

**THE AFTERSHOCK OF HAITI'S EARTHQUAKE:
RESPONSE EFFORTS IN THE WAKE OF NATURAL
DISASTERS PERPETUATE THE VIOLATION OF INTERNALLY
DISPLACED PERSONS' HUMAN RIGHTS**

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I. INTRODUCTION

On January 12, 2010, a 7.0 earthquake struck Haiti, displacing one-third of the country’s population.¹ In the aftermath of the quake, it became clear that current disaster response policy is inadequate to address mass population displacement in the wake of natural disaster.² Haitians affected by the earthquake represent a small number of the globe’s displaced population. In 2009, prior to the earthquake in Haiti, the United Nations High Commissioner for Refugees (UNHCR) reported that there were more than 27 million internally displaced people worldwide.³ With natural disasters—capable of displacing

1. Arthur McQueen, *SOUTHCOM Chief Praises Haiti Quake Response*, AIR FORCE PRINT NEWS TODAY (Jan. 13, 2011), http://www.af.mil/news/story_print.asp?id=123238241.

2. See INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI & THE LAMP FOR HAITI FOUNDATION, ONE YEAR AFTER THE EARTHQUAKE - HAITIANS STILL LIVING IN CRISIS (2011), available at http://ijdh.org/wordpress/wp-content/uploads/2011/01/Camp-Conditions_Final.pdf [hereinafter ONE YEAR]; THE LAMP FOR HAITI FOUNDATION ET AL., “WE’VE BEEN FORGOTTEN”: CONDITIONS IN HAITI’S DISPLACEMENT CAMPS EIGHT MONTHS AFTER THE EARTHQUAKE (2010), available at <http://ijdh.org/wordpress/wp-content/uploads/2010/09/IDP-Report-09.23.10-compressed.pdf> [hereinafter EIGHT MONTHS]; THE LAMP FOR HAITI FOUNDATION ET AL., NEGLECT IN THE ENCAMPMENTS: HAITI’S SECOND-WAVE HUMANITARIAN DISASTER (Mar. 2010), available at <http://ijdh.org/wordpress/wp-content/uploads/2010/03/Neglect-in-the-Encampments-FINAL.pdf> [hereinafter NEGLECT].

3. *Working with the Internally Displaced*, UNHCR (2011), available at <http://www.unhcr.org/4cd917fb9.html>; see *infra* Part 3.A.iv for a definition and

thousands—on the rise, the need to address the rights of those displaced has become of critical concern to the United Nations.⁴ In fact, “[p]eople displaced within their own country . . . now form the largest population of concern to the United States High Commissioner for Refugees.”⁵

The events following the earthquake in Haiti validate the United Nations’ concern regarding internally displaced populations in the wake of a natural disaster.⁶ Though the earthquake was not the sole source of displacement in Haiti, as the majority of people suffered from substandard living conditions even before it, the earthquake has increased the size of Haiti’s displaced population and further threatened displaced Haitians’ rights to health, vote, and security.⁷ This warrants concern, as a denial of these rights perpetuates immobility, animosity, and distrust, all things that impede efforts to reconstruct a better Haiti.⁸ This comment suggests a new policy approach toward managing and coordinating relief efforts both from the outset and in the wake of natural disasters. The goal of this new approach is to prevent other natural disasters from reaching the same level of humanitarian crisis as did the disaster in Haiti.

Although the response efforts in Haiti were well-intentioned, the methods taken were not appropriate for a country in such a state of disaster and, in some cases, exacerbated the situation. For example, aid was kept unused at the airport for days;⁹ rows of toilets in certain

description of internally displaced people.

4. See OFFICE FOR THE COORDINATION OF HUMANITARIAN AFF. (OCHA), HANDBOOK FOR APPLYING THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT, i-iii (1999), available at http://www.the-ecentre.net/resources/e_library/doc/HanbookIDP.pdf [hereinafter HANDBOOK].

5. *Id.* at 48. The earthquake in Haiti increased this population by more than a million people. *Id.*

6. See *Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective*, UNHCR, (Aug. 14, 2009), available at <http://www.unhcr.org/refworld/docid/4a8e4f8b2.html>.

7. Deborah Sontag, *Despair Grows on Devastated Street in Haiti*, N.Y. TIMES (Apr. 28, 2010), <http://www.nytimes.com/2010/04/28/world/americas/28haiti.html>.

8. See *id.*

9. Dr. Catherine Maternowska, Co-founder of Lambi Fund of Haiti, Address at the University of California Los Angeles Fowler Museum’s Conference: Haiti Stories / Istwa Ayiti (Jan. 29, 2011) [hereinafter Maternowska]. During the post-

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displacement camps were placed next to the trash receptacles, which were adjacent to water distribution and mobile clinic sites;¹⁰ and hundreds of people were confined into areas filled with plastic tents—areas which not only provided a breeding ground for bacterial disease, but provided safe harbors throughout the country's capital, Port-au-Prince, for many of the 4,000 prisoners who escaped from the National Penitentiary.¹¹ Further, numerous nongovernmental organizations (NGOs) arrived and set up operations in Port-au-Prince, an already highly congested urban area, but also one that would afford them the opportunity to gain media exposure.¹²

Unfortunately, no efforts were made to either decentralize the displaced population or to help individuals who voluntarily fled from Port-au-Prince to less affected, more rural areas.¹³ Rather than taking advantage of natural migration patterns of the Haitians who fled Port-au-Prince to the countryside to reunite with family members,¹⁴ agencies disbursed aid in Port-au-Prince, a city that was already densely populated prior to the earthquake, cluttered with dead bodies and rubble, and filled with panic.¹⁵ More efficient rubble removal and

earthquake recovery, Dr. Maternowska worked in the field and served as the point person for Violence Against Children. *Id.*

10. MARK SCHULLER, UNSTABLE FOUNDATIONS: IMPACT OF NGOS ON HUMAN RIGHTS FOR PORT-AU-PRINCE'S INTERNALLY DISPLACED PEOPLE 11 (Oct. 4, 2010), available at <http://ijdh.org/wordpress/wp-content/uploads/2010/10/Report-unstable-foundations-final-2.pdf>.

11. *Frontline: Battle for Haiti*, PBS (Jan. 11, 2011), <http://video.pbs.org/video/1737171448/#result> [hereinafter *Frontline*] (“On January 12, 2010, the jails broke open, all of the hardcore gang leaders escaped The tent camps represented virgin territory for the gangs to go and conquer.”).

12. SCHULLER, *supra* note 10, at 19, 32-33.

13. See generally NEGLECT, *supra* note 2, at 21-27 (revealing how the location of the camp plays a role in the receipt of aid. For example, while Champ-de-Mars, a camp in Port-au-Prince received water, Bouzi, a camp located outside of Port-au-Prince, did not receive any water from aid organizations).

14. Christopher Joyce, *Cellphones Could Help Doctors Stay Ahead of An Epidemic*, NPR'S HEALTH BLOG (Aug. 31, 2011, 12:01 AM), <http://www.npr.org/blogs/health/2011/08/31/140065855/cell-phones-could-help-doctors-stay-ahead-of-an-epidemic>.

15. See Clay Heaton, *The Differences Between the Aftermath of the Earthquakes in Haiti and Japan*, GAMEAID (Mar. 17, 2011), <http://gameaid.org/2011/03/17/the-differences-between-the-aftermath-of-the-earthquakes-in-haiti-and->

a quicker evacuation of Port-au-Prince could have allowed relief teams to access needy areas more quickly, and thus increase the effectiveness of response efforts.

To successfully build back countries recovering from natural disasters, policymakers must consider two fundamental matters: (1) internally displaced people face numerous and imminent dangers—and are virtually helpless—in the aftermath of a disaster; and (2) response methods must be carefully designed to prevent further harm to the internally displaced. Only when these matters are fully considered can policymakers implement thoughtful response efforts to mitigate the impact these subsequent risks may pose on displaced populations. As was needed in Haiti, the countries' self-rehabilitative efforts must be recognized, enforced, and encouraged. Rather than efforts coordinated solely through NGOs,¹⁶ international NGOs must adhere to the United Nations Office for the Coordination of Human Affairs' *Guiding Principles* and coordinate their post-disaster relief efforts to complement the work of grass-root initiatives in the respective disaster-stricken nation. NGO response initiatives that fail to comply with the *Guiding Principles* only address problems temporarily, yet perpetuate a dependency on aid. These organizations should be subject to sanctions by the United Nations and host countries, as these organizations' conduct, albeit unintentional, has contributed to the prolonged continuance of human rights violations.

Using Haiti as an object lesson, this comment examines the plight of people fleeing from natural disasters and how it is exacerbated by the international legal community's failure to establish institutions, bodies, and organizations to ensure compliance with the *Guiding Principles*.¹⁷ This comment argues that current principles, which fail to confer a binding, legal status upon internally displaced persons, insufficiently address the plight of internally displaced persons in the wake of natural disasters. In addition to suggesting how current initiatives can be reconfigured and supplemented, this comment proposes additional policy changes aimed to prevent NGOs from

japan/.

16. *Frontline*, *supra* note 11.

17. HANDBOOK, *supra* note 4, at 10 ("Observance of the *Guiding Principles* does not affect—positively or negatively—the status of any of these institutions or persons.").

unjustifiably benefiting at the expense of the rights of natural disaster victims, the very people the NGOs are expected to assist.

Section I describes what happened in Haiti in the aftermath of one of the world's deadliest disasters.¹⁸ Section II discusses how extant policy drove the response efforts. Section III discusses how the experience in Haiti demonstrates the need for a change in policy. Section IV proposes and outlines changes to the current policy approach and forecasts how the changes would affect future disaster relief response efforts. This comment concludes by emphasizing the heightened need for discussion on this issue.

II. WHAT HAPPENED IN HAITI IN THE AFTERMATH OF THE DISASTER

On January 12, 2010, an earthquake struck the small island of Haiti. The earthquake, measuring 7.0 on the Richter scale, killed 300,000 people,¹⁹ and destroyed many homes, leaving 1.5 million Haitians homeless.²⁰ As of January 12, 2011, one year after the earthquake, over one million people remain homeless, living in crowded camps.²¹ This shockingly high number of displaced Haitians raises a variety of human rights concerns, including violations of the

18. SCHULLER, *supra* note 10, at 2.

19. While the U.N. Office for the Coordination of Human Affairs and other sources initially reported the earthquake death toll to be 222,570, Haitian officials later increased the death toll for the earthquake to 316,000. *Haiti Earthquake Response*, OCHA 1 (Jan. 8, 2011), available at http://www.un.org/en/peacekeeping/missions/minustah/documents/ocha_haiti_one_year_factsheet.pdf; Randal C. Archibold, *Haiti: Quake's Toll Rises to 316,000*, N.Y. TIMES (Jan. 14, 2011), <http://www.nytimes.com/2011/01/14/world/americas/14briefs-Haiti.html>.

20. UNHCR, HAITI SITUATION RESPONSE 2010: PROTECTION AND ASSISTANCE TO INTERNALLY DISPLACED PERSONS AND HOST COMMUNITIES IN HAITI 3 (Apr. 2010), available at <http://www.unhcr.org/4bc71c109.html>; *Haiti: Speeding Earthquake Recovery 'Absolute Priority' for 2011, UN Says*, U.N. NEWS CENTRE (Jan. 10, 2011), <http://www.un.org/apps/news/story.asp?NewsID=37240&Cr=Haiti&Cr1> [hereinafter *Speeding Earthquake Recovery*]. The population of Haiti was roughly 9.7 million at the time of the earthquake, so the disaster left nearly one-sixth of the population homeless. *Haiti Population GRAPHIC Shows Impact of Earthquake*, HUFFINGTON POST (last updated May 25, 2011, 4:10 PM), http://www.huffingtonpost.com/2010/01/13/haiti-population-graphic_n_422179.html.

21. *Speeding Earthquake Recovery*, *supra* note 20.

rights to adequate food, clean water, a dignified sanitary environment, safe and decent housing, humanitarian assistance, health and medical care, physical integrity, and education.²²

The earthquake has had many implications for Haiti. First, the substandard living conditions Haitians experienced prior to the earthquake have been exacerbated.²³ Second, the number of people who are inherently more vulnerable to becoming victims of human rights violations—unaccompanied women, single parents, orphans, traumatized persons, and persons with disabilities—has increased dramatically.²⁴ Displacement poses additional hazards to these at-risk populations.²⁵ Third, the continued presence of displaced persons in and around the streets of Haiti raises personal safety, national security, and international security concerns.²⁶

Based on the increase in the number of displaced persons and an increase in the number of vulnerable people among those displaced, an effective response and relief effort became of paramount importance.²⁷ Recognizing this, United Nations and other institutions encouraged the international community to assist in the Haiti relief

22. See ONE YEAR, *supra* note 2; EIGHT MONTHS, *supra* note 2; NEGLECT, *supra* note 2.

23. See Sontag, *supra* note 7.

24. BROOKINGS INSTITUTION-UNIVERSITY OF BERN, PROJECT ON INTERNAL DISPLACEMENT, PROTECTING INTERNALLY DISPLACED PERSONS: A MANUAL FOR LAW AND POLICYMAKERS 18 (Oct. 2008) [hereinafter A MANUAL FOR LAW AND POLICYMAKERS].

25. *Id.*

26. UNICEF, CHILDREN IN HAITI: ONE YEAR AFTER – THE LONG ROAD FROM RELIEF TO RECOVERY 4-29 (Jan. 23, 2011), available at http://www.unicef.org/infobycountry/files/Children_in_Haiti_-_One_Year_After_-_The_Long_Road_from_Relief_to_Recovery.pdf. The continued presence of displaced Haitians on other citizens' private land fosters tension between groups with competing interests. Deborah Sontag, *In Haiti, Rising Call for Displaced to Go Away*, N.Y. TIMES (Oct. 4, 2010), <http://www.nytimes.com/2010/10/05/world/americas/05haiti.html?pagewanted=all>. Furthermore, as Haiti continues to remain in a state of ungoverned chaos, it could become a safe haven for terrorist activity. See U.S. DEP'T OF STATE, OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM, COUNTRY REPORTS ON TERRORISM 2009, Ch. 5: TERRORIST SAFE HAVENS AND TACTICS AND TOOLS FOR DISRUPTING OF ELIMINATING SAFE HAVENS (Aug. 5, 2010), <http://www.state.gov/s/ct/rls/crt/2009/140891.htm>.

27. ONE YEAR, *supra* note 2, at 4.

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efforts and implemented projects with the goal to “build back better.”²⁸ As revealed by the trajectory of catastrophes that followed the earthquake, however, the relief efforts, geared to “build back better,” have been stunted from the outset as a result of the inadequate protection and resources afforded to the displaced population.²⁹

The sequence of events in Haiti since January 12, 2010, represents a series of catastrophes that could have been mitigated with more effective, anticipatory response efforts. On October 21, 2010, authorities confirmed a cholera outbreak,³⁰ which, as of December 31, 2010, had claimed over 3,000 lives, caused 71,000 people to be hospitalized, and infected 130,000.³¹ Recent reports also indicate an increase in child trafficking, exploitation of women, and sexual abuse of children.³² Since the earthquake, children as young as two years old have been victims of rape, domestic abuse, exploitation, and discrimination.³³

28. *Id.*

29. *See generally* ONE YEAR, *supra* note 2; EIGHT MONTHS, *supra* note 2; NEGLECT, *supra* note 2 (revealing relief efforts in Haiti failed to adequately address the catastrophic situation).

30. *2010 Haiti Cholera Outbreak*, CTR. FOR DISEASE CONTROL, <http://www.cdc.gov/haiticholera/situation> (last visited Jan. 24, 2012) (“[f]or a cholera outbreak to occur, two conditions have to be met: (1) there must be significant breaches in the water, sanitation, and hygiene infrastructure used by groups of people, permitting large-scale exposure to food or water contaminated with *V.cholerae* organisms; and (2) cholera must be present in the population. While it is unclear how cholera was re-introduced to Haiti, both of these conditions now exist.”). *Cholera Information for Healthcare Providers Going to Haiti*, CTR. FOR DISEASE CONTROL, http://www.cdc.gov/haiticholera/hcp_goingtohaiti.htm.

31. ONE YEAR, *supra* note 2, at 6.

32. Laurie Hanna, *Haiti Children Sold to Human-Traffickers for as Little as 76p*, DAILY MIRROR, Mar. 11, 2011, <http://www.mirror.co.uk/news/top-stories/2011/02/22/haiti-children-sold-to-human-traffickers-for-as-little-as-76p-115875-22940014/> (“[s]ome infants in the Caribbean country—still in chaos following last year’s horror quake—are being forced into prostitution Penniless parents, believing their young will lead better lives elsewhere, are handing them to crooks posing as concerned officials.”).

33. Maternowska, *supra* note 9. In her time assisting displaced persons in tent camps, Dr. Maternowska discovered a two-year-old Haitian child who had been raped after a man slashed through the tent in which she was living. As a result of the attack, this two-year-old Haitian had gonorrhea in both her mouth and anus. *Id.*

The earthquake also adversely affected the democratic rights of Haitian citizens, further infringing upon their power as a displaced population.³⁴ On November 28, 2010, Haiti held its first round of elections for both the parliament and the presidency against a backdrop of disorder that marred the elections with uncertainty from the outset.³⁵ The earthquake itself severely hampered the electoral process, as over one million Haitians lost their voter identification cards in the disaster, usual polling stations were destroyed, voting registries were buried under the rubble, and many people were forced to live outside of their voting districts.³⁶ Without a doubt, these factors contributed to the suspect election results that triggered violent unrest moments after officials announced the preliminary results.³⁷

III. CURRENT POLICIES REGARDING ENVIRONMENTALLY DISPLACED PERSONS

Using Haiti as an example, this section discusses: (a) the unique situation people fleeing from natural disasters face, as they do not meet the legal definition of "refugee" under the 1951 Geneva Convention; (b) the attempts made to help categorize individuals who are displaced by the environment; and (c) how the existing policies drove the response efforts in Haiti.

A. People Fleeing From Natural Disasters Are Not Refugees

Despite the migratory implications of natural disasters, people forcibly displaced from their homes as a result of natural disasters neither meet the legal definition of "refugee," nor are they entitled to receipt of certain rights that might be conferred upon them if they met

34. *Haiti*, N.Y. TIMES, <http://topics.nytimes.com/top/news/international/countriesandterritories/haiti/index.html?scp=1&sq=haiti%20elections&st=cse> (last updated Sept. 23, 2011).

35. Elizabeth Ferris, Senior Fellow, Brookings Institute Burning Issues for Haiti's Recovery, Presentation to National Council of Churches' Working Group on Haiti (Sept. 9, 2010).

36. *Id.*

37. Deborah Sontag, *Election Violence Flares in Haiti*, N.Y. TIMES (Dec. 8, 2010), <http://www.nytimes.com/2010/12/09/world/americas/09haiti.html>.

the elemental refugee requirements.³⁸ There is some discussion regarding whether the definition should be expanded to include persons who have been displaced as a result of environmental factors.³⁹ This subsection provides an overview of the various attempts that have been made to categorize persons who have been forcibly displaced from their homes by the environment, and concludes with the definition that has acquired the greatest support and recognition.

i. Refugee

The 1951 Convention Relating to the Status of Refugees defines a “refugee” as:

any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁴⁰

Although there have been subsequent amendments to the 1951 Convention Relating to the Status of Refugees, people displaced as a result of natural disasters are still not considered refugees.⁴¹ This group’s continued exclusion from the definition of “refugee” has prompted scholars and other legal policy advocates to formulate new

38. See Sumudu Atapattu, *Climate Change, Human Rights, and Forced Migration: Implications for International Law*, 27 WIS. INT’L L.J. 607 (2009).

39. See Auriele Lopez, *The Protection of Environmentally-Displaced Persons in International Law*, 37 ENVTL. L. 365 (2007).

40. David Keane, *The Environmental Causes and Consequences of Migration: A Search for the Meaning of “Environmental Refugees,”* 16 GEO. INT’L ENVTL. L. REV. 209, 209-223 (2004).

41. Kara K. Moberg, *Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protection*, 94 IOWA L. REV. 1107, 1113 (2009).

definitions, under which people fleeing from natural disasters could qualify for protection.

ii. Environmental Refugee

In 1985, the United Nations Environment Program (UNEP) issued a report entitled *Environmental Refugees*.⁴² In this report, Essam El-Hinnawi, a UNEP researcher,⁴³ defined “environmental refugees” as “those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life.”⁴⁴

Various policy groups have opted not to use the term “environmental refugee” for four reasons.⁴⁵ First, expanding the definition will likely devalue the traditional concept of the refugee.⁴⁶ Second, environmental refugees, the majority of whom have not yet crossed international borders, do not meet the prerequisites outlined in the 1951 Convention.⁴⁷ Third, even should an expanded definition be proposed, it would be difficult to determine which category of migrants to include, as an expanded definition could potentially result in qualifying an enormous number of people as refugees.⁴⁸ Fourth, states will probably oppose the pressure to accept displaced persons that would accompany an expansion in the refugee definition.⁴⁹

42. Keane, *supra* note 40, at 210 n.3.

43. Diane C. Bates, *Environmental Refugees? Classifying Human Migrations Caused by Environmental Change*, 23 *POPULATION & ENV'T*, 465, 466 (2002).

44. Keane, *supra* note 40, at 210 (quoting El-Hinnawi).

45. Suzette Brooks Masters, *Environmentally Induced Migration: Beyond a Culture of Reaction*, 14 *GEO. IMMIGR. L.J.* 855, 868 (2000).

46. *Id.*

47. Moberg, *supra* note 41, at 1129.

48. *Id.*

49. *See id.* at 1132-33; Masters, *supra* note 45. As seen with the 2011 Japan disaster, however, when an initial disaster triggers a subsequent disaster like a tsunami, cross-territorial relocation of displaced persons in the wake of an initial natural disaster may be appropriate, especially where risks of nuclear radiation exposure is a possible consequence. Richard Knox, *Workers Evacuated from Japanese Reactor*, KPBS (Mar. 15, 2011), <http://www.kpbs.org/news/2011/mar/15/workers-evacuated-japanese-nuclear-reactor/>. Further discussion regarding the

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In recognizing the controversy surrounding the expansion of the refugee definition, some international groups have chosen not to use the term, “environmental refugee.”⁵⁰ Rather, organizations have found it more productive to devise a separate legal framework.⁵¹ The UNHCR, for example, uses the term, “environmentally displaced persons.”⁵²

iii. Environmentally Displaced Persons

Environmentally displaced persons (EDPs) are defined as “persons who are displaced within their own country of habitual residence or who have crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one.”⁵³ While this definition accounts for people who are displaced as a result of environment and natural disasters, it does not address the rights of those who are fleeing from the environmental degradation that prompted their displacement.

struggles host communities might experience as a result of the influx of people who flee from the site of disaster is warranted. These struggles will become more difficult when the time for cross-territorial resettlement in the wake of natural disaster emerges. See John H. Knox, *Linking Human Rights and Climate Change at the United Nations*, 33 HARV. ENVTL. L. REV. 477, 480-81 (2009); David Adam, *50m Environmental Refugees by End of Decade, UN Warns*, THE GUARDIAN (Oct. 11, 2005), <http://www.guardian.co.uk/environment/2005/oct/12/natural-disasters.climatechange1>.

50. Some of the organizations which do not use the term “environmental refugee” include the UNHCR, the International Organization for Migration, and the Refugee Policy Group. Keane, *supra* note 40, at 215; see Atapattu, *supra* note 38, at 625. In fact, the UNHCR has deemed “environmental refugee” a legal misnomer. Moberg, *supra* note 41, at 1114.

51. Atapattu, *supra* note 38, at 634.

52. *Id.* at 626.

53. Keane, *supra* note 40, at 215; *Environmentally-Induced Population Displacements and Environmental Impacts Resulting from Mass Migrations*, UNHCR (Oct. 1996), available at <http://www.unhcr.org/refworld/docid/4a54bbd6d.html>.

iv. Internally Displaced Persons

In recognizing the global crisis of internal displacement and displaced populations' inability to qualify for protection under the "refugee" definition, the United Nations Commission on Human Rights appointed Francis M. Deng, a former Representative of the Secretary-General on Internally Displaced Persons, to prepare a framework for the internally displaced in 1992.⁵⁴ These *Principles* are not binding, but have acquired international standing and authority.⁵⁵

As defined by the *Guiding Principles*,⁵⁶ internally displaced persons are

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.⁵⁷

Drawn from norms of customary international law, international humanitarian law, and international human rights law, the *Guiding*

54. *Guiding Principles on Internal Displacement*, U.N. Office for the Coordination of Human Affairs, U.N. Doc. No. E/CN.4/1998/53/Add.2, OCHA/IDP/2004/01 [hereinafter *Guiding Principles*].

55. HANDBOOK, *supra* note 4, at 2. Numerous international groups have acknowledged and/or welcomed the use of the *Guiding Principles* in the field (e.g., the Commission on Human Rights and the Economic and Social Council; the U.N. Inter-Agency Standing Committee, which is comprised of the leaders of the principal international humanitarian, human rights, and development agencies; the Inter-American Commission on Human Rights of the Organization of American States; the Commission on Refugees of the Organization of African Unity; and the Organization for Security and Cooperation in Europe). *Id.*

56. *Id.* at 1 ("Developed at the request of the [U.N.] Commission [on Human Rights] and the General Assembly, they set forth international standards for internally displaced persons based on and consistent with existing humanitarian law, human rights law, and refugee law by analogy.").

57. *Guiding Principles*, *supra* note 54, at 1. Distinguishable from individuals who, motivated by economic, social, or cultural reasons, voluntarily move from one location to another, internally displaced persons are people who, because of conflict, human rights violations, and other natural or manmade disasters, are forced to leave their home areas.

Principles have made a significant contribution to the dialogue concerning the plight of the internally displaced.⁵⁸ However, in contrast to a treaty, the *Guiding Principles* are not binding, and they fail to confer a legal status upon those who meet the definition of an “internally displaced person.”⁵⁹ As a result, while the *Principles* have made a significant contribution to the dialogue surrounding the plight of internally displaced persons, its non-binding nature creates undesirable consequences: it frustrates the underlying purpose of the *Principles* (protecting the needs and rights of the internally displaced) by unintentionally permitting NGOs to circumvent the needs and rights of displaced persons without consequences.

B. How Existing Policies Drove Response Efforts in Haiti

Because of the non-binding nature of the *Guiding Principles*, initiatives taken after natural disasters are often implemented on an ad hoc basis. With no concrete guidelines or rules on how and when to respond in order to ensure compliance with the *Guiding Principles*, response efforts in the aftermath of disasters can take a variety of forms, something which was clearly demonstrated after the earthquake in Haiti.

i. The Response of the United States and Other Nations

In the days following the earthquake, announcements from officials across the globe clarified the severity of the situation in Haiti. On January 15, 2010, United States President Barack Obama made an announcement granting Temporary Protective Status for eighteen months to Haitians already in the United States, including those in the United States illegally.⁶⁰ President Obama’s announcement confirmed that Haiti was an unstable environment which those Haitians already

58. 2010 High Commissioner’s Dialogue on Protection Challenges, UNHCR (Nov. 23, 2010), <http://www.unhcr.org/pages/4ca099226.html>.

59. HANDBOOK, *supra* note 4, at 2.

60. Devin Dwyer & Teddy Davis, *Obama Grants Haitians Illegally in U.S. ‘Protected Status’ for 18 Months*, ABC NEWS (Jan. 15, 2010), <http://abcnews.go.com/Politics/HaitiEarthquake/haiti-earthquake-illegal-haitians-protected-status-quake/story?id=9570995&page=2>.

in the United States should not be subjected.⁶¹ This announcement differed from the United States government's prior responses to Haitians' requests for Temporary Protective Status. Since 2008, the government had denied these requests.⁶² Thus, the sudden change in January 2010 demonstrated to the people of the United States and to the rest of the world just how severe the situation in Haiti had become.⁶³

President Obama's announcement also revealed an underlying disconnect: while it provided comfort to those Haitians already in the confines of the United States, it did nothing for those who still remained in Haiti, the people—at least from a humanitarian standpoint—who needed the most assistance. The United Nations' appeal for countries to extend the suspension of deportation proceedings for Haitians also highlights the underlying disconnect between the magnitude of the emergency and the insufficient protection afforded to those most at risk in the aftermath of disaster.⁶⁴ While Haitians living abroad illegally were granted temporary protection from deportation, Haitians still within the borders of Haiti (and displaced by the earthquake) were left to fend for themselves in conditions, which, inherent in these announcements and appeals, were too dangerous.

ii. NGO-Centered Approach

Upon learning about the earthquake in Haiti, people around the world responded with an unprecedented outpouring of aid, amounting to billions of dollars in pledges.⁶⁵ Half of the households in America,

61. *Id.*

62. *Id.*

63. Given the reputation of the United States for strict immigration policies, this announcement was especially powerful. See Ginger Thompson, *Haitians Look for Shift in Immigration Policy*, N.Y. TIMES (Feb. 28, 2009), <http://www.nytimes.com/2009/02/28/us/28haitians.html>.

64. OHCHR/UNHCR *Urge Extending Suspension of Returns to Haiti*, UNHCR (Feb. 12, 2010), <http://www.unhcr.org/4b7543026.html>.

65. SCHULLER, *supra* note 10, at 2; Arturo A. Valenzuela, *Building Back Haiti Better: Donors' Conference Delivers*, U.S. DEP'T OF STATE OFFICIAL BLOG (Apr. 3, 2010), http://blogs.state.gov/index.php/site/entry/building_back_haiti; Joe Johns & MaryAnne Fox, *Most Countries Fail to Deliver on Haiti Aid Pledges*, CNN WORLD,

amidst the worst economic crisis since the Great Depression,⁶⁶ donated money to Haitian relief efforts.⁶⁷ Six months after the earthquake, however, Haiti had yet to receive a significant amount of the aid the world had promised.⁶⁸ Of the \$506 million dollars dispersed to Haiti, less than half of that amount went directly to Haiti's government to help Haiti in the rebuilding process.⁶⁹ Instead, the money went to NGOs and other charities for aid work.⁷⁰

Providing NGOs with funds complies with Principle 25 of the U.N. Office for the Coordination of Human Affairs' (OCHA) *Guiding Principles*.⁷¹ However, allotting more than half of the money received to the NGOs, undermines Principle 3, which states, “[n]ational authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.”⁷²

(July 14, 2010), http://articles.cnn.com/2010-07-14/world/haiti.donations_1_haitian-government-pledges-interim-haiti-recovery-commission?_s=PM:WORLD.

66. Erik Eckholm, *Recession Raises Poverty Rate to a 15-Year High*, N.Y. TIMES (Sept. 17, 2010), <http://www.nytimes.com/2010/09/17/us/17poverty.html>.

67. Ctr. for Econ. and Pol’y Res., *AidWest vs. Aid Waste*, RELIEF AND RECONSTRUCTION WATCH BLOG (Aug. 4, 2010, 15:28), <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/aidwest-vs-aid-waste>.

68. Johns & Fox, *supra* note 65.

69. Jehane Sedky, a member of the U.N. Development Program explained to CNN, “that’s [\$506 million] about 9 percent of the money that was pledged. But about \$200 million was money that had been in the pipeline for aid work before the earthquake, and about another \$200 million went directly to the government of Haiti to help it get back on its feet.” *Id.*

70. Johns & Fox, *supra* note 65; ONE YEAR, *supra* note 2. For an account of where the relief money went see *Paul Farmer Examines Haiti ‘After the Earthquake,’* NATIONAL PUBLIC RADIO (July 11, 2011), <http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=137762573&m=137772419> (explaining that about 34% of money received went to civil and military donor projects, 30% went to the UN and international NGOs, 29% went to other NGOs and private contractors, 6% were in kind donations, and less than 1% of the pledged money went to the Haitian government).

71. Principle 25 states, “[i]nternational humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced.” *Guiding Principles*, *supra* note 54, Principle 25.

72. *Guiding Principles*, *supra* note 54, Principle 3.

Despite the amounts of money sent to organizations working in Haiti, over 1.5 million Haitians continued to live in conditions that violated their human rights more than one year after the earthquake.⁷³ Alarming, Haitians do not have an effective way to redress human rights violations and NGOs do not have an incentive to end Haitians' dependence on aid.⁷⁴ While NGOs are expected to adhere to the *Guiding Principles*, the NGOs face no real consequences when they fail to do so.⁷⁵

IV. HOW THE EXPERIENCES IN HAITI SUGGEST A CHANGE IN THE EXISTING POLICY APPROACH IS NECESSARY

This section examines whether the existing *Guiding Principles*, which fail to confer a binding, legal status upon individuals who are forcibly displaced from their homes, sufficiently addressed the catastrophic situation in Haiti. After summarizing recent surveys

73. See ONE YEAR, *supra* note 2; SCHULLER, *supra* note 10, at 2.

74. NGOs profit from Haitians' dependency on aid, and "in [former President William] Clinton's words, NGOs do not appear to be serious about 'working themselves out of a job' by empowering the committees or reinforcing the government." SCHULLER, *supra* note 10, at 32.

75. "Bill Clinton has repeatedly said that there are 10,000 NGOs working in Haiti, which would make the most NGOs per capita, one for every 900 people." *Id.* at 6-7. Only 10-20% of the NGOs, according to the Minister of Planning and Foreign Cooperation staff, submit their annual report to the government, even though it is a requirement to function in the country. In general, NGOs in Haiti have acquired a less than favorable reputation among Haitians. Known as "parallel states," "states within the state," or "fiefdoms," these NGOs tend to isolate and exercise total control over certain geographical regions. *Id.* at 7. This is not to say, however, that all relief efforts have been ineffective. For example, Partners in Health (PIH), a non-profit organization dedicated to global health, has an incredibly effective program in Haiti. The effectiveness of PIH stems from its multi-faceted, revolutionary, five-principle approach: (1) access to primary health care, (2) free health care and education for the poor, (3) community partnerships, (4) addressing basic social and economic needs, and (5) serving the poor through the public sector. PIH is a model to which all NGOs should aspire. See *Stand with Haiti: One-Year Report*, PARTNERS IN HEALTH (2001), available at http://parthealth.3cdn.net/e73153b5b0ccbfc193_01m6b8qk4.pdf; *The PIH Model of Care*, PARTNERS IN HEALTH, <http://www.pih.org/pages/the-pih-model-of-care> (last visited Nov. 15, 2011).

conducted in six tent camps for the internally displaced in Haiti,⁷⁶ this section concludes that current policies insufficiently address the plight of internally displaced persons in the wake of natural disasters, and thus, existing policies should be changed.

In its entirety, Principle 18 of the *Guiding Principles* reads as follows:

1. All internally displaced persons have the right to an adequate standard of living. 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: (a) Essential food and potable water; (b) Basic shelter and housing; (c) Appropriate clothing; and (d) Essential medical services and sanitation. 3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.⁷⁷

Unfortunately, recent studies indicate this Principle is not being met.

In the months after the earthquake, various researchers conducted at least four surveys to examine conditions in displacement camps throughout Haiti and evaluate the effectiveness of relief efforts. The studies show response efforts were ineffective as they failed to curtail persistent violations of Haitians' rights to adequate food, clean water, a sanitary environment, safe and decent housing, health and medical care, education, and participation,⁷⁸ rights upon which the *Guiding Principles* are based.

A. LAMP for Haiti Foundation's Ongoing Study

LAMP for Haiti, with the help of others, conducted an ongoing survey of displaced Haitian families. LAMP conducted an initial

76. The studies were conducted in the following camps: (1) Place St. Pierre in Pétionville, (2) Acra in Delmas, (3) Diquini/Adventist University in Carrefour, (4) Champ de Mars in Port-au-Prince, (5) Bouzi in Croix-des-Bouquets, and (6) Parc La Couronne in Cité Soleil. NEGLECT, *supra* note 2, at 4. Among the 99,140 displaced people living in these camps, researchers selected ninety families to survey at random. *Id.*

77. *Guiding Principles*, *supra* note 54, Principle 18.

78. See EIGHT MONTHS, *supra* note 2; ONE YEAR, *supra* note 2, at 3.

survey in February 2010, six weeks after the earthquake. Researchers conducted the subsequent follow up studies in July 2010, six months after the earthquake, and in December 2010, almost a year after the earthquake.⁷⁹ In addition to documenting how the earthquake affected Haitian families, researchers sought to measure the international community's effectiveness in delivering aid.⁸⁰ This subsection discusses the persistent violation of seven human rights to which all humans are entitled.⁸¹

i. Food

Under Principle 18(2)(a), authorities should, without discrimination and regardless of the circumstances, provide IDPs safe access to food.⁸² The surveys demonstrate that authorities failed to meet this principle by highlighting three problems with food relief efforts. First, there was inadequate food distribution. Second, the method of food distribution failed to ensure that all IDPs, particularly children, single women, and disabled persons, had safe access to food.⁸³ Third, certain landowners eventually withheld food from camp residents as a means to force people off the land.⁸⁴

After surveying the six camps, LAMP determined that food distribution was lacking. Survey respondents from Camp Acra reported that agencies provided food aid relief only once in the first forty-two days of the camp's existence.⁸⁵ Furthermore, when camp residents did receive food, some reported getting it only once or twice,

79. While the research team started with ninety families, the researchers encountered difficulties when they tried to contact the families for the follow up surveys. Only thirty-seven of the original ninety families participated in the December 2010 survey. ONE YEAR, *supra* note 2, at 3.

80. *Id.*

81. The seven basic human rights addressed in this series of studies are: (1) right to adequate food, (2) clean water, (3) dignified sanitary environment, (4) safe and adequate housing, (5) health and medical care, (6) education, and (7) participation. See EIGHT MONTHS, *supra* note 2; Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

82. *Guiding Principles*, *supra* note 54, Principle 18(2)(a).

83. See SCHULLER, *supra* note 10.

84. *Id.* at 23.

85. NEGLECT, *supra* note 2, at 15.

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and there were at least three problems with the food distribution methods.⁸⁶ First, in many camps, receipt of food was contingent upon having a food card.⁸⁷ Food card distribution was problematic because: (1) the organizations distributed far fewer cards than there were families;⁸⁸ (2) the distribution of the cards was biased and failed to take family size into account;⁸⁹ (3) the organizations distributing the food cards failed to tell residents when and where the food cards would be distributed;⁹⁰ and (4) the food ration cards were predominately distributed to men, leading to an increase in gender-based violence, as these cards could be exchanged for sex and money.⁹¹ Second, the type of food distributed was not conducive to the physical conditions of the camps.⁹² Third, food distribution methods failed to ensure everyone had healthy and safe access to food,

86. See NEGLECT, *supra* note 2, at 15; EIGHT MONTHS, *supra* note 2, at 15.

87. See SCHULLER, *supra* note 10, at 28; NEGLECT, *supra* note 2, at 15.

88. EIGHT MONTHS, *supra* note 2, at 15; NEGLECT, *supra* note 2, at 15.

89. See NEGLECT, *supra* note 2, at 15 (stating that the resident chosen to distribute the tickets first allotted them to friends and family); EIGHT MONTHS, *supra* note 2, at 15 (explaining that multiple families living in the same tent were treated like one family and, thus, provided less aid).

90. SCHULLER, *supra* note 10, at 29 (“Nathalie, a 26 year old mother of three, said, ‘You can’t afford to sleep when you hear that there’s a card distribution. You never know where and when they will give it out. You just have to follow the noise of the crowd and hope you will get yours.’”).

91. *Id.* at 28-29 (stating that there have been numerous cases of men using food ration cards to attempt to force women into having sex). A female member of Commission of Women Victims for Victims expressed, “Why is it these hard-up guys get the cards to distribute? Now [the NGOs] are using them to distribute the cards. And they don’t give the cards to women. So now even a young girl in need is forced to sleep with the person for a little card.” *Id.* This reveals the failure of NGOs to make “special efforts to ensure the full participation of women in the planning and distribution of these basic supplies,” which the *Guiding Principles* outline as being a responsibility of NGOs providing aid. *Guiding Principles, supra* note 54, Principle 18(3).

92. For example, relief agencies provided dry rice, which was problematic because: (1) camp residents did not an adequate supply of clean water with which to cook the rice, and (2) the physical conditions of the camp made it difficult to keep personal belongings dry, so that the food would get waterlogged and destroyed before IDPs could use it. SCHULLER, *supra* note 10, at 10; see NEGLECT, *supra* note 2, at 15. Thus, the decision to hand out this type of food demonstrates a lack of good judgment on the part of the NGOs.

something required under Principle 18 of the *Guiding Principles*. For example, relief agencies' food distribution methods failed to mitigate the risk of spreading bacteria, an issue which should have been of paramount concern to them, as the physical conditions of the camps (e.g., overcrowded, dirty, and tents capable of trapping heat) increased the potential for bacteria to spread.⁹³ Relief agencies' food distribution methods were also unsafe. For example, when some organizations dispersed food aid, they handed it out from a cargo truck.⁹⁴ To receive food, camp residents had to run to the truck and struggle for a position in line.⁹⁵ Thus, individuals who were unwilling, unable, or too weak to fight for a position in line received no food.⁹⁶

Six months after the earthquake, the conditions had not significantly improved.⁹⁷ One year after the earthquake, Haitians continued to live in a state of crisis,⁹⁸ and landowners had stopped delivering food to camp residents as a means to forcefully evict them from certain displacement camps.⁹⁹ This practice is in direct contrast

93. See NEGLECT, *supra* note 2, at 28 (demonstrating how food aid distribution methods and practices can contribute to the spreading of bacteria from one person to another).

94. *Id.* at 23; *Frontline: The Quake*, PBS (2011), <http://www.pbs.org/wgbh/pages/frontline/haiti/view/> [hereinafter *The Quake*].

95. NEGLECT, *supra* note 2, at 23 ("Many, of course, resigned themselves to the impossibility of this and often stayed behind to supervise their children under their shelters during the distributions."). This reveals agencies' failures to successfully disperse aid in a manner that took the family unit into account.

96. *Id.* at 3 (recounting LAMP for Haiti Task Force's experience observing a food aid distribution event unfold in which many residents of the camp were left out of the distribution). Because individuals who are too weak, unwilling, or unable to take on the crowds fighting for a ticket are likely people who are disabled, sick, and female—people to whom the *Principles* confer more consideration—this distribution method undermines the *Guiding Principles*. See A MANUAL FOR LAW AND POLICYMAKERS, *supra* note 24, at 66.

97. EIGHT MONTHS, *supra* note 2, at 7 (indicating that many of the fifty-two families interviewed had someone go an entire day without eating in the past week).

98. ONE YEAR, *supra* note 2, at 4 ("One out of two families had at least one child in their family go a full day without eating the prior week. Twenty-six percent of families regularly scrounged for food by either asking other families (16%) or by 'going and looking for food' (11%).").

99. SCHULLER, *supra* note 10, at 25 ("A pattern seems to have emerged in

to the *Guiding Principles* under which the displaced are said to have the right to “move throughout freely in and out of camps or other settlements,”¹⁰⁰ and “the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.”¹⁰¹

ii. Water

In addition to inadequate and counterproductive food distribution methods, water distribution was ineffective and failed to fulfill Principle 18(2)(a), which provides that, “at the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to [. . .] potable water.”¹⁰² The LAMP studies demonstrate at least two issues surrounding water relief efforts. First, the water was distributed unevenly.¹⁰³ Second, distribution methods failed to ensure safe access to potable water.¹⁰⁴

Out of the six camps surveyed, three camps reported receiving water from outside aid organizations.¹⁰⁵ Among those, only 35% of families reported being provided with drinking water.¹⁰⁶ Thus, while some camps received water from aid organizations, the water was distributed unevenly.

NGOs also failed to distribute water in a way that ensured those most in need of water received it. Residents reported that only those in good health were able to access water.¹⁰⁷ Thus, the strong could

which residents are first cut off of services.”). Aid is withdrawn as a means to pressure the displaced people to leave, a practice that is in direct contrast to Principle 8 of the *Guiding Principles*. EIGHT MONTHS, *supra* note 2, at 20-21.

100. *Guiding Principles*, *supra* note 54, Principle 14(2).

101. *Id.* at Principle 15(d).

102. *Id.* at Principle 18(2)(a).

103. *See* ONE YEAR, *supra* note 2, at 6.

104. *See* NEGLECT, *supra* note 2, at 29; EIGHT MONTHS, *supra* note 2, at 8-9.

105. *See* NEGLECT, *supra* note 2, at 15, 22, 29.

106. *Id.* at 15.

107. *Id.* at 18. Because only those who are strong can access the water, this violates Principle 18, which states that competent authorities shall provide internally displaced persons with the aforementioned resources without discrimination. *Guiding Principles*, *supra* note 54, Principle 18.

receive water, but those who needed water the most—the weak and dehydrated—could not.¹⁰⁸ For those who were fortunate enough to receive water from relief agencies, they discovered the water tended to be of low quality.¹⁰⁹

Residents also reported receiving water in two other forms: from “pipes” and from public water pumps.¹¹⁰ Initially, these appear to be viable methods of issuing water. However, further scrutiny reveals these methods are problematic for two reasons. First, it is dangerous for women and children, the traditional water carriers in Haiti, to collect water without accompaniment.¹¹¹ Second, the water from the pumps and pipes comes from the ground, a highly contaminated area.¹¹²

Six months after the earthquake, with approximately “44% of families primarily [drinking] untreated water,” conditions had not improved.¹¹³ A year after the earthquake, and a few months after the cholera outbreak, researchers discovered that, out of the thirty-seven families they were able to relocate, only 13% of families reported receiving potable water.¹¹⁴ Due to aid organizations’ failure to provide potable water and many families’ inability to afford treated water, numerous families resorted to drinking non-potable water.¹¹⁵

108. See NEGLECT, *supra* note 2, at 18. Because weakness is a symptom of dehydration, it seems reasonable to suggest that those most in need of the water are not receiving it.

109. *Id.* at 15. A high percentage of water was described by residents as “lou” or “heavy water that stuck in their chest all day.” *Id.* The water was said to “goute lame a” or “taste like the sea.” *Id.* Many used this water only to bathe and wash clothes, and were forced to buy palatable drinking water. *Id.*

110. *Id.* at 18.

111. EIGHT MONTHS, *supra* note 2, at 9 (“In Parc La Couronne, one family stated, ‘[i]t is not safe for women or children to go collect water alone. They are bothered and picked on.’”).

112. SCHULLER, *supra* note 10, at 12 (“Carrefour is blessed with many little springs. But the problem is that they are running under the destroyed houses and the decomposing bodies.”). The tendency of people to defecate on the ground also increases the likelihood of the water being contaminated. *Id.*

113. ONE YEAR, *supra* note 2, at 6.

114. *Id.* at 8.

115. *Id.* at 4; EIGHT MONTHS, *supra* note 2, at 27.

iii. Sanitation

Principle 18(2)(d) of the *Guiding Principles* states, “at the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to: . . . sanitation”¹¹⁶ Unfortunately, the studies revealed a failure to provide displaced populations with sanitation resources, an inability to anticipate the onset of subsequent sanitation issues, and a failure to maintain sanitation in the camps. Many IDPs had no access to bathing facilities or toilets; when residents did have access to toilets, the toilets were too dirty for use, not gender-specific, and unsafe.¹¹⁷ Further, agencies failed to disperse additional, standard resources—such as toilet paper and soap—that were necessary to ensure the long-term cleanliness and sanitation of the latrines they installed.¹¹⁸

While some agencies provided sanitation resources to camp residents, the agencies did so without considering how to implement sustainable relief projects. For example, the French Red Cross built latrines in some of the camps; however, these latrines were ineffective in at least three respects. First, there were over 17,000 men, women, and children in the camp, yet only four latrines were built.¹¹⁹ Second, the holes dug for the latrines were too shallow and filled up rapidly.¹²⁰ Third, latrine occupants were afforded minimal privacy because the four walls constituting the “stall” were mere tarps.¹²¹

Based on the inadequate, non-anticipatory measures taken to maintain the cleanliness of these facilities, the latrines evolved into revolting, unsanitary structures.¹²² As a result, camp residents started

116. *Guiding Principles*, *supra* note 54, Principle 18(2)(d).

117. *See generally* NEGLECT, *supra* note 2; EIGHT MONTHS, *supra* note 2, at 11.

118. *See* NEGLECT, *supra* note 2, at 22; SCHULLER, *supra* note 10, at 10-11; ONE YEAR, *supra* note 2, at 7.

119. NEGLECT, *supra* note 2, at 15.

120. *Id.*

121. *Id.*

122. *See* ONE YEAR, *supra* note 2, at 7; SCHULLER, *supra* note 10, at 10-11. Exacerbating this problem was the high number of people using each toilet. In the Port-au-Prince area, the average was 273 people per toilet. *Id.* at 11.

to urinate and defecate “near their shelters, on the ground, in buckets, or in plastic bags.”¹²³ Given that more than half of population surveyed reported they had no access to bathing facilities whatsoever, the sanitation concerns are especially alarming.¹²⁴

More than six months after the earthquake, the sanitation conditions had yet to improve.¹²⁵ A year after the earthquake, many residents were without soap, hundreds of residents still shared a small number of latrines,¹²⁶ and many IDPs were forced to sleep on the ground.¹²⁷ The unsanitary conditions present in the camps have had grave implications, such as providing a breeding ground for diseases like cholera.¹²⁸

iv. Safe and Adequate Housing

Principle 18(2)(b) requires that IDPs be ensured safe access to basic shelter and housing. Alarming, most Haitians reported never receiving sheltering materials from relief agencies.¹²⁹ Thus, this principle was not satisfied.

In some of the camps surveyed, agencies such as the Red Cross failed to distribute sheltering materials in a manner that ensured those most in need of supplies would get them.¹³⁰ Rather, agencies distributed these materials from cargo trucks in a sporadic,

123. NEGLECT, *supra* note 2, at 15.

124. *Id.*

125. *See* EIGHT MONTHS, *supra* note 2, at 10-11.

126. ONE YEAR, *supra* note 2, at 7. Respondents felt the toilets were unclean, unsafe, and overcrowded. *Id.*

127. *Haitians Facing 'Intolerable Breach of Human Dignity,'* DOCTORS WITHOUT BORDERS (Mar. 4, 2010), <http://www.doctorswithoutborders.org/news/article.cfm?id=4297>.

128. *See UN Press Conference By Deputy Special Representative on Situation in Haiti*, U.N., (Nov. 15, 2010), http://www.un.org/News/News/briefings/docs/2010/01115_Fisher.doc.htm.

129. NEGLECT, *supra* note 2, at 14, 22. The housing conditions following the disaster were particularly alarming. Approximately one-third of the people surveyed reported living in the open air and having no tarp or tent under which to sleep. *Id.* at 18. Other IDPs lived in make-shift shelters constructed out of twigs, wood, bed sheets, and tarps. *Id.*

130. *Id.*

unorganized manner. As a result, only those physically capable of maneuvering through the crowd to reach the back of the truck received supplies.¹³¹ This distribution method contradicts certain provisions of the *Guiding Principles* that: (1) prohibit aid from being dispersed in a discriminatory manner;¹³² (2) indicate that “displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected”;¹³³ and (3) indicate that “internally displaced persons, whether or not their liberty has been restricted,” shall be protected against rape, gender violence, and any form of indecent assault.”¹³⁴

Six months after the earthquake, “78% of families lived without enclosed shelter.”¹³⁵ One year after the earthquake, families still lacked sturdy housing and could not return to their former homes because their homes had been destroyed and not yet rebuilt.¹³⁶ Alarming, “40% [of IDPs] had been threatened with forced eviction since the earthquake,” despite having no place to go.¹³⁷

v. *Health and Medical Care*

Pursuant to Principle 18(2)(d), “at the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to . . .

131. *See id.* at 14.

132. *Guiding Principles*, *supra* note 54, Principle 18(2). If only the strong can obtain the materials for shelter, then the weak are left to fend for themselves. If aid is not distributed in a manner that takes these individuals’ needs into account, efforts to rebuild will be stunted from the outset, as a majority of the population is still in the recovery phase and remains unable to even attempt to rebuild. Addressing the needs of these people is important to the future success of Haiti, as failing to supply them with necessary resources prolongs their fragile state and continued presence in the displacement camps.

133. *Guiding Principles*, *supra* note 54, Principle 8.

134. *Id.* at Principle 11(2)(a). For an overview of the types of indecent assault against women that occurred in some camps, see *Frontline*, *supra* note 11, at 6:15.

135. EIGHT MONTHS, *supra* note 2, at 12.

136. ONE YEAR, *supra* note 2, at 4.

137. *Id.* (“The UN estimated in September 2010 that 29% of 1,268 camps studied had been closed forcibly, meaning the often violent relocation of tens of thousands of people.”).

essential medical services.” Although numerous aid organizations provided medical services to residents, efforts were not coordinated.¹³⁸ Lack of foresight and coordination exacerbated the likelihood that disease and sickness would spread, and six months after the earthquake, “there were 245 independently listed health problems among 45 families.”¹³⁹ One year later, Haitians battled a cholera outbreak,¹⁴⁰ and healthcare efforts had yet to significantly improve.¹⁴¹ Some families delayed addressing their medical needs because they could not wait in the long lines outside of medical clinics.¹⁴²

vi. Education

In December 2009, a month before the earthquake hit Haiti, half of all school-aged children were not in school.¹⁴³ The earthquake, which either damaged or destroyed 90% of Port-Au-Prince's schools, exacerbated the problems associated with establishing a strong education system in Haiti.¹⁴⁴ Article 32.1 of Haiti's Constitution guarantees a right to education.¹⁴⁵ Under Principle 23(4), “[e]ducation and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.” Yet, out of the 600,000

138. *The Quake*, *supra* note 94. For example, in the second week of the earthquake, while supplies and materials for amputations had arrived, there was a shortage of other necessary supplies like pain killers to give patients once they were in post-operative care. *Id.* In addition, agencies failed to coordinate and prioritize their flights effectively: “television reporters landed before doctors, shoes and clothing before bandages.” *Id.* at 25:43-25:48.

139. EIGHT MONTHS, *supra* note 2, at 16. Camp residents reported suffering from illnesses including influenza, malaria, diarrhea or digestive illness, eye illnesses, aches and pains, stress-related illnesses, heart conditions, general infections, vaginal infection, and respiratory issues. NEGLECT, *supra* note 2, at 9.

140. See *UN Press Conference By Deputy Special Representative on Situation in Haiti*, *supra* note 128.

141. ONE YEAR, *supra* note 2, at 1.

142. See NEGLECT, *supra* note 2, at 19.

143. *Paul Farmer Examines Haiti 'After the Earthquake,' supra* note 70.

144. *The Quake*, *supra* note 94, at approximately 10:00.

145. SCHULLER, *supra* note 10, at 16.

children who lived in the camps in the summer of 2010,¹⁴⁶ many of them were not back in school;¹⁴⁷ “according to UN staff, the government issued a decree forbidding schools from being built within the camps.”¹⁴⁸

Six months after the earthquake, despite the need for schools and the *Guiding Principles*’ promotion of education for IDPs, the majority of children were still not in school.¹⁴⁹ This is problematic because education is a critical component of promoting awareness of risks associated with disasters; it also equips Haitians with skills that complement disaster relief efforts, helping to prevent the onset of subsequent, preventable disasters.¹⁵⁰

vii. Participation

Participation of local groups in the rebuilding process is another critical aspect of the *Guiding Principles*.¹⁵¹ While the NGOs helped

146. *Id.* at 15.

147. Out of the six camps surveyed, families in each camp had children who were no longer able to attend school. *Id.* at 14 (“[U]p to 40% of schools could not re-open because of the extent of the damage to physical buildings and the deaths of school personnel . . .”).

148. *Id.* at 15.

149. EIGHT MONTHS, *supra* note 2, at 25 (“[Twenty-eight percent] of families had school-aged children under 18 who did not attend school . . .”).

150. Current efforts are reaction-based rather than proactive-based. More NGOs should follow PIH’s methodology in developing a sustainable education system in the field of engineering *before* disaster strikes. For example, an agency could implement an educational program that seeks to educate people about architecture and how to build earthquake-resistant structures. See Julie Satow, *Born of 9/11, an Effort to Rebuild Shattered Haiti*, N.Y. TIMES (Mar. 2, 2011), <http://www.nytimes.com/2011/03/02/realestate/commercial/02haiti.html?pagewanted=all>. While the Haitian government has ultimate authority over education in Haiti, some NGOs have worked to establish schools in Haiti throughout the years. See *Haiti Recovery*, UNICEF, <http://www.unicefusa.org/work/emergencies/Haiti/> (last visited Oct. 19, 2011). Similar to UNICEF, other organizations should work with the local government to reinforce the public education system. For an analogous situation where NGOs were encouraged and required to work with a country’s local government to help the country recover from a state of complete disaster, see Paul Farmer’s discussion on Rwanda in *Paul Farmer Examines Haiti ‘After the Earthquake,’ supra* note 70.

151. *Guiding Principles, supra* note 54, Principle 18.

distribute relief materials, the manner of distribution has impeded the Haitians' ability to build back better themselves, as NGOs have continually excluded local grassroots groups from their recovery efforts.¹⁵²

B. Survey Examining the Impact of NGOs on Human Rights for Port-au-Prince's Internally Displaced People

Through quantitative and qualitative surveys, researchers from York College and a professor at the Faculté d'Ethnologie, Université d'État d'Haïti, gathered valuable information from camp residents about the "conditions and services within the camps" and "residents' level of understanding and involvement in the camp committees."¹⁵³ Researchers' interviews with committee representatives helped to further elucidate the issues individuals living in camps currently face.¹⁵⁴

According to the research, physical conditions in the camps make it impossible for residents to sleep, bathe in privacy, and keep important personal effects like voter identification cards, birth certificates, and marriage licenses dry, intact, and safe.¹⁵⁵ The camps lack proper drainage systems, proper sanitation, an appropriate

152. This top-down instead of bottom-up approach is problematic because Haitians' continued exclusion from the relief efforts fosters a sense of dependency and immobility, both of which impede the nation's attempts to "build back better." See SCHULLER, *supra* note 10, at 27-30 (offering an example of NGOs' failure to help assist Haitian grass-root initiatives l'Étoile Brillant (Shining Star) and Men Nan Men (Hand in Hand). This practice is also inconsistent with the *Guiding Principles*. See *Guiding Principles*, *supra* note 54, Principle 28(2).

153. SCHULLER, *supra* note 10, (Executive Summary).

154. *Id.* at 18-19. Researchers conducted two surveys approximately six months after the earthquake; the third survey was conducted one year after the earthquake. *Id.* The study revealed four factors associated with the patterns in the gaps in services: (1) presence of NGO Camp Management agencies, (2) municipality, (3) size of the camp, and (4) the ownership of the land on which the camp sits. *Id.* While an analysis of these differences is warranted, space does not permit such an analysis. In general, it is important to note that the location of the camp seemed to influence whether or not the camp received aid. Those camps farther away from Port-au-Prince received fewer resources, if any at all, but camps in and around Port-au-Prince did receive aid. *Id.*

155. *Id.* at 10.

number of toilets, and gender-segregated toilets.¹⁵⁶ Rashes are also common because tents trap the heat.¹⁵⁷

The York College study also outlined two key security issues—gender-based violence and forced eviction.¹⁵⁸ These findings confirmed the issues highlighted in the LAMP studies. It also emphasized that coordination of relief efforts is a central concern.¹⁵⁹ When paired with uncoordinated relief efforts, the existence of gender-based violence, forced evictions, low levels of participation, and aid dependency suggest response policy should change. Current policy has failed to both effectively address the rights of the IDPs and mobilize them, thus preventing IDPs from having the capacity to move beyond a state of disaster and into a period of recovery.¹⁶⁰

The rights of the internally displaced people in Haiti should be addressed, and current efforts to help the internally displaced in the wake of a natural disaster need to be evaluated and supplemented.¹⁶¹ The time is now to rethink current policy approaches aimed to assist internally displaced persons.¹⁶²

156. *Id.* at 10-11.

157. *Id.* at 10.

158. *Id.* at 22-23.

159. For example, “residents mentioned that NGOs had talked about installing a water system but seven months after the earthquake, it still had yet to materialize. According to Valerie Kaussen who investigated the situation, most of the problem lies in the fact that two NGOs, Solidarite and World Vision International, had begun to work in the camp at the same time, so each assumed the other would finish the project.” *Id.* at 12.

160. *See id.*; EIGHT MONTHS, *supra* note 2; Randal C. Archibold, *Haitians Forced Out of Tents to Homes Just as Precarious*, N.Y. TIMES (Apr. 24, 2011), http://www.nytimes.com/2011/04/24/world/americas/24haiti.html?_r=1.

161. With global warming and other environmental disasters prompting exodus from other nations, the development of a comprehensive plan to address the plight of those who are displaced as a result of environmental factors is becoming increasingly necessary. *See* Rep. of the U.N. High Comm’r for Refugees, U.N. Doc. A/65/12, at 8; GAOR, 65th Sess., Supp. No. 12 (Oct. 7, 2010). For example, in Japan, thousands of people displaced struggled to find places to live nearly a month after the March 11, 2011 earthquake and subsequent tsunami. Kumiko Makihara, Op-Ed., *A Month After the Shock, a Different Japan*, N.Y. TIMES (Apr. 13, 2011), <http://www.nytimes.com/2011/04/14/opinion/14ihtedmakihara14.html?ref=japan>.

162. With the United States of America approximately 700 miles northwest of

V. A NEW POLICY APPROACH AND FORECASTING ITS IMPLICATIONS

A. A New Policy Approach

Various changes could be made to improve the quality of relief efforts by addressing the needs of the internally displaced in the wake of natural disasters.¹⁶³ First, coordination of relief efforts and the logistics of its distribution can be improved.¹⁶⁴ Second, relief

the small island, America becomes an increasingly desirable place where people, still homeless more than a year after the earthquake, might choose to flee. *See Magnitude 7.0 – Haiti Region*, USGS (Jan. 12, 2010), <http://earthquake.usgs.gov/earthquakes/recenteqsww/Quakes/us2010rja6.php>. The risk of these potential repercussions becoming realities should further motivate members of the international community to more effectively address the issues that accompany natural disasters' capacity to forcibly displace thousands of people from their homes.

163. *See* NEGLECT, *supra* note 2, at 31.

164. In 1991, the General Assembly requested the United Nations "establish a central register of all specialized personnel and teams of technical specialists, as well as relief supplies, equipment and services available within the United Nations system and from Governments and intergovernmental and non-governmental organizations, that can be called upon at short notice by the United Nations." G.A. Res. 47/1, ¶ 27, U.N. Doc. A/RES/46/182 (Dec. 19, 1991). In response to this, the OCHA established a Central Register of Disaster Management Capacities as an operational tool to support the United Nations system and the international community as a whole in their efforts to ensure expeditious delivery of the required humanitarian emergency assistance. *Introduction to the OCHA Central Register*, OCHA, <http://ocha.unog.ch/cr/> (last visited Nov. 9, 2011). The Central Register includes five directories of specific disaster management assets: (1) Search and Rescue Directory; (2) Military and Civil Defense Assets Directory; (3) Emergency Stockpiles of Disaster Relief Items; (4) Rosters of Disaster Management Expertise; and (5) Advanced Technologies for Disaster Response Directory. *Id.* The registry also includes three directories of contact persons: (1) National Focal Points and Legislation for Customs Facilitation in International Humanitarian Emergency Assistance; (2) Contact Points for Disaster Response; and (3) Major Donors of Emergency Humanitarian Assistance. *Id.* While this registry lists the resources available, it lacks the critical link between what the victims of the disaster know they need and what the international community thinks they need. This comment suggests the website could be improved to allow victims of a natural disaster to have a say in what items they need. U.N. policymakers should look to Disaster Relief Australia's registry as a model for an international registry. Lisa Banks, *Online Registry Launched to Help Queensland Flood Victims: Disaster Relief Australia Continues Legacy of Victorian Bushfire Appeal*, COMPUTERWORLD (Jan. 13, 2011, 2:54 PM), http://www.computerworld.com.au/article/373305/online_registry_

agencies should be required to provide aid in a manner that complies with the *Guiding Principles*. Third, relief agencies' efforts should be anticipatory and sustainable. Fourth, IDPs' access to education and jobs in the wake of natural disaster could be improved, thus fostering their mobility, which is an essential factor in the long-term goal of ending their displacement.¹⁶⁵

While each of these proposed changes is important to "build back better," the four proposed changes are divided into two categories: primary concerns and secondary concerns. The primary concerns focus on coordinating relief efforts from the outset to provide disaster victims with quick, appropriate, and efficient relief. The secondary concerns focus on helping displaced populations move from a state of disaster into a state of prolonged, sustainable recovery by reinforcing the local and public operations of the government. These two categories of concerns complement one another, and, in the aggregate, would help create an environment that is more conducive to a successful recovery in the aftermath of a natural disaster.

i. Primary Concerns

1. Coordination of Relief Efforts and Logistics of Distribution

Aid logistics can be improved in three ways. First, the U.N. could make improvements to advance the productivity of OCHA's current Global Disaster Alert and Coordination System (GDACS).¹⁶⁶ For example, in addition to the tabs which already appear on the website, a new tab titled, "international natural disaster relief registry" (INDRR) should be created.¹⁶⁷ The INDRR homepage would list each country

launched_help_queensland_flood_victims/.

165. See generally SCHULLER, *supra* note 10.

166. GLOBAL DISASTER ALERT AND COORDINATION SYSTEM, <http://www.gdacs.org/> (last visited Nov. 16, 2011) ("The Global Disaster Alert and Coordination System provides near real-time alerts about natural disasters around the world and tools to facilitate response coordination, including media monitoring, map catalogues and Virtual On-Site Operations Coordination Centre.").

167. While the GDACS currently has a "Coordination" tab which links users to its Virtual On-Site Operations Coordination Centre (VOSOCC), the VOSOCC does not rely on the participation of the actual victims of the environmental disaster. "The Virtual OSOCC is a platform for information exchange restricted to disaster

in hyperlink format, which would allow users to view that country's profile. Each country's profile would outline the country's geographical location, terrain, annual climate, and the types of disasters to which it is prone. Based on the country's profile and its level of disaster risk, the country's government, along with its residents, would create a registry (analogous to a bridal or baby registry) listing the materials and types of services they anticipate needing if and when a disaster strikes.¹⁶⁸ The country would submit its list to the U.N. for approval.¹⁶⁹ Based upon the U.N.'s review of the list, the list would either be approved and uploaded onto the online registry, or rejected and returned to the country with a list of issues needing revision. The country could then revise and resubmit its registry. Once the country's registry is approved, it would be uploaded to the online database.

In a disaster situation, the INDRR would operate as follows. First, upon learning that a country has been hit by a natural disaster, NGOs would go to OCHA's current GDACS, click on the INDRR tab, log in to the registry to view that country's registry profile, view that country's itemized registry, and click on the items and services it intends to provide the disaster stricken area.¹⁷⁰ The registry would

managers in governments and NGOs that deal with international disaster response. In general, representatives from media and interested individuals are not provided with user-accounts." *Virtual OSOCC*, HUMANITARIAN INFORMATION MANAGEMENT (Oct. 19, 2007), <http://phpeace.qwarx.com/huminman.net/virtualosocc>. Because staff members are given login information as they are deployed, this system seems more reactive than proactive.

168. Under Principle 28 of the *Guiding Principles*, "[s]pecial efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration." *Guiding Principles*, *supra* note 54, Principle 28(2). The LAMP studies, however, revealed a lack of participation by the local people in aid relief efforts. "People are not consulted about their needs." EIGHT MONTHS, *supra* note 2, at 2. The proposed registry system would help remedy this situation, as it would increase the level of participation among the native people both before the disaster and at the onset of the disaster. Upon signaling the U.N. to the types of resources it anticipates needing in a time of disaster, the U.N. can start seeking out the necessary items and services.

169. Certain things the U.N. would look out for: adequate supplies for all areas of need, frivolous requests, needs that are unique to the geographical and cultural nature of the country, etc.

170. See Lisa Banks, *supra* note 161 (explaining an analogous, domestic

improve coordination amongst NGOs by tracking and documenting which materials NGOs intend to provide. It would also provide local residents with a chance to participate in the disaster relief planning process, a requirement of the *Guiding Principles*. Finally, the registry would operate on a real-time basis, and throughout the disaster relief process, NGOs would document their inventory and update the registry accordingly.

To promote the transparency of NGOs, the registry should also be made public. If made public, donors could go online and select the exact items they would like to donate to relief efforts. This would allow donors to know precisely what their money is buying, as opposed to the current practice of blindly giving money to NGOs. Furthermore, if donors perceive they have more control over the money and resources they donate, this could lead to an increase in disaster relief donations, which could help increase the effectiveness of relief efforts. Agencies would still be permitted to solicit general monetary donations as well, though donors would have the power to direct their money to specific funds of their choice.¹⁷¹

2. *Requiring Relief Agencies to Comply with the Guiding Principles*

To increase the accountability of NGOs and to help promote the implementation of sustainable relief efforts, NGOs should be required to comply with the *Guiding Principles* when administering aid. The improvement to the OCHA's website suggested above would provide an opportunity to incorporate a contractual agreement between the U.N. and NGOs. For example, upon clicking and confirming its selection of the item and/or service from the list, the NGO would enter into a contractual relationship with the U.N. (the organization that would oversee the registry), such that the NGO would be accepting the duty to provide these items and/or services in a manner that is consistent with, and in furtherance of, the *Guiding Principles*. A breach of this duty would result in sanctions imposed by the U.N.

system that was launched in Australia after the Queensland flood).

171. Donors would be able to choose from specific categories of funds, including, but not limited to, Education, Cash-for-Work Programs, Infrastructure, Rubble Removal, Apparel, Sanitation, Water, etc.

In addition to the contractual relationship which the NGOs enter via the online transaction (i.e., a contractual promise to provide those materials), other changes could be made to ensure NGOs offer assistance in compliance with the *Guiding Principles*. For example, NGOs could be required to sign written contracts with the U.N. before they enter a disaster-stricken country. The contract should contain terms outlining the NGO's duty to comply with the *Guiding Principles* and the consequences if an NGO breaches its duty. By imposing requirements on NGOs and implementing disciplinary enforcement mechanisms, this could deter NGOs from providing help that is not conducive to the situation, and would make the agencies more accountable.

Critics of this formal arrangement may argue it will deter NGOs from participating in relief efforts out of fear they will be "punished" by meritless complaints about inadequate services. However, this mechanism will serve to keep the right NGOs in the country and the wrong ones out. This process could also be criticized for consuming time, something which is of the essence after a natural disaster. To account for this, the contracts would be formed in advance as part of the requirements the agency must fulfill when applying for consultative status with the U.N.¹⁷² Under this method, the initial writing would be the formal contractual relationship between the U.N. and the NGO—in exchange for the U.N. granting it consultative status—would accept the duty to adhere to the *Guiding Principles*. Then, when disaster strikes and an NGO chooses to assist a country listed on the registry, the U.N. would issue the NGO an informal reminder of the previously agreed upon contract. This would put the NGO on notice of its duty and hold the NGO more accountable—without slowing down relief efforts. NGOs should also be subject to a

172. See *NGO Related Frequently Asked Questions*, UNITED NATIONS, <https://www.un.org/esa/coordination/ngo/faq.htm> (last visited Nov. 15, 2011) (explaining that certain NGOs can apply for consultative status with the Economic and Social Council (ECOSOC) of the United Nations). Attaining consultative status allows the agency to engage in a collaborative working relationship with the U.N., and "[s]ometimes, as advocacy groups, they espouse UN themes, implementing plans of action, programmes and declarations adopted by the United Nations." *Id.*; see also *How to Apply for Consultative Status*, UNITED NATIONS, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, <http://esonet.org/?menu=83> (last visited Nov. 15, 2011) (explaining the application process).

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more thorough, annual evaluation as opposed to the current quadrennial report model,¹⁷³ as increased monitoring of the NGOs would also contribute to this model's success.

An alternative approach to mandating compliance would be to confer a special status on NGOs that have contractually agreed to adhere to the *Guiding Principles*.

Analogous to commercial websites that display the "VeriSign Trust" symbol, the U.N. could design a symbol for organizations that have contractually agreed to comply with the *Principles*.¹⁷⁴ Organizations that have promised compliance would receive special acknowledgement, and a symbol would appear next to the organization's title on the website to inform donors whether the NGO adheres to the *Guiding Principles*. By promoting consumer awareness of the *Principles* and the organizations that have promised compliance, more people will likely donate to organizations with U.N. trusted status than to those without it.¹⁷⁵ Eventually, this could indirectly result in all organizations promising compliance, as donors' tendencies to donate to trusted organizations would likely motivate NGOs to obtain trusted status to stay competitive.

173. See *Submitting your Quadrennial Report*, UNITED NATIONS, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, <http://csonet.org/?menu=85> (last visited Nov. 15, 2011) (discussing the guidelines and requirements for NGOs submitting their Quadrennial Reports). Currently, only NGOs in general or special consultative status with the ECOSOC need to submit reports to the Committee on NGOs. *Id.* Changes to this policy could also be made, such that all NGOs in consultative status with the U.N., including those in the roster category of consultative status, are required to submit quadrennial reports. This change could help ensure that all NGOs are held to the same standard.

174. *Secure Site Pro with EV*, VERISIGN, <http://www.verisign.com/ssl/buy-ssl-certificates/extended-validation-pro-ssl-certificates/index.html?tid=hp-banner> (last visited Sept. 10, 2011).

175. Analogous to how the VeriSign seal on websites helps attract more customers to businesses' websites and gives customers more confidence to complete online transactions, the U.N. could create a *Guiding Principles* Trusted seal, confer that status upon qualifying organizations, which, in turn, would encourage people to donate to the organizations with this special status. See *id.*

3. *Anticipatory and Sustainable Relief Efforts*

To improve the quality of post-disaster relief efforts, organizations must anticipate subsequent, foreseeable risks, and provide sustainable relief only. While the INDRR would take into account coordination from the outset of the disaster by documenting what supplies each agency is bringing, the INDRR would also need to anticipate the distribution of aid in a manner that is conducive to the overall rebuilding process. For example, rather than having agencies arrive in the area where the disaster struck, the aid agencies need to be dispersed to foster decentralization and movement away from the disaster zone. With this in mind, the INDRR would be created in combination with a grid distribution system.

Establishing a grid system with coordinates for aid distribution would help improve aid distribution processes. When relief agencies send out their agents, workers, and volunteers, there should be a master grid to which they look and send people to the necessary locations. Each square in the grid would represent an area in the country and each should have a certain ratio of NGO leaders from a variety of groups (health, education, clean water, home builders, etc.) to a certain number of Haitians.¹⁷⁶ Under this model, the NGO leaders would be required, as part of the contract, to engage in teaching relationships with the people and help teach them the skills they need to sustain themselves.¹⁷⁷ The grid system would also effectively

176. OCHA's current response approach, known as the Cluster Approach, seeks to implement a similar idea and aims to: (1) "ensure sufficient global capacity"; (2) "ensure predictable leadership"; (3) "strengthen accountability"; and (4) "improve strategic field-level coordination and prioritization." *Cluster Approach*, ONE RESPONSE, <http://onerresponse.info/Coordination/ClusterApproach/Pages/Cluster%20Approach.aspx> (last visited Nov. 4, 2011). The cluster approach is designed around the concept of partnerships between U.N. agencies, international organizations, and NGOs. Key sectors of the response cluster approach include: (1) logistics; (2) nutrition; (3) emergency shelter; (4) camp management and coordination; (5) health; (6) protection; (7) agriculture; (8) emergency telecommunication; (9) early recovery; (10) education; and (11) sanitation, water, and hygiene. See *How are Disaster Relief Efforts Organized?*, OCHA, <http://business.un.org/en/assets/39c87a78-fec9-402e-a434-2c355f24e4f4.pdf> (last visited Nov. 5, 2011). As seen in Haiti, however, this approach must be modified and supplemented to be more effective.

177. See *The PIH Model of Care*, *supra* note 75. Analogous to PIH's

utilize the country's geographical arrangement in the distribution of aid. For example, in efforts to decentralize the population away from the densely crowded, disaster-stricken area, aid would be disbursed in a way that would draw people out of the congested area. While evacuating people from disaster areas is currently not encouraged, "unless the safety and health of those affected requires their evacuation,"¹⁷⁸ recent natural disasters reveal evacuation as an increasingly viable and necessary option.¹⁷⁹ Thus, when there is a disaster of great magnitude, people should be required, if possible, to evacuate the area in order for rubble removal to take place. As people are leaving the disaster-stricken area, they should receive new identification cards.¹⁸⁰ Each camp should have a registry of all of its residents and an orientation period where residents draft the rules of the camps, devise the consequences for violating the rules, nominate certain people to run for the camp coordinator position, and then hold elections.¹⁸¹

While having the registry and grid system would help improve coordination from the onset of the disaster, it is equally important to improve the quality of sustainable relief efforts aimed to better assist displaced populations in the wake of natural disaster. For example, establishing reverse osmosis machines and composting toilets before disaster strikes could help mitigate the high need for relief agencies to enter the country in the immediate aftermath of the disaster, when,

principles of "community partnerships" and "serving the poor through the public sector," the term "teaching relationships" refers to collaborative relationships with local ministries and residents to help victims of natural disaster move from a state of disaster and into a sustainable period of recovery. For an analogous situation where a country faced immense obstacles to rebuild a nation, see Paul Farmer's discussion on Rwanda in *Paul Farmer Examines Haiti 'After the Earthquake,' supra* note 70.

178. *Guiding Principles, supra* note 54, Principles 6(1), 6(2)(d).

179. Instead of discouraging evacuation, the *Guiding Principles* should encourage and/or mandate evacuation of victims to areas that are safer and more resistant to subsequent disasters that could strike and arise as a result of the initial disaster. See Matthew Wald, *Japan Orders Evacuation Near 2nd Nuclear Plant*, N.Y. TIMES (Mar. 12, 2011), <http://www.nytimes.com/2011/03/12/world/asia/12nuclear.html>.

180. SCHULLER, *supra* note 10, at 10, 27.

181. *See id.*

because of the disaster's destruction, relief agencies may be unable to reach the site of disaster.¹⁸²

ii. Secondary Concerns

1. Fostering Mobility through Education and Cash for Work Programs

Even prior to the earthquake, Haitians suffered from severe poverty, which is often correlated with a host of other problems, including child trafficking, sexual abuse, and violence.¹⁸³ The earthquake further exacerbated the impoverished conditions in Haiti, leading to an increase in child trafficking, sexual abuse, and violence.¹⁸⁴ To keep children off the rubble-filled, chaotic streets in the wake of a natural disaster, post-disaster relief efforts should focus on implementing cash for education programs. These programs would help: (1) incentivize families to send their children and teenagers to school; (2) create income for families; (3) keep children off the streets; and (4) foster the development of human capital among Haitian children.¹⁸⁵

182. See ONE YEAR, *supra* note 1, at 6; Nicholas D. Kristof, *Haiti, Nearly a Year Later*, N.Y. TIMES (Dec. 2, 2010), <http://www.nytimes.com/2010/12/02/opinion/02kristof.html>.

183. See UNESCO, *Human Trafficking in Mozambique: Root Causes and Recommendations* 13, 31 (Policy Paper No. 14.1E) (2006), available at <http://unesdoc.unesco.org/images/0014/001478/147846e.pdf>.

184. Eve Blossom, *Haiti: Human Trafficking on the Rise after Earthquake*, HUFFINGTON POST (Jan. 26, 2010, 1:06 AM), http://www.huffingtonpost.com/eve-blossom/haiti-human-trafficking-o_b_436412.html. The chaos which followed the earthquake in Haiti no doubt made the job of child traffickers easier. Mike Thomson, *Haiti Earthquake One Year On: the Lost Generation*, BBC NEWS (Jan. 7, 2011), <http://www.bbc.co.uk/news/world-12128349>. For example, "[t]raffickers, wanting to cash in on the chaos, have been buying the children off their desperate parents, and some of them are grabbed in neighbouring Dominican Republic while they are scrounging for food." Oliver Pickup, *Haiti Earthquake Children Sold by their Parents for less than 76p each to Traffickers, say UNICEF*, MAILONLINE (Feb. 22, 2011), <http://www.dailymail.co.uk/news/article-1359152/Haiti-earthquake-children-sold-parents-80-PENCE-traffickers.html>.

185. Orazio Atanasio et al., *Child Education and Work Choices in the Presence of a Conditional Cash Transfer Programme in Rural Colombia* 3 (Inst. For Fiscal Studies, Working Paper No. 06/13) (2008) (explaining the effectiveness of

Under the cash for education framework, parents would receive monetary subsidies if their children attended a certain percentage of school classes.¹⁸⁶ Because parents would earn money for sending their children to school, the parents would not be forced to rely on alternative sources of income. Consequently, parents would be less likely to resort to selling their children into servitude and trafficking rings.¹⁸⁷

Relief efforts aimed to foster the development of human capital among internally displaced persons around the globe should be encouraged, as they can help serve as catalysts for change and social mobility. UNICEF already supports child-friendly schools, a model which revolves around the rights of the child.¹⁸⁸ However, this model lacks the necessary component to motivate school attendance. Modifying UNICEF's current child-friendly school model to supplement it with a cash-for-education component could prove to be effective in helping IDPs, specifically children, by encouraging them to attend school and avoid the dangerous streets. These efforts could be even further supplemented by reinforcing and implementing cash-

Familias en Acción, a conditional cash transfer program implemented in Colombia, in fostering increased school enrollment and attendance, especially among 14- to 17-year-old children), available at <http://www.ifs.org.uk/wps/wp0613.pdf>. As of January 2010, children under eighteen comprised almost half of Haiti's population. Emma Wilkinson, *Haiti Children Face Ongoing Disease and Trauma*, BBC NEWS (Jan. 15, 2010), <http://news.bbc.co.uk/2/hi/health/8461064.stm>. Because children form such a significant part of Haiti's population, it is imperative that they are included in the rebuilding process.

186. This is analogous to most conditional cash transfer programs, including *Familias en Acción*, where parents' receipt of a subsidy was conditioned on their children attending at least 80% of school classes. Attanasio, *supra* note 182, at 6.

187. *Political Agenda for Children*, UNICEF, www.unicef.org/media/files/HaitiPoliticalAgendaEng.doc (last visited Nov. 15, 2011).

188. Pursuant to UNICEF's Child-Friendly School Model, "[s]chools should operate in the best interests of the child; Educational environments must be safe, healthy and protective; Classrooms should be endowed with trained teachers and adequate resources; and within them, children's rights must be protected and their voices must be heard." *Child Friendly Schools*, UNICEF, <http://www.unicefusa.org/work/education/child-friendly-schools/> (last visited Nov. 3, 2011). This child-friendly approach is used in emergencies after disaster. But, as seen with other relief efforts, this approach depends on partnerships with other actors in the international arena, but it fails to depend on partnerships with the disaster victims, the very people they are expected to assist.

for-work programs.¹⁸⁹ All of these initiatives would give IDPs the tools and skills they need to build back better and transcend the disastrous circumstances.

B. Forecasting the Implications of the Proposed Changes

While the *Guiding Principles* have made a significant contribution to this area of law, their non-binding nature has resulted in non-uniform application.¹⁹⁰ This non-binding nature has also unintentionally facilitated countries' and NGOs' non-compliance, as the *Principles* do not provide the affected populations with an effective remedy to address their country's and other groups' failures to comply with the *Guiding Principles*. It is a framework without teeth.¹⁹¹ These proposed changes to current policy and the OCHA's website could provide the *Guiding Principles* instrument with the strength needed to be an effective model. While giving the Haitians a right to address the country's and other organizations' failures to adhere to the *Principles* is a viable option, the changes proposed in this comment hope to prevent the violations from occurring in the first place. Such changes also have the potential to mobilize internally displaced populations by providing them with incentives to help further their interests, their children's interests, and their country's interests.

189. *CHF Cash for Work Programs Helping Haitian Women Get Back on Their Feet*, CHF INTERNATIONAL, <http://chfinternational.org/node/34052> (last visited Nov. 2, 2011).

190. HANDBOOK, *supra* note 4, at 9 ("Being internally displaced, however, is not a legal status. The Guiding Principles offer a descriptive identification of the internally displaced . . . ; they do not confer a special legal status on those displaced. . . . They do, however, have special *needs* by virtue of their displacement. It is for this reason that the Guiding Principles spell out how the law should be interpreted and applied to them. . . . This does not mean that all situations of internal displacement require international attention. If the needs of the internally displaced are met effectively by their governments, the international community need not become involved unless the government itself requests assistance.").

191. While all international organizations and other committees that come in contact with IDPs are encouraged to respect these *Principles*, there are no consequences for their failure to do so. *Id.* at 10.

VI. CONCLUSION

As demonstrated by the response efforts in Haiti, current policies fail to effectively address the rights and needs of IDPs in the wake of a natural disaster and fail to promote sustainability. While the *Guiding Principles* do provide a solid framework for addressing the needs of the displaced, the disconnect between the relief services rendered and the goals of relief organizations must be reconciled, and the current disaster relief policy efforts must be supplemented with other initiatives grounded in sound social policy.

The need for legal provisions to accommodate the distress that arises from natural disasters has become more pressing.¹⁹² Using the Haiti disaster as an object lesson, this comment has proposed a variety of changes to help prevent other disasters from reaching this magnitude of destruction. In addition to reconfiguring and supplementing the U.N.'s current GDACS website, this comment has proposed the following policy changes: increasing participation levels among potential victims of natural disasters and their influence on the aid distribution process, changing the policies surrounding NGOs registering with the U.N., increasing the extent to which NGOs are monitored and evaluated, and requiring NGOs to sign a contract agreeing they will: (1) adhere to the *Guiding Principles*; and (2) only offer programs and disaster relief assistance that will not perpetuate a dependency on aid. These are viable options for change.

In the future, another country will suffer from a natural disaster and its devastating consequences. Before then, however, disaster response efforts must be reconsidered and new plans implemented in order to prevent relief efforts from exacerbating the devastating circumstances and perpetuating a dependency on aid in the wake of disaster. We cannot undo what has happened in Haiti since the

192. See Kumiko Makihara, *supra* note 158 (explaining and elaborating on the implications of the magnitude of disaster in Japan after the 2011 earthquake and subsequent tsunami); Martin Fackler & Matthew L. Wald, *Life in Limbo for Japanese Near Nuclear Plant*, N.Y. TIMES (May 1, 2011), www.nytimes.com/2011/05/02/world/asia/02japan.html (same); Wald, *supra* note 176 (same).

earthquake, but by implementing these suggested policy changes, we can prevent another country from reaching a similar state of humanitarian disaster.

*Sarah E. Jordan**

* J.D. Candidate, California Western School of Law, Spring 2012; B.A. Psychology and Spanish, Bates College, 2009. I would like to thank Professor Kenneth Klein for his valuable insight and feedback throughout the process of writing this comment. Thank you to Colin McDonald and the staff of the *California Western International Law Journal* for all their hard work. I also thank Dr. Paul Farmer, Robert Maguire, and Catherine Maternowska for taking the time to speak with me at the Haiti Stories / Istwa Ayiti Conference at UCLA on January 29, 2011. Finally, thank you to all my friends and family for their unwavering support and encouragement. I dedicate this comment to the people of Haiti.

