, these children generally work for long hours without being paid, do not attend school and have little or no contact with

their parents. They are often subject to physical and verbal violence by their masters, suffer from poor sanitary conditions and malnutrition, and are sometimes sexually abused. Girls, who represent three quarters of this population, are especially vulnerable to sexual violence.⁴²

Although no precise statistic has been established on the extent of this situation, UNICEF has estimated that it affects at least 300 000 children.⁴³ Children as young as 4 years old are involved in this practice. This situation is so serious that Anti-Slavery stated that, in its experience, “the practice of *restavèk* in Haiti constitutes one of the worst and most widespread manifestations of domestic child servitude to be found anywhere in the world”.⁴⁴

Despite the seriousness of this situation, the Government has remained passive. It is true that a reporting and support system was established in 2000 through a hotline available to child victims of abuse, but according to NHCR, “little evidence exists that this hotline amounts to more than a symbolic nod to Haiti’s international commitment following the country’s ratification of the convention on the Rights of the Child”.⁴⁵ Indeed, the IBESR, which should ensure that each

39 - International Confederation of Free Trade Unions (ICFTU), *Internationally-Recognised Core Labour Standards in Haiti, Report for the WTO General Council Review of Trade Policies of Haiti*, Geneva, 5 and 7 June 2002.

40 - National Coalition for Haitian Rights, *Restavèk No More: Eliminating Child Slavery in Haiti*, 2002, see http://www.nchr.org/hrp/restavek/report_es.htm.

See also Coalition Haïtienne pour la Défense des Droits de l’Enfant (COHADDE), *Rapport alternatif au Comité des Droits de l’Enfant*, 1^{er} février 2002, p. 16.

41 - See Labour Code, art. 341 to 356.

42 - See Special Rapporteur on violence against women, its cause and consequences, *Report on the mission to Haiti*, UN Doc. E/CN.4/2000/68/Add. 3, 27 January 2000, par. 38.

43 - UNICEF, *Haiti: Helping Child Servants who are Virtual Slaves*, 30 November 2000, <http://www.unicef.org/media/storyideas/946.htm>

44 - Anti-Slavery Statement before the Working Group on Contemporary Forms of Slavery of the UN Sub-Commission on the Promotion and Protection of Human Rights, 27th Session, Geneva 27-31 May 2002.

45 - National Coalition for Haitian Rights, *Restavèk No More: Eliminating Child Slavery in Haiti*, 2002, executive summary.

case receive an adequate follow-up, does not have the necessary resources to carry out its task.⁴⁶

OMCT regrets that the Government does not manifest any real intention to end the exploitation of children in Haiti. On the contrary, it rather seems to accept this situation which is contrary to the Convention in various regards. Indeed, in its report to the Committee, the Government stated: “Of course, the State has got no means to immediately intervene in order to stop the bad feeling represented by the work and the non rehabilitation of child victims of exploitation”.⁴⁷

OMCT is deeply preoccupied by the situation of working children in Haiti, particularly of domestic children. OMCT would recommend that the Government ratify ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. This Convention is aimed at protecting children, among other things, against “all forms of slavery or practices similar to slavery”.⁴⁸

OMCT would also urge the Government to take immediate measures to guarantee the

physical and psychological integrity of all child workers in Haiti. This would include the proper investigation of cases of violence against children as well as the adoption of enforcement measures, including penal sanctions, ensuring the accountability of perpetrators.

OMCT would also suggest that the Government collect reliable and complete data on child labour in Haiti in order to set up a global policy aimed at fully implementing the requirements of article 32 of the Convention. More particularly, OMCT would recommend that the Government develop a reliable monitoring and assistance system which would be available to all children victims of exploitation and slavery. The Government should seek international assistance in this regard.

6.3 Child trafficking

According to article 35 of the Convention, “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the (...) traffic in children for any purpose or in any form”.

46 - *Ibid.*

47 - Par. 3.1.

48 - ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 182, art. 3 (a).

With this respect, OMCT is concerned by information regarding the trafficking of Haitian children into the Dominican Republic. According to the International Organization for Migration (IOM) and UNICEF, over 4000 children are trafficked from Haiti every year and are exploited by adults who force them to work and later keep the earnings.⁴⁹ These children mainly work as street vendors, shoe shiners, organized beggars or farm employees. In most cases, these children are sent by their parents in order to obtain some additional income for their family. They usually stay in the Dominican Republic for a few months and then return, but some of them decide to settle in the country. According to IOM and

UNICEF, these children live under extremely precarious conditions in terms of housing and food and are especially vulnerable to violence.⁵⁰

OMCT would recommend that the Government, in cooperation with the Dominican Government, establish comprehensive policies and other measures to prevent and combat trafficking in children and to protect the victims. Such measures would include research, information and mass media campaigns as well as social and economic initiatives to address the factors contributing to child trafficking.

49 - IOM, *Dominican Republic: Trafficking of Haitian Children*, Press Briefing Notes, Friday 9 August 2002, <http://www.iom.int/en/news/pbn090802.shtml>.

50 - *Ibid.*

VII. Children in conflict with the law

Haiti's legal framework for children in conflict with the law dates back to 1961. It is composed of the law of 7 September 1961 and the Order of 20 November 1961, which provide for specific measures and procedures applicable to minors under 16 years of age regarding criminal matters. Today, this legislative body is inadequate. As stated by members of the International Civilian Mission in Haiti (MICIVIH) in 1998, "although some provisions of these texts are still applicable, the global body of law is out-of-date, sometimes incoherent and, in all events, broadly incompatible with the main principles established in the international and regional instruments on human rights in general and on children's rights in particular" (OMCT's translation).⁵¹

7.1 Age of criminal responsibility

The minimum age for criminal responsibility is set at 13 years and the age of criminal majority at 16 years.⁵² Articles 50 to 52 of the Criminal Code establish a specific crim-

inal status for children between 13 and 16 years. In less serious cases and according to the circumstances, the child must be admonished, sent to her/his parents or another person who will take care of her/him, or placed in an institution.⁵³ If the case is so serious as to justify a criminal proceeding, the child may be sentenced up to eight years of treatment in a "correctional educational centre".⁵⁴

51 - Mattarollo Rodolfo, Kane Salimata, Miedico Mauro, *Quelques observations préliminaires sur un projet de code de l'enfant. Colloque sur l'avant-projet de code de l'enfant*, Port-au-Prince, Haiti, 1998.

(http://cdonu.un.org/ec/publica/derecho/PROGRAMA/Modulo09/Mattarollo_R_Kane_S_Miedico_M.htm)

52 - Loi du 7 septembre 1961 sur le mineur en face de la loi pénale et des tribunaux spéciaux pour enfants, Art. 1er modifiant les art. 50, 51 et 52 du Code pénal.

53 - Code pénal, art. 50.

54 - Loi du 7 septembre 1961 sur le mineur en face de la loi pénale et des tribunaux spéciaux pour enfants
Art. 1er modifiant les art. 50, 51 et 52 du Code pénal :
(...)
Art. 51 : condamnation pénale des mineurs de plus de 13 ans :

"Lorsque les circonstances de la cause et la personnalité du prévenu ou de l'accusé de plus de 13 ans exigent une condamnation pénale, le jugement sera prononcé ainsi qu'il suit, sous réserve, le cas échéant de la faculté pour le Juge compétent d'écarter l'excuse atténuante de minorité :

S'il a encouru la peine de mort, des travaux forcés à perpétuité, il sera astreint à huit ans de traitement dans un Centre d'Education corrective de l'Etat.

S'il a encouru la peine des travaux forcés à temps, de la détention ou de la réclusion, il sera soumis à un traitement de trois ans au plus dans un Centre Professionnel spécialisé de l'Etat".

Regarding 11 years-old children responsible for criminal offences, the judge for children may require measures of protection, supervision, assistance or education.⁵⁵

OMCT is particularly concerned by the legal regime applicable to children in Haiti. OMCT wishes to remind the Government that, according to the Convention, “a child means every human being below the age of eighteen years, unless under the law applicable to the child majority is attained earlier”. As such, any child is entitled to special protection, notably during judiciary proceedings. However, since the Haitian legislation establishes the criminal majority at 16 years, children between 16 and 18 are treated as adults. Therefore, OMCT would urge the Government to modify its criminal legislation so as to grant special protection to all children in Haiti.

Moreover, OMCT is concerned by information showing that even the minimum age of criminal responsibility is not respected in

practice. In an article published in 1998, members of the MICIVIH stated that 29 boys between 10 and 13 years of age were imprisoned in the Fort-National jail in Port-au-Prince.⁵⁶ OMCT would therefore recommend that the Government undertake a survey on the situation of children detained in Haiti and order the immediate release of those who are too young to be held criminally responsible.

OMCT is also deeply concerned by the authority of the judge, when fixing a sentence, to “withdraw the mitigating excuse of minority” in the most serious cases.⁵⁷ This provision seems to authorize the judge to sentence a child older than 13 years of age to the same punishment as adults. According to article 51 let. A of the Criminal Code, such sentences, when not adapted to children, include death penalty and life forced labour.

This clearly is contradictory not only to article 37 (a) of the Convention, which states that “(n)either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”, but also to article 20 of the Haitian Constitution. This provision provides that: “The death

55 - Décret du 20 novembre 1961 instituant le “Tribunal Pour enfants”, Art. 12 par. 1 and 11.

56 - Mattarollo Rodolfo, *L'exercice de l'autorité parentale en Haïti au regard des droits de l'enfant*, 28 février 1998. (http://cdonu.un.org.ec/publica/derecho/PROGRAMA/Modulo05/Mattarollo_Rodolfo.htm)

57 - Code pénal, art. 51 : “d'écarter l'excuse atténuante de minorité”. Voir aussi Loi du 7 septembre 1961 sur le mineur en face de la loi pénale et des tribunaux spéciaux pour enfants, art. 3.

penalty is abolished in all cases”.⁵⁸ Accordingly, OMCT would strongly recommend to the Government to clarify this apparent legislative contradiction by explicitly abrogating the faculty for the judge to impose adult sentences to children.

7.2 Jurisdictions and proceedings

The Haitian legislation provides for the creation of a specific jurisdiction system for children in conflict with the law aged between 13 and 16 years of age. This system includes Tribunals for Children (*Tribunaux pour Enfants*), Criminal Courts for Children (*Cours d'Assises des Mineurs*) and Special Hearings of the Simple Police Tribunal (*Tribunal de Simple Police siégeant en audience spéciale*).⁵⁹ More particularly, under Haitian law, a Tribunal for Children must be set up in the jurisdiction of each Court of Appeal, and two Judges must be designated for each Tribunal.⁶⁰ Specific rules are also provided regarding the prosecution of children in conflict with the law.⁶¹

However, as admitted by the Government itself in its report to the Committee, the reality of juvenile justice in Haiti is far from being

consistent with this legal framework. There exists only one Tribunal for Children in Haiti and only three specialized prosecutors have been designated.⁶² Moreover, according to a study published by the *Vera Institute of Justice* in 2002, most criminal cases involving children are dealt with as adult cases. From November 1997 to mid-June 2001, this study established that only 73 cases had been handled by the Tribunal for Children, which is a very low percentage of the number of children jailed in Haiti.⁶³

Therefore, OMCT would call on the Government to implement Haiti's legislative framework regarding juvenile criminal justice, so as to demonstrate its commitment embodied in article 40 paragraph 3 of the Convention, according to which, “States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law”.

58 - “La peine de mort est abolie en toute matiere”.

59 - Loi du 7 septembre 1961 sur le mineur en face de la loi penale et des tribunaux speciaux pour enfants, art. 2, 18ss, 25ss and 27ss.

60 - *Ibid.*, art. 18.

61 - *Ibid.*, art. 15ss and 10.

62 - See Government report to the Committee on the Rights of the Child, par. 2.1: “L'administration de la justice pour mineurs”.

63 - Fuller Anne et al., *Prolonged pretrial detention in Haiti*, Vera Institute of Justice, July 2002, p. 29.

7.3 Fair trial

OMCT also wishes to express its preoccupation about the effective functioning of the justice in Haiti. As reminded by the UN Independent Expert on the situation of human rights in Haiti, “Haitians are inclined to judge the justice system harshly, complaining about its slowness, inaccessibility and cost, but also, and above all, its lack of credibility or integrity. Many citizens are convinced that, in many cases, the justice system takes the side of the rich against the poor, of the town-dweller against the country-dweller, of the educated against the illiterate, of the man against the woman. What disturbs people is the impression of deep corruption, or at least of arbitrariness or lack of consistency, that is given by the way justice works at present”.⁶⁴

In addition, it has been established that the judicial system suffers from a severe lack of resources, which has a direct impact on the quality of judicial proceedings. A satisfactory level of work Haiti’s judicial system is impeded by inadequate human resources,

facilities and secure transportation.⁶⁵ As emphasized by the *Vera Institute of Justice*, this ineffectiveness is also due to a lack of discipline that pervades the judicial system. Whereas disciplinary measures are provided for by the legal system, administrative control does not exist in practice.

As a result, the Haitian judicial system does not appear to be consistent with the basic judicial guarantees provided for in article 40 of the Convention. OMCT would thus recommend that the Government establish effective mechanisms to monitor the functioning of the justice system in Haiti and to apply disciplinary measures when necessary. For the same purpose, OMCT would suggest that any child in conflict with the law receive legal advice and assistance.

OMCT would also ask the Government to indicate the training activities developed for all professionals in charge of children within the judicial system on the provisions of the Convention on the Rights of the Child and other relevant international instrument such as the “Beijing Rules”, “the Riyadh Guidelines” and the UN Rules for the protection of Juveniles deprived of their liberty.

64 - *Situation of human rights in Haiti*, Report on the situation of human rights in Haiti prepared by Mr. Adama Dieng, Independent Expert, in accordance with Commission resolution 2000/73, para. 21, E/CN.4/2001/36, 30 January 2001, par. 37-38.

65 - Fuller Anne et al., *Prolonged pretrial detention in Haiti*, Vera Institute of Justice, July 2002, p. 16.

66 - Fuller Anne et al., *Prolonged pretrial detention in Haiti*, Vera Institute of Justice, July 2002, p. 22.

Finally, OMCT would require the Government to ensure that adequate resources are allocated to build up an effective juvenile justice system which would guarantee, in conformity with article 40 paragraph 1 of the Convention, that every child in conflict with the law be treated in a manner consistent with the promotion of her/his sense of dignity and worth, which reinforces her/his respect for the human rights and fundamental freedoms of others and which takes into account her/his age and the desirability of promoting her/his reintegration and her/his assuming a constructive role in society.

7.4 Grounds of arrest and detention

OMCT deems that the Haitian criminal legislation is excessively repressive, since it allows for the adoption of coercive intervention against children on the basis of undetermined or unjustified legal categories. In some situations, it provides for sentences which deprive liberty, whereas the targeted children would in fact need protective measures.

As already seen in a previous paragraph,

article 50 of the Criminal Code provides for the placement of children accused of minor criminal offences in various kinds of institutions, such as welfare centres, medico-pedagogical institutes or correctional educational institutions.⁶⁷ Such a decision may be adopted by a judge “according to the circumstances”, which means that considerable latitude of interpretation is left to her/him, while the decision adopted is particularly coercive, since it may involve a deprivation of liberty. Indeed, under Haitian law the placement in institutions may be similar to security measures, since it generally implies restriction on the freedom of movement or confinement in closed spaces.⁶⁸

Moreover, article 227 of the Criminal Code also provides for similar measures on unjustified grounds. This provision states that vagrant children shall be sent to a reeducational institution until their majority.⁶⁹ Children considered as vagrant under Haitian law are those, for example, “who left

67 - Voir aussi Loi du 7 septembre 1961 sur le mineur en face de la loi pénale et des tribunaux spéciaux pour enfants, art. 23. Ministère des affaires sociales, Moniteur n° 82 du 24 novembre 1984, Domaine administratif et social : Du Service de la protection des mineurs, art. 144.

68 - Mattarollo Rodolfo, *L'exercice de l'autorité parentale en Haïti au regard des droits de l'enfant*, 28 février 1998. (http://cdonu.un.org/ec/publica/derecho/PROGRAMA/Modulo05/Mattarollo_Rodolfo.htm)

69 - Code pénal, art. 227-3.

their parent's home without legitimate reason", "who are wandering", "who do not exercise any profession", or "who earn their living from debauchery".⁷⁰

In addition, article 15 of the Decree on parent's authority and civil majority allows parents to place their children in a reeducational centre or, when the situation is sufficiently serious, in a detention centre. In the latter case, the length of the detention must be fixed both by the Dean (*Doyen*) and the Public Ministry and cannot be longer than six months.⁷¹

OMCT is concerned by these various examples which promote coercive measures, rather than the protection and reintegration of child victims of precarious socio-economic conditions or of sexual exploitation. Due to their broad and undefined contents, these provisions extend the possibilities of

arrest and detention of children, whereas such a decision should be an exceptional measure. In this regard, OMCT wishes to recall article 37 (b) of the Convention which lays down that "no child shall be deprived of his or her liberty unlawfully or arbitrarily" and that "the arrest, detention or imprisonment of a child shall be used only as a measure of last resort".⁷²

OMCT is also concerned that the criminal regime applicable to children in Haiti allows the adoption of these measures on the basis of social situations, and not only on the basis of suspected illegal actions. This system, which blurs the distinction between sanction and protection, between offence and social marginalisation, tends to weaken the requirement of culpability and the presumption of innocence in the judiciary process, and thus appears contrary to the due process of law requirements protected by article 40 of the Convention. This is particularly true when the decision of deprivation of liberty may be adopted by the parents of the child without any procedural guarantees.⁷³

Finally, it must be highlighted that, due to the economic and social crisis that Haiti is currently undergoing, there is a risk that these provisions especially affect socially

70 - Code pénal, art. 227-2..

71 - Décret du 8 octobre 1982 sur l'autorité parentale et la majorité civile, Art. 15 "Les père et mère ou celui qui a la garde de l'enfant peuvent le confier à un centre de rééducation ou, si les motifs de mécontentement sont suffisamment graves, à un centre de détention pour une durée qui ne peut excéder six mois et qui doit être fixée par le Doyen et le Ministère Public".

72 - See also United Nations Rules for the Protection of Juveniles Deprived of their Liberty, art. 2.

73 - Voir Mattarollo Rodolfo, *L'exercice de l'autorité parentale en Haïti au regard des droits de l'enfant*, 28 février 1998. (http://cdonu.un.org/ec/publica/derecho/PROGRAMA/Modulo05/Mattarollo_Rodolfo.htm).

and economically disadvantaged groups, such as street children. Indeed, these children are more likely to be perceived by State authorities as “vagrant children” or “children in conflict with their parents”, and thus more likely to be targeted with coercive intervention. As a result, these provisions promote an attitude of discrimination and repression against children living in particularly difficult situations. Such an attitude would be incompatible with article 2 of the Convention, which obliges States Parties to respect the Convention “without discrimination of any kind”, and with article 6, which requires that they “ensure to the maximum extent possible the survival and development of the child”.

OMCT would thus recommend to the Government to launch a thorough reform of the juvenile justice system in accordance with the provisions of the Convention, in particular with the necessity to establish a clear distinction between child offenders and child victims, in order for the latter to be protected and assisted, rather than submitted to criminal jurisdictions.

OMCT would also recommend to strictly define the possible grounds of arrest and detention which might be applied to

children in order to ensure that the deprivation of liberty is a last resort for all children in conformity with article 37(b) of the Convention. In particular, OMCT would recommend abrogation of article 15 of the Decree on parent’s authority and civil majority.

7.5 Pretrial detention

Due to the excessive slowness of most judicial proceedings in Haiti, the majority of detainees are those awaiting a final decision on their cases. Based on the experience of MICIVIH, three experts stated in an article published in 1998 that 89,06 of the children imprisoned in Haiti were waiting for their trial, whereas only 10,04 of them had been tried.⁷⁴ Following the evaluation of the situation of 80 children waiting for their trial, the MICIVIH also established that the grounds of inculcation was unknown in 17 cases and that the file of the proceedings were missing in 11 cases. In all cases but two, the pretrial detention had lasted for more than one year.⁷⁵

74 - Mattarollo Rodolfo, Kane Salimata, Miedico Mauro, *Quelques observations préliminaires sur un projet de code de l'enfant. Colloque sur l'avant-projet de code de l'enfant*, Port-au-Prince, Haiti, 1998.

75 - *Ibid.*

Two years later, the situation had not improved. According to statistics published by the Independent Expert of the UN Human Rights Commission on Haiti, as of 30 November 2000, the prison population of Haiti numbered 4,373 detainees, of whom 20.14 per cent had been tried, including 5 children, and 79.86 per cent were awaiting trial, including 72 children.⁷⁶ Therefore, in practice, pre-trial detention of children in Haiti is a rule rather than an exception.

OMCT would recommend that the Haitian authorities adapt this practice to the requirement of article 37 (b) of the Convention and articles 2 and 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which state that imprisonment must be a last resort and for the shortest period of time. OMCT also would like to recall the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), in

particular the section related to pre-trial detention.

7.6 Conditions of detention

In a 1999 report on the situation of democracy and human rights in Haiti,⁷⁷ the UN Secretary-General expressed his concern about the prison conditions in the country. After recalling that 103 children were detained at that time in Haiti, the Secretary-General mentioned that some prisons, particularly the National Penitentiary in Port-au-Prince, persistently showed overcrowding and poor infrastructure. He also emphasized that numerous detainees showed signs of malnutrition, in some cases serious. Medical care also remained precarious.⁷⁸

Two years later, this situation has not improved. According to the Independent Expert of the UN Human Rights Commission on Haiti, the conditions of detention are constantly deteriorating. Poor sanitary conditions, overcrowding and malnutrition are the main concerns of this situation, which affects both adults and children. According to the Independent

76 - *Situation of human rights in Haiti*, Report on the situation of human rights in Haiti prepared by Mr. Adama Dieng, Independent Expert, in accordance with Commission resolution 2000/78, E/CN.4/2001/36, 30 January 2001, par. 21. See also Fuller Anne et al., *Prolonged pretrial detention in Haiti*, Vera Institute of Justice, July 2002, p. 3ss.

77 - *The situation of democracy and human rights in Haiti*, Report of the Secretary-General, UN Doc. A/53/950, 10 May 1999.

78 - *Ibid.* par. 30.

Expert, various reasons may explain this deterioration, “including the shortcomings of the criminal justice system, shortage of prison staff and lack of resources and infrastructure”.⁷⁹

In this regard, OMCT would remind the Government that, as children are more vulnerable than adults, they are entitled to specific measures of protection against any form of ill treatment and violence. According to the circumstances, some conditions of detention, which might be admissible when applied to adults, may constitute violations of international law when applied to children. For example, OMCT believes that, under a certain age, the sole fact of detaining children in a prison is contrary to the requirements of the Convention. In this regards, OMCT wishes to express its deep concern that children as young as 10 years old have been reported to be detained in Haitian jail.⁸⁰ This information is even more concerning, taking into account the conditions of detention mentioned above.

In addition, there are still detention facilities where children are kept with adult prisoners.⁸¹ This obviously is contrary to article 37 (c) of the Convention. OMCT strongly believes that detained children

must be held separately from adults. The risks for children detained with adults, to both their physical and psychological integrity, are enormous. Thus, OMCT would urge that the Government outline what measures it is planning to amend this intolerable situation.

Furthermore, OMCT wishes to recall that the conditions of detention of children described above do not meet the requirements of article 37 (a) and (c) of the Convention nor those of the UN Rules for the Protection of Juveniles Deprived of their Liberty. Among these rules, OMCT wishes to emphasise:

- rule 31, which states “the right to facilities and services that meet all the requirements of health and human dignity”;
- rule 34, according to which “sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their

79 - *Situation of human rights in Haiti*, Report on the situation of human rights in Haiti prepared by Mr. Adama Dieng, Independent Expert, in accordance with Commission resolution 2000/78, E/CN.4/2001/36, 30 January 2001, par. 21. See also Fuller Anne et al., *Prolonged pretrial detention in Haiti*, Vera Institute of Justice, July 2002, p. 16ss.

80 - Mattarollo Rodolfo, Kane Salimata, Miedico Mauro, *Quelques observations préliminaires sur un projet de code de l'enfant. Colloque sur l'avant-projet de code de l'enfant*, Port-au-Prince, Haiti, 1998.

81 - *Ibid.* See also Fuller Anne et al., *Prolonged pretrial detention in Haiti*, Vera Institute of Justice, July 2002, p. 29.

physical needs in privacy and in a clean and decent manner”;

- rule 37, which requires “food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements” as well as “clean drinking water avail-

able to every juvenile at any time”; and

- rule 49, which provides that “Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated”.

102 - Amnesty International, *Arbitrary Detention and Police Ill-Treatment*, March 2001, AI Index: EUR 71/001/2001, page 8.

103 - *Ibid.*

104 - *UN Rules for the Protection of Juveniles Deprived of their Liberty*, adopted by General Assembly resolution 45/113 of 14 December 1990.

105 - *Ibid.*, par. 76.

VIII. Conclusions and Recommendations

The International Secretariat of OMCT is profoundly concerned by the situation of children in Haiti, in particular by the risk of facing sexual or economic exploitation, as well as all forms of ill-treatment while confronted with the judiciary process. OMCT also wishes to emphasize that this situation of the rights of the child in Haiti is characterized by an important lack of information. In particular, OMCT would suggest that Government give more details on the strategy it intends to implement in order to evaluate the situation of street children and to protect, assist and reintegrate them.

OMCT believes that a number of safeguards, both legal and practical, must be implemented in order to fully guarantee the rights of children enshrined in the CRC.

Regarding the legal system, OMCT would recommend that the Committee on the Rights of the Child:

urge the Haitian Government to:

- ratify the Convention Against Torture and Other Cruel Inhuman or

Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women;

- undertake all appropriate legislative, administrative, and other measures to ensure the full implementation of the provision the CRC at national level.

Regarding torture and other cruel, inhuman or degrading treatment or punishment of children, OMCT would recommend that the Committee on the Rights of the Child:

urge the Haitian Government to:

- provide more information on legal and factual measures adopted to protect children against such practices;

- enact a law defining the crime of torture, with a view to clearly cover mental suffering and to make particular reference to child victims;
- implement effective procedures for internal monitoring and disciplining of the behaviour of public officials, including sanctions for failure to provide children with a lawyer or to inform them of their right to notify their next of kin of their detention;
- ensure that independent and qualified medical personnel be required to carry out regular examinations of child detainees;
- elaborate and implement preventive programmes, in particular by ensuring education and training for all personnel who may be involved in the custody, interrogation or treatment of any child subjected to any form of arrest, detention or imprisonment. This should include specific training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, in particular the CRC and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

Regarding unlawful killings, OMCT would recommend that the Committee on the Rights of the Child:

urge the Haitian Government to:

- state that its “zero tolerance” crime policy prohibits any form of unlawful killing by police officer or by the population;
- guarantee a thorough investigation into such practice, in order to identify those responsible, bring them before a competent and impartial civil tribunal and apply the appropriate penal, civil and/or administrative sanctions;
- elaborate and implement preventive programmes, in particular by ensuring education and training for officials in the armed forces. This should include specific training on international standards on the rights of the child, as well as on the use of force.

Regarding sexual abuse and exploitation, OMCT would recommend that the Committee on the Rights of the Child:

urge the Haitian Government to:

- amend article 182 paragraph 1 of the Criminal Code so as to provide various levels of protection adapted to the vulnerability of the victims;
- amend article 229 of the Criminal Code, in order that rape be defined as a serious crime and categorized as an attack on the victim's integrity and well-being, as opposed to a mere crime against morals;
- collect relevant and complete data on this situation in order to formulate a national policy aimed at preventing child sexual exploitation and prosecuting perpetrators and seek international assistance in this regard.

Regarding child labour, slavery and trafficking, OMCT would recommend that the Committee on the Rights of the Child:

urge the Haitian Government to:

- ratify ILO Convention 138 concerning the Minimum Age for Admission to Employment and ILO 182 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;

- modify its Labour Code so as to increase the minimum age for domestic workers from 12 to 15 years old;
- adapt its child labour law to international standards, in particular to ILO Convention 138, by establishing, as a general rule, that the minimum age for admission to employment be 15 years, and that it be raised to 18 years in case of employment likely to jeopardise the health, safety or morals of children;
- take immediate measures to guarantee the physical and psychological integrity of all child workers in Haiti, including investigation of cases of violence against children as well as the adoption of enforcement measures ensuring the accountability of perpetrators;
- collect reliable and complete data on child labour in Haiti in order to set up a comprehensive policy aimed at fully implementing the requirement of article 32 of the CRC. This would include the development of a reliable monitoring and assistance system which would be available to all child victims of exploitation and slavery;

- establish comprehensive policies and other measures to prevent and combat trafficking in children and to protect the victims.

Regarding the juvenile justice system, OMCT recommends that the Committee on the Rights of the Child:

urge the Haitian Government to:

- modify its criminal legislation regarding the criminal majority so as to ensure that all children under 18 years of age are granted special protection;
- undertake a survey on the situation of children detained in Haiti and order the immediate release of those who are too young to be held criminally responsible, as well as those who have been detained awaiting trial for an excessive period of time;
- abrogate the provision attributing to the judge the authority to “withdraw the mitigating excuse of minority” in certain criminal proceedings involving children;
- adopt all appropriate measures to promote the establishment of laws, proce-

dures, authorities and institutions specifically applicable to children in conflict with the law;

- monitor the functioning of the judicial system in Haiti and apply disciplinary measures when necessary;
- suggest that any child in conflict with the law receive legal advice and assistance;
- launch a thorough reform of the juvenile justice system in accordance with the provisions of the CRC, in particular with the necessity to establish a clear distinction between child offenders and child victims, in order for the latter to be protected and assisted, rather than submitted to criminal jurisdictions;
- strictly define the possible grounds of arrest and detention which might be applied to children in order to ensure that the deprivation of liberty is a last resort for all children in conformity with article 37(b) of the CRC;
- ensure that life conditions in child detention centres and institutions be in conformity with article 37 of the CRC and the UN Rules for the Protection of

Juveniles Deprived of their Liberty, in particular by resolving overcrowding problems, poor hygiene, lack of food and restrictions on family visits;

- ensure that child detainees are kept separately from adults, unless it is in their best interests not to do so;
- give information regarding the training activities developed for all professionals involved in the system of juvenile justice, on the provisions of the CRC and other relevant international instruments in the field of juvenile justice, including the “Beijing Rules”, the “Riyadh Guidelines” and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;

- ensure that adequate resources are allocated to build up an effective juvenile justice system which would guarantee, in conformity with article 40 paragraph 1 of the Convention, that every child in conflict with the law be treated in a manner consistent with the promotion of her/his sense of dignity and worth, which reinforces her/his respect for the human rights and fundamental freedoms of others and which takes into account her/his age and the desirability of promoting her/his reintegration and her/his assuming a constructive role in society.



COMMITTEE ON THE RIGHTS OF THE CHILD
32nd Session - Geneva, 13-31 January 2003

Concluding observations
of the Committee
on the Rights of the Child:
Haiti

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

1. The Committee considered the initial report of Haiti (CRC/C/51/Add.7), submitted on 3 April 2001, at its 854th and 855th meetings (see CRC/C/SR.854 and 855) held on 27 January 2003, and adopted¹ the following concluding observations.

A. INTRODUCTION

2. The Committee notes with appreciation the submission of the State party's initial report. However, the written replies to its list of issues (CRC/C/RESP/18) only partly addressed the Committee's questions. The Committee appreciates the presence of a delegation but regrets that it did not include anybody directly involved in the implementation of the Convention.

B. POSITIVE ASPECTS

3. The Committee welcomes:
- (a) the adoption of the 2001 Law prohibiting the use of corporal punishment within their family and in schools;
 - (b) the establishment of the National Committee for the Education of Girls to enhance the enrolment of girls in education.

C. FACTORS AND DIFFICULTIES IMPEDING THE IMPLEMENTATION OF THE CONVENTION

4. The Committee acknowledges that the external debt, the devaluation of the gourde, the high unemployment rate, the unstable political situation, and the limited availability of financial and skilled human resources have had a negative impact on the social welfare and on the situation of children and have

seriously impeded the full implementation of the Convention. The Committee also notes that the implementation of the OAS resolutions and the return to a political stability is a prerequisite condition for overseas development assistance which have been frozen.

D. PRINCIPAL SUBJECTS OF CONCERN AND RECOMMENDATIONS

1. General measures of implementation (arts. 4, 42 and 44, paragraph 6 of the Convention)

Legislation

- ◆ 5. The Committee notes that a draft Code on Children is being prepared to harmonise the existing legislation with the Convention, but remains concerned, however, that domestic legislation still does not fully reflect the principles and the provisions of the Convention.
- ◆ 6. The Committee encourages the State party to take all necessary measures to ensure that its domestic legislation conforms fully to the principles and provisions of the

Convention. In that respect, the Committee recommends that the State party:

- a) undertake all steps to finalise the harmonisation of existing legislation with the Convention on the Rights of the Child;
- b) adopt as a matter of urgency a comprehensive children's code which will reflect the general principles and provisions of the Convention on the Rights of the Child;
- c) ensure the implementation of its legislation.

Coordination

- ◆ 7. The Committee notes the establishment of an Inter-Ministerial Commission in charge, inter alia, of the coordination of governmental bodies working on the implementation of the Convention (Commission de réflexion). But the Committee is concerned that this Commission is not operational. In addition, the Committee notes that the Social Welfare and Research Institute (Institut du bien-être social et de recherche - IBESR) is a key institution in the implementation of the Convention but remains concerned that this

body is not fully operational due to limited human and financial resources.

8. The Committee recommends that the State party establish as a matter of urgency a body with the clear mandate to coordinate all activities related to the implementation of the Convention, and with the necessary power, human and other resources to fulfil its mandate in an effective manner at the national, regional and local level. The Committee further recommends that the State party take all necessary measures to allow the Social Welfare and Research Institute to carry out its functions at the national, regional and local levels.

National Plan of Action

9. Although the State party in developing some sectoral plans, e.g. in the area of health, the Committee is concerned at the lack of a comprehensive national strategy or plan of action for the implementation of the Convention.

10. The Committee encourages the state party to develop a comprehensive national plan of action for the implementation of the Convention incorporating the objectives and goals of the outcome Document “A World Fit

for Children” of the UNCASS. In this regard, The State party should seek technical assistance from UNICEF and involve the civil society in the preparation and implementation of such a national Plan of action.

Independent monitoring structures

11. The Committee notes the establishment of the Ombudsman Office (Office de la Protection du Citoyen, OPC) but regrets that this body is not fully operational and the absence of independent monitoring structure with a mandate which would include the power to receive and address individual complaints of violations of the rights of the child.

12. The Committee encourages the State party to consider the establishment of an independent national human rights institution, taking into account of the Committee's General Comment No. 2 on National Human Rights Institutions, to monitor and evaluate progress in the implementation of the Convention at the national and at the local level. In addition, the Committee recommends that the institution be allocated with adequate human and financial resources and that its mandate includes the power to receive and

investigate complaints of violations of child rights in a child-sensitive manner, and to effectively address them. The Committee encourages the State party to seek technical assistance from, among others, OHCHR and UNICEF.

Resources for children

13. The Committee notes the existence of the Economic and Social Programme 2001-2006, but expresses its concern at the limited budget allocations and mobilisation for the social sector, in particular for those areas addressing the needs of the most vulnerable groups of children. In that regard, the Committee is concerned that insufficient attention has been paid to article 4 of the Convention regarding the implementation to the “maximum extent ... of available resources” of the economic, social and cultural rights of children.

14. The Committee recognises the difficult economic conditions but it nevertheless recommends that the State party make every effort to implement the Economic and Social Programme 2001-2006 and to increase the proportion of the budget allocated to the realisation of children’s rights, inter alia by ta-

king the necessary steps for a resumption of international aid programmes. In this context, the State party should ensure the provision of appropriate human and financial resources and guarantee that the implementation of policies relating to children is a priority, in particular for the most vulnerable groups of children.

Data collection

15. The Committee is concerned at the absence of reliable data and the lack of an adequate data collection system.

16. The Committee recommends that the State party develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, and urban and rural area. This system should cover all children up to the age of 18 years with specific emphasis on those who are particularly vulnerable. It further encourages the State party to use these indicators and data for formulation of policies and programmes for the effective implementation of the Convention. The Committee recommends that the State party seek technical assistance from, inter alia, UNICEF, UNDP.

Civil society/NGOs

17. The non-governmental organisations play *de facto* an important role in awareness raising and service provision in areas like health and education. But the Committee is concerned that the State party has not developed a well-structured systematic cooperation with the NGOs and that the State party does not evaluate the activities of NGOs.

18. The Committee recommends that the State party establish a well structured, systematic cooperation with NGOs to set clear minimum standards for the service providing activities regularly and made sure that they are given the necessary follow-up.

Training/Dissemination of the Convention

19. The Committee is aware of the measures undertaken to promote widespread awareness of the principles and provisions of the Convention. However, the Committee is of the opinion that these measures need to be strengthened. In this respect, the Committee is concerned at the lack of a systematic plan to introduce training and awareness among professional groups working for and with children.

20. The Committee recommends that the State party:

- a) strengthen its efforts to disseminate the principles and provisions of the Convention as a measure to sensitise society about children's rights through social mobilisation;
- b) undertake systematic education and training on the provisions of the Convention for all professional groups working for and with children, in particular parliamentarians, judges, lawyers, law enforcement officials, civil servants, municipal and local workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers;
- c) seek technical assistance from, among others, the Office of the High Commissioner for Human Rights and UNICEF.

2. Definition of the child (article 1 of the Convention)

21. The Committee is concerned at the different minimum legal age for marriage for girls (15 years) and for boys (18 years).

22. The Committee recommends that the State party equalise the minimum legal age for marriage for girls and boys by raising the minimum legal age for girls.

3. General principles (arts. 2, 3, 6 and 12 of the Convention)

23. The Committee is concerned that the general principles contained in the Convention, namely the right to non-discrimination (art. 2), the best interests of the child (art. 3), the right to life, survival and development (art. 6) and respect for the views of the child (art. 12), are not fully integrated into the State party's legislation and administrative and judicial decisions, or in policies and programmes relevant to children at both national and local levels.

24. The Committee recommends that the State party appropriately integrate the

general principles of the Convention, in particular the provisions of articles 2, 3, 6 and 12, in all relevant legislation concerning children and apply them in all political, judicial and administrative decisions, as well as in projects, programmes and services which have an impact on all children. These principles should guide planning and policy-making at every level, as well as actions taken by social and health welfare institutions, courts of law and administrative authorities.

Non-discrimination

25. The Committee notes that discrimination is prohibited under the Constitution (article 18) and a Ministry for the Status of Women was established in 1994 but remains concerned by the persistence of discriminatory legal rules regarding children born out of wedlock. The Committee is further concerned at the facto discrimination in the State party. In particular, the Committee is concerned at the disparities in the enjoyment of rights experienced by children belonging to the most vulnerable groups, such as girls, *restavèk*, children from poor families, street children, children with disabilities and children living in rural areas.

26. In light of article 2 and other related articles of the Convention, the Committee recommends that the State party

- (a) adopt, as a matter of priority, effective legal measures to stop discrimination against children born out of wedlock;
- (b) ensure through legislation that all children within its jurisdiction enjoy all the rights set out in the Convention without discrimination and prioritise and target social services to children belonging to the most vulnerable groups through a proactive and comprehensive strategy measures;
- (c) ensure effective law enforcement, and launch comprehensive public information campaigns to prevent and combat all forms of discrimination, where needed within the framework of international co-operation.

27. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the World

Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking account of General Comment No. 1 on article 29.1 of the Convention (aims of education).

Best interests of the child

28. The Committee is concerned that the principle of the best interests of the child is not fully recognised and implemented in the relevant legislation and in decisions relevant to children. The Committee is especially concerned that the existing legislation, as referred to in the State party report [para. 51], allows parents to send their children to prison for a period up to 6 months, without the involvement of a court or similar body constituting a violation of article 37(d) of the Convention. However, the Committee welcomes the information that this rule is rarely applied in practice.

29. The Committee recommends that the State party ensure that the best interests of the child is reflected in all relevant legislation, policies, programmes and otherwise in the implementation of the Convention. The Committee particularly recommends that the State party abolish the rule of “correction

paternelle” which allows parents to place a child in prison.

Respect for the views of the child

30. The Committee notes that the Decree of 12 December 1960 provides for the right of children to express themselves in the family; however it is concerned that children’s opinion are not given sufficient consideration and that respect for the views of the child remains limited within the family, in schools, in the courts, and before administrative authorities and in the society at large.

31. The Committee encourages the State party to ensure that children’s views are given due consideration, in accordance with article 12 of the Convention, in the family, at schools, in the courts, and in all relevant administrative and other processes concerning them through, inter alia, the adoption of appropriate legislation, the training of professionals and the establishment of specific activities in schools.

4. Civil rights and freedoms (arts. 7, 8, 13-17 and 37(a) of the Convention)

Birth registration

32. The Committee welcomes the 1995 Decree which allows for late birth registration but it remains concerned at the large number of children whose birth is not being registered. The Committee is further concerned at the fees which parents have to pay for a birth certificate of their children.

33. In the light of article 7 of the Convention, the Committee urges the State party to strengthen its efforts to ensure that all children are registered at birth, including through awareness-raising campaigns, consider facilitating procedures of birth registration, notably by suppressing any fees and by a decentralisation of the system; and take measures to register those who were not registered at birth.

Right to identity

34. The Committee is concerned that children born out of wedlock are denied the right to know the identity of their father (article 306 of the Civil Code).

35. In light of article 7 of the Convention, the Committee recommends that the State party take the necessary measures, including the repeal of article 306 of the Civil Code, to ensure, as far as possible, respect for the child's right to know his or her parent's identities.

Ill-treatment and other forms of violence

36. The Committee welcomes the Act prohibiting corporal punishment (August 2001) within the family and in schools, but remains concerned at the persistent practice of corporal punishment by parents or teachers or ill-treatment used against child domestics (*restaveks*). The Committee is further deeply concerned about instances of ill-treatment by law enforcement officers against street children

37. The Committee recommends that the State party:

- (a) take all necessary measures for the effective implementation of the law prohibiting corporal punishment, in particular by making use of information and education campaigns to sensitise parents, teachers, other professionals working with children, and the public in general of the

harm caused by corporal punishment and of the importance of alternative, non-violent forms of discipline as foreseen in article 28 paragraph 2 of the Convention;

- (b) investigate in an effective way reported cases of ill-treatment of children by law enforcement officers and ensure that alleged offenders are transferred from active duty or suspended while they are under investigation, dismissed and punished if convicted;
- (c) provide for the care, recovery and reintegration of child victims.

5. Family environment and alternative care (arts. 5; 18 (paras. 1-2); 9-11; 19-21; 25; 27 (para. 4); and 39 of the Convention)

Separation from parents

38. The Committee is particularly concerned of the high number of children who are separated from their parents. The Committee is further concerned at the fact that the views of the child are not considered when such a decision is taken and that the Social Welfare and Research Institute does not carry out a

periodic review of placement of all children separated from their parents.

39. In light of article 9, 12, 20 and 25 of the Convention, the Committee recommends that the State party:

- (a) ensure that a child shall not be separated from his or her parents against their will, unless it is in the best interests of the child and if it has been decided by a competent authority, subject to judicial review;
- (b) ensure that a child who is temporarily and permanently deprived of his or her family environment is entitled to special protection and assistance;
- (c) ensure that the child is given an opportunity to participate in the proceedings and that he or she can make his or her views known; and
- (d) undertake all necessary efforts to allow the Institute for Social Welfare and Research to carry out a periodic review of placement of all children separated from their parents, should be in institutions or in foster families.

Adoption

40. The Committee is concerned at the increase of inter-country adoption without adequate monitoring mechanism.

41. The Committee recommends that the State party:

- (a) ratify the Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption of 1993
- (b) undertake efforts to enhance its capacities to monitor inter-country adoptions to ensure full respect with article 21 and other relevant provisions of the Convention.

Violence, abuse and neglect

42. The Committee is concerned 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. The Committee is particularly concerned at the very high rate of sexual abuse of girls (more than a third of women were sexually

abused before the age of 15 years). In addition, the Committee is concerned at the lack of statistical data and a comprehensive plan of action, and the insufficient infrastructures.

43. In light of article 19 and 39 of the Convention, the Committee recommends that the State party:

- (a) assess the scope, nature and causes of violence against children, in particular sexual violence against girls with a view to adopting a comprehensive strategy and effective measures and policies and to changing attitudes;
- (b) properly investigate cases of violence, through a child-sensitive judicial procedure, notably by giving appropriate weight to children's views in legal proceedings, and apply sanctions to perpetrators with due regard given to guaranteeing the right to privacy of the child;
- (c) provide services for the physical and psychological recovery and social reintegration of girls victims of sexual abuses and any other children victims of abuse, neglect, ill-treatment, violence or exploitation, and take appropriate measures

to prevent the criminalisation and stigmatisation of victims;

- (d) take into consideration the recommendations of the Committee adopted on its days of general discussion on children and violence (CRC/C/100, para. 688 and CRC/C/111, paras. 701-745);
- (e) seek technical assistance from, among others, UNICEF and WHO.

6. Basic health and welfare (arts. 6, para. 2; 18, para. 3; 23-24; 26; and 27, paras. 1-3 of the Convention)

44. The Committee welcomes efforts undertaken by the State party in the area of basic health and welfare, such as the Extended Vaccination Programme, the adherence to the Integrated Management of Childhood Illness, the Baby Friendly Hospital Initiative or the promotion of breast-feeding, but it remains deeply concerned at the high infant under-five and maternal mortality rates and low life expectancy in the State party. The Committee also remains concerned that access to health services in the rural areas is limited; and that the survival and

development of children in the State party continue to be threatened by early childhood diseases infectious diseases, diarrhoea, and malnutrition. Concern is also expressed at the poor state of sanitation and at the insufficient access to safe drinking water, especially in rural areas.

45. The Committee recommends that the State party by, inter alia, implementing as soon as possible its National Health Plan:

- (a) reinforce its efforts to allocate appropriate resources and develop and implement comprehensive policies and programmes to improve the health situation of children, particularly in rural areas;
- (b) facilitate greater access to primary health services, notably in rural areas; reduce the incidence of maternal, child and infant mortality; prevent and combat malnutrition, especially among vulnerable and disadvantaged groups of children; and continue to promote proper breastfeeding practices;
- (c) continue its immunization campaigns and incorporate them into IMCI;

- (d) Establish midwifery training programmes to assure safe home delivery; and

- (e) pursue additional avenues for cooperation and assistance for the improvement of child health with, among others, WHO and UNICEF.

Adolescent health

46. The Committee is concerned that insufficient attention has been given to adolescent health issues, including developmental mental and reproductive health concerns, and substance abuse. The Committee is also concerned at the particular vulnerable situation of girls, given, for instance, the very high percentage of early pregnancies. In that respect, the Committee is particularly concerned at the high incidence of illegal abortions with the inevitable risks to health and life that it implies.

47. The Committee recommends that the State party:

- (a) Undertake all necessary measures to formulate adequate adolescent health policies and programmes, paying particular attention to adolescent girls; and

- (b) Strengthen sexual and reproductive health education, mental health and adolescent-sensitive counselling services and make them accessible to adolescents.

HIV/AIDS

48. The Committee notes the adoption of the HIV National Strategic Plan but is extremely concerned at the high incidence and increasing prevalence of HIV/AIDS amongst adults and children, more particularly at the high incidence of children infected at birth and at the number of children orphaned by HIV/AIDS. The Committee is further concerned at the lack of knowledge among adolescents on how to prevent HIV/AIDS in spite of real efforts of the State party to raise awareness on this issue.

49. The Committee recommends that the State party:

- (a) increase its efforts to prevent HIV/AIDS, taking into consideration the recommendations of the Committee adopted on its day of general discussion on children living in a world with HIV/AIDS (CRC/C/80, para. 243);

- (b) urgently take measures to prevent the mother-to-child transmission, inter alia, by combining it with the activities to reduce maternal mortality, and take adequate measures to address the impact upon children of the HIV/AIDS-related deaths of parents, teachers and others, in terms of children's reduced access to family life, adoption, emotional care and education;
- (c) strengthen its efforts to raise awareness on HIV/AIDS among adolescents, particularly among those belonging to vulnerable groups; and
- (d) seek further technical assistance from, among others, UNAIDS.

Children with disabilities

50. The Committee notes that a colloquium held in 1999 adopted recommendations regarding children with disabilities to be implemented by the State party but remains concerned at the absence of a comprehensive strategy for children with disabilities; at the lack of data and at the insufficient measures taken by the State party to ensure effective access of these children to adequate health services, education and social services, and

to facilitate their full inclusion in society. The Committee is also concerned about the small number of well-trained professionals working with and for children with disabilities.

51. The Committee recommends that the State party:

- (a) develop a comprehensive strategy, including the necessary plans of action, for children with disabilities ;
- (b) collect data regarding disabled children in order to review the situation of these children in terms of their access to suitable health care, education services and employment opportunities;
- (c) take note of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (General Assembly resolution 48/96, annex) and of the Committee's recommendations adopted at its day of general discussion on the rights of children with disabilities (CRC/C/69, paras. 310-339);
- (d) allocate adequate resources to strengthen services for children with disabilities, support their families and train professionals in the field; and

(e) seek assistance from, among others, UNICEF and WHO.

7. Education, leisure and cultural activities (arts. 28, 29, and 31)

52. The Committee notes the adoption of the National Education and Training Plan and the establishment of a Pilot Committee for its implementation. The Committee further welcomes the increasing budget allocated to education as well as the establishment of the National Committee for the Education of Girls. However, the Committee is concerned at the still low enrolment ratios, the disparities in enrolment between girls and boys and between rural and urban areas. The Committee is further concerned at very limited number of public schools and at the quality of education expressed in the high rate of repetition and dropout which can be explained notably because of the lack of appropriate training for teachers [para. 192 of the State party report]. The Committee is also concerned that pregnant girls are excluded from schools. Finally, the Committee is concerned that education is principally run by the private sector [para. 184 of the State party report] while the

supervision by the State through the National Partnership Commission is very limited.

53. In light of article 28, 29 and other relevant provisions of the Convention, the Committee recommends that the State party:

- (a) Expedite an effective implementation of the National Education and Training Plan;
- (b) continue its efforts to ensure that all children, especially girls, have equal access to educational opportunities with a special attention to those living in rural and remote areas;
- (c) take the necessary measures to guarantee access to adapted and adequate curricula designed for vulnerable children like street children, *restaveks* and over-aged children/adolescents;
- (d) take the necessary measures to identify the causes of the high rate of repetition and dropout in primary schools and take steps to address the situation;
- (e) better monitor the school curricula and the quality of education in private schools;

- (f) introduce, strengthen and systematise human rights education including the rights of the child into school curricula, beginning in primary school;
- (g) provide teachers with adequate training;
- (h) review its policy to ensure the leadership in governance of the education sector by notably reinforcing the powers of the National Partnership Commission; and
- (i) seek technical assistance from, among others, UNESCO and UNICEF.

8. Special protection measures (arts. 22; 38-40; 37 (b)-(d); and 32-36)

Economic exploitation

54. The Committee is deeply concerned at the high number of under-age children involved in labour who are working long hours at young ages, which has a negative effect on their development and school attendance.

55. The Committee recommends that the State party:

- (a) strengthen the implementation of its labour laws and increase the number of labour inspectors;
- (b) ratify the ILO Conventions No. 138 concerning the Minimum Age for Admission to Employment and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- (c) seek technical assistance from, inter alia, ILO.

56. The Committee is deeply concerned at the situation of child domestic workers (*restaveks*), in particular at the low age retained in article 341 of the Labour Code (12 years) at which children can be placed in families, taking into account that, in practice, even younger children are concerned. The Committee notes with concern that these children, most of them being girls, are forced to work long hours under harsh conditions and without any financial retribution; and are subjected to ill-treatment and abuse, including sexual abuse.

57. The Committee recommends that the State party urgently:

- (a) repeal article 341 of the Labour Code and ensure respect of the minimum age for employment set at 15 years;
- (b) take all necessary measures to prevent and end this practice through a comprehensive strategy, notably by raising debates and awareness campaigns, providing guidance and support to the most vulnerable families, and addressing the root causes of the phenomenon;
- (c) properly investigate cases of violence, through a child-sensitive judicial procedure, and apply sanctions to perpetrators;
- (d) ensure that *restaveks* are offered physical and psychological recovery and social reintegration, including access to education.

Street children

58. The Committee expresses its concern at the increasing number of street children and at the lack of a systematic and comprehensive strategy to address this situation and to

provide these children with adequate protection and assistance. In addition, the Committee is concerned that these children are used for the perpetration of offences and that some of them have disappeared.

59. The Committee recommends that the State party:

- (a) ensure that street children are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full-development;
- (b) ensure that these children are provided with recovery and reintegration services for physical, sexual and substance abuse, and services for reconciliation with their families;
- (c) to investigate the disappearances of street children;
- (d) develop a comprehensive strategy to address the increasingly large number of street children, with the aim of preventing and reducing this phenomenon.

Trafficking of children

60. The Committee is deeply concerned at the high incidence of trafficking of children from Haiti to the Dominican Republic. The Committee is concerned that these children once they are separated from their family are forced to beg or to work in the Dominican Republic.

61. The Committee recommends that the State party take all necessary measures to prevent the trafficking of Haitian children to the Dominican Republic. In particular, the Committee recommends that the State party conclude an agreement with the Dominican Republic for the repatriation of trafficked children to Haiti and to strengthen borders control. The Committee recommends that the State party continue to seek assistance from, inter alia, UNICEF and the International Organisation on Migration.

Children in conflict with the law

62. The Committee notes that the administration of juvenile justice is governed by the Act of 7 September 1961 and the Decree of 20 November 1961, but the Committee remains concerned that a juvenile justice

system does exist only in Cap Haitien and Port-au-Prince. The Committee is also concerned that children may stay long time in pre-trial detention, at the failure to separate children from adult in detention (with the exception of the Fort National, in Port au Prince), about allegations of ill-treatment by law enforcement officers, the conditions of detention of minors. The Committee is further concerned at the very limited possibilities for the rehabilitation and reintegration of juveniles following judicial proceedings: and at the sporadic training of judges, prosecutors and prison staff.

63. The Committee recommends that the State party take the necessary steps to reform the legislation concerning the system of juvenile justice in line with the Convention, in particular articles 37, 40 and 39, and other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System.

64. As part of this reform, the Committee particularly recommends that the State party:

- (a) undertake all necessary measures to ensure that juvenile courts are established and trained juvenile judges appointed in all regions of the State party;
- (b) consider deprivation of liberty as a measure of last resort and for the shortest possible period of time, limit by law the length of pre-trial detention, and ensure that the lawfulness of this detention is reviewed by a judge without delay and regularly thereafter;
- (c) provide children with legal and other assistance at an early stage of the procedure;
- (d) provide children with basic services (e.g. schooling);
- (e) protect the rights of children deprived of their liberty and improve the conditions of detention and imprisonment, notably by establishing special prisons for children with conditions suitable to their age and their needs and by ensuring the presence of social services in all detention centres in the country, and in the meantime by ensuring that they are separated from adults

in all prisons and in pre-trial detention places throughout the country;

- (f) request the technical assistance in the area of juvenile justice and police training from, among others, OHCHR and other members of the United Nations Coordination Panel on Technical Advice and Assistance on Juvenile Justice.

9. Optional Protocols

65. The Committee notes that the State Party has signed but not ratified the two Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict.

66. The Committee recommends the State party ratify the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict.

10. Dissemination of documentation

67. Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the initial report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government and the general public, including NGOs.

11. Periodicity for submission of reports

68. In light of the recommendation on reporting periodicity adopted by the Committee and described in the report on its twenty-ninth session (CRC/C/114), the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States parties' responsibilities to children under the Convention is ensuring that the Committee on

the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by States parties is crucial. As an exceptional measure, in order to help the State party catch up with its reporting obligations in full compliance with

the Convention, the Committee invites the State party to submit its second and third reports in one consolidated report by 7 July 2007, the due date for the submission of the third report. The Committee expects the State party to report thereafter every five years, as foreseen by the Convention.

The World Organisation
Against Torture (OMCT)
wishes to extend its gratitude
to the following for their
support to the Children's
Rights Programme:



P.O. Box 21 - 8, rue du Vieux-Billard
CH 1211 Geneva 8
Tel. +4122-809 49 39 - Fax +4122-809 49 29
[http:// www.omct.org](http://www.omct.org) - Electronic Mail: omct@omct.org

ISBN 2-88477-043-7