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# WOMEN IN THE AFTERMATH OF THE 2010 HAITIAN EARTHQUAKE

*Benedetta Faedi Duramy\**

## INTRODUCTION

On January 12, 2010, a 7.0 magnitude earthquake struck Haiti, devastating the capital of the country, Port-au-Prince, and several other cities.<sup>1</sup> Hundreds of thousands of Haitians died, approximately the same number were injured, and more than a million lost their homes and have been living in the 1,300 displacement camps around the country ever since.<sup>2</sup> Extreme poverty and desperation, coupled with sexual violence, affect the women and girls who have survived the earthquake.<sup>3</sup> To be sure, gender-based violence is not a new problem in Haiti. Several studies conducted prior to the earthquake documented the rampant practices of sexual violence affecting women and girls both in the public and private realms.<sup>4</sup> The earthquake and its dramatic consequences, however, exacerbated the already arduous conditions faced by Haitian women. In addition, the earthquake violently undermined the precarious capacity and functionality of national institutions including the government, law enforcement forces, and judicial system.

This Article examines women's and girls' struggles in the aftermath of the Haitian earthquake. In particular, it focuses on the grievous conditions in the displacement camps that foster gender-based violence and abuse, often perpetrated by members of armed groups or prison escapees. Indeed, the lack of lighting, private sanitary facilities, secure shelters, and police patrols in the encampment areas endanger women's and girls' safety. The devastation and traumatic loss of family and community members following the earthquake

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<sup>1</sup> Simon Romero & Marc Lacey, *Fierce Quake Devastates Haitian Capital; Worst Is Feared*, N.Y. TIMES, Jan. 12, 2010, at A1.

<sup>2</sup> *Where We Work*, REFUGEES INT'L, <http://www.refintl.org/where-we-work/%252Fhaiti> (last visited Oct. 31, 2011).

<sup>3</sup> *See id.*

<sup>4</sup> *See* INTER-AGENCY SUB-WORKING GRP. ON GENDER IN HUMANITARIAN ACTION, INTER-AGENCY STANDING COMM., INFORMATION ON SEXUAL VIOLENCE IN HAITI PRIOR TO THE EARTHQUAKE 1 (2010), available at <http://oneresponse.info/Disasters/Haiti/Protection/publicdocuments/Lit%20Review%20Sexual%20Violence%20in%20Haiti%2029%20January%202010.pdf>.

further affect women's resilience and increase their vulnerability to abuse and sexual violence. By examining the conditions and risks faced by women and girls in the displacement camps, this Article aims to identify preventive measures and effective responses that international law and humanitarian aid should adopt to protect displaced women and girls and address gender-based violence.

Part I depicts the devastation caused by the 2010 Haitian earthquake as well as the international aid and relief efforts deployed by foreign states and international organizations. Part II presents accounts of women and girls living in the displacement camps who have been victims of sexual violence. This Part documents some of their stories and reports their daily struggles. Part III examines both the international and domestic legal framework to protect women and girls from violence in post-disaster settings. Finally, Part IV suggests practical measures that should be implemented to provide adequate services, protection, and judicial redress to rape victims in the aftermath of the Haitian earthquake.

## I. THE AFTERMATH OF THE EARTHQUAKE

The earthquake of January 12, 2010, devastated the Haitian capital of Port-au-Prince and much of the surrounding countryside.<sup>5</sup> Other areas severely impacted by the quake included the cities of Petit Goave, Grand Goave, and Leogane in the West Department; the town of Jacmel in the South-East Department; and the town of Miragoane in the Nippes Department.<sup>6</sup> Hundreds of thousands of Haitians lost their lives, and about 3 million people—a third of Haiti's population—were affected by the quake.<sup>7</sup> The United Nations ("UN") and the Haitian government estimated that the death toll was between 250,000 and 300,000,<sup>8</sup> an equal number of Haitians was injured or permanently

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<sup>5</sup> Romero & Lacey, *supra* note 1.

<sup>6</sup> U.N. Secretary-General, *Rep. of the Secretary-General on the United Nations Stabilization Mission in Haiti*, para. 2, U.N. Doc. S/2010/200 (Feb. 22, 2010).

<sup>7</sup> *Haiti Raises Earthquake Toll to 230,000*, WASH. POST, Feb. 10, 2010, at A9; *Red Cross: 3M Haitians Affected by Quake*, CBS NEWS (Mar. 9, 2010, 6:27 PM), <http://www.cbsnews.com/stories/2010/01/13/world/main6090601.shtml>.

<sup>8</sup> *Haiti Will Not Die, President Rene Preval Insists*, BBC NEWS (Feb. 12, 2010), <http://news.bbc.co.uk/2/hi/americas/8511997.stm>; *Haiti's Earthquake Death Toll Revised to at Least 250,000*, TELEGRAPH (Apr. 22, 2010, 11:11 PM), <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/haiti/7621756/Haitis-earthquake-death-toll-revised-to-at-least-250000.html>.

disabled, and 1 million were left homeless.<sup>9</sup> More than 600,000 individuals fled Port-au-Prince to safer rural areas and provincial towns, thereby encumbering local communities.<sup>10</sup> Schools, hospitals, houses, offices, shops, the presidential palace, the cathedral, and the headquarters of the UN mission all collapsed.<sup>11</sup>

Seismologists had long warned about the probability of earthquakes on the island of Hispaniola, which includes the countries of Haiti and the Dominican Republic.<sup>12</sup> In fact, the island sits on the Gonave microplate, a small strip of the earth's crust that compresses the North American and Caribbean tectonic plates.<sup>13</sup> In 1946, the Dominican Republic suffered a severe earthquake,<sup>14</sup> but the 2010 Haitian disaster was more devastating. Its epicenter was only about ten miles southwest of Port-au-Prince and began only six miles below ground, quickly reaching the surface with full force.<sup>15</sup> The shaking was felt as far away as eastern Cuba; a series of powerful aftershocks continued throughout the following few days.<sup>16</sup>

The country was utterly unequipped to withstand the earthquake. Many poor Haitians lived in tin-roofed shacks perched on steep ravines, which are subject to landslides.<sup>17</sup> In the center of the capital and the neighboring towns, most of the buildings were constructed of inferior concrete and sand without steel rods or any other form of fortification.<sup>18</sup> As a result, hillsides packed with slums as well as entire urban neighborhoods were swept away by landslides following the earthquake.<sup>19</sup> Horrifying media images depicted dead bodies

<sup>9</sup> *Haiti's Earthquake Death Toll Revised to at Least 250,000*, *supra* note 8; see also Kimberly A. Cullen & Louise C. Ivers, *Human Rights Assessment in Parc Jean Marie Vincent, Port-au-Prince, Haiti*, 12 HEALTH & HUM. RTS. PRAC. 61, 61 (2010).

<sup>10</sup> Amnesty Int'l, *Haiti: After the Earthquake, Initial Mission Findings March 2010*, at 6, AI Index AMR 36/004/2010 (Mar. 2010) [hereinafter *Haiti: After the Earthquake*].

<sup>11</sup> See *id.* at 7-9; Andrew Cawthorne, *Interview - Haitian Education System 'Totally Collapsed'*, REUTERS, Jan. 18, 2010, available at <http://in.reuters.com/article/2010/01/18/idINIndia-45472320100118>; Bryan Walsh, *After the Destruction: What Will It Take To Rebuild Haiti?*, TIME (Jan. 16, 2010), [http://www.time.com/time/specials/packages/article/0,28804,1953379\\_1953494\\_1954338,00.html](http://www.time.com/time/specials/packages/article/0,28804,1953379_1953494_1954338,00.html).

<sup>12</sup> See Katherine Harmon, *Haiti Earthquake Disaster Little Surprise to Some Seismologists*, SCIENTIFIC AM. (Jan. 13, 2010), <http://www.scientificamerican.com/article.cfm?id=haiti-earthquake-prediction>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Romero & Lacey, *supra* note 1.

<sup>16</sup> *M7.0 — Haiti Region*, U.S. GEOLOGICAL SURV. (Jan. 12, 2010, 4:53 PM), <http://earthquake.usgs.gov/earthquakes/dyfi/events/us/2010rja6/us/index.html>.

<sup>17</sup> Romero & Lacey, *supra* note 1.

<sup>18</sup> 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](http://articles.cnn.com/2010-01-13/world/haiti.construction_1_building-code-haiti-earthquake).

<sup>19</sup> *Id.*

littering the pavement while ambulances swerved around them to rescue those who were still alive and injured.<sup>20</sup> The presidential palace, the parliament building, the offices of international aid agencies, the Hotel Montana—housing tourists and foreign delegations—as well as the roof and aisles of the national cathedral folded like cardboard.<sup>21</sup> The Hotel Christopher, headquarters of the UN peacekeeping mission, collapsed as well as other UN offices.<sup>22</sup>

The earthquake severely impacted both the capacity and structure of the Haitian state. Some senators and several other politicians were injured.<sup>23</sup> In addition, one-third of the country's civil servants died.<sup>24</sup> As a result, the elections that had been scheduled for February 2010 were postponed, creating political instability and domestic unrest.<sup>25</sup> In addition to the parliament building and presidential palace, many other government buildings collapsed or were seriously damaged, including the Supreme Court, the Palace of Justice, ministries, tribunals, and police stations.<sup>26</sup> More than seventy-five police officers perished and hundreds were injured or dispersed.<sup>27</sup> The male prison in Port-au-Prince was destroyed by the earthquake and about 4,300 prisoners escaped, including some leaders and many members of armed groups.<sup>28</sup> One hundred and one UN personnel died, including the special representative and his deputy, the acting police commissioner, the director of political affairs, the head of the elections unit, and many military, police, and civilian officers.<sup>29</sup>

The international community response provided approximately \$9 billion in short- and long-term relief and rebuilding efforts.<sup>30</sup> During the first days

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<sup>20</sup> See *Haiti Earthquake: Photos*, CNN (Jan. 18, 2011), <http://www.cnn.com/interactive/2010/01/world/gallery.large.haiti-1/index.5.html>.

<sup>21</sup> See Simon Romero, *Haiti Lies in Ruins; Grim Search for Untold Dead*, N.Y. TIMES, Jan. 13, 2010, at A1; Tracy Wilkinson, *Disaster in Haiti: Despair Among Haiti's Sacred Ruins*, L.A. TIMES, Jan. 16, 2010, at 19; Press Release, Offices of the Spokesperson for the Secretary-General & the Spokesperson for the Gen. Assembly President, Spokesperson's Noon Briefing (Jan. 13, 2010), <http://www.un.org/News/briefings/docs/2010/db100113.doc.htm>; *200 Missing, Feared Dead, in 4-Star Haiti Hotel Collapse*, FOXNEWS.COM (Jan. 13, 2010), <http://www.foxnews.com/world/2010/01/13/missing-feared-dead-star-haiti-hotel-collapse>; Christopher Joyce, *Haiti Buildings Weren't Fit To Withstand Quakes*, NPR (Jan. 14, 2010), <http://www.npr.org/2010/01/14/122547242/haitis-buildings-werent-fit-to-withstand-quakes>.

<sup>22</sup> U.N. Secretary-General, *supra* note 6, para. 4.

<sup>23</sup> *Id.* para. 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* para. 4.

<sup>30</sup> Cullen & Ivers, *supra* note 9, at 61.

following the earthquake, emergency relief operations were launched by the UN and a number of states.<sup>31</sup> Canada and the United States deployed thousands of disaster assistance personnel to the most affected regions of the country.<sup>32</sup> The World Food Programme provided 3.5 million Haitians with food assistance, including specific nutrition support for vulnerable groups such as children and pregnant women, as well as providing support for hospitals and emergency medical organizations.<sup>33</sup> Humanitarian efforts also focused on providing emergency shelter by distributing thousands of tents and tarpaulins along with basic kitchen and hygiene equipment.<sup>34</sup>

The massive destruction of the earthquake forced displaced Haitians to gather spontaneously in camps on empty pieces of land, either public or private, as well as on main roads and squares in urban centers.<sup>35</sup> Amnesty International estimated that about 460 spontaneous settlements were erected throughout the country within the first few months following the earthquake.<sup>36</sup> The Haitian government identified thousands of hectares on the outskirts of Port-au-Prince for temporary relocations and allocated specific sites to host displaced settlements.<sup>37</sup> However, the heavy seasonal rains and the lack of water, sanitation, and hygiene in many makeshift camps facilitated the spread of cholera that killed thousands of displaced people by the end of 2010 and the beginning of 2011.<sup>38</sup> The absence of police forces in the camps also contributed to a large number of criminal incidents and armed group activities as well as a lack of adequate measures aimed at maintaining security and enforcing the law.<sup>39</sup>

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<sup>31</sup> U.N. Secretary-General, *supra* note 6, para. 5.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at para. 10.

<sup>34</sup> *Id.* at para. 11.

<sup>35</sup> *Haiti: After the Earthquake*, *supra* note 10, at 7.

<sup>36</sup> *Id.*

<sup>37</sup> U.N. Secretary-General, *supra* note 6, para. 11.

<sup>38</sup> See MARK SCHULLER, MET KOVEYEKO: FOREIGN RESPONSIBILITY IN THE FAILURE TO PROTECT AGAINST CHOLERA AND OTHER MAN-MADE DISASTERS (2011), available at <http://ijdh.org/wordpress/wp-content/uploads/2011/01/Report-met-ko-veye-ko-final.pdf>; Nicholas D. Kristof, Op-Ed, *Haiti, Nearly a Year Later*, N.Y. TIMES, Dec. 1, 2010, at A37; Talea Miller, *Seasonal Rains Bring Rise in Cholera Cases in Haiti*, PBS NEWSHOUR (Apr. 12, 2011, 12:38 PM), <http://www.pbs.org/newshour/rundown/2011/04/rains-bring-cholera-cases-in-haiti.html>; Michelle Roberts, *Haiti Cholera 'Far Worse Than Expected,' Experts Fear*, BBC NEWS HEALTH (Mar. 15, 2011, 8:02 PM), <http://www.bbc.co.uk/news/health-12744929>.

<sup>39</sup> *Haiti: After the Earthquake*, *supra* note 10, at 8.

## II. GENDER-BASED VIOLENCE IN THE DISPLACEMENT CAMPS

Public attention and humanitarian aid have focused primarily on rebuilding efforts and meeting people's basic needs. However, given the climate of increasing insecurity and gang activities in the makeshift camps for the displaced, women and girls have been daily victims of sexual violence and exploitation.<sup>40</sup> Many settlements are overcrowded and lack safe accommodations and adequate sanitary facilities to allow proper privacy for women and girls.<sup>41</sup> Serious shortcomings in lighting the camps also make women and girls vulnerable to aggression and violence at night.<sup>42</sup> In a recent survey of households in four camps for internally displaced persons in and around the capital, fourteen percent of the respondents declared that, since the earthquake, one or more members of their household have been victimized by sexual violence.<sup>43</sup> Among the victims, eighty-six percent were women and girls.<sup>44</sup> Incidents of sexual violence have occurred both during the day and at night, mostly inside the victims' shelters or on their way to collect water.<sup>45</sup>

According to the same study, about seventy percent of the respondents admitted being more concerned about sexual violence after the earthquake than before.<sup>46</sup> Such data reflects the well-documented evidence that gender-based violence typically increases in post-disaster settings in which infrastructures are damaged and unsafe, living conditions are poor, and security services are inadequate.<sup>47</sup> Indeed, incidents of sexual violence against women, and especially intimate partner violence, tripled in the year after Hurricane Katrina struck.<sup>48</sup> Similarly, a substantial increase in gender inequalities and gender-

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<sup>40</sup> *Rape Rampant in Haiti's Earthquake Camps*, CBS NEWS (Mar. 17, 2010, 10:56 PM), <http://www.cbsnews.com/stories/2010/03/17/world/main6306562.shtml>.

<sup>41</sup> INST. FOR JUSTICE & DEMOCRACY IN HAITI, BUREAU DES ADVOCATS INTERNATIONAUX ET AL., *OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN'S FIGHT AGAINST RAPE 11* (2010), *available at* <http://ijdh.org/wordpress/wp-content/uploads/2010/07/Haiti-GBV-Report-Final-Compressed.pdf> [hereinafter INST. FOR JUSTICE & DEMOCRACY IN HAITI].

<sup>42</sup> *Haiti: After the Earthquake*, *supra* note 10, at 11.

<sup>43</sup> CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE, *SEXUAL VIOLENCE IN HAITI'S IDP CAMPS: RESULTS OF A HOUSEHOLD SURVEY 3* (2011), *available at* <http://www.chrgj.org/publications/docs/HaitiSexualViolenceMarch2011.pdf>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 4.

<sup>46</sup> *Id.*

<sup>47</sup> See U.N. Secretary-General, *Rep. of the Secretary-General on Women's Participation in Peacebuilding*, paras. 12–24, U.N. Doc. A/65/354-S/2010/466 (Sept. 7, 2010).

<sup>48</sup> See Michael Anastario, Nadine Shehab & Lynn Lawry, *Increased Gender-Based Violence Among Women Internally Displaced in Mississippi 2 Years Post-hurricane Katrina*, 3 *DISASTER MED. & PUB. HEALTH PREPAREDNESS* 18, 22 (2009).

based violence, particularly domestic violence, was registered after the South Asian tsunami of 2004.<sup>49</sup>

In September 2010, the UN reported on the vulnerability of children and women and the scale of sexual violence, especially in the camps neighboring the large slums of Cité Soleil and Martissant in Port-au-Prince, where several armed groups operate.<sup>50</sup> The report acknowledged that the lack of accurate and aggregated data in relation to gender-based violence makes it difficult to assess the true extent of the increase in sexual violence in Haiti since the earthquake.<sup>51</sup> A study conducted in Parc Jean Marie Vincent, a spontaneously created camp in Port-au-Prince, revealed that although the UN and the Haitian National Police regularly patrolled the area, most of the respondents still felt unsafe.<sup>52</sup> In particular, numerous incidents of sexual violence were reported against women and girls who had been assaulted on their way to gather water at night. A young victim recounted:

My mother is dead, my father is dead. I made a small shelter on Place Pétion [in Champ-de-Mars] to live in . . . I'm living alone. I had a tarpaulin but it was torn down and M. gave me a small tent to live in . . . On 16 February, I went out to buy some water at around 8 pm. When I came back to my home, I lay down. A man came in. He removed the sheets covering me and when I tried to cry he put his hand over my mouth . . . He tore off my underwear and raped me. He kicked me and punched me before leaving. When I was able to call for help, he cut through the tarpaulin and fled. . . . On 17 February I went to the General Hospital. . . . I lost a lot of blood. I bled for 22 days . . . At the hospital there was a foreign doctor. He gave me some pills and asked me to return again because I was wounded. He gave me pills to fight infection and HIV/AIDS. He told me I should eat when taking the medicine . . . I didn't have any money to buy food.<sup>53</sup>

The lack of separate sanitary facilities for men and women also was pinpointed as a danger for women's personal security.<sup>54</sup> Furthermore, in the relief camp of

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<sup>49</sup> See Eileen Pittaway et al., *Gendered Dimensions of the 2004 Tsunami and a Potential Social Work Response in Post-disaster Situations*, 50 INT'L SOC. WORK 307 (2007).

<sup>50</sup> U.N. Secretary-General, *Rep. of the Secretary-General on the United Nations Stabilization Mission in Haiti*, para. 8, U.N. Doc. 2/2010/446 (Sept. 1, 2010).

<sup>51</sup> *Id.*

<sup>52</sup> Cullen & Ivers, *supra* note 9, at 6.

<sup>53</sup> Amnesty Int'l, *Aftershocks: Women Speak Out Against Sexual Violence in Haiti's Camps*, at 12, AI Index AMR 36/001/2011 (Jan. 2011) [hereinafter *Aftershocks*].

<sup>54</sup> UNITED NATIONS STABILIZATION MISSION IN HAITI: HUMAN RIGHTS SECTION, IDP CAMP JOINT SECURITY ASSESSMENT REPORT 2, 9 (2010).



Delmas 14, girls have reported being scared of going to the latrines at night because of the absence of adequate lighting.<sup>55</sup> Another victim shared her tragic story:

At around 9 pm on 3 May, I left my tent to go to the toilet [one of the plastic toilets near the Presidential Palace]. While I was in the toilet, the door opened – there was no catch to lock the door. At first I thought it was the wind, but in fact it was a man who opened the door. It was dark. There were two men: one came into the toilet, the other stayed outside as lookout. I tried to fight the man who came in but he pulled a knife and pressed it into my groin. After he'd raped me, he ran away. I called out for help immediately and a police car patrolling the area stopped. I explained to the police officers what had happened. They asked me where the attackers were, but when I told them that they had run away, the officers told me there was nothing they could do.<sup>56</sup>

Data from a study conducted in the shantytown of Cité Soleil in Port-au-Prince showed that rape and other forms of violence, including robbery, beating, and fighting, were rampant in the encampment areas.<sup>57</sup> Many women and girls reported having been beaten by men out of rage.<sup>58</sup> Respondents acknowledged that sexual violence was widespread where they were living and, in some cases, they had personally witnessed or experienced violent attacks.<sup>59</sup> Accounts from informants of the study declared that in Cité Soleil the armed groups manage access to food, aid, and shelter.<sup>60</sup> Girls are often obligated to trade sex to secure food and refuge from the heavy rains.<sup>61</sup> According to respondents, sexual assaults and the exploitation of girls usually occur at night, when police forces have left the relief camps and the gangs take control of the territory.<sup>62</sup> More than sixty percent of the participants in the study believed that women and children are less protected and safe in the camps versus in the shanties where they lived before the earthquake.<sup>63</sup>

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<sup>55</sup> *Id.* at 9.

<sup>56</sup> *Aftershocks*, *supra* note 53, at 14.

<sup>57</sup> INTERUNIVERSITY INST. FOR RESEARCH & DEV., VOICES FROM THE SHANTIES: A POST-EARTHQUAKE RAPID ASSESSMENT OF CITÉ SOLEIL, PORT-AU-PRINCE 2 (2010).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 12.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 13.

A survey of Port-au-Prince households conducted in March 2010 estimated that three percent of the individuals living in the capital had been victims of sexual violence in the first two months following the earthquake.<sup>64</sup> Doctors Without Borders reported treating 212 victims of sexual violence in the five months after the tragedy.<sup>65</sup> The *Solidarité des Femmes Haïtiennes*, a civil society organization providing medical assistance to rape victims, documented 718 cases of gender-based violence in its clinics between January and June 2010.<sup>66</sup> *Komisyon Fanm Viktim pou Viktim* (“KOFAVIV”), another civil society organization providing primary medical and psychological assistance to victims of sexual violence, documented the stories of some of its patients.<sup>67</sup> One of them reported:

1. My name is . . . I am 19 years old. Prior to the earthquake, I lived in Carrefour Feuille. I am now staying in a camp in Martissant with my aunt, her children and my four-year-old daughter. We no longer have access to adequate shelter, therefore, we are sleeping under sheets.

2. On January 20, 2010, we heard gunshots fired in the camp. Shortly thereafter, around 9 pm, nine men entered our sheltered area. Four of these men stayed behind with my aunt and brutally abused her. The other five abducted me and kept me somewhere for two days. During this time, the five men repeatedly beat and raped me. I was not sure if they were going to kill me and if I would ever be allowed to return to my family. Thankfully, they released me after those two days.

3. Although I suffered greatly and was wounded on my mouth, I could not afford to go to the doctor. I feel extremely depressed and helpless. I was afraid to go to the police because of what those men did to me, so I did not report my attack. I knew the police would do nothing to protect us. We have no way to protect ourselves from such brutality and each day and every day I am fearful that those men will come back again.<sup>68</sup>

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<sup>64</sup> MADRE et al., Gender-Based Violence Against Haitian Women & Girls in Internal Displacement Camps, in UNIVERSAL PERIODIC REVIEW, REPUBLIC OF HAITI: SUBMISSION TO THE UNITED NATIONS 87, 88 (Inst. for Justice & Democracy in Haiti, Bureau des Avocats Internationaux ed., 2011), available at <http://www.ijdh.org/wordpress/wp-content/uploads/2011/04/LERN-Compiled-UPR-Submissions1.pdf>.

<sup>65</sup> DOCTORS WITHOUT BORDERS, EMERGENCY RESPONSE AFTER THE HAITI EARTHQUAKE: CHOICES, OBSTACLES, ACTIVITIES AND FINANCE 18 (2010).

<sup>66</sup> MADRE et al., *supra* note 64, at 88.

<sup>67</sup> Request by the International Women’s Human Rights Clinic at the City University of New York School of Law et al., at app. A, PM 340/10—Women and Girls Residing in 22 Camps for Internally Displaced Persons in Port-au-Prince, Haiti (Inter-Am. Comm’n H.R. 2010).

<sup>68</sup> *Id.*

In August 2010, another young woman supported by KOFAVIV was kidnapped by five armed men who dragged her into a truck and raped her.<sup>69</sup> In July 2010, a nineteen-year-old woman was assaulted by three men when she left her tent to use the latrine during the night.<sup>70</sup> Only a few days later, another victim was raped by a man who broke into her tent in the middle of the night, threatening her with a machete and a gun.<sup>71</sup> Finally, a five-year-old girl was brutally raped and suffered bleeding from vaginal tearing and other severe consequences of the infection.<sup>72</sup> KOFAVIV reported that, unfortunately, her grandmother was not able to buy all of the necessary medications prescribed by the doctor.<sup>73</sup>

According to another recent study, most victims reported being raped by more than one individual, unknown to them and usually armed with guns, machetes, or other weapons.<sup>74</sup> Many of the survivors declared that they would not be able to identify their aggressors because the rapes often occurred at night, the perpetrators were wearing masks, and the emotional shock of the aggression impaired their recollection of the events.<sup>75</sup> On the other hand, some victims identified their attackers as members of armed groups or fugitives from prison.<sup>76</sup> They reported being raped mostly at night between 9 p.m. and 3 a.m., although some aggressions also occurred during the day.<sup>77</sup> Women were attacked inside the relief camps in their tents, in the latrines, or in the middle of the street.<sup>78</sup> Sometimes, perpetrators cut the tent with a knife to access their victims' shelters.<sup>79</sup> In particular, one woman reported being kidnapped from her camp and taken to a house where she was beaten and gang-raped repeatedly for several days until she managed to escape.<sup>80</sup>

Accounts from further testimonies revealed that the earthquake destroyed Haitian women's social support network, thus increasing their vulnerability to violence.<sup>81</sup> Many of them lost their husbands in the tragedy and have been left

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<sup>69</sup> MADRE et al., *supra* note 64, at 88.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 89.

<sup>73</sup> *Id.*

<sup>74</sup> INST. FOR JUSTICE & DEMOCRACY IN HAITI, *supra* note 41, at 11.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 12.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 11.

with the primary responsibility to provide care and financial support for children, the elderly, and the newly disabled people.<sup>82</sup> Prior to the earthquake, the majority of Haitian women worked as merchants in the market, but many of them lost their goods under the rubble.<sup>83</sup> Extreme poverty and the traumatic loss of family or community members hamper their resilience and shape their decisions about living options, thus increasing their vulnerability to abuse and sexual violence.<sup>84</sup>

### III. LEGAL FRAMEWORK

#### A. *International Legal Instruments*

The primary areas of international law that can provide protection to women affected by natural disasters are international humanitarian law, international human rights law, and international disaster response law. Addressing women's struggles and, specifically, gender-based violence in post-disaster settings is challenging for countries like Haiti, already facing extreme poverty, armed violence, and poor governance prior to the earthquake.<sup>85</sup> Public attention and the international community have necessarily focused on rebuilding efforts and meeting basic needs.<sup>86</sup> However, given the increasing economic and physical vulnerability of displaced women and girls, an international legal response becomes crucially important to address gender-based violence and design adequate relief measures for victims.

Traditionally, international humanitarian law focuses on civilian violations, which includes gender-based violence, perpetrated in armed conflicts.<sup>87</sup> However, the provisions of humanitarian law have also been applied in the context of armed violence; by analogy, these same provisions can be used to address sexual violence against women perpetrated by armed groups in the

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> See U.N. Secretary-General, *Rep. of the Secretary-General on the United Nations Stabilization Mission in Haiti*, paras. 14, 19–20, 49, U.N. Doc. S/2009/439 (Sept. 1, 2009).

<sup>86</sup> Cf. U.N. Secretary-General, *Rep. of the Secretary-General on the United Nations Stabilization Mission in Haiti*, para. 29, U.N. Doc. S/2011/540 (Aug. 25, 2011) (reporting that “[o]f the 229 projects carried out, 182 addressed urgent needs related to the rehabilitation of public infrastructure and the delivery of basic public services”) [hereinafter *2011 Haiti Report*].

<sup>87</sup> See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 27, *adopted* Aug. 12, 1949, 6 U.S.T. 3516 (entered into force Oct. 21, 1950) [hereinafter *Fourth Geneva Convention*]; Int’l Comm. of the Red Cross, *International Humanitarian Law: Answers to Your Questions*, Pub. Ref. 0703, at 16 (Jan. 1, 2004), available at [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0703.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0703.pdf).

displacement camps. Moreover, the destruction and breakdown of society as well as the wretched living conditions following a natural disaster closely resemble those experienced by endangered civilians in wartime.<sup>88</sup> Therefore, international humanitarian norms can be applied to protect women and girls from rape and sexual assaults in the aftermath of the Haitian earthquake.

With the 1949 adoption of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, international law, for the first time, extended protection to women and children as members of the civilian population, setting forth that women should be “especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”<sup>89</sup> Similar protective provisions were further included in the two Additional Protocols to the Geneva Conventions of 1977 for the Protection of Victims of International Armed Conflict (Protocol I) and of Non-International Armed Conflicts (Protocol II), respectively, stating that both women and children should be the object of special respect and should be protected against any form of indecent assault.<sup>90</sup> More recently, the Rome Statute of 1998, establishing the International Criminal Court, listed rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity, committed against civilians in conflict settings, as crimes against humanity.<sup>91</sup>

Other international humanitarian law instruments dealing with gender-based violence include U.N. Resolution 1325 on women, peace, and security, adopted by the Security Council in 2000,<sup>92</sup> and subsequently U.N. Resolutions 1820, 1888, and 1889, approved by the Security Council on June 19, 2008, September 30, 2009, and October 5, 2009, respectively.<sup>93</sup> Although these

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<sup>88</sup> See *2011 Haiti Report*, *supra* note 86, paras. 12–13 (describing humanitarian conditions after the earthquake); *Haiti Earthquake: President Preval Says Country Like a War Zone*, TELEGRAPH (Jan. 16, 2010, 10:20 AM), <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/haiti/7003082/Haiti-earthquake-President-Preval-says-country-like-a-war-zone.html> (comparing the post-earthquake conditions to those of wartime).

<sup>89</sup> Fourth Geneva Convention, *supra* note 87, art. 27.

<sup>90</sup> See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) arts. 76–77, *adopted* June 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II) art. 4, *adopted* June 8, 1977, 1125 U.N.T.S. 609.

<sup>91</sup> See Rome Statute of the International Criminal Court art. 7, *opened for signature* July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).

<sup>92</sup> S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

<sup>93</sup> S.C. Res. 1889, U.N. Doc. S/RES/1889 (Oct. 5, 2009); S.C. Res. 1888, U.N. Doc. S/RES/1888 (Sept. 30, 2009); S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008).

instruments are not legally binding for member states,<sup>94</sup> they exert political pressure on human rights violators and support strategies for change. Their normative significance is especially relevant in the case of Haiti, where displaced women and girls are often victims of violence perpetrated by armed groups.

Specifically, Resolution 1325 calls on “all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse.”<sup>95</sup> It emphasizes the importance of the equal participation and full involvement of women in promoting and maintaining peace and security, and at all decision-making levels in conflict “prevention, management, and resolution.”<sup>96</sup> All actors involved in the negotiation of peace settlements are also required to take women’s needs during “rehabilitation, reintegration, and post-conflict reconstruction” into account as well as to support “local women’s peace initiatives and indigenous processes for conflict resolution.”<sup>97</sup>

The content of Resolution 1325 was complemented and expanded by the passage of U.N. Resolution 1820 recognizing “that women and girls are particularly targeted by the use of sexual violence . . . as a tactic of war to humiliate, dominate, instil [sic] fear in, disperse and/or forcibly relocate civilian members of a community.”<sup>98</sup> Recalling its condemnation of the use of rape and other forms of sexual violence in armed conflict, Resolution 1820 calls on “Member States to comply with their obligations [to prosecute the perpetrators of sexual violence] to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice,” and to end impunity for sexual violence.<sup>99</sup> To that extent, Resolution 1888 requests that the Secretary-General “deploy rapidly a team of experts to situations of particular concern with respect to sexual violence.”<sup>100</sup> Finally, Resolution 1889 reaffirms the provisions of Resolution 1325, emphasizing the need for member states to implement them effectively.<sup>101</sup>

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<sup>94</sup> See U.N. Charter arts. 10, 14 (describing certain General Assembly actions as “recommendations”).

<sup>95</sup> S.C. Res. 1325, *supra* note 92, para. 10.

<sup>96</sup> *Id.* paras. 1–2.

<sup>97</sup> *Id.* para. 8.

<sup>98</sup> S.C. Res. 1820, *supra* note 93, pmb1.

<sup>99</sup> *Id.* para. 4.

<sup>100</sup> See S.C. Res. 1888, *supra* note 93, para. 8.

<sup>101</sup> S.C. Res. 1889, *supra* note 93, paras. 17–18.

In addition to humanitarian law, several international human rights law instruments aim specifically at protecting the rights of women and girls in post-disaster settings. First, the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”),<sup>102</sup> the paramount women-specific instrument under international law,<sup>103</sup> was adopted by the UN General Assembly in 1979, when gender-based violence was not part of the immediate agenda.<sup>104</sup> As a result, CEDAW did not explicitly address sexual violence, but rather condemned any form of discrimination against women, meaning “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms.”<sup>105</sup>

Although an evolutionary interpretation of CEDAW could have eventually embraced gender-based violence under its focus, in January 1992, the Committee on the Elimination of Discrimination against Women adopted General Recommendation Number 19, which provides that the definition of discrimination should have also included gender-based violence, defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately.”<sup>106</sup> Gender-based violence includes acts of physical, mental, and sexual harm or suffering, threats of such acts, or coercion.<sup>107</sup> Moreover, General Recommendation No. 19 recognizes that gender-based violence impairs or nullifies women’s enjoyment of human rights and fundamental freedoms, including the right to life, security, and bodily integrity, and the right to be free from torture or cruel, inhuman, or degrading treatment or punishment.<sup>108</sup>

The following year, concerned for some groups of women, the Committee on the Elimination of Discrimination against Women fostered the adoption of the Declaration on the Elimination of Violence against Women (“UN Declaration”) by the UN General Assembly.<sup>109</sup> The UN Declaration explicitly

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<sup>102</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

<sup>103</sup> See Janet Benshoof, *U.S. Ratification of CEDAW: An Opportunity To Radically Reframe the Right to Equality Accorded Women Under the U.S. Constitution*, 35 N.Y.U. REV. L. & SOC. CHANGE 103, 104 (2011).

<sup>104</sup> See G.A. Res. 48/104, U.N. Doc. A/RES/48/104, at 1–3, (Feb. 23, 1994).

<sup>105</sup> CEDAW, *supra* note 102, art. 1.

<sup>106</sup> Rep. of the Comm. on the Elimination of Discrimination Against Women, 11th Sess., U.N. GAOR, 47th Sess., Supp. No. 28, U.N. Doc. A/47/38, at 1 (Jan. 2, 1992).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 1–2.

<sup>109</sup> Declaration on the Elimination of Violence Against Women, G.A. Res. 48/404, U.N. Doc. A/RES/48/404 (Feb. 23, 1994).

stated that violence against women “includes any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or in private life.”<sup>110</sup>

Inspired by the UN Declaration, the Organization of American States adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women—the Convention of Belém Do Para—in 1994, declaring that “violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”<sup>111</sup> Parties to the Convention of Belém Do Para, among them Haiti, which ratified the treaty on April 3, 1996,<sup>112</sup> acknowledge that violence against women is an “offense against human dignity and a manifestation of the historically unequal power relations between women and men.”<sup>113</sup> Moreover, parties agree to pursue policies to prevent, punish, and eradicate such violence by all appropriate means and commit to adopting fair and effective legislation and procedures to address the various forms of gender-based violence.<sup>114</sup>

Specifically for girls, the Convention on the Rights of the Child of 1989, ratified by Haiti on June 9, 1995,<sup>115</sup> prohibits discrimination against children on the grounds of gender and provides that signatories shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, or neglect, including any form of sexual abuse and exploitation.<sup>116</sup> In addition, parties shall ensure that no child is subjected to torture or other cruel, inhuman, or degrading treatment.<sup>117</sup> Further commitments undertaken by the members of the World Conference on Women in Beijing in 1995 include the determination

<sup>110</sup> *Id.* art. 1.

<sup>111</sup> See Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention Belém do Para”) art. 1, June 9, 1994, 33 I.L.M. 1534 [hereinafter Convention of Belém do Para].

<sup>112</sup> Inter-American Comm’n on Human Rights, *The Right of Women in Haiti To Be Free from Violence and Discrimination*, ¶ 105, OEA/Ser.L/V/II, Doc. 64 (Mar. 10, 2009), available at <http://www.cidh.org/countryrep/Haitimujer2009eng/HaitiWomen09.Chp.IIIandIV.htm>.

<sup>113</sup> Convention of Belém do Para, *supra* note 111, intro.

<sup>114</sup> *Id.* art. 7.

<sup>115</sup> SYLVAIN VITÉ, WORLD ORG. AGAINST TORTURE, RIGHTS OF THE CHILD IN HAITI 8 (Roberta Cecchetti ed., 2003), available at <http://www.omct.org/files/2001/11/1155/haitichildren2002.pdf>.

<sup>116</sup> See Convention on the Rights of the Child art. 2, 19, 34, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3, U.N. Doc. A/RES/44/25 (Nov. 20, 1989).

<sup>117</sup> *Id.* art. 37(a).



to ensure girls' full enjoyment of all human rights and fundamental freedoms, to take effective action against violations of those freedoms, to protect them by repealing existing discriminatory laws and regulations, and to remove other discriminatory customs and practices affecting girls.<sup>118</sup>

Although international human rights law definitely applies to violations against women in post-disaster settings, important limitations hamper its effectiveness when it comes to enforcing economic, social, and cultural rights. Indeed, under international law, states' obligations to adopt adequate measures toward the realization of economic, social, and cultural rights are based on the maximum extent of their available resources.<sup>119</sup> To be sure, the devastation caused by the earthquake has exhausted Haiti's already scarce resources, leaving very little hope for the implementation of reforms and programs aimed at protecting women and girls from gender-based violence. However, international human rights law urges other countries to cooperate in assisting states affected by natural disasters.<sup>120</sup>

Other international law standards that can be used to address women's rights in post-disaster settings are the recommendations of the UN Guiding Principles on Internal Displacement of 1998 ("Guiding Principles").<sup>121</sup> Based upon international humanitarian, human rights, and analogous refugee law, the Guiding Principles aim at protecting internally displaced individuals in situations of internal conflict, natural disasters, and forced displacement.<sup>122</sup> They are designed to serve as a guide for governments, international organizations, and all other relevant actors to provide assistance and protection to internally displaced people.<sup>123</sup> For instance, Principle 11 states that internally displaced persons shall be protected against rape, torture, cruel, inhuman, or degrading treatment or punishment, as well as other outrages upon personal dignity such as acts of gender-specific violence.<sup>124</sup> Indeed, the

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<sup>118</sup> See generally Report of the Fourth World Conference on Women, U.N. Doc. A/CONF.177/20/Rev.1, U.N. Sales No. 96/IV/13 (1996).

<sup>119</sup> See International Covenant on Economic, Social and Cultural Rights art. 2, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>120</sup> INTER-AGENCY STANDING COMM., PROTECTING PERSONS AFFECTED BY NATURAL DISASTERS: IASC OPERATIONAL GUIDELINES ON HUMAN RIGHTS AND NATURAL DISASTERS 10–11 (2006), *available at* <http://www.humanitarianinfo.org/IASC/downloadaddoc.aspx?docId=3429>.

<sup>121</sup> E.S.C. Res. 1998/53, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998).

<sup>122</sup> *Id.*, intro., para. 2.

<sup>123</sup> *Id.*, intro., para. 3.

<sup>124</sup> *Id.* princ. 11. See generally U.S. HIGH COMM'R FOR REFUGEES, SEXUAL AND GENDER-BASED VIOLENCE AGAINST REFUGEES, RETURNEES, AND INTERNALLY DISPLACED PERSONS: GUIDELINES FOR PREVENTION AND RESPONSE (2003), *available at* <http://www.unhcr.org/refworld/docid/3edcd0661.html>.

Guiding Principles acknowledge that because displaced women and girls are removed from their home communities, they become particularly vulnerable to acts of rape, sexual exploitation, forced prostitution, and slavery.<sup>125</sup>

Finally, the emerging international disaster response law includes a number of recommendations aimed at improving the lives of vulnerable and displaced people by mobilizing the international community network to respond to disasters that exceed local and national capacities.<sup>126</sup> Based on the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, adopted by the International Federation of Red Cross and Red Crescent Societies in 2007,<sup>127</sup> international disaster response law promotes cooperation and coordination among states and international organizations in response to disasters.<sup>128</sup> It also fosters the development of the capacity of national societies to engage with governments on issues concerning the protection of the rights of persons living in post-disaster settings.<sup>129</sup> Specifically, the guidelines clarify the responsibilities of states in terms of planning, organization, and management of disaster relief operations.<sup>130</sup>

The limitations in these bodies of law applicable to displaced women and girls in natural disasters primarily concern the lack of enforcement of their provisions. Indeed, regardless of the binding nature of international humanitarian and human rights treaties addressing gender-based violence, states often fail to comply with their obligations to adopt and implement adequate legislation and related measures. Similarly, the multiple UN resolutions on women, peace, and security; the Guiding Principles; and the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance fall short of effective application, not because of their legally nonbinding nature, but rather because the affected states lack the necessary resources to implement them.<sup>131</sup>

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<sup>125</sup> E.S.C. Res. 1998/53, *supra* note 121; see U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, HANDBOOK FOR APPLYING THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT (1999), available at <http://www.unhcr.org/refworld/docid/3d52a6432.html>.

<sup>126</sup> Int'l Fed'n of Red Cross & Red Crescent Soc'ys, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, at 6, IFRC 301C/07/R24 Annex (2007), available at <http://www.ifrc.org/global/publications/idrl/resources/guidelines.asp>.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 1.

<sup>129</sup> *Id.* at 8.

<sup>130</sup> *See id.* at 5.

<sup>131</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-01-803, FOREIGN AFFAIRS: INTERNALLY DISPLACED PERSONS LACK EFFECTIVE PROTECTION 4 (2001).

Over the years, international law has attempted to mitigate such shortcomings by recognizing that governments have positive obligations to exercise due diligence to prevent, investigate, and punish acts of violence against women, whether those acts are perpetrated by the state or by private individuals or organizations.<sup>132</sup> Governments also have the duty to adopt and revise domestic legislation for the protection of women, as well as provide access to just and effective remedies and specialized assistance to victims of violence, including vulnerable women living in internal displacement camps.<sup>133</sup> A fundamental principle connected to the application of the due diligence standard is that of nondiscrimination,<sup>134</sup> which means that states are required to act with the same level of commitment in relation to prevention, investigation, punishment, and provision of remedies for gender-based violence as they do in relation to other forms of violence.<sup>135</sup>

The due diligence standard paved the way for recognizing violence against women as a human rights violation, as well as a new understanding of the doctrine of state responsibility, according to which states may be held accountable for gender-based violence, regardless of whether the perpetrator is a public or a private actor.<sup>136</sup> Accordingly, Article 9 of the Convention of Belém do Para, for instance, sets forth that states shall take special account of the vulnerability of women to violence by reason of their status as migrants, refugees, or displaced persons.<sup>137</sup> Similarly, the CEDAW General Recommendation Number 19 recognizes state liability for private acts if they fail to act with due diligence to prevent violations of rights, investigate and punish acts of violence, or provide compensation to victims.<sup>138</sup>

In 1999, the UN Special Rapporteur on Violence against Women developed a list of considerations to assess compliance with the obligation of due diligence, including the ratification of international human rights instruments, constitutional guarantees of equality for women, the existence of national legislation or administrative sanctions providing adequate redress for female victims of violence, policies or plans of action that deal with the issue

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<sup>132</sup> See Declaration on the Elimination of Violence Against Women, *supra* note 109, art. 4(c). For information on the due diligence standard, see E.S.C. Res. 2006/61, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006).

<sup>133</sup> *Id.*

<sup>134</sup> E.S.C. Res. 2006/61, *supra* note 132, para. 14.

<sup>135</sup> *Id.* para. 35.

<sup>136</sup> See *id.* para. 57.

<sup>137</sup> Convention of Belém do Para, *supra* note 111, art. 9.

<sup>138</sup> Rep. of the Comm. on the Elimination of Discrimination Against Women, *supra* note 106, at 7.

of violence against women, the gender sensitivity of the criminal justice system and police, and the accessibility and availability of support services for victims.<sup>139</sup> Therefore, under international law, individual states are liable to comply with the due diligence obligation to protect girls and women from gender-based violence.<sup>140</sup> However, in the case of states affected by a natural disaster such as Haiti, where devastation impairs the government's ability to perform its ruling function, foreign states and international organizations are called on to cooperate and coordinate the support of relief efforts for the victims of violence.<sup>141</sup>

### *B. Domestic Legislation*

Under the Constitution of the Republic of Haiti, the state has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction.<sup>142</sup> Until recently, however, the Haitian statutory laws and relevant penalties provided inadequate deterrence of gender-based violence crimes. Indeed, in accordance with Article 279 of the Haitian Penal Code of 1835, preeminently based on the French Penal Code of 1810,<sup>143</sup> anyone who committed rape or was responsible for any other assault on morals, executed or attempted with violence, was to be punished with imprisonment.<sup>144</sup> Pursuant to Article 280, in the event that the crime was committed against a child under the age of fifteen, the perpetrator was to be punished with forced labor.<sup>145</sup> Thus, the Haitian Penal Code originally defined sexual violence as an assault on the honor of the victim rather than as a crime against the right to bodily integrity.<sup>146</sup>

Such classification of gender-based violence contravened the precepts of the Haitian Constitution and international conventions, including CEDAW and the Convention on the Rights of the Child, both of which were ratified by Haiti,<sup>147</sup> prompting the adoption of new legislation in 2005.<sup>148</sup> The novel

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<sup>139</sup> See E.S.C. Res. 2006/61, *supra* note 132, para. 32.

<sup>140</sup> See *id.*

<sup>141</sup> See *id.*

<sup>142</sup> See CONSTITUTION OF THE REPUBLIC OF HAITI, 1987, art. 19.

<sup>143</sup> See HANS JOERG ALBRECHT ET AL., USIP PEACE BRIEFING: BUILDING THE RULE OF LAW IN HAITI: NEW LAWS FOR A NEW ERA 2 (2009), available at [http://www.usip.org/files/resources/haiti\\_rol.pdf](http://www.usip.org/files/resources/haiti_rol.pdf).

<sup>144</sup> CODE PÉNAL [C. PÉN] art. 279 (1835) (Haiti).

<sup>145</sup> *Id.* art. 280.

<sup>146</sup> See HUMAN RIGHTS WATCH, RAPE IN HAITI: A WEAPON OF TERROR 21 (1994).

<sup>147</sup> See U.N. Human Rights Council, Draft Report of the Working Group on the Universal Periodic Review: Haiti, 12th Sess., Oct. 3–14, 2011, U.N. Doc. A/HRC/WG.6/12/HTI/1 (Oct. 18, 2011), available at [http://www.upr-info.org/IMG/pdf/a\\_hrc\\_wg.6\\_12\\_1.17\\_haiti.pdf](http://www.upr-info.org/IMG/pdf/a_hrc_wg.6_12_1.17_haiti.pdf).

decreed redefined rape as a criminal offense of sexual aggression, committed or attempted with violence, threat, surprise, or psychological intimidation.<sup>149</sup> It also provided for the reinforcement of the relevant sanctions and acknowledged that the provisions under the Haitian Penal Code fostered gender discrimination, which was incompatible with the international commitments undertaken by the Republic of Haiti.<sup>150</sup>

Accordingly, included under a new section of the Haitian Penal Code entitled Sexual Aggressions, the amended Article 278 provides that anyone who commits rape or is responsible for any other type of sexual aggression shall be punished with ten years of forced labor. Furthermore, Article 280 now states that in the event that the crime is committed against a child under the age of fifteen, the perpetrator shall be punished with fifteen years of forced labor. Although the 2005 legislation represents a positive development in deterring gender-based violence, the effective adjudication of rape cases and judicial redress for victims have failed to keep pace with expectations.<sup>151</sup>

#### IV. RESPONSES TO WOMEN'S STRUGGLES IN THE DISPLACEMENT CAMPS

Studies conducted in the encampment areas have shown that preventive measures should be taken to preclude the occurrence of gender-based violence, as well as to alleviate the struggles of women and girls living in the aftermath of the earthquake.<sup>152</sup> To be sure, primary efforts should be made to provide adequate lighting throughout the camps, private sanitary and bathing facilities, and secure living accommodations. Waterproof and fire-resistant plastic tents, used as an immediate housing response, should be replaced with transitional shelters that combine emergency supplies with more robust building materials, including cement and steel roof panels.<sup>153</sup> An infrastructure redevelopment program should then follow to rebuild communities in the areas affected by the earthquake. Specifically, redevelopment should guarantee that such

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<sup>148</sup> *Id.* at 12.

<sup>149</sup> See Boniface Alexandre, *Decret Modifiant le Régime des Agressions Sexuelles et Éliminant en la Matière les Discriminations Contre la Femme* [Decree Changing the Regulation of Sexual Aggressions and Eliminating Forms of Discrimination Against Women], LE MONITEUR, Aug. 11, 2005, at 2.

<sup>150</sup> *Id.*

<sup>151</sup> See ALBRECHT ET AL., *supra* note 143, at 3.

<sup>152</sup> See Brooke Stedman, *Security After the Quake? Addressing Violence and Rape in Haiti*, USIP PEACEBRIEF, Jan. 7, 2011, at 2–3, available at [http://www.usip.org/files/resources/PB73-Security\\_After\\_the\\_Quake.pdf](http://www.usip.org/files/resources/PB73-Security_After_the_Quake.pdf).

<sup>153</sup> See USAID, USAID'S APPROACH TO SHELTER IN POST-EARTHQUAKE HAITI: PROVIDING SECURITY, DIGNITY AND WORK 1 (2010), <http://www.usaid.gov/ht/docs/eqdocs/pdaccp673.pdf>.

communities have access to clean water, sewage service, electricity, and job opportunities for women to promote their participation in Haiti's economic development.<sup>154</sup>

Data collected by civil society organizations reveals that many victims did not receive medical care after being assaulted because of lack of information, long waits, the impossibility of paying for transportation to reach assistance, and the fear of stigmatization.<sup>155</sup> On the other hand, the few functioning clinics are overwhelmed with patients and struggle to adequately meet the demand for healthcare resulting from these assaults.<sup>156</sup> Thus, prompt interventions should be made to open more medical centers equipped with HIV prophylaxis and emergency contraception. Efforts should also be made to increase the number of female providers assisting rape victims. Comprehensive information regarding the location of medical services and the fact that they are available free of charge should also be provided to residents of displacement camps. Moreover, free medical certificates should be issued to victims of sexual violence to document the assault as evidence for use in a criminal trial.<sup>157</sup> Finally, the number of psychiatrists and trauma specialists should be increased to provide psychological assistance to the many rape victims who suffer from depression and post-traumatic stress disorders.

Studies have shown that women and girls seldom report incidents of sexual violence to competent authorities due to the lack of police response, distrust of the justice system, fear of retaliation, and stigmatization by their communities.<sup>158</sup> Civil society organizations have reported that the Haitian National Police rarely patrol in the displacement camps; the remaining operational police stations employ very few female officers and lack safe facilities that would allow victims to confidentially lodge their complaints.<sup>159</sup> Fear of retaliation by the perpetrators, who often live in the same displacement camp as their victims, as well as social stigmatization within local communities, intimidates rape victims.<sup>160</sup> Indeed, women have reported being

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<sup>154</sup> *Id.* at 2.

<sup>155</sup> See INST. FOR JUSTICE & DEMOCRACY IN HAITI, *supra* note 41, at 12–13.

<sup>156</sup> *Id.* at 13.

<sup>157</sup> *Id.* at 13.

<sup>158</sup> See Stedman, *supra* note 152, at 2; HUMAN RIGHTS WATCH, *supra* note 146, at 18.

<sup>159</sup> See *Haiti: After the Earthquake*, *supra* note 10, at 11.

<sup>160</sup> See *Rape Rampant in Haiti's Earthquake Camps*, CBS NEWS (Mar. 17, 2010, 10:56 PM), <http://www.cbsnews.com/stories/2010/03/17/world/main6306562.shtml>.

threatened with further harm or even death if they tell anyone about the aggression.<sup>161</sup>

Police corruption and inefficiency are also rampant. Grassroots organizations reported the case of a victim who had approached the police to file a complaint and was asked to buy the police gas for their car.<sup>162</sup> Once the woman had given the police her money, they refused to drive to the nearby camp to investigate the crime.<sup>163</sup> Other accounts included women who approached the police for help and received the response that “there was nothing they could do,” that the assault was not the responsibility of the police, but rather of Haiti’s President Préval, and that the victims “should return when [they] had identified and/or captured [their] attackers.”<sup>164</sup>

Adequate police patrols are imperative and should be carried out in and around the camps. Police stations should guarantee a safe and private space for rape victims to lodge their complaints. In addition, more female security guards should be recruited to assist women and girls to report incidents of sexual assaults, thus minimizing the mockery, shame, and stigma experienced by rape survivors when dealing with male security forces. Similarly, additional protection and access to justice should be guaranteed to victims of sexual violence. Currently, in the Haitian justice system, no state-funded legal aid or witness protection is available for rape victims.<sup>165</sup> Only a few civil society organizations provide services that encourage victims to report the aggression, accompany them, and represent them through the legal process.<sup>166</sup> With their capacity and infrastructure severely affected by the earthquake, however, such organizations struggle to keep up with the overwhelming number of aggressions.

Representatives of these organizations have denounced the handling of rape cases in Haiti since the earthquake.<sup>167</sup> According to these organizations, the Haitian government has prosecuted only a small number of them.<sup>168</sup> Indeed, in the incidents in which the police have arrested the alleged perpetrators,

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<sup>161</sup> See Tracy Wilkinson, *Rape Flourishes in Rubble of Haitian Earthquake*, L.A. TIMES, Feb. 4, 2011, at 1.

<sup>162</sup> See INST. FOR JUSTICE & DEMOCRACY IN HAITI, *supra* note 41, at 14.

<sup>163</sup> See *id.*

<sup>164</sup> *Id.* at 13.

<sup>165</sup> Cf. Lys Anzia, *Anti-rape Legal Experts Mobilize for Change in Haiti*, WOMEN NEWS NETWORK (May 18, 2011), <http://womennewsnetwork.net/2011/05/18/antirape-legal-experts-haiti>.

<sup>166</sup> See INST. FOR JUSTICE & DEMOCRACY IN HAITI, *supra* note 41, at 14.

<sup>167</sup> See *id.* at 19.

<sup>168</sup> See, e.g., Wilkinson, *supra* note 161.

suspects have often been released due to poor investigations or bribery of prosecutors by the defendants or their families.<sup>169</sup> Faced with this crisis, immediate action should be taken to end the widespread climate of impunity in the justice system, which currently represents a considerable disincentive for victims to report assaults. In addition, adequate training should be provided to police and justice officers to enable them to address sexual violence and assist rape survivors. Finally, grassroots organizations should be guaranteed full participation in the relief efforts, particularly in addressing gender-based violence and women's struggles in the displacement camps.

#### CONCLUSION

After the earthquake that struck Haiti on January 12, 2010, identifying effective responses to the causes of gender-based violence has become extremely urgent. Indeed, the above analysis documents that, in the midst of desperation and disarray, due to their increasing economic and physical vulnerability, women and girls have been daily victims of rape in the makeshift displacement camps. As suggested by this Article, international law and humanitarian aid can help provide effective measures for improving women's and girls' living conditions as well as protecting them from violence. Further relief efforts should be directed toward funding adequate programs and interventions to reintegrate women and girls in post-disaster communities and to encourage their active participation in rebuilding a more peaceful country.

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<sup>169</sup> See MADRE et al., *supra* note 64, at 4.