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CHEAPER, BETTER, LONGER-LASTING: A RIGHTS-BASED APPROACH TO DISASTER RESPONSE IN HAITI

Brian Concannon Jr.*

Beatrice Lindstrom**

INTRODUCTION

On January 12, 2010, a 7.0 magnitude earthquake shook Haiti, crumbling the capital and surrounding areas.¹ The quake killed more than 200,000 people by most estimates and displaced more than 1.5 million.² In the immediate aftermath of the earthquake, the international community responded swiftly: nearly half of all households in the United States made charitable donations to Haiti,³ governments and multilateral organizations pledged billions of dollars,⁴ and international nongovernmental organizations (“NGOs”) swarmed into Haiti’s capitol, Port-au-Prince.⁵ But this tremendous generosity at the giving end has not, in almost two years, translated into even adequate progress on the ground for Haiti’s earthquake victims, infrastructure, and economy. Many analyses of the response grade it a “failure,”⁶ and at best it has been painfully slow.⁷ Thousands of blue and gray tents continue to sit sandwiched between

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¹ Jason Beaubien, *Against a Scarred Landscape, Haitians Persevere*, NPR (Jan. 5, 2011), <http://www.npr.org/2011/01/05/132657376/against-a-scarred-landscape-haitians-persevere>.

² *Id.*

³ Tarini Parti, *Haiti Earthquake: Six Months Later, Are Relief Efforts Dragging?*, CHRISTIAN SCI. MONITOR (July 12, 2010, 6:12 PM), <http://www.csmonitor.com/USA/2010/0712/Haiti-earthquake-Six-months-later-are-relief-efforts-dragging>.

⁴ Margaret L. Satterthwaite, *Indicators in Crisis: Rights-Based Humanitarian Indicators in Post-earthquake Haiti*, 43 N.Y.U. J. INT’L L. & POL. 865, 868 (2011).

⁵ See William O’Neill, *Haiti: Can Catastrophe Spur Progress?*, SSRIC (Jan. 14, 2010), <http://www.ssrc.org/features/pages/haiti-now-and-next/1338/1308>.

⁶ See, e.g., Simon Roughneen, *Aid Failure Bodes Ill for Haiti*, WORLDPRESS.ORG (Feb. 2, 2010), <http://www.worldpress.org/Americas/3491.cfm>.

⁷ Memorandum, Walter Kaelin, Representative of the Sec’y-Gen. on the Human Rights of Internally Displaced Persons, United Nations, Human Rights of Internally Displaced Persons in Haiti: Memorandum Based on a Working Visit to Port-au-Prince 4 (Oct. 16, 2010) [hereinafter Kaelin], <http://www.ijdh.org/wordpress/wp-content/uploads/2010/11/Kalin-Statement-2010-Haiti-English.pdf> (noting that “reconstruction has hardly started”).

developments⁸ and rubble along Port-au-Prince's roads and hundreds of thousands of internally displaced persons ("IDPs") survive in camps that fail to meet even minimum international standards, severely lacking in access to clean water, latrines, and security.⁹

The causes of this frustrating and often lethal gap between great intentions and limited results are many and complex. Proffered explanations include the immense scale of the disaster, preexisting weaknesses in Haiti's governmental capacity, shortcomings in coordination, delayed dispersal of aid, and corruption, among others.¹⁰ While all these factors certainly play a role, one of the principal causes is also one of the most overlooked: Haiti's historical relationships with the United States and other powerful countries that influence its destiny, which both prevent Haiti's government from providing the basic government services that all successful countries provide and impair the international community's ability to respond to the earthquake in an effective, sustainable way.

This Article explores how the failure of the earthquake response is the result of past and current policies that, however well intentioned, fail to adequately respect the human rights of Haitians, especially Haiti's poor. It demonstrates that while the earthquake created new acute human rights challenges for Haiti,¹¹ it also exposed the disastrous effects of decades-old policies that systematically undermine the Haitian government's ability to provide basic governmental services and meet the needs of the majority of its people.¹² A legacy of debt and international trade policies has incapacitated the Haitian government, and lack of enforcement of the rule of law has made

⁸ Beatrice Lindstrom, *Reflection: As Tomas' Rains Fall*, INST. FOR JUST. & DEMOCRACY HAITI (Nov. 4, 2010), <http://ijdh.org/archives/15298>.

⁹ Ctr. for Human Rights & Global Justice, NYU Sch. of Law et al., *Right to Food, Water and Sanitation* [hereinafter *Right to Food*], in UNIVERSAL PERIODIC REVIEW, REPUBLIC OF HAITI: SUBMISSIONS TO THE UN HUMAN RIGHTS COUNCIL 71, 78–79 (Inst. for Justice & Democracy in Haiti, Bureau des Avocats Internationaux ed., 2011) [hereinafter IIDH SUBMISSION TO THE UNHRC], available at <http://www.ijdh.org/wordpress/wp-content/uploads/2011/04/LERN-Compiled-UPR-Submissions1.pdf>. Many surveys of IDP camps have found that they fall below minimum international standards, especially with regard to water, sanitation, and shelter space. See *Right to Food*, *supra*, at 78–79; Kaelin, *supra* note 7, at 3.

¹⁰ See, e.g., Martin Hartberg, Oxfam, *From Relief to Recovery: Supporting Good Governance in Post-earthquake Haiti 2–3* (Oxfam, Oxfam Briefing Paper No. 142, 2011).

¹¹ See generally Kaelin, *supra* note 7 (discussing the human rights problems facing IDPs in Haiti after the 2010 earthquake).

¹² Blaine Bookey, *Enforcing the Right To Be Free from Sexual Violence and the Role of Lawyers in Post-earthquake Haiti*, 14 N.Y. CITY L. REV. (forthcoming 2011); see also Kaelin, *supra* note 7, at 1 (noting that the earthquake "struck against the backdrop of a chronic crisis").

Haiti's poor disproportionately vulnerable to natural disasters. Haiti's earthquake illustrates that the most severe humanitarian emergencies are most often symptomatic of and contributory to a larger human rights emergency.

A successful disaster response must place human rights at the center. Under international law, the Haitian government has the primary obligation to realize the human rights of its people,¹³ but natural disasters make it difficult for states, already lacking capacity due to resource constraints, to assert full control over policies that are central to their ability to fulfill their human rights obligations. In this context, the international community has an obligation to support the Haitian government toward the realization of rights, and their human rights obligations inhere to regulate their interventions.

The most striking aspect of the response to the earthquake in Haiti is perhaps the decision to treat Haiti as a charity case rather than as a space where legal obligations exist and guide interventions. This Article presents legal and practical arguments for why a human rights-based approach is essential to successful disaster response and shows how a failure to prioritize this framework continues to reinforce Haiti's vulnerability to disasters. A human rights-based approach places human rights protection and realization at the center of international assistance, ensuring that the plans, policies, and processes of international assistance are "anchored in a system of rights and corresponding obligations established by international law."¹⁴ The rights-based approach ensures that the aim of all activities is to contribute directly to the realization of rights by prioritizing capacity building, participation, transparency, accountability, and nondiscrimination. In Haiti, aid has largely been delivered outside this framework, with a focus on distributions to meet immediate needs at the cost of investing in long-term infrastructure and

¹³ See Convention on the Elimination of All Forms of Discrimination Against Women art. 2, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; International Covenant on Civil and Political Rights pmbl., art. 2, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights pmbl., art. 2, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR]; International Convention on the Elimination of All Forms of Racial Discrimination art. 2, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter CERD]. In addition to being the parties subject to obligations under international human rights, states are also traditionally the primary subjects under international law. See, e.g., ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT 39–46 (1994); NICOLA M.C.P. JÄGERS, CORPORATE HUMAN RIGHTS OBLIGATIONS: IN SEARCH OF ACCOUNTABILITY 20 (2002).

¹⁴ OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS, UNITED NATIONS, FREQUENTLY ASKED QUESTIONS ON A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION 15 (2006) [hereinafter OHCHR, FAQs], available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.

structural reform.¹⁵ This Article argues that while the practical reality of humanitarian disasters sometimes contains a tension between competing needs, an overemphasis on this tension risks overlooking the interconnectedness between humanitarian relief and human rights enforcement.¹⁶

The UN Office of the High Commissioner for Human Rights (“OHCHR”) has identified two chief rationales for the human rights-based approach: (a) “the *intrinsic* rationale,” which acknowledges that a human rights-based approach is legally mandated; and (b) “the *instrumental* rationale,” which recognizes that it enables better and more sustainable results.¹⁷ This Article begins by examining the legal rationale for the rights-based approach. Part I provides an introduction to the content and sources of the rights-based approach, and then explores the legal obligations of donor states and non-state actors to work within this framework. Part II uses Haiti as a case study to argue that the rights-based approach must be implemented as a matter of best practice even where legal obligations do not demand it. This Part demonstrates that Haiti’s recent disasters are not only natural, but also stem from systemic human rights violations that must be addressed. It shows that the rights-based approach enables more successful programming because it ensures project effectiveness and guides investment towards those actors that can ensure project sustainability. If Haiti is to see a different future, the international community must actively implement a rights-based approach to its interventions and programming in Haiti.

I. THE INTRINSIC RATIONALE: INTERNATIONAL OBLIGATIONS TO IMPLEMENT A RIGHTS-BASED APPROACH

A few weeks after the January 12 earthquake, a collaboration of human rights groups submitted briefings and testified before the Inter-American Commission on Human Rights (“IACHR”) in support of international actors

¹⁵ Press Release, Ctr. for Constitutional Rights et al., A Call for Human Rights-Based Approach to Humanitarian Assistance for Haiti (Jan. 14, 2010) [hereinafter A Call for Human Rights-Based Approach], available at <http://www.chrgi.org/projects/docs/100114HaitiStatement.pdf>.

¹⁶ This idea is reflected by others involved in Haiti’s rebuilding. After his visit to Haiti in October 2011, the Representative of the United Nations (“UN”) Secretary-General on the Human Rights of IDPs, Walter Kaelin, noted the need to look beyond immediate humanitarian needs, stating that “Haiti is a humanitarian crisis that needs a development solution. Without development through intelligent reconstruction, a majority of the population will see their basic social and economic rights not fulfilled and continue to depend on humanitarian assistance for indefinite periods of time.” Kaelin, *supra* note 7, at 6.

¹⁷ OHCHR, FAQs, *supra* note 14, at 16.

employing a rights-based approach in their assistance to Haiti.¹⁸ The discussion below draws from the brief submitted to the IACHR and presents an explanation of the contents of the rights-based approach. It also summarizes the legal foundation of the approach to argue that international law mandates implementation of a rights-based approach.

A. *The Human Rights-Based Approach and Its Legal Underpinnings*

The human rights-based approach to international assistance is “a conceptual framework . . . that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.”¹⁹ It frames international assistance in the context of entitlements and obligations, and can be distinguished from a needs-based approach or a charitable approach to assistance.²⁰ The rights-based approach operationalizes foundational principles of human rights law, including: “universality and inalienability; indivisibility; interdependence and interrelatedness; nondiscrimination and equality; participation and inclusion; [and] accountability and the rule of law.”²¹ The legal obligations to adopt a human rights-based approach in humanitarian assistance derive from internationally recognized duties that find their origin in human rights treaties and customary international law.²²

The rights-based approach to assistance uses the human rights framework to redefine the relationship between stakeholders in society as rights-holders with entitlements and duty bearers with correlative obligations.²³ This characterization of actors stems from the foundational paradigm of

¹⁸ Brief to the Inter-American Commission on Human Rights for a Hearing on the Economic and Social Rights Situation in Haiti Following the Earthquake and the Human Rights Obligations of OAS Member States (Inter-Am. Comm’n H.R. 2010) [hereinafter IACHR Brief]; see also *Inter-American Human Rights System*, INST. FOR JUST. & DEMOCRACY HAITI, <http://ijdh.org/projects/iachr> (last visited Nov. 16, 2011). The Center for Human Rights and Global Justice took the lead in developing this analysis.

¹⁹ OHCHR, FAQs, *supra* note 14, at 15.

²⁰ See AUSTL. COUNCIL FOR INT’L DEV., MILLENNIUM DEVELOPMENT: RIGHTS 5 (2009), available at http://www.acfid.asn.au/what-we-do/docs_what-we-do/docs_hrproject/Millennium%20Development%20Rights.pdf.

²¹ OHCHR, FAQs, *supra* note 14, at 36.

²² See, e.g., CAPACITY DEV. GRP., UNITED NATIONS DEV. PROGRAMME, APPLYING A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION AND PROGRAMMING: A UNDP CAPACITY DEVELOPMENT RESOURCE 5 (2006) [hereinafter APPLYING A HUMAN RIGHTS-BASED APPROACH], available at <http://www.beta.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/a-human-rights-based-approach-to-development-cooperation/Human-Rights.pdf> (noting that a human rights-based approach is mandated by human rights treaties, constitutions, and national laws).

²³ OHCHR, FAQs, *supra* note 14, at 37.

international human rights law that sovereign states carry the duty to respect, protect, and fulfill the human rights of those within their jurisdiction.²⁴ Non-state actors, albeit to a more limited extent, share this responsibility when operating in a situation where their actions affect human rights²⁵ and where they fulfill roles usually filled by national governments.²⁶ Individuals, regardless of race, sex, creed, or background, are rights-holders entitled to the equal realization of human rights. The rights-based approach “works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations,”²⁷ and provides a mechanism through which to analyze the responsibility of different actors and to locate accountability for failures to fulfill human rights.²⁸ This is achieved by designing and delivering assistance in a manner that prioritizes five key components: capacity development, participation, transparency, accountability, and nondiscrimination.²⁹

As expounded in the brief to the IACHR, the rights-based approach prioritizes building the capacity of the Haitian State to guarantee the rights of

²⁴ See Special Rep. of the Secretary-General on the Issue of Human Rights & Transnat'l Corps. & Other Bus. Enters., *Rep. of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations & Other Business Enterprises: Guiding Principles on Business & Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, ¶ 6, Human Rights Council, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (by John Ruggie).

²⁵ For example, the UN Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises has found that corporations have a duty to respect, protect, and remedy human rights violations caused by their actions. *Id.*

²⁶ See OHCHR, FAQs, *supra* note 14, at 3, 37.

²⁷ *Id.* at 37.

²⁸ See *id.* at 7.

²⁹ See, e.g., IACHR Brief, *supra* note 18, at 2; RTS. AGENDA: HRLC MONTHLY BULL. (HUMAN RTS. L. CTR.), June 2011, at 32, available at http://c742005.r5.cf2.rackcdn.com/files/RightsAgenda_HRLC_Bulletin_July_2011.pdf (“A human rights-based approach to development does not merely comprise of funding programs which may promote and protect human rights. Rather, it is an approach to development which is participatory, empowering, non-discriminatory and focuses first and foremost on the most marginalised and disadvantaged.”); Indep. Expert on the Effects of Foreign Debt & Other Related Int'l Fin. Obligations of States on the Full Enjoyment of All Human Rights, Particularly Econ., Soc. & Cultural Rights, *Rep. of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights: Mission to Australia (7–11 February 2011) and Solomon Islands (14–18 February 2011)*, ¶¶ 94–97, Human Rights Council, U.N. Doc. A/HRC/17/37/Add.1 (May 25, 2011) (by Cephias Lumina); Dev. Assistance Comm., Organisation for Econ. Co-operation and Dev., DAC Action-Oriented Policy Paper on Human Rights and Development 6 (2007) [hereinafter DAC Policy Paper on Human Rights], available at <http://www.oecd.org/dataoecd/50/7/39350774.pdf> (noting that the human rights-based approach commonly “feature[s] the integration of human rights principles—such as participation, inclusion and accountability—into policies” and practices).

all Haitians because human rights law recognizes the state as the primary duty bearer.³⁰ Furthermore,

It seeks full participation by requiring, among other things, that information about aid is transparent and that the population is routinely consulted—both in providing input on project design and in ensuring necessary modifications to the projects to maximize the realization of human rights. Transparency necessitates that information about relief and rebuilding projects is easily accessible to the community in a language known to them. It also requires paying particular attention to groups that have been historically excluded from the political process and have not had access to basic services. [Additionally], in order to ensure respect for the rights of Haitians, those providing assistance, including foreign donors, must be accountable to the Haitian people. Accountability means that there are effective mechanisms for all Haitians to make complaints, have their complaints investigated and receive redress when their rights are violated.³¹

Finally, nondiscrimination entails affording particular attention to groups that have been historically excluded from the political process and have not had access to basic services.³²

The key duty bearers in Haiti after the earthquake can be broken down into three types of actors: (1) the Haitian government, which bears the primary duty to respect, protect, and fulfill rights, but whose capacity is limited by resource constraints and the devastation of the earthquake; (2) donor states, which have committed substantial funding and resources critical to rebuilding and who wield significant influence over how these resources are used; and (3) non-state actors such as humanitarian agencies and NGOs, which are the recipients of much of the aid (most of it governmental) and who provide many basic services in Haiti that are usually provided by governments in other countries.

While the human rights obligations of the Haitian State are easily ascertained, the legal obligations of the international community to adopt a human rights-based approach are less defined. In the case of Haiti, the obligations of the international community are particularly important. The international community plays an unusually comprehensive role in Haiti

³⁰ For a more detailed discussion of what the human rights-based approach means in practice in post-earthquake Haiti, see A Call for Human Rights-Based Approach, *supra* note 15.

³¹ *Right to Food*, *supra* note 9, at 6–7.

³² *Id.*

through funding, service delivery, policymaking, and peacekeeping, often fulfilling roles traditionally served by the state. For these reasons, the following Subparts focus on the duties of the international community in Haiti and discuss the legal obligations of donor states and non-state actors to implement a rights-based approach in their interventions in Haiti. Understanding of the legal grounding for international assistance allows one to shift away from a framework that focuses on humanitarian assistance as charity toward a framework that is more accountable.

B. Obligations of Donor States

In the months following the earthquake, donor states came together and pledged \$4.6 billion to respond to the earthquake in Haiti.³³ They also joined with the Inter-American Development Bank, the UN Development Group, and the World Bank to establish the Haiti Reconstruction Fund, aimed at pooling and coordinating donor resources to reduce costs and duplication of efforts.³⁴ The Interim Haiti Recovery Commission (“IHRC”) was established in March 2010 to oversee the use of these funds.³⁵ The IHRC was co-chaired by former U.S. President Bill Clinton and Haiti’s Prime Minister.³⁶ The IHRC’s powers were approved under a controversial emergency law that allowed foreign donors a strong voice in managing the earthquake response and reconstruction—an allocation of authority viewed by some as an unconstitutional encroachment on sovereignty.³⁷ Donor states are thus playing an unusually large and intrusive role in Haiti’s reconstruction. Although opinions will differ as to the desirability of that enlarged role in the current context, it is clear that, as donor states play this role, they have human rights obligations to the people of Haiti.

While the Government of Haiti has the primary obligation to guarantee the human rights of those under its jurisdiction, other states acting in Haiti have a minimum duty to respect and protect human rights throughout their assistance

³³ 37.2 Percent Disbursement Rate for Haiti Recovery Among Bilateral and Multilateral Donors, INTERIM HAITI RECOVERY COMM’N (Apr. 6, 2011), <http://en.cirh.ht/analysis-disbursement.html>.

³⁴ HAITI RECONSTRUCTION FUND, REBUILDING TOGETHER: SIX MONTH PROGRESS REPORT: JUNE 17–DECEMBER 16, 2010, at 5 (2011), available at http://www.haitireconstructionfund.org/hrf/sites/haitireconstructionfund.org/files/lores_eng_rpt_spreads.pdf.

³⁵ Joseph Guylor Delva, *Haiti Approves Key Post-quake Reconstruction Body*, REUTERS, Apr. 16, 2010, available at <http://www.reuters.com/article/2010/04/16/us-quake-haiti-reconstruction-idUSTRE63F39V20100416>.

³⁶ *Id.*

³⁷ *See id.*

and interventions.³⁸ A number of human rights documents that discuss international cooperation toward the realization of rights contemplate that human rights obligations extend beyond a state's immediate borders and carry over to their extraterritorial acts. The UN Charter commits states to take "joint and separate action" to protect economic and social rights.³⁹ This obligation to cooperate internationally toward the realization of rights is reiterated in the International Covenant on Economic, Social and Cultural Rights ("ICESCR"):

Each State Party to the present Covenant undertakes to take steps, individually *and through international assistance and co-operation*, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means.⁴⁰

The UN Committee on Economic, Social and Cultural Rights ("ESCR Committee") has reiterated this obligation in its comment on state obligations, noting that "international co-operation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard."⁴¹ The committee has also spelled out the content of such international obligations with regard to the right to health⁴² and the right to water.⁴³ These instruments together foresee that states should and will take action toward the realization of human rights beyond their own borders.

³⁸ See U.N. Charter art. 56; *supra* note 13 and accompanying text.

³⁹ U.N. Charter art. 56; see also Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT'L L. 691, 730 (2006) (explaining the jurisdictional extension under a human rights treaty).

⁴⁰ ICESCR, *supra* note 13, art. 2(1) (emphasis added). As of July 2011, 160 countries had ratified the ICESCR, and Haiti joined in ratifying it in 2012. *International Covenant on Economic, Social and Cultural Rights*, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL ch. IV, § 3, p. 1 [hereinafter Parties to ICESCR], available at <http://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20IV/IV-3.en.pdf>; Press Release, Bureau des Advocats Internationaux, Haiti Ratification of ICESCR (Feb. 7, 2012), <http://www.ijdh.org/archives/24763>.

⁴¹ General Comment No. 3 (1990): The Nature of States Parties Obligations (Article 2, Paragraph 1 of the Covenant), U.N. ECOSOCOR, 5th Sess., Supp. No. 3, Annex III, U.N. Doc. E/C.12/1990/8, at 87 (1991).

⁴² See Econ. & Soc. Council, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 14 (2000): The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) (explaining the obligations regarding health under the ICESCR).

⁴³ See U.N. Secretary-General, *Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation: Note by the Secretary-General*, U.N. Doc. A/65/254 (Aug. 6, 2010) [hereinafter *Safe Drinking Water*]; Econ. & Soc. Council, Substantive Issues Arising in the Implementation of the International Covenant

These and other national treaties that set out states' human rights obligations should guide states through their international development policies and programming.⁴⁴ For example, the Independent Expert on the Right to Water, Catarina de Albuquerque, stressed that:

Development cooperation and assistance must be designed and implemented in line with human rights standards and principles, including the rights to water and sanitation and human rights obligations regarding nondiscrimination, ensuring that there are adequate and effective measures in place to identify and address any negative impacts on human rights.⁴⁵

Haiti's regional neighbors who are members of the Organization of American States ("OAS") have additional sources of obligations to implement the rights-based approach. Among the core purposes of the OAS is the promotion, through cooperative action, of economic and social development.⁴⁶ Under the OAS Charter, Member States have obligations to work together for economic, social, and cultural rights, particularly when a state is seriously affected by conditions it cannot remedy alone.⁴⁷ According to Article 26 of the

on Economic, Social & Cultural Rights: General Comment 15 (2002): The Right to Water (Articles. 11 & 12 of the International Covenant on Economic, Social & Cultural Rights), U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter Gen. Comment 15]. See generally CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE, NYU SCH. OF LAW ET AL., WÖCH NAN SOLEY [ROCKS IN THE SUN]: THE DENIAL OF THE RIGHT TO WATER IN HAITI (2008) [hereinafter WÖCH NAN SOLEY], available at <http://www.chrgj.org/projects/docs/wochnansoley.pdf> (explaining the rights to water in Haiti).

⁴⁴ OHCHR, FAQs, *supra* note 14, at 16 ("[I]nternational human rights treaties should guide all development cooperation and programming in all sectors and in all phases of the programming process.").

⁴⁵ *Safe Drinking Water*, *supra* note 43, ¶ 63(e).

⁴⁶ The OAS Charter sets the eradication of extreme poverty as an essential purpose of the OAS. Charter of the Organization of American States art. 2(g), *opened for signature* Apr. 30, 1948, O.A.S.T.S. No. 1-C, 119 U.N.T.S. 3 (entered into force Dec. 13, 1951) [hereinafter OAS Charter], *amended by* Protocol of Amendment to the Charter of the Organization of American States art. 2, *opened for signature* Dec. 14, 1992, O.A.S.T.S. No. 1-E, 33 I.L.M. 1005 (entered into force Sept. 25, 1997) [hereinafter Protocol of Washington]. It declares, "Inter-American cooperation for integral development is the common and joint responsibility of the Member States" and "should include the economic, social, educational, [and] cultural . . . fields." *Id.* art. 31, *amended by* Protocol of Amendment to the Charter of the Organization of American States art. 4, *opened for signature* Dec. 5, 1985, O.A.S.T.S. No. 66, 25 I.L.M. 529 (entered into force Nov. 16, 1988) [hereinafter Protocol of Cartagena de Indias], *further amended by* Protocol of Washington, *supra*, art. 3. Notably, the charter specifies the goals of ensuring basic survival rights such as food, nutrition, health, and sanitation. *Id.* art 34, *amended by* Protocol of Washington, *supra*, arts. 2-3.

⁴⁷ See *id.* art. 37, *amended by* Protocol of Amendment to the Charter of the Organization of American States art. 8, *opened for signature* Feb. 27, 1967, O.A.S.T.S. No. 1-A, 721 U.N.T.S. 324 (entered into force Feb. 27, 1970) [hereinafter Protocol of Buenos Aires], *further amended by* Protocol of Cartagena de Indias, *supra* note 46, art. 6, *further amended by* Protocol of Washington, *supra* note 46, art. 3 (noting that Member States agree to "join together in seeking a solution . . . whenever the economic development or stability of any Member State is seriously affected by conditions that cannot be remedied through the efforts of that State").

convention, “States Parties undertake to adopt measures, both internally and *through international cooperation*, especially those of an economic and technical nature, with a view to achieving progressively . . . the full realization” of fundamental rights under the OAS Charter.⁴⁸ The formulation of the duty makes clear that, in addition to their duties within their territories, states should take cooperative steps that are aimed at fulfilling economic and social rights within the hemisphere. These measures should be undertaken progressively, that is, in a manner which constantly and consistently advances toward the full realization of these rights. Following the earthquake, the IACHR reminded the international community and implementing organizations on the ground of “the importance of respecting international human rights obligations in all circumstances, in particular non-derogable rights and the rights of those most vulnerable.”⁴⁹

Finally, there is a growing consensus among countries that the rights-based approach is key to good and sustainable development practice.⁵⁰ In 1993, members of the OECD Development Assistance Committee committed to develop “specific policies to guide their development co-operation with reference to human rights.”⁵¹ Several countries have passed national legislation that places human rights and the rights-based approach at the center of development and international assistance.⁵² For example, Canada’s Official Development Assistance Accountability Act 2008⁵³ requires a minister to agree that the aid “is consistent with international human rights standards.”⁵⁴

⁴⁸ Organization of American States, American Convention on Human Rights art. 26, *opened for signature* Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978) [hereinafter American Convention on Human Rights] (emphasis added).

⁴⁹ Press Release, Inter-Am. Comm’n on Human Rights, Org. of Am. States, IACHR Stresses Duty To Respect Human Rights During the Emergency in Haiti (Feb. 2, 2010), <http://www.cidh.org/Comunicados/English/2010/11-10eng.htm>.

⁵⁰ See DAC Policy Paper on Human Rights, *supra* note 29, at 3.

⁵¹ ORG. FOR ECON. CO-OPERATION & DEV., PARTICIPATORY DEVELOPMENT AND GOOD GOVERNANCE 25 (1995), *available at* <http://www.oecd.org/dataoecd/27/13/31857685.pdf>.

⁵² Examples of bilateral donors include Denmark, Sweden, and the United Kingdom. APPLYING A HUMAN RIGHTS-BASED APPROACH, *supra* note 22, at ii–iii, 15; *see also* DAC Policy Paper on Human Rights, *supra* note 29, at 14.

⁵³ Official Development Assistance Accountability Act, S.C. 2008, c. 17 (Can.).

⁵⁴ *Id.* § 4(1)(c); UNITED NATIONS OFFICE OF THE SPECIAL ENVOY FOR HAITI, HAS AID CHANGED?: CHANNELING ASSISTANCE TO HAITI BEFORE AND AFTER THE EARTHQUAKE 29 n.4 (2011) [hereinafter HAS AID CHANGED?], *available at* http://www.haitispecialenvoy.org/download/Report_Center/has_aid_changed_en.pdf.

The European Consensus on Development⁵⁵ and the European Consensus on Humanitarian Aid,⁵⁶ which guide the European Commission's aid, highlight the importance of human rights to effective and equitable development.⁵⁷

C. *Obligations of Non-state Actors*

In addition to donor governments, the formal humanitarian aid system is made up of a wide array of non-state actors, including intergovernmental organizations ("IGOs") and NGOs.⁵⁸ Haiti has a particularly large number of non-state actors operating in the country. It is commonly referred to as the "Republic of NGOs" and is believed to have one of the highest number of NGOs per capita in the world.⁵⁹ After the earthquake, humanitarian organizations have been the primary service providers and often perform what are otherwise considered traditional government functions.⁶⁰ They command enormous resources that often exceed the resources available to the government ministries whose tasks they take on.⁶¹ Beyond mere service provision, humanitarian agencies actively engage in governance and policymaking.⁶² Disaster response in Haiti is organized through a cluster system that seeks to coordinate humanitarian relief by bringing together UN agencies and NGOs working in particular sectors.⁶³ Only some of the clusters

⁵⁵ Joint Statement by the Council and the Representatives of the Governments of the Member States Meeting Within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus,' 2006 O.J. (C 46) 1.

⁵⁶ Joint Statement by the Council and the Representatives of the Governments of the Member States Meeting Within the Council, the European Parliament and the Commission, 2008 O.J. (C 25) 1.

⁵⁷ See HAS AID CHANGED?, *supra* note 54, at 29 n.4.

⁵⁸ See, e.g., Satterthwaite, *supra* note 4, at 880 (describing the makeup of the humanitarian aid system).

⁵⁹ Madeline Kristoff & Liz Panarelli, *Haiti: A Republic of NGOs?* 1 (U.S. Inst. Of Peace, Peace Brief No. 23, 2010), available at <http://www.usip.org/files/resources/PB%2023%20Haiti%20a%20Republic%20of%20NGOs.pdf>. The exact number of NGOs operating in Haiti is unknown due to the fact that most do not register with the government due to the arduous nature of the process, despite legal requirements to do so. See Mark Schuller, *Invasion or Infusion?: Understanding the Role of NGOs in Contemporary Haiti*, J. HAITIAN STUD., Fall 2007, at 96, 98–99. In 2005, only 343 were registered with the government, *id.* at 99, but some estimates show the number of pre-earthquake NGOs as high as 10,000. Kristoff & Panarelli, *supra*, at 1.

⁶⁰ See Satterthwaite, *supra* note 4, at 935. IDP camps in Haiti are commonly managed by camp management agencies, humanitarian NGOs that coordinate service provision including water provisions and sanitation equipment and services. *Id.*

⁶¹ See *id.* at 880–82.

⁶² See *id.* at 935.

⁶³ See *Cluster Approach*, ONERESPONSE, <http://www.onerresponse.info/Coordination/ClusterApproach/Pages/Cluster%20Approach.aspx> (last visited Nov. 17, 2011).

have a government presence,⁶⁴ yet they play a large role in determining and implementing post-disaster policies. For example, the Shelter Cluster in Haiti after the earthquake is responsible for transitional housing⁶⁵ and is, in effect, determining the housing landscape and shelter options for displaced persons over the next few years.⁶⁶

The obligation of non-state actors to implement a rights-based approach derives from both express commitments and implied duties. Efforts to mainstream human rights in UN programming led the UN system to expressly adopt a rights-based approach to development cooperation and programming.⁶⁷ Key humanitarian charters that are meant to guide humanitarian assistance assert the rights-based approach, including the important Sphere Minimum Standards in Disaster Response.⁶⁸ Many individual development and humanitarian NGOs have also followed suit, including organizations active in Haiti such as Oxfam and CARE.⁶⁹

⁶⁴ See ANDREA BINDER & FRANÇOIS GRÜNEWALD, INTER-AGENCY STANDING COMM., HAITI: IASC CLUSTER APPROACH EVALUATION, 2ND PHASE COUNTRY STUDY, APRIL 2010, at 48–57 (2010), available at <http://www.alnap.org/pool/files/gppi-urd-haiti-en.pdf>.

⁶⁵ Jessica Desvarieux, *Haiti's Homeless: Is 'Transitional' Housing the Solution?*, TIME (July 16, 2010), <http://www.time.com/time/world/article/0,8599,2004056,00.html>.

⁶⁶ The building of transitional wooden shelters (“t-shelters”) has been the most prominent approach to providing housing to displaced persons after the earthquake. See Office of the Haiti Special Coordinator, U.S. Dep’t of State, *Shelter Solutions: Fast Facts on the U.S. Government’s Work in Haiti*, U.S. DEP’T OF STATE (July 15, 2011), <http://www.state.gov/s/hsc/rls/168715.htm> [hereinafter *Shelter Solutions*]. Based on the experience of lawyers at the BAI representing IDPs in need of adequate housing, access to t-shelters is the preferred, and sometimes only housing alternative available to IDPs. See ROGER ANNIS ET AL., CAN. HAITI ACTION NETWORK, CANADIAN FACT-FINDING DELEGATION REPORTS ON POST-EARTHQUAKE HAITI 6 (2011), available at <http://www.cooperinstitute.ca/sitefiles/File/Delegation-2011-report-August-4.pdf>. These shelters are meant to be temporary and are designed to last three years, *Shelter Solutions*, *supra*, but in light of the sluggish pace of housing repairs and building of permanent housing, t-shelters are likely to constitute the primary form of housing for IDPs for the foreseeable future.

⁶⁷ See UNITED NATIONS EDUC., SCIENTIFIC & CULTURAL ORG., DOCUMENTING LESSONS LEARNED FOR HUMAN RIGHTS-BASED PROGRAMMING: AN ASIA-PACIFIC PERSPECTIVE: IMPLICATIONS FOR POLICY, PLANNING AND PROGRAMMING: UNDERTAKING A HUMAN RIGHTS-BASED APPROACH: A GUIDE FOR BASIC PROGRAMMING 3 (2008), available at <http://unesdoc.unesco.org/images/0017/001791/179186e.pdf>. UN agencies including United Nations International Children’s Emergency Fund (“UNICEF”), United Nations Development Fund for Women (“UNIFEM”), United Nations Development Programme (“UNDP”), World Health Organization (“WHO”), and the Joint United Nations Programme on HIV and AIDS (“UNAIDS”) have also expressly adopted the rights-based approach. See Dzodzi Tsikata, *The Rights-Based Approach to Development: Potential for Change or More of the Same?*, IDS BULL., Oct. 2004, at 130, 130.

⁶⁸ See Satterthwaite, *supra* note 4, at 873–74.

⁶⁹ COOP. FOR ASSISTANCE & RELIEF EVERYWHERE, THE GLOBAL WATERS CRISIS: CARE’S PORTFOLIO OF WATER PROGRAMS WORLDWIDE 2 (2006), available at http://www.care.org/careswork/whatwedo/health/downloads/water_portfolio.pdf; OXFAM INT’L, TOWARDS GLOBAL EQUITY: STRATEGIC PLAN 2001–2004, at 7 (2001), available at http://english.oxfam.jp/about/strategicplan/strat_plan.pdf.

Even those organizations that have not explicitly adopted a rights-based approach as a guiding principle in their work have a minimum duty not to violate human rights in their work. Non-state actors such as international organizations are generally not parties to binding human rights treaties, but are increasingly recognized as subjects of international law with the requisite legal personality to be obliged to comply with the international legal system, including human rights norms that rise to the level of customary international law.⁷⁰ The status of international organizations such as the International Organization for Migration (“IOM”) as legal persons under international law derives from their constituent instruments, through which states bestow on the organizations legal personality.⁷¹ Once established, international organizations are legal persons distinct from the states that created them and have legal obligations to observe customary international law.⁷² Even when such personality is not established *de jure*, “*de facto* legal personality can be deduced from the powers and operations” of the entity.⁷³ The International Court of Justice has found that the UN has legal personality in the international legal system because the UN “exercise[s] and enjoy[s] . . . functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane.”⁷⁴ As a result, such international organizations are also bound by international human rights law and should implement a rights-based approach

⁷⁰ See HIGGINS, *supra* note 13, at 46–48. Under the traditional view of international law, this legal framework governed the relations among nation-states and has states as its only subjects. See, e.g., *id.* at 39. International law has since expanded to include non-state actors such as international organizations and individuals among its subjects. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174, 179 (Apr. 11) (finding legal personality for international organizations); *TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL* (1947) (finding individuals subject to international law).

⁷¹ HIGGINS, *supra* note 13, at 46. The IOM has legal personality by virtue of its own constitution, which sets forth that the “Organization shall possess full juridical personality.” Constitution of the International Organization for Migration art. 27, *opened for signature* Oct. 19, 1953, 1560 U.N.T.S. 440.

⁷² See *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. at 178. While the case does not define what is considered an international organization, legal scholarship has later defined it broadly as “an autonomous entity, set up by a constituent instrument, which expresses its independent will through common organs and has a capacity to act on an international plane.” Philippe Gautier, *The Reparation for Injuries Case Revisited: The Personality of the European Union*, 4 MAX PLANCK Y.B. UNITED NATIONS L. 331, 333 (2000) (presented as the lowest common denominator based on a survey of different legal scholars’ definitions).

⁷³ JÄGERS, *supra* note 13, at 21.

⁷⁴ *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. at 179.

in their practices as a means to ensure that they respect and protect human rights in their practices.⁷⁵

II. THE INSTRUMENTAL RATIONALE: THE NEED FOR A RIGHTS-BASED APPROACH IN PRACTICE

The relevance of human rights in humanitarian emergencies is by no means a new concept; using human rights to direct international assistance has been accepted as best practice in the development discourse for at least a decade.⁷⁶ Despite this, implementation of the rights-based approach is still far from comprehensive, and commitments to human rights have been neglected in humanitarian emergencies in Haiti.⁷⁷ This has greatly reduced the effectiveness and sustainability of recovery efforts and has created a context in which Haitians are approached as passive beneficiaries rather than rights-holders, reinforcing dependency on aid and reducing their agency. There are two key practical reasons for using the rights-based approach in aid delivery: (1) Haiti's disproportionate vulnerability to disasters is a result of underlying human rights violations which must be addressed in order for the humanitarian response to be meaningful, and (2) the rights-based approach leads to long-term efficiency and sustainability of projects, making investments more fruitful.

A. *Human Rights Violations as Contributory Causes to Humanitarian Emergencies*

A brief look at Haiti's recent history may cause one to lament Mother Nature's seeming obsession with inflicting suffering on the Haitian people. In 2008, four tropical cyclones slammed Haiti, dumping heavy rains that led to

⁷⁵ The same principles have been applied to corporations and apply equally to other private entities such as NGOs, provided that their powers and operations merit it. *But see* *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 131–45 (2d Cir. 2010), *cert. granted*, 132 S. Ct. 472 (2011) (mem.).

⁷⁶ *See* OHCHR, FAQs, *supra* note 14, at iii, 2, 35. The human rights-based approach emerged from a commitment to mainstreaming of human rights through the UN's operations, introduced in the 1990s. *See id.* Numerous international organizations have since adopted the human rights-based approach as the key guiding principle in their programming. *See, e.g.*, BEVERLY BELL, OTHER WORLDS, FROM DISASTER AID TO SOLIDARITY: BEST PRACTICES IN MEETING THE NEEDS OF HAITI'S EARTHQUAKE SURVIVORS 1 (2010); OHCHR, FAQs, *supra* note 14, at iii.

⁷⁷ *See, e.g.*, Kaelin, *supra* note 7, at 1 (noting that more could have been and can be done to improve the situation with decision-making driven by due regard to human rights implications).

severe flooding.⁷⁸ In January 2010, the earthquake deemed “the largest urban natural catastrophe in recorded history” rocked Haiti.⁷⁹ Then, while the country was still reeling from the damage caused by the earthquake, cholera broke out north of Port-au-Prince in late 2010.⁸⁰ Placing the blame on Mother Nature, however, obscures the fact that while the events themselves might be natural, the devastating damage resulting from the disasters are anything but. These three disasters are discussed below to illustrate how human rights violations have made Haiti disproportionately vulnerable to natural disasters. The human rights-based approach addresses these underlying causes and should be applied to ensure a long-term reduction in vulnerability.

1. Storms, Flooding, and Socio-economic Rights

Haiti has a recent history of deadly storms and flooding that have led to widespread loss of life and costly damage. In 2004, tropical storm Jeanne swept over Haiti, causing major flooding and 2,500 deaths.⁸¹ Jeanne hit Puerto Rico, the Dominican Republic, Barbados, and the United States as a hurricane, killing thirty-four people in all those places combined.⁸² Jeanne was only a tropical storm when it killed seventy times that number in Haiti.⁸³ In 2008, Haiti was again struck—by four storms in the same season that injured hundreds and left more than 1,000 people dead or missing.⁸⁴ The hurricanes destroyed 22,702 homes and damaged another 84,625.⁸⁵ In total, the hurricanes affected an estimated 800,000 people.⁸⁶ The floods wiped out seventy percent of Haiti’s crops, resulting in severe malnutrition in subsequent months.⁸⁷ Authorities estimate that the hurricanes’ total damage exceeded \$1 billion.⁸⁸

⁷⁸ Jeffrey Masters, *Hurricanes and Haiti: A Tragic History*, WEATHER UNDERGROUND, <http://www.wunderground.com/hurricane/haiti.asp> (last visited Nov. 13, 2011).

⁷⁹ *Haiti: Six Months on*, OFFICE FOR HIGH COMMISSIONER FOR HUM. RTS. (July 30, 2010), <http://www.ohchr.org/EN/NewsEvents/Pages/Haitisixmonthson.aspx>.

⁸⁰ Jonathan M. Katz, *Cholera in Haiti Capital Confirmed*, HUFFINGTON POST (Nov. 9, 2010, 8:04 PM), http://www.huffingtonpost.com/2010/11/09/cholera-in-haiti-capital-_n_780875.html.

⁸¹ Sylvana Nzirorera, *One Year After Hurricane Jeanne, Recovery Continues*, UNICEF (Sept. 18, 2005), http://www.unicef.org/infobycountry/haiti_28308.html.

⁸² *Gonaives*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/haiti/gonaives.htm> (last updated Feb. 8, 2011 8:44 PM).

⁸³ Masters, *supra* note 78.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

The recent devastation suffered from hurricanes and tropical storms is not a result of Haiti's location in a particularly unfortunate storm path;⁸⁹ “[s]urprisingly, only six major Category 3 and stronger hurricanes have struck Haiti since 1851.”⁹⁰ Rather, it is a result of human-made rights violations that make Haiti disproportionately vulnerable to flooding and damage resulting therefrom. Deforestation has over time reduced Haiti's ability to withstand heavy rains, making it extremely vulnerable to flooding.⁹¹ Deforestation is, in turn, a result of the inability of Haiti's poor to enforce basic economic and social rights.⁹² Most Haitians depend on wood and charcoal as their primary fuel source, because the high costs of oil and other alternative fuel sources are prohibitive.⁹³ In addition to serving cooking needs, cutting down and selling trees provides an alternative source of income for mountain farmers to buy food and other basic necessities.⁹⁴ But heavy deforestation has denuded mountain slopes, allowing rainwater to wash down unimpeded.⁹⁵ The farmers know more intimately than the experts what happens when rain hits a deforested slope, because the rain rushes away with the topsoil that is needed for next year's crop, which is many farmers' only legacy for their children.⁹⁶ Legacies and next year's crop are of secondary relevance, however, when children are dying now, and the farmer is left with little choice but to cut and sell the tree to meet immediate needs of medicine and food.⁹⁷

Back in 1980, Haiti still had twenty-five percent of its forests, allowing the nation to withstand heavy rain events like 1979's Category 3 Hurricane David without loss of life.⁹⁸ But as of 2004, only 1.4% of Haiti's forests remained,

⁸⁹ In fact, Haiti has a relatively protected location. Caribbean cyclones generally move from east to west, and Haiti is the western one-third of the island of Hispaniola. The mass of the Dominican Republic, especially its high mountains, weakens storms before they reach Haiti. See *Hurricane Irene Strengthens to Category 2 on Way to Bahamas, U.S.*, CNN (Aug. 22, 2011, 9:42 PM), <http://www.cnn.com/2011/WORLD/americas/08/22/tropical.weather>.

⁹⁰ Masters, *supra* note 78.

⁹¹ *See id.*

⁹² *See id.*

⁹³ See Bureau des Avocats Internationaux, Inst. for Justice & Democracy in Haiti et al., *Environmental Justice* [hereinafter *Environmental Justice*], in IJDH SUBMISSION TO THE UNHRC, *supra* note 9, at 58, 65.

⁹⁴ Brian Concannon Jr., *Another Unnatural Disaster*, BOS. HAITIAN REP., Oct. 2004, reprinted in Brian Concannon Jr., *Another Unnatural Disaster*, INST. FOR JUST. & DEMOCRACY HAITI (Jan. 28, 2010), <http://www.ijdh.org/archives/8452>.

⁹⁵ *See id.*

⁹⁶ *See id.*

⁹⁷ *Id.*

⁹⁸ Masters, *supra* note 78.

making it one of the most deforested countries in the world.⁹⁹ When Jeanne and Gordon struck Haiti, they were merely tropical storms, but they resulted in devastating floods that killed thousands because of the near complete lack of tree cover. As Jeffrey Masters notes, “it doesn’t even take a tropical storm to devastate Haiti—in May of 2004, three days of heavy rains from a tropical disturbance dumped more than 18 inches of rain in the mountains, triggering floods that killed over 2600 people.”¹⁰⁰

The failure of the Haitian government to protect even the most fundamental rights necessary for survival is thus directly connected with the reliance on deforestation to meet economic needs and the resulting vulnerability to flooding. Under international law, the Government of Haiti has a legal obligation to respect, protect, and fulfill the right to food, and to ensure that it is economically accessible.¹⁰¹ Article 25 of the Universal Declaration of Human Rights¹⁰² (“UDHR”) guarantees a human being’s right to food and freedom from hunger.¹⁰³ The right is also articulated in the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”)¹⁰⁴ and the Convention on the Rights to the Child (“CRC”)¹⁰⁵ to which Haiti is a party. Furthermore, Article 12 of the Protocol of San Salvador¹⁰⁶ and Article 11 of the American Declaration¹⁰⁷ both recognize the right to food. The right was subsequently codified in Article 11 of the ICESCR.¹⁰⁸ The ESCR

⁹⁹ *Environmental Justice*, *supra* note 93, at 65; *accord* Masters, *supra* note 78.

¹⁰⁰ Masters, *supra* note 78.

¹⁰¹ *See* Econ. & Soc. Council, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social & Cultural Rights: General Comment 12 (Twelfth Session, 1999): The Right to Adequate Food (Article 11), U.N. Doc. E/C.12/1999/5 (May 12, 1999).

¹⁰² Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹⁰³ *See id.* art 25.

¹⁰⁴ CEDAW, *supra* note 13, art. 12(2) (recognizing the right of pregnant and lactating women to food and nutrition).

¹⁰⁵ Convention on the Rights of the Child art. 24(2)(c), *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 20, 1990) [hereinafter CRC] (recognizing the right of children to adequate food and clean drinking water).

¹⁰⁶ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 12, *opened for signature* Nov. 17, 1988, O.A.S.T.S. No. 69, 28 I.L.M. 161 (entered into force Nov. 16, 1999).

¹⁰⁷ American Declaration on the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992); *see also* *The Right to Food in National Constitutions*, in FOOD & AGRIC. ORG. OF THE UNITED NATIONS, THE RIGHT TO FOOD: IN THEORY AND PRACTICE 42 (2008), *available at* <http://www.fao.org/Legal/rf/booklet.pdf>.

¹⁰⁸ ICESCR, *supra* note 13, art. 11. This encompasses two separate but related norms: the right to adequate food and the right to be free from hunger. *See* LORENZO COTULA & MARGARET VIDAR, FOOD &

Committee has established that a minimum core of economic, social, and cultural rights are customary international law and are thus binding on all states, regardless of whether they have signed or ratified treaties protecting those rights.¹⁰⁹

Violations of the right to food are not the responsibility of the Haitian government alone, however.¹¹⁰ In the 1980s, Haiti was a net exporter of agricultural produce.¹¹¹ The agricultural sector collapsed, however, after the International Monetary Fund imposed structural adjustments that required Haiti to decrease subsidies on domestic rice and remove tariffs on imported staples.¹¹² Under pressure from the United States, Haiti also had to slash tariffs from 45–50 percent, down to 0–15 percent.¹¹³ Without this protection, Haitian farmers could not compete with subsidized U.S. agricultural goods, and imports from the United States flooded the Haitian markets.¹¹⁴ Former President Bill Clinton recently publicly acknowledged that this policy was a mistake that only benefited farmers in the United States.¹¹⁵ Today, Haiti suffers from a food deficit and is highly dependent on foreign sources such as imports

AGRIC. ORG., THE RIGHT TO ADEQUATE FOOD IN EMERGENCIES 4–5 (2002), available at <ftp://ftp.fao.org/docrep/fao/005/y4430E/y4430E00.pdf>.

¹⁰⁹ Econ. & Soc. Council, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social & Cultural Rights, ¶ 31, U.N. Doc. E/C.12/1/Add.90 (June 26, 2003) (“[B]asic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law.”); see also WÖCH NAN SOLEY, *supra* note 43, at 45.

¹¹⁰ *Right to Food*, *supra* note 9, at 76 (footnotes omitted); see also Beverly Bell, “Miami Rice”: The Business of Disaster in Haiti, HUFFINGTON POST (Dec. 9 2010, 3:56 PM), http://www.huffingtonpost.com/beverly-bell/miami-rice-the-business-o_b_794504.html; Mark Doyle, *US Urged To Stop Haiti Rice Subsidies*, BBC NEWS (Oct. 4, 2010), <http://www.bbc.co.uk/news/world-latin-america-11472874>; Nathaniel Gronewold, *Post-quake Revitalization Plans Collide in Haiti’s Breadbasket*, N.Y. TIMES (Mar. 8, 2010), <http://www.nytimes.com/gwire/2010/03/08/08greenwire-post-quake-revitalization-plans-collide-in-hai-15994.html>; *Haiti No Longer Grows Much of Its Own Rice and Families Now Go Hungry*, OXFAM INT’L (June 2008), <http://www.oxfam.org/development/haiti-no-longer-grows-much-its-own-rice-and-families-now-go-hungry>; Jonathan M. Katz, *With Cheap Food Imports, Haiti Can’t Feed Itself*, HUFFINGTON POST (Mar. 20, 2010, 2:13 PM), http://www.huffingtonpost.com/2010/03/20/with-cheap-food-imports-h_n_507228.html; Bill Quigley, *The U.S. Role in Haiti’s Food Crisis*, COUNTERPUNCH (Apr. 21, 2008), <http://www.counterpunch.org/quigley04212008.html>.

¹¹¹ *Right to Food*, *supra* note 9.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

and aid to meet its food needs.¹¹⁶ Difficulties in meeting basic food needs have contributed to the deforestation problem.

International trade policies have thus contributed to Haiti's vulnerability, in violation of countries' extranational obligations to respect, protect, and facilitate the right to food.¹¹⁷ International aid has also been a culprit for destabilizing Haiti's food market ultimately hindering long-term access to food. A 2010 report by the Robert F. Kennedy Center for Justice & Human Rights focusing on the impact of U.S. food aid on access to food in Haiti found that food aid can be harmful to the sustainability and availability of local food for purchase, interfering with the realization of Haitians' human rights and long-term economic stability.¹¹⁸ In particular, when foreign-grown food is either distributed for free or sold at a subsidized price, such aid may make it difficult for local food producers to compete with the imported food.¹¹⁹ At times it has also led farmers to abandon agricultural production because it is no longer lucrative. Former UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes stressed that a "combination of food aid, but also cheap imports have . . . resulted in a lack of investment in Haitian farming, and that has to be reversed."¹²⁰ International cooperation in Haiti must seek to address violations of the right to food in order to deal with the root causes of flooding disasters.

2. *The January 12 Earthquake and the Right to Housing*

While the tremors that crumbled much of Haiti's central infrastructure on January 12, 2010, were a natural phenomenon, the disproportionate consequences of the earthquake were also direct results of policy choices and a failure to enforce human rights. In the aftermath of the earthquake, the Haitian government noted that the toll did not result from the tremor alone, but from "an excessively dense population, a lack of adequate building standards, the

¹¹⁶ See *Haiti Emergency*, WORLD FOOD PROGRAMME, <http://www.wfp.org/crisis/haiti> (last visited Nov. 14, 2011) (describing the food crisis in Haiti).

¹¹⁷ Special Rapporteur on the Right to Food, *Economic, Social & Cultural Rights: The Right to Food: Rep. Submitted by the Special Rapporteur on the Right to Food in Accordance with Commission on Human Rights Resolution 2002/25*, ¶ 29, U.N. Doc. E/CN.4/2003/54 (Jan. 10, 2003) (by Jean Zielger); see also Narula, *supra* note 39, at 725.

¹¹⁸ See CTR. FOR HUMAN RIGHTS & JUSTICE, NYU SCH. OF LAW ET AL., SAK VID PA KANPE [EMPTY SACK DOES NOT STAND UP]: THE IMPACT OF U.S. FOOD AID ON HUMAN RIGHTS IN HAITI 1, 6 (2010), available at http://www.rfkcenter.org/files/RTF_Briefing.pdf.

¹¹⁹ See Katz, *supra* note 110.

¹²⁰ *Id.*

disastrous state of the environment, disorganized land use, and an unbalanced division of economic activity.”¹²¹ Decades of national and international policies and weak rule of law created a vulnerability of Haitians that resulted in astronomical displacement and death tolls that far exceed the mortality in earthquakes of comparable scale in other countries.¹²²

Violations of the right to housing in Haiti directly contributed to the human toll of the quake. The right to housing is a necessary component of the right to an adequate standard of living. Article 25 of the UDHR provides that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care.”¹²³ The ICESCR establishes the right “of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹²⁴ Other international agreements to which Haiti is a party also incorporate the right to housing either expressly or implicitly, including the International Covenant on Civil and Political Rights (“ICCPR”),¹²⁵ the CRC,¹²⁶ and the Convention on the Rights of Persons with Disabilities.¹²⁷ Nondiscrimination with regard to housing is also recognized by CEDAW¹²⁸

¹²¹ GOV'T OF THE REPUBLIC OF HAITI, ACTION PLAN FOR NATIONAL RECOVERY AND DEVELOPMENT OF HAITI 5 (2010), available at http://www.haiticonference.org/Haiti_Action_Plan_ENG.pdf [hereinafter HAITI, ACTION PLAN].

¹²² See, e.g., Kaelin, *supra* note 7, at 2 (“Not least due to the massive urban planning deficits, the earthquake wreaked such enormous destruction.”).

¹²³ Universal Declaration of Human Rights, *supra* note 102, art. 25(1).

¹²⁴ ICESCR, *supra* note 13, art. 11(1).

¹²⁵ “Homelessness has been found to threaten violations of the right to life and forced evictions have been found to contravene the right to be free from arbitrary or unlawful interference with the home.” Camp Benediction et al., *Right to Housing* [hereinafter *Right to Housing*], in IJDH SUBMISSION TO THE UNHRC, *supra* note 9, at 101, 110 n.4.

¹²⁶ CRC, *supra* note 105, art. 27(3) (“State Parties, in accordance with national conditions and within their means, shall take appropriate measure to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regards to nutrition, clothing and housing.”).

¹²⁷ Convention on the Rights of Persons with Disabilities art. 28(1), *opened for signature* Dec. 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008) [hereinafter CRPD] (“States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.”).

¹²⁸ CEDAW, *supra* note 13, art. 14(2)(h) (“States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: . . . (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”).

and the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”).¹²⁹

The right to adequate housing includes elements of habitability, affordability, physical security, and security of tenure.¹³⁰ In stark contrast, “a majority of Haitians live[d] in overpopulated urban centers, shantytowns or under-developed villages that fail[ed] to meet minimum standards of habitability” and security.¹³¹ Housing conditions in Haiti are directly linked to the conditions of extreme poverty:

Before the earthquake, an estimated eighty percent of the population was formally unemployed, and most people eked out a meager living as manual laborers or service providers in the underground economy. Few Haitians could afford to own a home, so the majority lived in shoddy rental units or informal settlements on open land.¹³²

Overpopulation made matters worse by creating a severe housing shortage in the nation’s urban centers after the agricultural sector collapsed in the 1980s. Farmers who lost their livelihoods after U.S. agricultural goods flooded Haitian markets migrated to Port-au-Prince in search of employment.¹³³ The U.S. Agency for International Development pushed a policy to concentrate the population in cities in order to promote assembly manufacture. As described in a stakeholder report on the right to housing, submitted for Haiti’s Universal Periodic Review:¹³⁴

The city, once home to 250,000 people, grew to 3 million. Construction proceeded without regard for building codes or safety standards, and poor urban planning resulted in neighborhoods being

¹²⁹ CERD, *supra* note 13, art. 5(e)(iii) (“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . . (e) Economic, social and cultural rights, in particular: . . . (iii) The right to housing.”).

¹³⁰ General Comment No. 4 (1991): The Right to Adequate Housing (Art. 11(1) of the Covenant), U.N. ECOSOCOR, 6th Sess., Supp. No. 3, Annex III, U.N. Doc. E/C.12/1991/4, at 114 (1992).

¹³¹ *Right to Housing*, *supra* note 125, at 102.

¹³² *Id.*

¹³³ INT’L COMM. OF NAT’L LAWYERS GUILD ET AL., UNITED STATES OF AMERICA: SUBMISSION TO THE UNITED NATIONS PERIODIC REVIEW: THE NEGATIVE IMPACT OF U.S. FOREIGN POLICY ON HUMAN RIGHTS IN COLUMBIA, HAITI AND PUERTO RICO 6 (2010), available at http://www.ushnetwork.org/sites/default/files/declaration-treaty/Foreign_Policy_Joint_Report_USA.pdf; Kaelin, *supra* note 7, at 2.

¹³⁴ See U.S. AGENCY FOR INT’L DEV., TOWARDS AN URBAN FUTURE: A DRAFT REPORT: AN ASSESSMENT OF ISSUES AND TRENDS 7–8 (2011), available at http://www.citiesalliance.org/ca/sites/citiesalliance.org/files/CA_Images/Executive%20Summary%20IRG%20Urban%20Report.pdf.

established in areas prone to flooding and other natural hazards, including steep hill-sides that collapsed in the earthquake. Following an assessment in 2009, United Nations officials concluded that the Haitian government had lost the capacity to manage metropolitan Port au Prince.

The earthquake struck less than one year later, killing up to 250,000 people. It displaced an additional two million, and few of them had the resources to secure alternative housing outside the affected area.¹³⁵

Most of these people were killed as buildings crumbled over them, a result of decades of building with poor materials and non-enforcement of building codes.¹³⁶ The quake disproportionately impacted the poor by destroying buildings in lower middle class neighborhoods and poor neighborhoods constructed in ravine areas.¹³⁷ The impact of poverty and unsafe housing on death tolls is made clear when Haiti's mortality is compared to that of other countries shaken by quakes of a similar or greater scale. By comparison, prosperous Chile was struck by an earthquake in February 2010 that claimed fewer than 600 lives but was about 500 times more powerful than the 7.0 magnitude convulsion in Haiti.¹³⁸ Japan's 2011 earthquake registered a 9.0 magnitude, exponentially stronger than even Chile's, but relatively few people seem to have perished from the tremor itself thanks to Japan's famed emergency preparedness and construction standards.¹³⁹

3. *The Cholera Epidemic and the Right to Water*

Ten months after the earthquake left more than a million people to survive in precarious sanitation situations, cholera broke out in central Haiti.¹⁴⁰ Cholera represents a grave and continuing threat to the hundreds of thousands of displaced persons still living in camps that often lack access to clean water and toilets and to the majority of Haitians that live in rural areas far from water

¹³⁵ *Right to Housing, supra* note 125, at 102.

¹³⁶ See Tom Watkins, *Problems with Haiti Building Standards Outlined*, CNN (Jan. 13, 2010), http://articles.cnn.com/2010-01-13/world/haiti.construction_1_building-code-haiti-earthquake.

¹³⁷ See Kaelin, *supra* note 7, at 2.

¹³⁸ See *More Than 2 Million Affected by Earthquake, Chile's President Says*, CNN (Feb. 27, 2010), http://articles.cnn.com/2010-02-27/world/chile.quake_1_magnitude-haiti-quake-chilean-president-michelle-bachelet.

¹³⁹ See Carol J. Williams, *Japan Earthquake, Tsunami Death Toll Rises to 1,000, Reports Say*, L.A. TIMES (Mar. 11, 2011), <http://articles.latimes.com/2011/mar/11/world/la-fgw-japan-quake-death-toll-20110312>.

¹⁴⁰ *Cholera Confirmed in Haiti, October 21, 2010*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/haiticholera/situation> (last updated Oct. 22, 2010).

infrastructure, hospitals, and clinics.¹⁴¹ For cholera, a disease that is waterborne and kills by dehydration, access to clean water is imperative to both prevention and treatment.

The source of the epidemic has been traced back to the Artibonite River, a critical water source for much of central Haiti.¹⁴² Residents of the region rely on the river for bathing, washing, drinking, and irrigation. The river was contaminated by fecal matter introduced from a UN peacekeeping base seated at a tributary to the Artibonite River.¹⁴³ By early 2011, as Haiti mourned the anniversary of the earthquake, more than 4,000 people had died from cholera and more than 200,000 cases had been recorded.¹⁴⁴ The cholera outbreak is only the most recent and urgent symptom of a larger and ongoing violation of the right to water in Haiti. Despite rigorous public awareness campaigns seeking to educate people on the need to drink treated water, cholera spread in large part because of a lack of access to treated or potable water.¹⁴⁵ Studies conducted in 2006 found that “only 55.2 percent of the population has access to an improved water source, while close to 70 percent does not have direct access to potable water.”¹⁴⁶ These figures almost definitely overstate access to improved water sources because public systems are highly dysfunctional and

¹⁴¹ *Haiti Aid Group Warns of Cholera Surge on Eve of Rainy Season*, WASH. POST (Feb. 24, 2012), http://www.washingtonpost.com/world/americas/haiti-aid-group-warns-of-cholera-surge-on-eve-of-rainy-season/2012/02/24/gIQA7bvXR_story.html.

¹⁴² See ALEJANDO CRAVIOTO, INT’L CTR. FOR DIARRHOEAL DISEASE RESEARCH, FINAL REPORT OF THE INDEPENDENT PANEL OF EXPERTS ON THE CHOLERA OUTBREAK IN HAITI 18, 30 (2011) [hereinafter HAITI CHOLERA FINAL REPORT], available at <http://www.un.org/News/dh/infocus/haiti/UN-cholera-report-final.pdf>.

¹⁴³ In May 2011, a UN-commissioned panel of experts released the results of an independent investigation, which found that “the evidence overwhelmingly supports the conclusion that the source of the Haiti cholera outbreak was due to contamination . . . as a result of human activity.” *Id.* at 29. More specifically, the outbreak was caused by the “contamination of the Meye Tributary of the Artibonite River with a pathogenic strain of the current South Asian type *Vibrio cholerae*.” *Id.*

¹⁴⁴ UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, HAITI: CHOLERA SITUATION REPORT #35: 4 FEBRUARY 2011, at 1 (2011), available at http://haiti.humanitarianresponse.info/Portals/0/OCHA_Haiti_Cholera_Sitrep_35.pdf.

¹⁴⁵ Molly Hennessy-Fiske, *Q&A: Dr. Paul Farmer and Ophelia Dahl on Recovery Efforts in Haiti*, L.A. TIMES (Jan. 29, 2011, 8:35 AM), <http://latimesblogs.latimes.com/lanow/2011/01/haiti-cholera-earthquake-dr-paul-farmer-ophelia-dahl.html> (“You can spend half your resources telling people to wash their hands or drink clean water, but if they don’t have access to clean water, it’s a peculiarly noxious way of approaching the problem.”); Beatrice Lindstrom, *Law in the Time of Cholera: Violations of the Right to Water in Haiti*, HUFFINGTON POST (Jan. 21, 2011, 11:42 AM), http://www.huffingtonpost.com/beatrice-lindstrom/law-in-the-time-of-cholera_b_812170.html.

¹⁴⁶ WÖCH NAN SOLEY, *supra* note 42, at 15 (citation omitted). Fifty-three percent of the population in urban areas had access to an improved water source and fifty-two percent in rural areas. *Water and Sanitation*, OFF. SPECIAL ENVOY FOR HAITI, <http://www.haitispecialenvoy.org/about-haiti/water-sanitation/> (last visited Nov. 14, 2011).

in some communities rarely available year round.¹⁴⁷ As reported by the World Bank, “[i]n almost all urban areas water supply is intermittent,” and in rural areas, water is very difficult to access during the dry season.¹⁴⁸

Haiti has international human rights obligations to respect, protect, and fulfill the rights to water and sanitation. The minimum core obligations in relation to the right to water are binding on Haiti under customary international law.¹⁴⁹ The right to water entitles individuals to water that is sufficient in quantity, safe in quality, acceptable in taste and odor, physically accessible, available, and affordable.¹⁵⁰ In July 2010, the UN General Assembly recognized the right to water and sanitation as a separate human right “that is essential for the full enjoyment of life and all human rights,”¹⁵¹ and the UN Human Rights Council affirmed the legally binding nature of this right.¹⁵² The UN Independent Expert on the Right to Water has emphasized that “[s]anitation and water must be prioritized by according greater political priority to these sectors, which should be reflected in allocations in State budgets and donor commitments.”¹⁵³ The right to water is also protected in relation to specific populations in CEDAW¹⁵⁴ and the CRC.¹⁵⁵

Like with the right to food, however, the responsibility for the failure to respect the right to clean water does not lie with the Haitian government alone. In 1998, the government had the opportunity and commitment to make drastic improvements to its water supply system when the Inter-American Development Bank (“IDB”) approved a \$54-million loan aimed to improve potable water and sanitation services.¹⁵⁶ The IDB estimated that the loan would

¹⁴⁷ WÖCH NAN SOLEY, *supra* note 43, at 15.

¹⁴⁸ *Id.* (quoting WORLD BANK, PROJECT APPRAISAL DOCUMENT ON A PROPOSED GRANT IN THE AMOUNT OF SDR 3.4 MILLION (US\$5 MILLION EQUIVALENT) TO THE REPUBLIC OF HAITI FOR A RURAL WATER AND SANITATION PROJECT 28 (2006), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rendered/PDF/38080.pdf).

¹⁴⁹ See *supra* notes 42–44 and accompanying text.

¹⁵⁰ General Comment 15, *supra* note 43, at 2; see also UNITED NATIONS HUMAN RIGHTS ET AL., THE RIGHT TO WATER: FACTSHEET NO. 35, at 34–35 (2010), available at <http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>.

¹⁵¹ The Human Right to Water and Sanitation, G.A. Res. 64/292, ¶ 1, U.N. Doc A/RES/64/292 (Aug. 3, 2010).

¹⁵² Human Rights and Access to Safe Drinking Water and Sanitation, H.R.C. Res. 15/9, ¶ 6, U.N. Doc A/HRC/RES/15/9 (Oct. 6, 2010).

¹⁵³ *Safe Drinking Water*, *supra* note 43, ¶ 63(c).

¹⁵⁴ CEDAW, *supra* note 13, art. 14(2)(h).

¹⁵⁵ CRC, *supra* note 105, art. 24(2)(c).

¹⁵⁶ WÖCH NAN SOLEY, at 43, at iii.

decrease water costs for the poor by up to ninety percent.¹⁵⁷ On the eve of its dispersal, however, the United States blocked the loan.¹⁵⁸ Internal communications obtained under the U.S. Freedom of Information Act revealed that the interference was motivated by a policy designed to limit support for Haiti's democratically elected president Jean-Bertrand Aristide because of his left-wing policies, which were seen as contrary to U.S. interests in the region.¹⁵⁹ Such political considerations are in direct violation of the IDB's Articles of Agreement, but, with significant voting power, the United States succeeded in stopping the loan dispersal, considerably undermining the opportunity for the Haitian government to develop the water infrastructure.¹⁶⁰

The cholera outbreak itself is also evidence of the need for the international community to adhere to human rights in their assistance and interventions in Haiti. A report issued by a UN-commissioned panel of experts found that the cholera pathogen was introduced in fecal matter that likely leaked from a UN base that had a negligently maintained sanitation system with broken pipes carrying significant risk for contamination.¹⁶¹ The report found significant evidence tracing the source of the cholera outbreak back to UN malfeasance.¹⁶² The panel found that the outbreak originated near a UN peacekeeping base, where the sanitation system was negligently maintained, and broken pipes created a "significant potential for [fecal] contamination."¹⁶³ The base also dumped waste in an unfenced pit that regularly overflowed into a nearby tributary to the Artibonite River, Haiti's central water source.¹⁶⁴ The UN's negligent waste management in an environment already vulnerable to waterborne disease has led to an arbitrary deprivation of life for thousands of Haitians and amounts to a gross violation of human rights in itself.

B. Implementation of the Rights-Based Approach Post-earthquake: Lost Opportunities To Enhance the Impact of Humanitarian Efforts

The previous Subpart has demonstrated that systemic economic and social rights violations create an environment susceptible to disproportionate damage

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *See id.* at 11.

¹⁶⁰ *See id.*

¹⁶¹ HAITI CHOLERA FINAL REPORT, *supra* note 142, at 21.

¹⁶² *Id.* at 23.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

from natural disasters. The rights-based approach reduces the underlying vulnerability by analyzing and addressing root causes of poverty and disasters, rather than simply responding to the immediate results thereof. Another key practical benefit of the rights-based approach is that it enhances the success of the humanitarian response itself because it leads to higher efficiency and sustainability of projects. By engaging critical stakeholders, the rights-based approach ensures that aid is delivered in a manner that is consistent with the recipient government's national development priorities, and ensures that efforts are not duplicating existing national programs. When properly implemented, this framework enables the beneficiaries to play an active role in the development of their country to express their priorities, make demands on their government and donors, have a say in how those demands are met (how projects are designed and implemented), and ensure that there are effective methods for communities to communicate with donors and implementing agencies to report problems or concerns.¹⁶⁵ The rights-based approach also helps to promote the sustainability of development work by “empowering people themselves—especially the most marginalized—to participate in policy formulation and hold accountable those who have a duty to act.”¹⁶⁶ Through participation, a proper implementation of the rights-based approach ensures that projects meet the needs of rights-holders and are delivered in a way that is sensitive to the specific needs and attributes of the community. This, in turn, enables projects to contribute to durable solutions that can be continued after funding runs out and aid agencies leave.

The rights-based approach is accepted as a positive practice within the humanitarian community in Haiti. In a recent study on the humanitarian community's use of rights-based indicators to guide their work in Haiti after the earthquake, Professor Margaret Satterthwaite surveyed “[o]ne hundred thirty-eight respondents . . . working in the humanitarian or development field and having worked full-time in or in relation to Haiti at some point during the preceding two years.”¹⁶⁷ “A striking 85 percent of [the respondents] reported using a rights-based approach in Haiti,”¹⁶⁸ and ninety-six percent of respondents said that the rights-based approach improves the impact of their work.¹⁶⁹ Several respondents underscored the importance of the rights-based

¹⁶⁵ See OHCHR, FAQs, *supra* note 14, at 17.

¹⁶⁶ *Id.* at 15.

¹⁶⁷ Satterthwaite, *supra* note 4, at 877.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 879.

approach in the Haitian context, in particular “one opined that the rights-based approach was important following five hundred years of ‘rights-violation based approaches,’ while several others pointed to the failure of past international interventions in Haiti as underlining the need for the rights-based approach.”¹⁷⁰ In practice, implementation of the rights-based approach has been spotty at best.

This Subpart discusses implementation in each of the five pillars of the rights-based approach: capacity building, participation, transparency, accountability, and nondiscrimination. It uses examples from experiences in post-earthquake Haiti to illustrate the shortcomings in implementation and show how a failure to implement the rights-based approach has led to a less successful humanitarian response. This Subpart does not strive to be a holistic evaluation of the extent to which the rights-based approach has been implemented, but rather seeks to demonstrate the importance of implementation to highlight the instrumental value of the approach.

1. *Capacity Building*

Human rights law recognizes the state as the primary duty-bearer responsible for respecting, protecting, and fulfilling human rights. The core human rights treaties apply to and create obligations for state actors,¹⁷¹ and national authorities have the principal duty and responsibility to provide protection and humanitarian assistance to IDPs.¹⁷² As such, the rights-based approach focuses on building the capacity of the state to realize the human rights of all Haitians. Haiti’s recovery from the earthquake is significantly delayed by two factors: the impact of the disaster on the government itself and the weak public infrastructure that predated the earthquake. The earthquake was particularly devastating because it struck so near the capital, incapacitating the central government. Critical governmental institutions crumbled including the presidential palace, parliament, law courts, and most ministerial and public administration buildings.¹⁷³ The public sector suffered heavy human losses

¹⁷⁰ *Id.* at 945–46 (citation omitted).

¹⁷¹ *See supra* note 13 and accompanying text.

¹⁷² Representative of the Secretary-General, *Further Promotion & Encouragement of Human Rights & Fundamental Freedoms, Including the Question of the Programme & Methods of Work of the Commission: Human Rights, Mass Exoduses & Displaced Persons: Rep. of the Representative of the Secretary-General, Submitted Pursuant to Commission Resolution 1997/39: Addendum: Guiding Principles on Internal Displacement*, Annex I, § 1, princ. 3(1), U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998).

¹⁷³ HAITI, ACTION PLAN, *supra* note 121, at 7; *see also* UNITED NATIONS, HAITI: 6 MONTHS AFTER . . . , at 3 (2010), http://www.undp.org/haiti/doc/Haiti_6months_after.pdf.

(thousands of civil servants died).¹⁷⁴ Yet the Haitian government's limited capacity to respond to this and other natural disasters also stems from a long history of intentional disempowerment by the international community. The lack of institutional capacity emanates from a combination of interrelated factors: limited resources resulting from a history of debt service; international trade and aid policies that have hindered national production; autocratic leaders who, often with foreign support, have used the national treasury to boost personal wealth; and the international community's deliberate undermining and overthrowing of the government that most aggressively worked to provide basic governmental services to the population.¹⁷⁵

The structure and delivery of international assistance in Haiti has often reinforced the weak capacity of the state rather than supported its capacity to fulfill its role as primary duty-bearer. Non-state actors in Haiti have habitually worked outside the government framework, and international financing has been directed to NGOs rather than government entities.¹⁷⁶ Despite being one of the major sources of bilateral aid to Haiti, the United States has a long history of bypassing the Haitian government with its funds. In 2000, the U.S. government imposed a complete aid embargo on Haiti, openly committing to suspending all aid to the Haitian government while continuing to fund NGOs that were viewed as "suitably complicit," or more in line with U.S. political interests.¹⁷⁷ The embargo was enacted to pressure the Haitian government to change the results of the May 2000 legislative elections,¹⁷⁸ and the impact has crippled the government. Political philosopher Peter Hallward and economist Jeffrey Sachs observed that "[t]he effect of the US aid embargo, in short, was to slice [then President] Aristide's miniscule spending-power roughly in half," interrupting the provision of basic services and draining foreign exchange reserves, which led to the collapse of the exchange rate, a rise in inflation, and the collapse of the economy.¹⁷⁹

¹⁷⁴ HAITI, ACTION PLAN, *supra* note 121, at 7; *see also* UNITED NATIONS, *supra* note 173, at 3.

¹⁷⁵ *See generally* PAUL FARMER, THE USES OF HAITI (3d ed. 2006).

¹⁷⁶ Hartberg, *supra* note 10, at 11.

¹⁷⁷ PETER HALLWARD, DAMMING THE FLOOD: HAITI AND THE POLITICS OF CONTAINMENT 82 (2007).

¹⁷⁸ *See id.* ("[A]fter May, all US aid to the Haitian government was suspended, and the new US ambassador, Dean Curran, was instructed to tell [President] Aristide on the eve of his inauguration that the US would not normalize relations until the 'problems with the May elections are resolved.' A year into Aristide's second administration—and long after Aristide had duly resolved these 'problems'—USAID official Sharon Bean admitted to Timothy Pershing and other journalists that Aristide's administration 'would never receive a dime of American aid.'" (citations omitted)).

¹⁷⁹ *Id.* at 83.

In 2007, only three percent of bilateral aid to Haiti went to budget support of the government.¹⁸⁰ The international community began to recognize the grave consequences of bypassing the government and has, in recent donors conferences, made renewed commitments to supporting the Haitian State.¹⁸¹ Despite these pledges, the earthquake response has continued the old tradition of supporting non-state actors over the government. The UN Office of the Special Envoy for Haiti surveyed official aid to Haiti after the earthquake and found that only one percent of earthquake relief aid went to the Haitian government.¹⁸² The majority of aid circumvented public institutions in favor of foreign non-state actors such as NGOs and private contractors.¹⁸³ While the statistics for recovery aid show improvements, the bigger portion of aid still bypasses the government.¹⁸⁴ The special envoy's report concludes that the allocation of aid demonstrates that the use of aid to Haiti has not changed since the earthquake and that the effect of circumventing of Haitian public institutions is to render government leadership in recovery "impossible."¹⁸⁵

The structure of assistance to Haiti also reinforces the government's exclusion from decision-making. As described in this Subpart, humanitarian assistance in Haiti is organized through a cluster system that groups NGOs and international agencies by sector.¹⁸⁶ It is important for the state to maintain standards and mechanisms to oversee the activities of the various actors working in Haiti to ensure that their actions are effective and do not undermine

¹⁸⁰ HAS AID CHANGED?, *supra* note 54, at 8.

¹⁸¹ See *Haiti, Donors Facing Huge Task To 'Build Back Better,'* DAILY HERALD (Mar. 28, 2010, 11:42 PM), <http://www.thedailyherald.com/regional/2-news/2047-haiti-donors-facing-huge-task-to-build-back-better> (providing an overview of March 2010's Build Back Better conference); Bryan Schaaf, *The Prime Minister's New Paradigm for Haiti*, HAITI INNOVATION (June 21, 2009), <http://haitiinnovation.org/en/2009/06/22/prime-ministers-new-paradigm-haiti> (describing June 2010's conference at which Prime Minister Pierre Louis presented his plan for rebuilding Haiti).

¹⁸² HAS AID CHANGED?, *supra* note 54, at 14.

¹⁸³ *Id.* at 15.

¹⁸⁴ *Id.* (finding that fifty-nine percent of recovery aid went to private institutions).

¹⁸⁵ *Id.* at 2.

¹⁸⁶ See BINDER & GRÜNEWALD, *supra* note 64, at 20–21. This evaluation found that the cluster system:

[E]nhanced partnership between the UN and other international humanitarian actors, facilitated information sharing, improved the predictability of leadership, limited duplications and enhanced coherence. At the same time, the evaluators found a number of important shortcomings of the cluster [approach] in Haiti: it was weak on ownership and connectedness, demonstrated only a low level of accountability—both toward the Humanitarian Coordinator and affected populations—and could not significantly improve coverage. The report shows that the cluster approach in Haiti has not realized its full potential.

Id. at 7.

human rights, but the government has not been sufficiently empowered in the management and leadership of these clusters, due in part to practical obstacles¹⁸⁷ or language barriers that hinder meaningful participation.¹⁸⁸ Evaluations of the cluster system have called for improvement in the interface between the government and cluster system, but have not led to significant change.¹⁸⁹ While the IHRC was established in 2010 to improve coordination between donors and the government and support the capacity of the Haitian government, success was limited.¹⁹⁰ Due in large part to weaknesses in staff capacity, the IHRC has not done enough to include government and Haitian stakeholder participation.

The lack of government leadership in the earthquake response is a critical barrier to recovery. The Government of Haiti must play a larger role in the relief effort by being more active in governance, making active decisions based on national priorities, leading the international community, and leading the protection of vulnerable populations. It must also assist in resettlement and in the enactment of national policies on housing and relocation. The humanitarian community has pointed to the lack of responsiveness from the Prèval government as one of the main barriers to effective reconstruction.¹⁹¹ Yet focusing attention solely on the human rights obligations of the host state in a disaster setting can ignore those actors that are in a critical position to impact human rights and the responsibility that the international community has to support the capacity of public institutions. Opportunities to do so exist at every level—from national to local, and as noted by Oxfam in their earthquake anniversary report: “Whatever the weaknesses of the Haitian government, it remains the sovereign authority whose engagement is essential if relief, reconstruction, and development in Haiti are to be successful.”¹⁹² Two years after the earthquake, many humanitarian agencies have reached the end of their earthquake relief mandate, making it necessary to transition essential service

¹⁸⁷ “For example, many clusters have met on MINUSTAH’s Logistics Base located on the outskirts of Port-au-Prince, which is not easily accessible.” *Right to Food*, *supra* note 9, at 85 n.85.

¹⁸⁸ “Some cluster meetings are held in English, not French or Creole, effectively excluding participation by government officials and Haitian civil society.” *Id.* at 85 n.86

¹⁸⁹ ABHIJIT BHATTACHARJEE & ROBERTA LOSSIO, UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, EVALUATION OF OCHA RESPONSE TO HAITI EARTHQUAKE 10–12 (2011), *available at* <http://ochanet.unocha.org/p/Documents/Evaluation%20of%20OCHA%20Response%20to%20the%20Haiti%20Earthquake.pdf>.

¹⁹⁰ *Right to Food*, *supra* note 9, at 79.

¹⁹¹ *See id.* at 78.

¹⁹² Hartberg, *supra* note 10, at 4.

provision and decision-making back to the state.¹⁹³ Given the lack of support the government has received to build up its capacity, it is unclear how this will be executed.

2. Participation

The human-rights based approach requires “active, free, and meaningful” participation from all parts of Haitian society, including impacted communities, grassroots organizations, minorities, rural populations, and women.¹⁹⁴ Perfunctory contact with program beneficiaries does not constitute adequate and meaningful participation.¹⁹⁵ As Amanda M. Klasing, P. Scott Moses, and Satterthwaite discuss, the right to participation in decision-making and democratic life is a vital human rights principle.¹⁹⁶ The UDHR specifically provides for the right to political participation.¹⁹⁷ It includes the right to participate in government and extends to equal access to public service and participation in the cultural life of the community,¹⁹⁸ encompassing a broad range of rights necessary for the meaningful participation of those affected by policies and decisions. The right to participation should be considered in the context of all the rights contained within the UDHR.¹⁹⁹ While the UDHR is in itself non-binding, many of its principles are encompassed in binding human rights treaties, including the ICCPR and the ICESCR.²⁰⁰

¹⁹³ See INTERIM HAITI RECOVERY COMM’N, ABOUT THE INTERIM HAITI RECOVERY COMMISSION: IHRC–FREQUENTLY ASKED QUESTIONS 17 (2010), available at http://en.cirh.ht/files/pdf/about_ihrc.pdf.

¹⁹⁴ A Call for Human Rights-Based Approach, *supra* note 15.

¹⁹⁵ *Id.*

¹⁹⁶ See Amanda M. Klasing et al., Measuring the Way Forward in Haiti: Grounding Disaster Relief in the *Legal Framework of Human Rights*, 13 HEALTH & HUM. RTS. J., 1, 14 (2011).

¹⁹⁷ Universal Declaration of Human Rights, *supra* note 99, arts. 21–22; Klasing et al., *supra* note 186, at 14.

¹⁹⁸ See Klasing et al., *supra* note 196, at 14.

¹⁹⁹ *Id.* at 14 (citation omitted) (quoting PHILIP ALSTON, A HUMAN RIGHTS PERSPECTIVE ON THE MILLENNIUM DEVELOPMENT GOALS 51 (2003), available at http://www.hurilink.org/tools/HRsPerspectives_on_the_MDGs--Alston.pdf).

²⁰⁰ *Id.* Klasing, Moses, and Satterthwaite provide the following example:

[T]he ICCPR specifically provides individuals with the human right to participate in the political life of the community. According to the ICCPR, all citizens have the rights to participate in the conduct of public affairs, to vote and to be elected and to have access to public service. The ICCPR also recognizes the same rights to recognition and equal protection under the law and to freedom of opinion and expression. In addition, the ICCPR offers insight into preconditions for meaningful and full participation. For example, everyone has the right to use his or her own language, an important condition to ensure participation is possible. According to the Human Rights Committee (HRC), the UN body charged with monitoring the implementation of the ICCPR, the right to participate in the conduct of public affairs extends to “all aspects of public

Participation is necessary at each stage of the rescue, recovery, and rebuilding strategy-development process, from the initial needs assessment through implementation and evaluation.²⁰¹ Yet assessments in Haiti since the earthquake have shown that “inconsistent with the rights-based approach, humanitarian services have in many circumstances been provided through a top-down approach, with international agencies making decisions about peoples’ needs without securing meaningful input from the communities they are intended to benefit.”²⁰² Moreover, key stakeholders such as the beneficiary communities and Haitian civil society have not been able to access the fora where decisions directly impacting them are being made.²⁰³ Haiti’s poor majority is especially marginalized from the rebuilding process.

Both the UN and the IHRC have extensively and inappropriately relied on international NGOs to “be the voice of the people.”²⁰⁴ This treatment of Haiti as a blank space where help can be infused has reduced efficiency by causing international actors to overlook existing infrastructure and create parallel structures. While the government in Haiti has limited capacity to respond to natural disasters and implement assistance programs, important infrastructure exists in the form of communities and grassroots organizations. These organizations have the connections and know-how to implement projects effectively.²⁰⁵ While the vast majority of funding after the earthquake went to NGOs, not a single Haitian NGO was supported in the first flash appeal.²⁰⁶ This is harmful to the broader aid effort because local organizations have

administration, and the formulation and implementation of policy at international, national, regional and local levels.”

Id. (citations omitted) (quoting Human Rights Comm., General Comment Adopted by the Human Rights Committee Under Article 40, Paragraph 4, of the International Covenant on Civil & Political Rights: Addendum: Gen. Comment No. 25, ¶ 5, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 27, 1996)).

²⁰¹ A Call for Human Rights-Based Approach, *supra* note 15.

²⁰² *Right to Food*, *supra* note 9, at 80. “This was demonstrated in the OCHA evaluation, where one staff member admitted that “[w]e do not interact with local NGOs or government, forget about interacting with communities.”” *Id.* at 86 n.91 (quoting BHATTACHARJEE & LOSSIO, *supra* note 189, at 32); *see also* Hartberg, *supra* note 10 at 12.

²⁰³ *Right to Food*, *supra* note 9, at 80.

²⁰⁴ *Id.* (quoting MARK SCHULLER, YORK COLLEGE, CITY UNIV. OF N.Y., UNSTABLE FOUNDATIONS: IMPACT OF NGOS ON HUMAN RIGHTS FOR PORT-AU-PRINCE’S INTERNALLY DISPLACED PEOPLE 32 (2011), available at <http://www.ijdh.org/wordpress/wp-content/uploads/2010/10/Report-unstable-foundations-final-2.pdf>).

²⁰⁵ *See* Caroline Preston & Nicole Wallace, *6 Months After Earthquake, Haiti Struggles to Rebuild*, CHRON. PHILANTHROPY (July 8, 2010), <http://www.philanthropy.com/article/Charities-Struggle-to-Help/66199>.

²⁰⁶ HAS AID CHANGED?, *supra* note 54, at 16.

established community connections and an understanding of the socio-economic and cultural context.

Lack of adequate participation by local communities has characterized much of the rebuilding effort, and a recent example illustrates that this practice continues under President Michel Martelly's administration. Shortly after President Martelly's inauguration on May 14, 2011, he announced a plan to close six of the most visible displacement camps in the Port-au-Prince area and relocate the families back to their original neighborhoods.²⁰⁷ The plan pays displaced families to move out of camps into other housing.²⁰⁸ Families are allocated a pre-determined sum that carries little or no relation to the actual amount that would be needed to repair the damage of the house or to pay rent in a new unit.²⁰⁹ The plan, commonly referred to as 16/6,²¹⁰ is the pilot project for closing camps and moving victims of 2010's devastating earthquake into permanent housing.

Implementation of the plan has moved more slowly than initially proposed,²¹¹ but over the course of the months after its initial announcement, the plan has become the de facto resettlement policy and has influenced a perception that paid relocations are the solution to Haiti's displacement problem.²¹² To date, it is the closest resemblance of a national resettlement policy, and the international community is focusing great attention and resources on the plan; in mid-August, the Haiti Reconstruction Fund pledged \$78 million to fund it.²¹³ Moreover, private landowners and local municipalities and NGOs have adopted the model of paid relocation as the

²⁰⁷ NICOLE PHILLIPS, INST. FOR JUSTICE & DEMOCRACY IN HAITI & UNIV. OF S.F. SCH. OF LAW, HAITI'S HOUSING CRISIS: RESULTS OF A HOUSEHOLD SURVEY ON THE PROGRESS OF PRESIDENT MICHEL MARTELLY'S 100-DAY PLAN TO CLOSE SIX IDP CAMPS 5 (2011), available at http://ijdh.org/wordpress/wp-content/uploads/2011/10/Martelly-100-Day-Report-final_Oct-3.pdf. The camps slated for closure are Primature, Place Saint-Pierre, Place Boyer, Place Canapé-Vert, Mais Gaté, and Stade Sylvio Cator. *Id.* The residents of these camps were deemed to have come from sixteen neighborhoods in surrounding areas. *See id.*

²⁰⁸ *See id.* at 4.

²⁰⁹ Beatrice Lindstrom & Jocelyn Brooks, *Final Whistle for 514 Families as Haitian Government Illegally Closes Stadium Camp*, HUFFINGTON POST (July 28, 2011, 9:38 PM), http://www.huffingtonpost.com/beatrice-lindstrom/final-whistle-for-514-fam_b_911638.html.

²¹⁰ Jacqueline Charles, *Michel Martelly Launches Housing Plan in Haiti*, MIAMI HERALD (Oct. 6, 2011), <http://www.miamiherald.com/2011/10/05/v-fullstory/2442531/michel-martelly-launches-housing.html>.

²¹¹ The plan was initially presented to the CCCM Cluster as Martelly's 100-day plan, with plans to close four of the camps during Martelly's first 100 days in office. *See* PHILLIPS, *supra* note 207, at 5.

²¹² *See id.*

²¹³ *Id.* at 3.

preferred method for moving displaced communities out of camps.²¹⁴ To date, four of the six camps in the plan have been partially or fully closed without meaningful resettlement assistance.²¹⁵ In practice, residents are commonly given a deadline to leave a camp, often under the threat or use of force, and are paid a fixed sum of \$250 to \$500 to support their relocation.²¹⁶ Implemented in this way, payment strategies do not lead to durable solutions because they do not in actuality result in access to adequate alternative housing.²¹⁷

The plan has directly impacted the living situation of many who were displaced by the earthquake, yet neither displaced communities generally, nor the specific camps targeted in the plan, were consulted in its development. In August 2011, the Center for Law and Global Justice at the University of San Francisco School of Law, the Institute for Justice & Democracy in Haiti, and the BAI interviewed 150 households on the government's implementation of the housing plan, including camp closures, residents' access to information and input on the plan, and the provision of housing assistance.²¹⁸ The survey found that eighty-two percent of residents in the six camps had not been consulted on their opinion regarding how settlement would be structured.²¹⁹ Only thirty-eight percent of the households surveyed in the four camps where closure had not yet begun had even heard of plans to close their camp.²²⁰ "Of those, fifty-three percent learned from rumor from other residents, and only 12.7 percent

²¹⁴ See *id.* at 3. Over the course of the summer, the BAI saw a sharp increase in the number of cases of forced evictions that included payment schemes. See Letter from Brian Concannon, Dir., Inst. for Justice & Democracy in Haiti et al., to Ban Kai Moon, Sec'y-Gen. United Nations et al. (Aug. 23, 2011) (on file with author). The Martelly Administration has tried to distance itself from these evictions, asserting that the mayors and landowners are acting outside of the framework of the 100-day plan. See Lindstrom & Brooks, *supra* note 209. The president's failure to stop or condemn the evictions, including those in two of the camps that are a part of the plan, has been perceived as tacit encouragement, however. *Id.* The Mayor of Delmas specifically purported to be acting under the direction of the president during an eviction in June. Letter from Mario Joseph, Bureau des Avocats Internationaux, to the Inter-Am. Comm'n on Human Rights (June 15, 2011), available at ijdh.org/wordpress/wp-content/uploads/2011/06/Haiti-Precautionary-Measures-Update-to-IACHR-15-June-2011REDACTED.pdf. "Furthermore, the money for the relocation was reported to have come from both the mayor and" central government. Lindstrom & Brooks, *supra* note 209.

²¹⁵ See PHILLIPS, *supra* note 207, at 7.

²¹⁶ See Lindstrom & Brooks, *supra* note 209.

²¹⁷ *Id.* "In Place Saint Pierre in the wealthy suburb of Petionville, the municipal government implemented a similar strategy in April, paying displaced families \$500—twice as much as offered in this case—to vacate a public square." *Id.* Many of these families "remained displaced and homeless after receiving the money because it was inadequate to secure alternative housing. Government officials even admitted that the money offered was generally insufficient to cover rent for a family of five in Port-au-Prince." *Id.*

²¹⁸ See PHILLIPS, *supra* note 207, at 2.

²¹⁹ *Id.* at 2, 10.

²²⁰ *Id.* at 2, 10–11.

heard it from a government official, the UN,” or an NGO.²²¹ While the compensation is meant to cover costs of repair and reconstruction, the amounts are not based on an evaluation of actual costs. All of the residents surveyed in Stade Sylvio Cator, where many residents were paid \$250 before being moved out, said that the money was not enough for them to relocate or pay rent.²²² They also reported that the money was not enough to build a basic 12x10 foot shack with a concrete floor, plywood walls and corrugated metal roof, which costs about US\$300.²²³

Prior consultation during the design of the plan could have ensured that it responded effectively to the needs of those being resettled, thereby preventing the waste of significant and critical financial and physical resources on a policy that is ineffective and unsustainable. Community participation would also ensure that the camp residents had access to adequate information in order to plan for and make informed decisions about their future—critical components to a durable solution for displacement. Meaningful participation is not only a protected human right, but also has concrete practical benefits and should be adopted as a best practice by the Martelly Administration and its international supporters.

3. *Transparency*

Although not fully articulated in international law as a free-standing state right, transparency is necessary for the full enjoyment of other fundamental rights²²⁴—without transparency, rights-holders will not be able to hold actors accountable for acts and omissions that impact their human rights, nor will they be able to participate meaningfully in decision-making. In practice, the right to transparency is therefore based on the recognized duty of states to take

²²¹ *Id.* at 11–12.

²²² *Id.* at 11.

²²³ Press Release, Mario Joseph & Nicole Phillips, Inst. for Justice & Democracy in Haiti, 100 Days into Michel Martelly’s Presidency: Survey Reveals Government’s Closure of Camps Conflicts with Durable Housing Solutions Proposed in Housing Plan (Aug. 18, 2011), http://ijdh.org/wordpress/wp-content/uploads/2011/08/Survey-Results_Martelly-Plan_-Press-Release_Final.pdf.

²²⁴ For example, as described above, the right to participate in public affairs, as well as the right to an effective remedy for the violation of human rights, is protected in international law. *See supra* note 200 and accompanying text. In practice, participation in public affairs requires the ability to be aware and informed about issues of public interest and government policy. *See ICESCR, supra* note 13, art. 25(a). In addition, in order to seek redress for acts or omissions that impact rights, citizens must have knowledge of their rights, understand the process to seek redress, and be able to reasonably meet any necessary evidentiary burden in seeking that redress. *See id.* art. 2(3)(a).

necessary steps to give effect to protected human rights.²²⁵ Further, the right to freedom of information includes a right to access information (to “seek” and “receive”), requiring transparency and openness on the part of information-holders.²²⁶ This right has been recognized specifically to include access to information held by governmental bodies, subject only to extremely limited exceptions, such as imminent threats to national security.²²⁷

Where international legal commitments extend to non-state actors engaged in development initiatives, similar requirements of transparency apply. In the context of humanitarian assistance and development, transparency includes clear and publicly accessible financial records, procurement and distribution policies, and project evaluation.²²⁸ Transparency requires making information on all stages of the development and implementation of the humanitarian response available and accessible to Haitians from all sectors of society.²²⁹ The

²²⁵ *Id.* art. 2(2); General Comment Adopted by the Human Rights Committee Under Article 40, Paragraph 4, of the International Covenant on Civil & Political Rights: Addendum: Gen. Comment No. 25 (57), Annex V, para. 1, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 27, 1996) (“Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects.”). This duty is also articulated in other treaties. *See, e.g.*, CRPD, *supra* note 127, art. 4(1)(a) (requiring states “[t]o adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention”); American Convention on Human Rights, *supra* note 48, art. 2 (“Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”).

²²⁶ American Convention on Human Rights, *supra* note 48, art. 13; ICCPR, *supra* note 13, art. 19.

²²⁷ *See, e.g.*, *Reyes v. Chile*, Inter-Am. Ct. H.R. (ser. C) No. 151 (Sept. 19, 2006); *Társaság a Szabadságjogokért v. Hungary*, Eur. Ct. H.R. at 1, 4 (2009), http://www.echr.coe.int/echr/Homepage_EN (follow “Case-Law” hyperlink; then follow “HUDOC” hyperlink; then search by placing “Társaság a Szabadságjogokért” in the “Case Title” box) (“The disclosure of public information on request in fact falls within the notion of the right ‘to receive,’ as understood by Article 10 § 1. This provision protects not only those who wish to inform others but also those who seek to receive such information.”); Inter-American Declaration of Principles on Freedom of Expression art. 4 (adopted by the Inter-American Commission on Human Rights at its 108th regular session, Oct. 19, 2000); African Commission on Human and People’s Rights, African Declaration of Principles on Freedom of Information in Africa art. 4, 32d Sess. (Oct. 23, 2002). While non-binding, these declarations evidence state parties’ commitment to upholding the tenets of the agreement in good faith.

²²⁸ *See* Organisation for Econ. Co-operation & Dev., *Paris Declaration on Aid Effectiveness, in THE PARIS DECLARATION ON AID EFFECTIVENESS AND THE ACCRA AGENDA FOR ACTION 1, 1* (2008), available at <http://www.oecd.org/dataoecd/11/41/34428351.pdf>. One hundred thirty-six states, including Haiti, are signatories to the declaration, as are numerous international and civil society organizations. *See Countries, Territories and Organisations Adhering to the Paris Declaration and AAA, ORG. FOR ECONOMIC CO-OPERATION & DEV.*, http://www.oecd.org/document/22/0,3746,en_2649_3236398_36074966_1_1_1_1_00.html (last visited Nov. 15, 2011).

²²⁹ A Call for Human Rights-Based Approach, *supra* note 15.

right to transparency also specifically suggests a duty on states to take measures to increase participation with civil society organizations and other members of the public.²³⁰ A lack of transparency can subvert political stability; in October 2009, the senate voted to remove Haiti's prime minister because of a lack of transparency surrounding the spending of \$197 million in aid to Haiti for rebuilding after the 2008 storms.²³¹

Transparency in Haiti after the earthquake has been severely lacking; rights-holders have not received essential information about critical aspects of the reconstruction process.²³² The Haitian government has a duty to communicate new policies, and international actors have a duty to provide the government with up-to-date information regarding their programs and activities in Haiti for public dissemination.²³³ Less than one third of camp residents surveyed in October 2010 felt they were informed about the future—whether regarding aid delivery or resettlement.²³⁴ The lack of transparency in Haiti's reconstruction process has inhibited participation in decision-making and hindered collaboration.²³⁵ It has resulted in anger on the part of Haitians who do not have access to information on how billions of aid money pledged for Haiti has been spent. Around Port-au-Prince, graffiti reading "*Aba ONG volè*" ("down with NGO thieves"), is not an uncommon site.²³⁶

The lack of transparency has hindered the success of aid efforts small and large. In November 2010, the approach of Hurricane Tomas raised fears for the 1.3 million people living in precarious conditions under tarps and tents.²³⁷ Haiti's only government-established displacement camp, Camp Corail-Cesselesse, sits on a flood plain, raising particular concerns about

²³⁰ See Inter-American Convention Against Corruption art. 3(11), *opened for signature* Mar. 29, 1996, 35 I.L.M. 727. See generally INT'L COUNCIL ON HUMAN RIGHTS POLICY & TRANSPARENCY INT'L, CORRUPTION & HUMAN RIGHTS: MAKING THE CONNECTION (2009) (encouraging private individuals and institutions to collaborate with anti-corruption institutions).

²³¹ A Call for Human Rights-Based Approach, *supra* note 15.

²³² *Right to Food*, *supra* note 9, at 80.

²³³ *Id.* "This was demonstrated in the lead-up to Hurricane Tomas in November 2010, when residents of Camp Corail-Cesselesse chose not heed the advice of international agencies to evacuate because they were not told where they would be taken and feared that they would not be allowed to return to their camp." *Id.* at 86 n.94.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Leslie Macmillan, *High Stakes for Haiti*, TUFTS J. (Apr. 21, 2010), http://tuftsjournal.tufts.edu/2010/04_2/features/02.

²³⁷ See Kathleen Bergin & Nicole Phillips, *Facing Man-Made Disasters in Haiti*, HOUSTON CHRON. (Nov. 9, 2010, 6:30 AM), <http://www.chron.com/opinion/outlook/article/Facing-man-made-disaster-in-Haiti-1695510.php>.

vulnerability.²³⁸ Immediately preceding the hurricane, the government and aid community operating in Corail began a concerted effort to evacuate the residents from the camp.²³⁹ Hours before the hurricane hit landfall, aid workers instructed residents to pack up and evacuate the camp.²⁴⁰ Of the roughly 8,000 residents living in the camp, only a few hundred agreed to leave.²⁴¹ Most refused, and as hostility escalated, the aid workers left.²⁴² The hurricane shifted course in the last minute, sparing the population in Camp Corail and other vulnerable areas.²⁴³ The question remains, however, as to why the residents refused to leave.

Conversations with residents in Corail and elsewhere revealed a real fear that the evacuation was actually an eviction from the camp.²⁴⁴ Two factors made this fear reasonable: the epidemic of forced evictions that have swept Haiti's displacement camps and the near complete lack of transparency preceding the evacuation. Within a couple of weeks of the earthquake, private landlords and governmental agents began evicting the displaced off the land.²⁴⁵ Forced evictions from displacement camps, often under intimidation or use of force, have become one of the most prevalent threats facing displaced communities.²⁴⁶ In March 2011, the IOM estimated that a quarter of all displacement camps faced an imminent threat of eviction.²⁴⁷ Meanwhile, the residents of Corail were given little to no information about the hurricane,

²³⁸ See *id.*; *Residents of Settlement Camps Evacuate as Tropical Storm Tomas Approaches*, WEATHER NETWORK (Nov. 4, 2010), http://www.theweathernetwork.com/news/storm_watch_stories3&stormfile=residents_of_resettlement_ca_041110. For a discussion of the circumstances that led to Corail's establishment in this precarious location, see *supra* Part II.B.3.

²³⁹ Bergin & Phillips, *supra* note 237; see also *Residents of Settlement Camps Evacuate as Tropical Storm Tomas Approaches*, *supra* note 238.

²⁴⁰ Bergin & Phillips, *supra* note 237.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Haiti Homeless Caught Between Eviction and Storm*, JAM. OBSERVER (Nov. 5, 2010), http://www.jamaicaobserver.com/Haiti-homeless-caught-between-eviction-and-storm_8121928. The Associated Press reported the dilemma as follows: in the wake of Hurricane Tomas, "[a]n estimated 1.3 million homeless faced their hardest decision since the earthquake: Do they follow the government's advice and leave their slapped together shelters ahead of the storm and risk never being allowed to return? Or do they risk their lives and stay?" *Id.*

²⁴⁵ Ezra Fieser, *Landowners Force Haitians out of Camps*, GLOBAL POST (Feb. 23, 2011, 6:07 AM) <http://www.globalpost.com/dispatch/americas/110210/haiti-homeless-camp-violence>.

²⁴⁶ See *id.*

²⁴⁷ See CAMP COORDINATION & CAMP MGMT. CLUSTER & INT'L ORG. FOR MIGRATION, *EVICIONS IN IDP CAMPS REPORT 2* (2011), available at http://www.ijdh.org/wordpress/wp-content/uploads/2011/04/IOM_EVICTION-REPORT-MARCH_2011-ENGLISH-1.pdf.

about the dangers that their land was on, and perhaps most strikingly, about where they were being taken.²⁴⁸ While officials reportedly had a list of thousands of useable shelters (mostly designated schools and churches), it was not released to the public.²⁴⁹ By the time information did become available as to the evacuation site, many Corail residents had already developed a deep skepticism of the motives behind the move. While the efforts to evacuate the residents of Camp Corail were in reality motivated by the best interest of the community, the effort was rendered unsuccessful in large part because of a lack of transparency and communication with the residents.

4. *Accountability*

Accountability is a bedrock principle of human rights—without it, rights are unenforceable. The right to a remedy requires states to set up systems that can ensure that those who violate human rights are held accountable and that those who are wronged can seek redress.²⁵⁰ It is a central principle of all human rights treaties,²⁵¹ codified in Article 2 of the International Covenant on Civil and Political Rights; Article 6 of the International Covenant on the Elimination of All Forms of Racial Discrimination; Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and Article 39 of the Convention on the Rights of the Child, among others.

The OHCHR has explained that accountability is “the *raison d’être* of the rights-based approach.”²⁵² As Klasing et al. note, “[R]ights-based programming aims to directly strengthen both the capacity of the state to respond to human rights violations through its official agencies and the capacity of rights-holders to demand accountability of those responsible for fulfilling rights and redressing wrongs.”²⁵³ The rights-based approach mandates that donor governments, international organizations, and implementing NGOs are directly accountable to the Haitian people, and requires that mechanisms be put into place through which the community

²⁴⁸ See Johnathan M. Katz, *Confusion, Fear as Haiti Camps Evacuate for Storm*, ABC ACTION NEWS (Nov. 4, 2010), http://abclocal.go.com/wpvi/story?section=news/national_world&id=7764484.

²⁴⁹ *Haiti Homeless Caught Between Eviction and Storm*, *supra* note 244.

²⁵⁰ Klasing et al., *supra* note 196, at 16.

²⁵¹ *Id.*

²⁵² OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, CLAIMING THE MILLENNIUM DEVELOPMENT GOALS: A HUMAN RIGHTS APPROACH, at 15, U.N. Sales No. E.08.XIV.6 (2008).

²⁵³ Klasing et al., *supra* note 196, at 16.

receiving assistance can report problems and access remedies.²⁵⁴ “Accountability . . . requires mechanisms through which the community receiving assistance is able to report problems and access remedies.”²⁵⁵

Actors in the development field have undertaken significant work to improve accountability by investing resources and attention to mechanisms such as courts, national human rights institutions mandated to investigate and remedy violations, or ombudsmen.²⁵⁶ This has created a curious paradox, however, wherein international actors focus on building up national accountability mechanisms while they themselves largely fall outside of any accountability framework. MINUSTAH’s operations in Haiti illustrate this incongruity. One of the peacekeeping operation’s main functions is “development of the rule of law” through training police officers and building up investigatory, prosecutorial, and adjudicatory capacities of various public institutions.²⁵⁷ Simultaneously, MINUSTAH and its members enjoy nearly absolute immunity from legal processes arising out of any acts perpetrated in Haiti, including those that rise to the level of grave human rights violations.²⁵⁸ Numerous scholars have raised serious concerns regarding the impunity of UN peacekeeping forces and have put forth recommendations for mechanisms that will achieve accountability outside of the formal legal system, but these have not been implemented.²⁵⁹ MINUSTAH’s Status of Forces Agreement (“SOFA”) with Haiti calls for the establishment of a Standing Claims Commission to investigate and provide compensation for civil claims.²⁶⁰ While this is a common feature of all SOFAs, no peacekeeping force has yet to establish one,²⁶¹ leaving victims of crimes or human rights abuses, including rape, sexual violence, and wrongful death, without any avenues to seek redress.

²⁵⁴ A Call for Human Rights-Based Approach, *supra* note 15.

²⁵⁵ *Id.*

²⁵⁶ Klasing et al., *supra* note 196, at 16.

²⁵⁷ S.C. Res. 1529, ¶ 4, U.N. Doc. S/RES/1529 (Feb. 29, 2004); *see also* Restoring a Secure and Stable Environment, MINUSTAH, <http://www.un.org/en/peacekeeping/missions/minustah/index.shtml> (last visited Nov. 15, 2011).

²⁵⁸ *See Right to Food*, *supra* note 9, at 124 (arguing that MINUSTAH’s vast immunity and lack of accountability in Haiti runs counter to the Haitian government’s duty to respect, protect, and fulfill the right to a remedy).

²⁵⁹ *See, e.g.,* Catherine E. Sweetser, *Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel*, 83 N.Y.U. L. REV. 1643, 1661–63 (2008) (arguing for a compensation mechanism for victims of abuses).

²⁶⁰ Matt Halling & Blaine Bookey, *Peacekeeping in Name Alone: Accountability for the United Nations in Haiti*, 31 HASTINGS INT’L & COMP. L. REV. 461, 483 (2008).

²⁶¹ *Id.*

In the context of post-earthquake Haiti, the international actors who are influencing much of the direction and implementation of reconstruction are also largely unaccountable to the Haitian people. Any accountability that does exist is largely to the donor and not the people they are seeking to serve.²⁶² International NGOs are primarily funded by national development agencies and donor governments, and are “beholden to the broader policy imperatives of their funders.”²⁶³ Some also draw significant resources from individual donors, but such private donors often lack the incentive to follow up on project implementation.²⁶⁴ One example that illustrates this lack of accountability is the relocation of displaced families from Jenkins-Penn Haitian Relief Organization (“J/P HRO”), a large camp located on the Petionville Golf Club, which is managed by actor Sean Penn, to Camp Corail, discussed in the preceding section.²⁶⁵ The relocation was motivated by land surveys that found certain parts of J/P HRO to be on a slope subject to flooding and landslides.²⁶⁶ The families who agreed to move were told they would receive shelter, food rations, clean water, free medical care, and access to schools at the new site.²⁶⁷ There was also an understanding that “they would be first in line for jobs in Korean-owned garment factories that the Haitian government pledged would soon be built in the area.”²⁶⁸

When the families arrived, however, they were met by barren, dusty plains at the foot of a denuded mountain, miles from any economic developments, schools, markets, or hospitals.²⁶⁹ Their shelter consisted of flimsy tents subject to flooding and overheating.²⁷⁰ There were no jobs, because the hoped-for factories would not be built for months—or even years.²⁷¹ Ironically, the Corail site is on a floodplain just as dangerous as the J/P HRO site.²⁷² What is more, a

²⁶² Janet Reitman, *Beyond Relief: How the World Failed Haiti*, ROLLING STONE (Aug. 4, 2011, 1:35 PM), <http://www.rollingstone.com/politics/news/how-the-world-failed-haiti-20110804> (noting the general lack of accountability for NGOs, as seen by workers on the ground).

²⁶³ *Id.*

²⁶⁴ See Kate Snow et al., *Where Things Stand: U.S. Charity Donations to Haiti*, ABC NEWS (Feb. 11, 2011), <http://abcnews.go.com/WN/HaitiEarthquake/haiti-us-charity-donations-haiti-earthquake-victims-spent/story?id=9786221#.TsPW83Fqj71>.

²⁶⁵ Reitman, *supra* note 262.

²⁶⁶ *See id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.* As of September 1, 2011, no building has begun on a factory in the Corail area. Greger Calhan, *Out of Options in Haiti?*, J. FOREIGN REL. (Sept. 1, 2011), <http://www.jofr.org/2011/09/01/out-of-options-in-haiti>.

²⁷² Reitman, *supra* note 262.

combination of a lack of clear communication from the government and international community and the Haitian rumor mill caused thousands more to flock to the area under the impression that Corail would be the government's new site for resettlement of the displaced.²⁷³ Canaan, the area surrounding Corail,²⁷⁴ is now the home to approximately 30,000 displaced families who live under the constant threat of flooding and the vast majority of whom lack access to even basic life-saving services.²⁷⁵ The response to the situation has been to close off the "official" camp of Corail with barbed wire from the broader settlement of Canaan.²⁷⁶ Whereas residents of Corail now have temporary wooden shelters, lighting, security, and other services, those living in Canaan have been criminalized in the press and in aid circles as squatters and opportunists.²⁷⁷ They have been denied shelter, water services, cholera-prevention trainings, and other critical services.²⁷⁸ As a spokeswoman for Oxfam told *Rolling Stone*, the situation amounts to "a ton of people living in a flux state, without safe shelter, who don't know what the future holds. . . . It's Haiti post-earthquake in a nutshell."²⁷⁹

²⁷³ See Jessica Desvarieux, *Getting Haiti's Earthquake Homeless To Move*, TIME (Apr. 13, 2010), <http://www.time.com/time/world/article/0,8599,1981295,00.html>. The government obtained the land through eminent domain and released a decree that described that the land, which included all of Canaan was being taken for resettlement. See Tim Padgett & Jessica Desvarieux, *Haiti: Where Building a Hospital Can Be Illegal*, TIME (Nov. 12, 2010), <http://www.time.com/time/world/article/0,8599,2031102,00.html>.

²⁷⁴ Reitman, *supra* note 262 (noting the name of the region surrounding Corail has been dubbed Canaan, derived from "the biblical promised land").

²⁷⁵ Padgett & Desvarieux, *supra* note 269.

²⁷⁶ See INT'L CRISIS GRP., POST-QUAKE HAITI: SECURITY DEPENDS ON RESETTLEMENT AND DEVELOPMENT 10 (2011), <http://www.crisisgroup.org/~media/Files/latin-america/haiti/B25%20Post-quake%20Haiti%20-%20Security%20Depends%20on%20Resettlement%20and%20Development.pdf> (supporting the idea of a distinction between official Corail and unofficial Canaan).

²⁷⁷ See, e.g., Emily Troutman, *Squatters Looking for a Home of Their Own in Haiti*, AOL NEWS (Oct. 12, 2010, 6:36 AM), <http://www.aolnews.com/2010/10/12/haitis-new-frontier-scrapping-for-a-piece-of-a-dream> (portraying the residents in Canaan as deceitful opportunists who hailed from other parts of Haiti to take advantage of services in Canaan). The notion that the settlers in Canaan are not actually victims of the earthquake was deconstructed by Un Techo para Mi Pais, one of the few NGOs that works to provide services in Canaan. See generally UN TECO PARA MI PAIS, YEARLY SUMMARY 2010: SUMMARY OF THE PROGRESS MADE ONE YEAR AFTER THE EARTHQUAKE (2010), available at <http://untecho.org/annualSummaryHaiti.pdf>. Eighty-eight percent of the respondent households reported that they moved to Canaan as a direct result of the earthquake, either because their houses were destroyed or in need of repair. *Id.* at 6 (stating that 85.41% of the population in Canaan will not go home because their housing was destroyed in the earthquake, and that 2.57% will not go home because their housing is being reconstructed). The camp manager of Corail has distinguished between residents of Corail as IDPs and residents of Canaan as squatters entitled to fewer rights. Interview with Bryant Castro, Staffer, American Refugee Committee (Mar. 14, 2010).

²⁷⁸ See Calhan, *supra* note 271.

²⁷⁹ Reitman, *supra* note 262 (internal quotation marks omitted).

For the people of Corail and Canaan, there is no measure of accountability for the situation in which they currently find themselves. *Rolling Stone* reports that, “[i]n the aftermath of the move, no one in the State Department or the Haitian government seemed willing to take responsibility for the relocation—or even for the rationale behind it.”²⁸⁰ Virtually every actor involved has blamed others in a relentless game of finger pointing that has left the real victims without accountability. It has pitted U.S.-based aid groups against Washington bureaucrats, UN agencies against private aid groups, and veteran insiders against “a new breed of technocrats who, with little to no experience in development, have descended on Port-au-Prince armed with bold theories and PowerPoint presentations, as if the entire country were a case study from Harvard Business School.”²⁸¹

5. *Nondiscrimination*

The final pillar of the rights-based approach, nondiscrimination, is a fundamental, “crosscutting principle in international human rights law.”²⁸² It is a core principle recognized in each of the major human rights treaties, and it is universal in application.²⁸³ It prohibits discrimination on the basis of a list of non-exhaustive categories, including sex, race, and color.²⁸⁴ Furthermore, according to the Inter-American Court, “the fundamental principle of equality and nondiscrimination has entered the realm of *jus cogens*.”²⁸⁵ It therefore binds all states, irrespective of their adhesion to treaties.²⁸⁶ *Jus cogens* norms, like the prohibition on discrimination, are nonderogable and must be respected even during times of a national emergency.²⁸⁷ In post-earthquake Haiti, donor countries thus have a duty to act in a way that complies with the principle of equality and must ensure that their programs and actions do not have a discriminatory effect.²⁸⁸ They must also take care that their assistance to Haiti does not reinforce that society’s entrenched inequalities and discrimination,

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *What Are Human Rights?*, OFF. HIGH COMMISSIONER FOR HUM. RTS., <http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx> (last visited Nov. 15, 2011).

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 110 (Sept. 17, 2003), available at <http://www.corteidh.or.cr/opinion.es.cfm>; IACHR Brief, *supra* note 18, at 11.

²⁸⁶ IACHR Brief, *supra* note 18, at 11.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

regarding gender, creed, economic status, social condition, color, and language, among other categories.”²⁸⁹

Nondiscrimination requires that the poorest and most vulnerable Haitians be targeted for priority assistance and empowerment. It requires conscious outreach and inclusion. Haiti’s poor majority has a long history of marginalization from political, economic, and social life.²⁹⁰ One particularly salient example of discrimination post-earthquake is the intentional exclusion of poor women from participating in strategies related to responding to gender-based violence (“GBV”).²⁹¹ Haiti has experienced an epidemic of violence against women and girls in displacement camps after the earthquake. The quake placed women in a particularly vulnerable situation as a result of “the collapse of social infrastructures, the erosion of family and community networks, inequitable access to social services, absence of law and order, lack of secure housing or safe neighborhoods and dependence resulting from economic dislocation.”²⁹² In spite of “scarce resources and under brutal conditions, [poor] women in the camps have organized a breathtaking array of ad-hoc services, including community-based security patrols, psycho-social support, legal advocacy and medical care for rape survivors.”²⁹³ Some of the most comprehensive and systematized support for victims of rape are organized and implemented at the grassroots level by Haitian women’s groups and other organizations composed of community organizers among Haiti’s poor majority.

Despite their invaluable work, Haitian grassroots women’s groups have been intentionally excluded from “meaningful participation in the coordination of efforts to address and prevent sexual violence in Port-au-Prince IDP camps.”²⁹⁴ After the earthquake, the UN established a subcluster on GBV to increase protection of women and girls and coordinate the response to the crisis.²⁹⁵ For more than a year, grassroots women’s groups have been asking for full participation and leadership in the implementation of responses to

²⁸⁹ *Id.* (citation omitted)

²⁹⁰ *See* Reitman, *supra* note 262.

²⁹¹ *See* MADRE ET AL., OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN CONTINUE TO FIGHT AGAINST RAPE 22 (2011), available at http://reliefweb.int/sites/reliefweb.int/files/resources/9BB8998DF0D1BA9349257815000F2EA1-Full_Report.pdf.

²⁹² *Id.* at 4.

²⁹³ *Id.*

²⁹⁴ *Id.* at 22.

²⁹⁵ *Id.* at 13.

GBV.²⁹⁶ Requests that meetings be held in Haitian Creole or that a translation be made available for the vast majority of Haitians who do not speak French were rejected by the coordinator of the subcluster on the grounds that “translation would be ‘tedious’ and that holding the meetings in French is important because the international groups would otherwise be incapable of communicating with one another.”²⁹⁷ Despite the fact that the grassroots groups provide some of the most comprehensive support for victims of rape and the BAI is the only legal office in Haiti with free and specialized legal services for rape victims, the groups were further excluded from the subclusters referral cards, which list organizations that provide critical services to survivors of sexual violence.²⁹⁸ Repeated inquiries into the reasons for exclusion received differing answers, none of which was grounded in rational policy motivations. A meeting with a UN representative later revealed that “the exclusion of [the groups] . . . was an internal decision” made under the direct order of the Haitian Women’s Ministry, which sought to intentionally exclude the groups in order “to curry favor with the more affluent and powerful local Haitian women’s organizations.”²⁹⁹

This discrimination has had a direct and profound impact on at-risk populations and has also led to significant waste and misdirection of aid by donor countries.³⁰⁰ This discrimination against poor women also violates international law and standards requiring such participation.³⁰¹ In November 2010, the IACHR issued directives to the Haitian government requesting that it take measures to ensure that grassroots women’s groups have full participation and leadership in planning and implementing responses to GBV.³⁰² As stressed in a submission for Haiti’s Universal Periodic Review in October 2011,

²⁹⁶ *Id.* at 22. The grassroots groups have raised these points in individual meetings with UN officers, in public reports, in the media, and before international mechanisms such as the IACHR and the Human Rights Council. *See id.* In November 2011, the IACHR issued a directive to the Haitian government specifically on the point of grassroots participation, yet the exclusion has persisted. *Id.*

²⁹⁷ *Id.* at 22–23.

²⁹⁸ *See id.* at 21.

²⁹⁹ *See id.* at 23.

³⁰⁰ “For example, because of a failure to consult and coordinate with grassroots organizations, battery-operated flashlights were purchased and distributed to increase lighting in the IDP camps. These flashlights are now useless because camp residents cannot afford replacement batteries. . . . [S]olar flashlights, available at a comparable price, would still be working and could significantly increase lighting and security in the camps.” *Id.* at 22. The refusal to list grassroots women’s groups on reference cards has also denied victims critical information on a full list of service providers. *Id.* at 23.

³⁰¹ MADRE et al., *Gender-Based Violence Against Haitian Women & Girls in Internal Displacement Camps*, in IJDH SUBMISSION TO THE UNHRC, *supra* note 9, at 88, 91.

³⁰² *Id.*

however, “grassroots women groups operating within displacement camps continue to be excluded in post-disaster needs assessments and in the planning of activities designed to mitigate such violence.”³⁰³

CONCLUSION

While the state of affairs in Haiti and its fraught relationships with international actors may leave one to throw one’s arms in the air in despair, the true lesson to be drawn from Haiti is that its vulnerability to natural disasters is neither due to its hopeless fate nor a result of chance. The solution to mitigating vulnerability lies in empowering rights-holders to demand fulfillment of their own rights and empowering the Haitian government to fulfill them. Haitian civil society has the information, experience, strength, and networks in place to drive Haiti’s future in a direction that respects human rights. The treatment of Haiti as a blank space that stands to benefit from a profusion of NGOs, church groups, volunteer groups, and other well-intentioned do-gooders has hindered Haitians from realizing their status as rights-holders. As Haiti transitions from a post-disaster emergency into a state of development, a rights-based approach will be especially critical to ensuring that rebuilding places the realization of human rights at the forefront and reduces vulnerability to disasters in the future.

³⁰³ *Id.*