



World Organisation Against Torture  
Organisation Mondiale Contre la Torture  
P.O. Box 21 - 8, rue du Vieux-Billard  
CH 1211 Geneva 8, Switzerland  
Tel. +41-22-809.49.39 Fax +41-22-809.49.29

# Rights of the Child in Haiti

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

Report prepared by the  
World Organisation Against Torture (OMCT)  
for the Committee on the Rights of the Child

Researched and written by Sylvain Vité  
Co-ordinated and edited by Roberta Cecchetti

For further information please contact OMCT at: [sv@omct.org](mailto:sv@omct.org)

OMCT would like to express its gratitude to the *Commission nationale Justice et Paix Haiti* for its help with the research on the present report.

Geneva, October 2002

**Contents**

- Introduction..... p. 3**
- 1. International standards..... p. 3**
- 2. Definition of the child..... p. 4**
- 3. Protection from torture and other cruel, inhuman or degrading treatment or punishment..... p. 5**
- 4. Unlawful killings..... p. 7**
- 5. Protection from other forms of violence..... p. 7**
  - a. Sexual abuse and exploitation..... p. 8**
  - b. Child labour and slavery ..... p. 9**
  - c. Child trafficking..... p. 11**
- 6. Children in conflict with the law..... p. 11**
  - a. Age of criminal responsibility..... p. 11**
  - b. Jurisdictions and proceedings..... p. 13**
  - c. Fair trial..... p. 13**
  - d. Grounds of arrest and detention..... p. 14**
  - e. Pretrial detention..... p. 16**
  - f. Conditions of detention..... p. 16**
- Conclusion and recommendations..... p. 18**

## 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.<sup>1</sup>

Haiti also suffers from a recurrent political instability, which has slowed down the democratisation process and constantly threatens the human rights situation.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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. 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.

### 1. International standards

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

---

<sup>1</sup> The World Bank Group, *Haiti, Country Brief*, <http://wbln0018.worldbank.org/external/lac/lac.nsf>.

<sup>2</sup> *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.

<sup>3</sup> *La CIDH est préoccupée par le manque de progrès en matière de droits de l’homme en Haiti*, Commission interaméricaine des droits de l’homme, Communiqué de presse, Haiti, 29 août 2002.

<sup>4</sup> *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.

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 legislation 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.

## **2. 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.<sup>5</sup>

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 Investigations<sup>6</sup> (IBESR).<sup>7</sup> 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.<sup>8</sup>

---

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

<sup>6</sup> Institut du bien-être social et de recherches

<sup>7</sup> Art. 344 and 345.

<sup>8</sup> 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.<sup>9</sup> 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).<sup>10</sup> Recruitment into HNP is voluntary and the minimum age is fixed at 18 years of age.<sup>11</sup> 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”.<sup>12</sup> OMCT welcomes the fact that these provisions are in conformity with article 38 of the Convention.

### **3. Protection from 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.<sup>13</sup> These rules and guidelines are: the Beijing Rules<sup>14</sup>, the Riyadh Guidelines<sup>15</sup> and the Rules for the Protection of Juveniles Deprived of their Liberty<sup>16</sup>.

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”.<sup>17</sup>

---

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

<sup>10</sup> Police nationale d'Haiti.

<sup>11</sup> The Coalition to Stop the Use of Child Soldiers, *Child Soldiers, Global report*, 2001, p. 189.

<sup>12</sup> « Le service Militaire est obligatoire pour tous les Haitiens âgés au moins de dix-huit (18) ans ».

<sup>13</sup> 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.

<sup>14</sup> General Assembly resolution 40/33.

<sup>15</sup> General Assembly resolution 45/112.

<sup>16</sup> General Assembly resolution 45/113.

<sup>17</sup> Article 25.

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).<sup>18</sup>

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 “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).<sup>19</sup> 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.<sup>20</sup>

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 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

---

<sup>18</sup> 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 ».

<sup>19</sup> 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 exécuter 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 élevant la peine suivant la règle posée en l'article 159 ».

<sup>20</sup> 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 (...) ».

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.

#### **4. 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.<sup>21</sup> 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 family 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.<sup>22</sup>

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.

---

<sup>21</sup> 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>).

<sup>22</sup> Amnesty International, *Report 2002*, Haiti.

## 5. 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".

### a. 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".<sup>23</sup>

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).<sup>24</sup> 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.<sup>25</sup>

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.

Under the Criminal Code, rape is considered a crime, but not a serious crime, since no jury trial is required.<sup>26</sup> 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".<sup>27</sup>

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.<sup>28</sup> According to ECPAT International, approximately 10,000 children are involved.<sup>29</sup> However, as sexual exploitation is a hidden phenomenon and often goes

---

<sup>23</sup> Convention on the Rights of the Child, art. 34.

<sup>24</sup> 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 ».

<sup>25</sup> Criminal Code, art. 182 par. 2.

<sup>26</sup> Criminal Code, art. 229.

<sup>27</sup> *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.

<sup>28</sup> 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.

<sup>29</sup> ECPAT, Online database, Haiti,



unreported, this figure may be higher. According to the Centre of Popular Education,<sup>30</sup> 70 % of Haiti's street girls have been victims of this form of violence.<sup>31</sup>

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.<sup>32</sup>

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

### **b. 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 dangerous employment, both from a physical or moral point of view, and are not allowed to work in places where alcoholic beverage is sold.<sup>33</sup>

Regarding domestic labour, the law specifies that the child shall be treated as a member of the family.<sup>34</sup> More particularly, she/he shall not be employed for work beyond her/his strength<sup>35</sup> or which might affect her/his health, development or capacity to attend school.<sup>36</sup> Furthermore, she/he shall not be subject “to moral torture nor corporal punishment” (OMCT's translation).<sup>37</sup> From the age of 15, domestic children are also entitled to receive a salary.<sup>38</sup>

---

[http://64.78.48.196/eng/Ecpat\\_inter/projects/monitoring/online\\_database/index.asp](http://64.78.48.196/eng/Ecpat_inter/projects/monitoring/online_database/index.asp).

<sup>30</sup> Centre d'éducation populaire

<sup>31</sup> ECPAT, Online database, Haiti,

[http://64.78.48.196/eng/Ecpat\\_inter/projects/monitoring/online\\_database/index.asp](http://64.78.48.196/eng/Ecpat_inter/projects/monitoring/online_database/index.asp).

<sup>32</sup> *La CIDH est préoccupée par le manque de progrès en matière de droits de l'homme en Haiti*, Commission interaméricaine des droits de l'homme, Communiqué de presse, Haiti, 29 août 2002.

<sup>33</sup> 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 ».

<sup>34</sup> Labour Code, art. 345.

<sup>35</sup> 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 ».

<sup>36</sup> Ibid., art. 346.

<sup>37</sup> Ibid., art. 349.

<sup>38</sup> Ibid. art. 350.

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

Child labour is widespread in Haiti, especially in rural and urban informal activities and in domestic service.<sup>39</sup> In 2002, the National Coalition for Haitian Rights (NCHR) published a report on the situation of the “*restavèk*”,<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup>

Although no precise statistic has been established on the extent of this situation, UNICEF has estimated that it affects at least 300 000 children.<sup>43</sup> 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”.<sup>44</sup>

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”.<sup>45</sup> Indeed, the IBESR, which should ensure that each case receive an adequate follow-up, does not have the necessary resources to carry out its task.<sup>46</sup>

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

---

<sup>39</sup> 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.

<sup>40</sup> National Coalition for Haitian Rights, *Restavèk No More: Eliminating Child Slavery in Haiti*, 2002, see [http://www.nchr.org/hrp/restavek/report\\_es.htm](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*, 1er février 2002, p. 16.

<sup>41</sup> See Labour Code, art. 341 to 356.

<sup>42</sup> 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.

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

<sup>44</sup> 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.

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

<sup>46</sup> *Ibid.*

to stop the bad feeling represented by the work and the non rehabilitation of child victims of exploitation”.<sup>47</sup>

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”.<sup>48</sup>

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

### **c. 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”.

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.<sup>49</sup> 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.<sup>50</sup>

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.

---

<sup>47</sup> Par. 3.1.

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

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

<sup>50</sup> Ibid.

## 6. 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).<sup>51</sup>

### a. Age of criminal responsibility

The minimum age for criminal responsibility is set at 13 years and the age of criminal majority at 16 years. Articles 50 to 52 of the Criminal Code establish a specific criminal status for children between 13 and 16 years.<sup>52</sup> 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.<sup>53</sup> 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".<sup>54</sup>

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

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

---

<sup>51</sup> 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](http://cdonu.un.org/ec/publica/derecho/PROGRAMA/Modulo09/Mattarollo_R_Kane_S_Miedico_M.htm))

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

<sup>53</sup> Code pénal, art. 50.

<sup>54</sup> Loi du 7 septembre 1961 sur le mineur en face de la loi pénale et des tribunaux spéciaux pour enfants Art. 1<sup>er</sup> 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 ».

<sup>55</sup> Décret du 20 novembre 1961 instituant le "Tribunal Pour enfants", Art. 12 par. 1 and 11.

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.<sup>56</sup> 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.<sup>57</sup> 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 penalty is abolished in all cases”.<sup>58</sup> 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.

## **b. 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*).<sup>59</sup> 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.<sup>60</sup> Specific rules are also provided regarding the prosecution of children in conflict with the law.<sup>61</sup>

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.<sup>62</sup> 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

---

<sup>56</sup> 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](http://cdonu.un.org.ec/publica/derecho/PROGRAMA/Modulo05/Mattarollo_Rodolfo.htm))

<sup>57</sup> 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.

<sup>58</sup> « La peine de mort est abolie en toute matière ».

<sup>59</sup> Loi du 7 septembre 1961 sur le mineur en face de la loi pénale et des tribunaux spéciaux pour enfants, art. 2, 18ss, 25ss and 27ss.

<sup>60</sup> Ibid., art. 18.

<sup>61</sup> Ibid., art. 15ss and 10.

<sup>62</sup> See Government report to the Committee on the Rights of the Child, par. 2.1: “L’administration de la justice pour mineurs”.

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.<sup>63</sup>

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".

### **c. 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".<sup>64</sup>

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.<sup>65</sup> As emphasized by the *Vera Institute of Justice*, this ineffectiveness is also due to a lack of discipline that pervades the judicial system.<sup>66</sup> 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.

---

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

<sup>64</sup> *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, para. 21, E/CN.4/2001/36, 30 January 2001, par. 37-38.

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

<sup>66</sup> 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.

#### **d. 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.<sup>67</sup> 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.<sup>68</sup>

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.<sup>69</sup> Children considered as vagrant under Haitian law are those, for example, “who left their parent’s home without legitimate reason”, “who are wandering”, “who do not exercise any profession”, or “who earn their living from debauchery”.<sup>70</sup>

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.<sup>71</sup>

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

---

<sup>67</sup> 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 no 82 du 24 novembre 1984, Domaine administratif et social : Du Service de la protection des mineurs, art. 144.

<sup>68</sup> 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](http://cdonu.un.org.ec/publica/derecho/PROGRAMA/Modulo05/Mattarollo_Rodolfo.htm))

<sup>69</sup> Code pénal, art. 227-3.

<sup>70</sup> Code pénal, art. 227-2.

<sup>71</sup> 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 ».

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”.<sup>72</sup>

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.<sup>73</sup>

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 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.

#### **e. 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.<sup>74</sup> 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

---

<sup>72</sup> See also United Nations Rules for the Protection of Juveniles Deprived of their Liberty, art. 2.

<sup>73</sup> 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](http://cdonu.un.org.ec/publica/derecho/PROGRAMA/Modulo05/Mattarollo_Rodolfo.htm)).

<sup>74</sup> 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.



were missing in 11 cases. In all cases but two, the pretrial detention had lasted for more than one year.<sup>75</sup>

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.<sup>76</sup> 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.

#### **f. Conditions of detention**

In a 1999 report on the situation of democracy and human rights in Haiti,<sup>77</sup> 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.<sup>78</sup>

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 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”.<sup>79</sup>

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

---

<sup>75</sup> Ibid.

<sup>76</sup> *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.

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

<sup>78</sup> Ibid. par. 30.

<sup>79</sup> *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.

been reported to be detained in Haitian jail.<sup>80</sup> 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.<sup>81</sup> 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 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 available 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”.

## **Conclusion 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:

---

<sup>80</sup> 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.

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

- 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, procedures, 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.