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Still Trembling: State Obligation Under International Law to End Post-Earthquake Rape in Haiti

LISA DAVIS*

I. INTRODUCTION

The struggle to end sexual violence in Haiti on the international level started with the visionary work of Professor Rhonda Copelon,¹ founder of the International Women's Human Rights Clinic at the City University of New York (CUNY) School of Law. At the end of 1994, after Haiti suffered from a surge in sexual violence due to political instability, Copelon pulled together a team of organizations, including MADRE, the Center for Constitutional Rights, the law firm of Morrison & Foerster, and others, to strategize on this issue. Together they filed a brief with the Organization of American States (OAS), calling attention to the violence happening in Haiti and to the notion under international law of rape as a form of torture when committed by government actors.

About fifteen years later Haiti suffered yet another surge in sexual violence, but this time due to an earthquake on January 12, 2010.² The

* Lisa Davis is an Adjunct Professor of Law for the International Women's Human Rights Clinic at the City University of New York (CUNY) School of Law and the Human Rights Advocacy Director for MADRE. She received her J.D. from CUNY Law School, where she was Editor-in-Chief of the *New York City Law Review*, and her M.A. in International Policy from American University. For over ten years she has worked as an advocate for human rights and has written extensively on international women's human rights issues. Lisa currently serves as the Coordinator for the Lawyers' Earthquake Response Network Gender Working Group. She is a member of the New York City Bar Association's International Human Rights Committee and the National Lawyers' Guild Working Group on Haiti. The author would like to thank Natashah Lycia Ora Bannan for her editorial assistance and Pierce Suen for his research assistance. This article is dedicated to the courageous women of Haiti living and organizing within the displacement camps. These women are not just rape survivors but survivors in every sense of the word, and any victory we have had as international attorneys working with them on this crisis has been because of their strength and ability to do this work. This article is also dedicated to the memory of Rhonda Copelon whose strategic legal brilliance, unwavering political courage, and deep commitment to a women's human rights vision will forever inspire and guide our work.

1. Rhonda Copelon's extensive work history on this issue included working for over a decade at the Center for Constitutional Rights where she litigated civil rights cases with a focus on women's rights and international human rights including the landmark case of *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), which opened federal courts to international human rights claims. Professor Copelon also cofounded and directed the Legal Secretariat of the Women's Caucus for Gender Justice in the International Criminal Court and served as a legal advisor to the Coalition on Women's Human Rights in Conflict Situations.

2. Although no comprehensive study has been conducted on the growth of post-earthquake sexual violence in Haiti, "snap shot" research that has been conducted demonstrates a sharp

organizations that worked on this issue in 1994—as well as some new partners, including Women’s Link Worldwide and the Institute for Justice and Democracy in Haiti—came together in partnership with Haitian grassroots groups to file a request for precautionary measures with the Inter-American Commission on Human Rights (IACHR or Commission) that was granted at the end of December of 2010.³ Building on their work from before, these lawyers called attention to the notion under international law of rape as a form of torture and this time to the State’s due diligence obligation to end sexual violence committed by private actors.

Natural disasters such as Haiti’s earthquake disproportionately affect women and girls.⁴ Women who are forced live in crowded, poorly lit internally displaced persons (IDP) camps experience a heightened likelihood of exposure to sexual violence or crime simply because they are women.⁵ Women and girls also experience greater vulnerability due to the lack of adequate food and clean water in camps. In many instances they must walk long distances through high-risk areas in order to secure food and water for their children and families.

Prevalent in the media are the egregious and horrifying stories about women victims of sexual violence in Haiti. One woman was kidnapped by five armed men and dragged into a truck. Before raping her, they choked her, forcing her to open her mouth, and one of the men bit off her tongue. She has been able to leave the camp, but her perpetrators remain at large.⁶ A five-year-old was brutally raped and suffered from

increase in sexual violence victims and threat of sexual violence. *See discussion, infra* Part II.B. Post-Earthquake Responses. Additionally, research demonstrates that Haiti is not unique and that throughout the world, after disasters and conflicts, women and children living in internally displaced persons (IDP) camps are especially vulnerable to sexual violence and rape. In the United States, for example, two national crime-victims’ groups reported a drastic increase in the number of rapes perpetrated against storm evacuees after a hurricane severely damaged the city of New Orleans. *See, e.g.,* John Burnett, *More Stories Emerge of Rapes in Post-Katrina Chaos*, NPR (Dec. 21, 2005), <http://www.npr.org/templates/story/story.php?storyId=5063796>.

3. Letter from Santiago A. Canton, Exec. Sec’y, Inter-Am. Comm’n H.R., to Lisa Davis, Esq., Int’l Women’s Human Rights Clinic, City University of New York (CUNY) School of Law, Human Rights Advocacy Dir., MADRE, et al. (Dec. 22, 2010) [hereinafter IACHR Decision Re: Women and Girl Victims in Haiti], *available at* http://www.law.cuny.edu/clinics/clinicalofferings/IWHRC/research/Haiti_Commission_PM_Decision_2010.pdf.

4. *See generally* PAUL FARMER, *PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS, AND THE NEW WAR ON THE POOR* (2003); Interim Haiti Recovery Comm’n, *Haiti Earthquake PDNA: Assessment of Damage, Losses, General and Sectoral Needs* (2010), *available at* <http://www.cirh.ht/sites/ihrc/en/Haiti%20Recovery%20Plan/Documents/PDNA.pdf>; UNICEF, *Children of Haiti: Milestones and Looking Forward at Six Months* (July 2010), http://www.unicef.org/haiti/french/ENG_UNICEF_Haiti_Six_Months_Report_Final_Draft.pdf.

5. *See generally* sources cited *supra* note 4.

6. Request by the International Women’s Human Rights Clinic at the City University of New York School of Law et al. for Precautionary Measures Under Article 25 of the Commission’s Rules of Procedure 5 (Inter-Am. Comm’n H.R. Oct. 19, 2010) [hereinafter Request for

bleeding from vaginal tearing, as well as chronic fever, trouble breathing, stomach pains, and incontinence.⁷ A sixty-year-old grandmother was raped when she tried to intervene in the sexual assault of a young girl.⁸ Also covered by the media are the experiences of women living in displacement camps. Women face a multitude of vulnerable conditions, including sleeping under sheets or tarps, with little security or lighting available, in overly crowded conditions, with few accessible life-sustaining resources nearby.

But what is less covered by the media is how much the courageous women from grassroots organizations, such as KOFIVIV⁹ and FAVILEK¹⁰, who are living and organizing in these camps have done to help those in their communities. KOFIVIV for example not only lost its women's center in the earthquake, but most of its members and leaders lost their homes. After becoming displaced, members immediately started organizing in the camps they found themselves living in.

Haitian grassroots women's groups began creating their own security, including organizing groups of trusted men to take shifts patrolling in camps and accompanying women walking to and from portable toilets, particularly at night. These groups started organizing demonstrations and rallies; holding press conferences; and sharing their stories and experiences of sexual violence, and what it means to live under the threat of such violence, day in and day out, over and over again. Because of their work, Haitian women leaders and human rights defenders living and working in displacement camps have experienced retaliation and fear while sexual violence persists at alarming rates.¹¹

In the wake of disaster, women generally have less access to resources and decision-making processes. Disproportionate vulnerability in times of disaster also exacerbates the consequences of sexual violence, such as disease, disability, and depression. This discrimination makes women and girls more vulnerable to the impact of disasters, including the specific conditions that give rise to sexual violence. Because of this, customary international law calls for the participation of women in post-conflict and post-disaster settings. Specifically, laws call for women's participation in addressing sexual and gender-based violence in IDP camps, including the Inter-American Convention on the

Precautionary Measures] (citation omitted), available at <http://www.law.cuny.edu/news-events/FacultyNews/12705-petition.pdf>.

7. *Id.* (citation omitted).

8. *Id.* (citation omitted).

9. *Komisyon Fanm Viktim Pou Viktim*, or Commission of Women Victims for Victims.

10. *Fanm Viktim, Leve Kanpe*, or Women Victims, Get Up Stand Up.

11. Interview with camp residents in Champs de Mars, Port-au-Prince Haiti (on file with author).

Prevention, Punishment and Eradication of Violence Against Women ("Belém do Pará"),¹² U.N. Security Counsel Resolution 1325,¹³ and the U.N. Guiding Principles on Internal Displacement.¹⁴

Despite these laws, poor women have been excluded from full participation and leadership in the relief effort in Haiti. International law mandates require that a gender perspective be integrated into ongoing discussions and planning. Preventative measures—such as providing lighting, privacy, secure housing and active police presence or other effective security (particularly at night) within the camps—are critically lacking, despite U.N. guidelines that not only highlight the prevalence of rape and other forms of gender-based violence (GBV) in the aftermath of disaster but also provide blueprints for addressing them.¹⁵ Having no other options, Haitian women's grassroots groups have resorted to taking charge of their own safety and security.

To meet its obligations to combat sexual violence and fully implement the Inter-American Commission's binding decision¹⁶ issued in December of 2010, the Government of Haiti needs adequate resources. Yet, much of the funding pledged for Haiti by donor States in March of 2010 has still not been released. Of the money released, a large portion has not yet been spent.¹⁷ Moreover, much of the money delivered has

12. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, *adopted* June 9, 1994, 33 I.L.M. 1534 [hereinafter *Belém do Pará*].

13. S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

14. Representative of the Secretary-General, *Rep. of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) [hereinafter *Guiding Principles*].

15. See Inter-Agency Standing Comm., *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies* (Sept. 2005), http://www.unicef.org/emerg/files/tfgender_GBVGuidelines2005.pdf; U.N. High Comm'r for Refugees, *Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced Persons* (May 2003), <http://www.unhcr.org/3f696bcc4.html>; World Health Org. [WHO], *Violence and Disasters* (2005), available at http://www.who.int/violence_injury_prevention/publications/violence/violence_disasters.pdf.

16. IACHR decisions are binding under Haitian domestic law as well as in the view of the Commission. See, *infra* note 118; see also Inter-Am. Comm'n H.R. Res. 1/05, ¶ 9 (Mar. 8, 2005). The Commission noted that its decisions are understood to be binding on member States:

The juridical basis for the precautionary measures is found in the obligation of States to respect and ensure the human rights of all persons subject to their jurisdiction, and the general practice of compliance with them on the part of the great majority of States is based on the existing understanding of their binding nature.

Id.

17. For example, the American Red Cross has spent only 39% of the \$476,000,000 raised; Catholic Relief Services has spent only 32% of the \$196,000,000 raised; and World Vision has spent just 50% of the \$192,000,000 that it raised. Marisol Bello, *Much of Aid for Haiti Is Still Unspent*, USA TODAY (Nov. 29, 2010), http://www.usatoday.com/yourlife/mind-soul/doing-good/2010-11-29-sharing-haiti_N.htm; see also *Aid Groups in Haiti Criticized for Not Spending Fast Enough*, PHILANTHROPY NEWS DIGEST (May 15, 2010), <http://foundationcenter.org/pnd/news/>

gone to NGOs¹⁸ with little accountability to donors or, more importantly, to the people of Haiti.¹⁹ This dynamic has effectively undermined and increasingly weakened the Haitian government's capacity to provide for its own citizens.

This pattern has continued post-earthquake through the humanitarian response, shaping the way aid has been delivered to and received by Haitians, with residents of the camps being the most vulnerable to the consequences. It is not only the scale of the disaster that has prevented survivors from receiving timely and necessary relief support, but also the strategies through which this support has been provided that have continued to contribute to the emergency.

The failure to design and execute a response with the participation of Haitians living in the camps has meant that substantial amount of relief efforts have not only been inadequate but have in some cases exacerbated existing structural inequalities. As a result, the most vulnerable members of Haitian society—women, children, and the poor—have become even more vulnerable following the earthquake.

In the face of these obstacles, and their exclusion in post-disaster needs assessments and planning, grassroots groups operating within displacement camps continue to mobilize and develop innovative strategies to improve the lives and conditions of all Haitians. Together these groups and their attorneys filed a request for precautionary measures to the Inter-American Commission on Human Rights calling on both the Government of Haiti and the international community to take immediate action in addressing the epidemic rise of sexual violence faced by women and girls living in camps and to include their voices in planning. On December 22, 2010, the Commission issued a decision in favor of the petitioners, highlighting the importance of respecting international law, including women's rights to be free from violence. This precautionary measures decision is the first ever to recognize that Haiti, like all States, has a responsibility to prevent third-party violence against women.

But this decision also serves as a reminder that the Haitian government's inadequate response to the crisis is due in part to sheer lack of capacity, resulting from international policies that predate the earthquake. Winning these precautionary measures is not the end of the campaign but the beginning. The Commission's recommendations serve as

story.jhtml?id=294700016; *Haiti PM Criticises Post-Earthquake Rebuilding Efforts*, BBC News (Dec. 27, 2010), <http://www.bbc.co.uk/news/world-latin-america-12082047> [hereinafter *Haiti PM Criticises*].

18. See *Haiti PM Criticises*, *supra* note 17.

19. For example, since the 1995 Dole Amendment No. 2280, all USAID funds must go through NGOs instead of through the Haitian government.

the blueprint for addressing and preventing sexual violence in Haiti's displacement camps. But progress can only be achieved by working in partnership with the grassroots groups.

Building and strengthening the rule of law is fundamental to sustaining peace and security for societies emerging from post-disaster. Haiti's transition from disaster creates a unique opportunity to adopt strategies and policies for the establishment of the rule of law and the promotion of gender equality and gender justice, within key areas relating to the legislative process.

In order for the Government of Haiti to fulfill the Commission's order to address sexual violence, government programs must be adequately funded. Yet, the majority of pledged funding for Haiti by donor States still has not been released nor has there been any specific allocation set aside for this issue. Of the money delivered, most has gone to international aid agencies—not to Haitian organizations or the Haitian government. In order to help build the Government of Haiti's capacity to address the issue of sexual violence, this issue must be prioritized within the reconstruction process. Ultimately, for Haiti to build the resiliency to disaster that it needs, the government needs to have the capacity to meet the needs of its people and donor States' policies need to prioritize this issue.

This Article argues that the right to be free from sexual violence committed by third-party perpetrators is not only required under Haitian domestic and international law but is also a mandatory obligation for States to enforce. The Article examines how post-earthquake conditions in Haiti have left women and girls in a heightened state of vulnerability as well as the ineffectiveness of the U.N. and government to uphold obligations under international law to include grassroots women's leadership in the planning and implementation sessions to address sexual violence in displacement camps. First, this Article provides a brief overview to pre- and post-earthquake responses to sexual violence in Haiti, and then an overview of sexual violence and the vulnerability of women and girls since the earthquake. Next, this Article discusses Haiti's obligations under international and regional law to protect women and girls from violence committed by private actors as well as the obligation to include their voices in plans for combating gender-based violence. Finally, this Article examines the recent decision for precautionary measures granted by the IACHR to address sexual violence in 22 Haitian displacement camps and how this decision must be implemented by donor States through building the capacity of the Haitian government and Haitian civil society in order to end the epidemic of post-earthquake sexual violence.

II. HISTORY OF ADDRESSING GENDER-BASED VIOLENCE IN HAITI

In Haiti, the women's movement has achieved considerable successes in the past few decades, including the creation of the *Ministère à la Condition Féminine et aux Droits des Femmes*²⁰ (MCFDF), the establishment of shelters and support structures for sexual and gender-based violence survivors, and the adoption of a 2005 law on violence against women.

Prior to reforms undertaken in 2005, rape was officially classified in Haiti as an "assault on morals" and understood as an attack upon the victim's honor as opposed to a crime against women's right to physical integrity and the right to safety and wellbeing. Based upon the French Penal Code of 1810, Articles 279 and 280 of the Haitian Penal Code of 1835 provided little in the way of enforcement or criminal sanction. Under the 1835 Code, rape was seen as a "crime of passion" that resulted in forced labor sentences if the victim was under the age of fifteen and restitution through financial compensation to the victim's family or through marriage to the rapist.²¹

Though efforts at reform began many years before, it was not until 2005 that rape was recognized as a criminal offense. By presidential decree, rape was officially redefined in article 278 of the Haitian Penal Code as "sexual aggression" that is committed or attempted via violence, threat, surprise, or psychological intimidation.²² Criminal sanctions were also strengthened, with rape punishable by a ten-year forced labor sentence and a fifteen-year forced labor sentence if the victim is under the age of fifteen.²³ This reform was partly driven by obligations under international law, and the decree specifically recognized that existing provisions were incompatible with international commitments to guarantee women's human rights.²⁴

Many of these international commitments were active within domestic Haitian law even prior to the decree. Article 276.2 of the Haitian Constitution explicitly incorporates international treaties ratified by the government into domestic law without requiring further legislation.

20. Ministry on the Status and Rights of Women.

21. Benedetta Faedi, Note, *The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti*, 44 STAN. J. INT'L L. 147, 181 (2008).

22. Benedetta Faedi, *From Violence Against Women to Women's Violence in Haiti*, 19 COLUM. J. GENDER & L. (forthcoming 2011) (manuscript at 42), available at http://www.allacademic.com/one/isa/isa09/index.php?cmd=isa09_search&offset=0&limit=5&multi_search_search_mode=publication&multi_search_publication_fulltext_mod=fulltext&textfield_submit=true&search_module=multi_search&search=search&search_field=title_idx&fulltext_search=From+Violence+Against+Women+to+Women%27s+Violence+in+Haiti.

23. Faedi, *supra* note 21, at 182.

24. See *id.*

As Haiti ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1981 and the Belém do Pará Convention in 1996, a precedent of women's rights to freedom from sexual violence arguably existed long before the 2005 decree.²⁵

A. *Pre-Earthquake Responses*

Both the 2005 decree and continued efforts at political and legislative reform were motivated by the efforts of Haitian women organizing around the issue of gender-based violence. Following the fall of Duvalier²⁶ in 1986, 30,000 women, composed of fifteen different women's groups, marched in the streets of Port-au-Prince demanding political inclusion and action against women's poverty and sexual violence.²⁷ In 1987, SOFA,²⁸ a well-known Haitian women's health organization, launched the first public campaign against gender-based violence.²⁹ However, the return of military rule from 1991 to 1994 shut down much of the independent organizing, and most groups went underground. When Haiti began its democratic transition in 1994, it was left with a broken justice system that had little law, interest, or capacity in bringing redress for gender-based violence victims.³⁰

Violence against women emerged as a unifying theme for Haitian women's organizations following the return to power of Aristide³¹ and the subsequent Preval³² presidency. A national Ministry of Women's Affairs and Women's Rights was established in 1994, though engagement remained limited between government initiatives and NGOs.³³ Seeking to address human rights abuses committed during military rule, including the use of rape as a political weapon, the government created the Truth and Justice Commission in 1994.³⁴ Breaking new ground, the

25. See Anne Fuller, *Challenging Violence: Haitian Women Unite Women's Rights and Human Rights*, 55/56 CONCERNED AFR. SCHOLARS BULL. 39, 39–41 (1999), available at <http://concernedafricascholars.org/docs/acasbulletin55.pdf>.

26. Jean-Claude Duvalier, known as "Baby Doc," was President of Haiti from 1971 until he was overthrown in 1986.

27. See Faedi, *supra* note 21, at 192–93.

28. *Solidarité Fanm Ayisyen*, or Haitian Women's Solidarity.

29. Fuller, *supra* note 25, at 43.

30. See generally Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, a View from Haiti*, 32 COLUM. HUM. RTS. L. REV. 201 (2000).

31. Jean Bertrand Aristide was Haiti's first democratically elected President in 1991 and served until 1992 when he was overthrown by a military coup. He was then President again from 1994 to 1996 and from 2001 until 2004 when he was ousted from the presidency and forced into exile.

32. René Préval was President of Haiti from 1996 to 2001 and again from 2006 to 2011.

33. See Fuller, *supra* note 25, at 45.

34. President Jean Bertrand Aristide officially created the Commission by an executive order on December 17, 1994. On March 28, 1995, the Commission announced as its mandate "to

Commission returned recommendations in 1995 calling for the criminalization of rape, recognition of women's rights to physical integrity, and new legislation addressing conjugal rape and domestic violence within the home.³⁵

Women's organizations built upon this new national focus on gender-based violence. Frustrated with the lack of progress and continued government inaction, these organizations held the International Tribunal on Violence against Women in Haiti in 1997.³⁶ Calling for a systematic effort to address gender-based violence, the Tribunal returned recommendations that once again included the criminalization of rape, as well as the establishment of a women-staffed police unit to address violence against women, and the creation of shelters for women who are victims of violence.³⁷ Women's organizations followed the Tribunal with efforts to continue the national dialogue regarding gender-based violence. The Colloquium of Haitian and Dominican Women Against Violence was organized in 1998 and gathered Haitian and Dominican delegates from forty-three different organizations.³⁸

Despite these initiatives, little coherent government action emerged. In 1999, the United Nations Stabilization Mission in Haiti (MINUSTAH) reported that levels of sexual violence and attitudes in the community concerning sexual violence had not changed since the use of rape as a political weapon from 1991 to 1994 and that few measures had been implemented to adequately address sexual violence.³⁹ As a result, women's organizations moved increasingly toward community and grassroots action aimed at primary medical assistance and direct services for victims.⁴⁰ For example, KOFAVIV was established in 2004 by a group of women who were the victims of gender-based violence during the military dictatorship.⁴¹ Facing a government unable and unwilling to provide essential services, KOFAVIV sought to provide medical assistance, counseling, social support, and financial assistance to victims of gender-based violence in addition to engaging in organizing and advo-

globally establish the truth concerning the most serious Human Rights violations perpetrated between September 29, 1991 and October 15, 1994, inside and outside the country and to help to the reconciliation of all Haitians without any prejudice against seeking legal action based on these violations." The order is available at <http://www.usip.org/files/file/resources/collections/commissions/Haiti-Charter.pdf>.

35. See U.N. Dev. Fund for Women, *UNIFEM in Haiti: Supporting Gender Justice, Development and Peace*, at 5 (July 2004), <http://www.ijdh.org/pdf/UNIFEMinHaiti.pdf>.

36. See Faedi, *supra* note 21, at 193.

37. Fuller, *supra* note 25, at 45–46.

38. *Id.* at 46.

39. Faedi, *supra* note 21, at 180.

40. See *id.* at 193.

41. See *History*, KOFAVIV, <http://www.kofaviv.org/> (last visited Apr. 29, 2011).

cacy strategies. Women's shelters also emerged as an important way to address these needs. Run exclusively by women's organizations and funded by international donors, these shelters provide free medical assistance, counseling, testing, and treatment for sexually transmitted infections and prenatal care for women who become pregnant as a result of rape.⁴² Women's organizations have also taken a front-line stance advocating for women's rights within Haiti's strengthened anti-rape laws. For example, many shelters organized putting together the documentation necessary to support criminal charges.⁴³

In the early part of the 2000s, a strong women's movement in Haiti began to emerge. A new dialogue was established between international development organizations, government ministries, and domestic civil society organizations in 2003. The National Round Table on the Prevention of Violence against Women culminated in the creation in 2005 of a five-year national plan, which set forward a new agenda of policy reform, legislative action, and partnership among women's organizations, the government, and international NGOs.⁴⁴ The 2006–2011 National Plan to Combat Violence Against Women was adopted, and the Haitian Penal Code was amended to recognize rape as a criminal offense with increased penalties rather than an "offense against morals."⁴⁵ In 2006, the Ministry of Women's Affairs and Women's Rights and the gender unit of MINUSTAH starting implementing the five-year national plan as well as implementing recommendations from CEDAW Committee.⁴⁶

Despite this progress, the issue of sexual and gender-based violence and discrimination remained persistent in Haiti. In 2009, the Commission issued a report, *The Right of Women in Haiti to be Free from Violence and Discrimination*, highlighting the alarming situation of violence and discrimination against women, who constitute more than half of the Haitian population, as a fundamental human rights issue.⁴⁷ The report provides an in-depth assessment of violence against women in Haiti, including an analysis of the institutional and judicial responses

42. Faedi, *supra* note 21, at 200.

43. *See id.* at 201.

44. *See* Amnesty Int'l, *Don't Turn Your Back on Girls: Sexual Violence Against Girls in Haiti*, at 22, AI Index AMR 36/004/2008 (Nov. 27, 2008).

45. *See* Décret, Président Provisoire de la République, *Modifiant le Régime des Agressions Sexuelles et éliminant en la matière les Discriminations contre la Femme*, LE MONITEUR, 11 Août 2005, a 2 (Haiti) (changing the regulation of sexual aggressions and eliminating forms of discrimination against women).

46. Valeria Vilardo, *Women "More Protected" to Report Sexual Violence*, INTER PRESS SERVICE NEWS AGENCY (July 22, 2009), <http://www.ipsnews.net/news.asp?idnews=47753>.

47. *See* Inter-Am. Comm'n H.R., *The Right of Women in Haiti to Be Free from Violence and Discrimination* (Mar. 10, 2009).

to this issue. In its report, the Commission recognized that while Haiti had been showing signs of stabilizing as early as 2006, the reports of physical, sexual, and psychological violence toward women in Haiti remained consistent,⁴⁸ stating:

[T]he Commission conveys and reiterates its grave concern over the suffering of Haitian women due to a situation of widespread and systematic violence and discrimination. The Commission also underscores the importance of considering the specific needs of women in the public and institutional response to these problems and the overall security situation in Haiti The problems of discrimination and violence against women remain taboo and hidden issues in Haiti, which leaves the victims with a sense of insecurity, defenselessness and mistrust that the acts suffered will ever be remedied, and that their physical and emotional scars will ever be healed.⁴⁹

B. *Post-Earthquake Responses*

In the wake of the earthquake, much of the progress that was made has eroded, and sexual violence has exacerbated the vulnerable conditions women and children are living in. Although official statistics are lacking, there is overwhelming evidence that the problem of sexual and gender-based violence—specifically, the rape of women and girls—has dramatically escalated in Haiti since the earthquake, especially in IDP camps.⁵⁰

A University of Michigan survey conducted in March of 2010 found that three percent of all people living in Port-au-Prince had been sexually assaulted since the earthquake; all but one of the respondents were female, and half of the victims were girls under the age of eighteen.⁵¹ Doctors Without Borders reported in an interview that it treated sixty-eight rape survivors at one facility living in Port-au-Prince during the month of April alone.⁵² SOFA documented 718 cases of gender-based violence against women and girls in its clinics from January to

48. *Id.* ¶ 6.

49. *Id.* ¶ 164.

50. See, e.g., Editorial, *An Epidemic of Rape for Haiti's Displaced*, N.Y. TIMES, Apr. 4, 2011, at A20; Jared McCallister, *Rape Runs Rampant in Wake of Haiti's 2010 Earthquake that Devastated Country, Report Finds*, NYDAILYNEWS.COM (Jan. 23, 2011), http://articles.nydailynews.com/2011-01-23/local/29442499_1_kofaviv-sexual-violence-jean-bertrand-aristide; Lisa Armstrong, *Haiti Camps No Safe Havens for Women*, USA TODAY, Dec. 22, 2010, http://www.usatoday.com/news/world/2010-12-22-haiti_N.htm; Deborah Sontag, *Sexual Assaults Add to Miseries of Haiti's Ruins*, N.Y. TIMES, June 24, 2010, at A1.

51. ATHENA R. KOLBE ET AL., ASSESSING NEEDS AFTER THE QUAKE: PRELIMINARY FINDINGS FROM A RANDOMIZED SURVEY OF PORT-AU-PRINCE HOUSEHOLDS 24 (2010).

52. Site visit to Médecins Sans Frontières (MSF) Delmas 31 (May 2010). MSF reported treating 212 victims of sexual violence in the five months following the earthquake. See also Médecins Sans Frontières [Doctors Without Borders] [MSF], *Emergency Response After the Haiti*

June of 2010.⁵³ According to SOFA's assessment, sexual violence targeting women is a growing emergency. In January 2011, the Center for Human Rights and Global Justice at New York University (NYU) conducted a survey of 365 households in four Port-au-Prince IDP camps examining connections between gender-based violence and access to food and water.⁵⁴ Although the results cannot be generalized, the survey's preliminary findings strongly suggest that alarming levels of sexual violence exist in Haiti's IDP camps. Moreover, these findings add weight to what human rights groups have been saying for over a year: that sexual violence and fear of sexual violence are prevalent in the camps.

In response to the violence, delegations of U.S. attorneys and law students began investigating the prevalence and patterns of rape and other gender-based violence against displaced women and girls in Port-au-Prince in the aftermath of the earthquake as well as governmental, intergovernmental, nongovernmental, and grassroots responses to the violence.⁵⁵ In two weeks during May and June alone, members of delegations interviewed over fifty women who had survived rape or attempted rape since the earthquake. These women and girls were referred to the delegations by KOFAVIV and FAVILEK, grassroots women's organizations working in displacement camps and poor neighborhoods within Port-au-Prince. In October, lawyers and law students from the International Women's Human Rights Clinic at CUNY Law School, MADRE, and the Center for Constitutional Rights conducted follow-up investigatory research into the obstacles for grassroots women's participation in planning sessions to end sexual violence and related general conditions.

What the groups found was that displaced women and girls face chronic and increasing inaccessibility to shelter, potable water, food, adequate sanitation, medical treatment, and education. Surveys conducted during the summer and fall found that only approximately ten

Earthquake: Choices, Obstacles, Activities and Finance (July 2010), available at https://www.msf.or.jp/info/pressreport/pdf/haiti_six_months_EN_LOW.pdf.

53. SOLIDARITE FANM AYISYEN, RAPPORT BILAN 10, CAS DE VIOLENCES ACCUEILLIS ET ACCOMPAGNÉS DANS LES 21 CENTRES DOUVANJOU DE LA SOFA DE JANVIER À JUIN 2010 (2010) (noting that the 718 cases of violence against women included 114 rapes and 540 cases of physical abuse).

54. Press Release, CHR&GJ, Sexual Violence in Haiti's IDP Camps: Results of a Household Survey (Mar. 2011), available at <http://www.chrgj.org/press/docs/Haiti%20Sexual%20Violence%20March%202011.pdf>.

55. Delegations took place in May, June, July, and October of 2010. The author was a member and organizer of three out of the four delegations.

percent⁵⁶ to twenty percent⁵⁷ of families had tents. Even these shelters—many of which were battered beyond repair in their first few months of use⁵⁸—do not provide meaningful protection against the elements or perpetrators of violence. One woman reported, “even when we receive tents, people slash [them] with razors.”⁵⁹ Said one woman living in a camp in Champ de Mars: “No one from the government has come by to ask how we’re doing and if we’re people or animals. Dogs that live in rich people’s houses don’t go through what we go through.”⁶⁰ The lack of private bathing facilities is a further affront to dignity.

These conditions have created an environment in which people feel frustrated, desperate, and dehumanized—emotions that all too often are channeled into sexual violence against women and girls. One camp resident stated, “People rape older women, younger women, and kids. We need security and lighting.”⁶¹ Another resident said, “In the camp, we have to sleep with one eye open.”⁶²

The U.N. Gender-Based Violence Sub-Cluster has not adequately included displaced women in project planning, which prevents those designing and implementing projects from obtaining the information needed to create successful programs. This exclusion has had a direct and profound impact on at-risk populations and led to significant waste and misdirection of aid.

For example, because of a failure to consult and coordinate with grassroots organizations, battery-operated flashlights were purchased and distributed to increase lighting in the IDP camps. These flashlights are now useless because camp residents cannot afford replacement batteries. If Sub-Cluster members had consulted with the grassroots leadership they would have learned sooner that solar flashlights, which are available at comparable prices and last considerably longer were more desirable and practical for camp residents.

The continued exclusion of grassroots organizations means repeating these types of mistakes. The implementation of security measures must be undertaken with the input of camp residents, especially those

56. MARK SCHULLER, UNSTABLE FOUNDATIONS: IMPACT OF NGOS ON HUMAN RIGHTS FOR PORT-AU-PRINCE’S INTERNALLY DISPLACED PEOPLE 3 (2010), available at <http://ijdh.org/wordpress/wp-content/uploads/2010/10/Report-unstable-foundations-final-2.pdf>.

57. Inst. for Justice & Democracy in Haiti [IJDH], “We’ve Been Forgotten”: Conditions in Haiti’s Displacement Camps Eight Months After the Earthquake, at 12 (2010), available at <http://ijdh.org/wordpress/wp-content/uploads/2010/09/IDP-Report-09.23.10-compressed.pdf>.

58. *Id.*

59. Interviews by Int’l Women’s Human Rights Clinic at CUNY Sch. of Law with IDP residents of Champ de Mars (Oct. 13, 2010) (on file with author).

60. *Id.*

61. *Id.*

62. *Id.*

organizing and in leadership positions. The failure to do so not only violates international humanitarian law, but if not addressed, will limit the effectiveness of any precautionary measure mandated by the Commission.

III. THE PROHIBITION OF GENDER-BASED VIOLENCE UNDER INTERNATIONAL LAW

Gender-based violence constitutes a direct violation of women's human rights and contributes to their inability to enjoy the full range of civil, political, economic, social, and cultural rights that are guaranteed under international law. Among other things, international law prohibits discrimination on the grounds of sex, protects the right to bodily integrity, and guarantees the right to be free from torture or cruel, inhuman, or degrading treatment or punishment.

The Government of Haiti has ratified various international human rights instruments that have direct bearing on women's human rights, including the right to be free from rape and other forms of gender-based violence. These include the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention on the Rights of the Child (Children's Convention).⁶³ In the Latin American and Caribbean region, Haiti is a member of the OAS, and has ratified the Convention of Belém do Pará, as well as the American Convention on Human Rights (ACHR).⁶⁴

According to the Haitian Constitution, upon approval and ratification, international treaties become part of domestic law and abrogate any conflicting laws.⁶⁵ Moreover, Article 19 of the Haitian Constitution recognizes the State's "absolute obligation" to guarantee certain human rights (i.e., "the right to life, health, and respect of the human person for all citizens without distinction").⁶⁶

63. Haiti ratified CERD in 1972, CEDAW in 1981, ICCPR in 1991 (by accession), and the Children's Convention in 1995. See *Chapter IV: Human Rights*, U.N. TREATY COLLECTION DATABASES, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=a&lang=en> (last visited Apr. 29, 2011) (providing information regarding the status of human rights treaties).

64. Haiti ratified the Convention of Belém do Pará in 1997 and the ACHR in 1977. See *Basic Documents Pertaining to Human Rights in the Inter-American System*, OAS INTER-AM. COMM'N ON HUMAN RIGHTS, <http://www.cidh.oas.org/Basicos/English/Basic.TOC.htm> (follow "Signatures and Current Status of Ratifications" hyperlinks under the Convention of Belém do Pará and ACHR hyperlinks) (last updated June 30, 2010).

65. LA CONST. DE LA REPUBLIQUE D'HAÏTI Mar. 10, 1987, art. 276.2 ("Les Traités, ou Accord Internationaux, une fois sanctionnés et ratifiés dans les formes prévues par la Constitution, font partie de la Législation du Pays et abrogent toutes les Lois qui leur sont contraires.").

66. *Id.* art. 19.

A. *The Rise of Women's Rights to Be Free from Gender-Based Violence Under International Law*

In 1992, the CEDAW Committee paved the road toward addressing gender-based violence as a form of discrimination against women in its passage of General Recommendation No. 19 to Article 1 of the Convention. Recommendation No. 19 defines GBV as “violence that is directed against a woman because she is a woman or that affects women disproportionately.”⁶⁷ GBV under CEDAW includes acts of physical, mental, or sexual harm or suffering, threats of such acts, or coercion and under Recommendation 19, recognizes that “[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”⁶⁸ Further, it notes the “close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms.”⁶⁹ By expanding the definition of discrimination against women under Article 1 to include GBV, this Recommendation affirms that GBV—including when committed by private actors—may breach other provisions of CEDAW, even if those provisions do not expressly mention violence.⁷⁰

A year later, the World Conference on Human Rights in Vienna was held, building the foundation for re-conceptualizing human rights, including violence against women, from a gender perspective.⁷¹ The General Assembly followed with the U.N. Declaration on the Elimination of Violence against Women, further codifying gender-based violence as a form of discrimination. “[V]iolence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private.”⁷² Furthermore, the General Assembly affirmed that violence against women is a State responsibility, calling on

67. Gen. Recommendation No. 19, U.N. Comm. on the Elimination of Discrimination Against Women, 11th Sess., ¶ 6 (1992).

68. *Id.* ¶¶ 1, 6.

69. *Id.* ¶ 4.

70. Julie Goldscheid, *Domestic and Sexual Violence as Sex Discrimination: Comparing American and International Approaches*, 28 T. JEFFERSON L. REV. 355, 379–83 (2006). “Although the text of CEDAW itself does not explicitly discuss domestic and sexual violence, . . . [General] Recommendation [19] details a number of rights and freedoms that gender-based violence may impair or nullify, and makes clear that CEDAW applies to violence perpetrated by both public and private parties.”

71. Rhonda Copelon, *Preventing Torture: Implications of General Comment 2: “Implementation of Article 2 by States Parties of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,”* 11 N.Y. CITY L. REV. 229, 239 (2008).

72. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104, art. 1 (Dec. 20, 1993).

States to “condemn violence against women and . . . pursue by all appropriate means and without delay a policy of eliminating violence against women”⁷³

Inspired by the U.N. Declaration on the Elimination of Violence against Women, the OAS adopted the Convention of Belém do Pará in 1994. The Convention of Belém do Pará affirms that “violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms”⁷⁴ States parties, such as Haiti, that have ratified this treaty “agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake,” among other things, to adopt new legal and administrative measures, amend or repeal existing legislation, and establish fair and effective legal procedures to address the various forms that GBV takes.⁷⁵ States parties also agree to “undertake progressively specific measures, including programs to foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence.”⁷⁶ The Convention also includes a series of measures and programs in which States parties agree to undertake and implement the needs of particularly vulnerable groups of women.⁷⁷

B. *Addressing Rape Through Due Diligence*

Over the years, international law has increasingly recognized that States have positive obligations with regard to rights; notably, to act with due diligence to prevent, investigate, and punish acts of violence against women whether perpetrated by State or private actors, and to adopt and revise domestic laws that protect victims of violence,⁷⁸ especially for women living in dangerous situations, including internal displacement camps.

According to Yakin Yuturk, former Special Rapporteur on Violence Against Women, a “fundamental principle connected to the application of the due diligence standard is that of non-discrimination, which implies that States are required to use the same level of commitment in relation to prevention, investigation, punishment and provision of reme-

73. *Id.* art. 4.

74. Belém do Pará, *supra* note 12, pmb1.

75. *Id.* art. 7.

76. *Id.* art. 8(i).

77. *Id.* arts. 7–9.

78. Special Rapporteur on Violence Against Women, Its Causes & Consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, Comm’n on Human Rights, ¶ 25, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (by Yakin Ertürk).

dies for violence against women as they do with regards to the other forms of violence.”⁷⁹ Additionally, the “due diligence obligation must be implemented in good faith.”⁸⁰

Moreover, the due diligence standard triggers States’ responsibility to prevent third-party interference with or harm of women’s rights to nondiscrimination and to be free from violence.⁸¹ Article 9 of the Convention of Belém do Pará, for example, explicitly recognizes that States parties must “take special account of the vulnerability of women to violence by reason of, among others, . . . their status as migrants, refugees or displaced persons . . . [or because they are] of minor age, . . . socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.”⁸²

CEDAW Recommendation No. 19 affirms that the duty of States not to engage in acts of gender-based violence extends to the liability for failure to act with due diligence to prevent, investigate, and punish acts of violence. International instruments that are concerned with racial violence have imposed similar due diligence obligations. The CERD Committee has applied a standard of due diligence with regard to the State’s positive obligation to address private racially motivated violence. In the case of *L.K. v. the Netherlands*,⁸³ the CERD Committee held that when threats of violence are made, the State has a responsibility to exercise due diligence and investigate such threats.

Under General Comment No. 31 to Article 2 of the ICCPR, the U.N. Human Rights Committee asserts that if a State party permits or fails to take appropriate action to exercise due diligence to prevent, punish, investigate, or redress the harm caused by private persons or entities, it may be in violation of Article 2(3).⁸⁴ The Committee explains that “[a]ll branches of government . . . and other public or governmental authorities, at whatever level—national, regional or local—are in a position to engage the responsibility of the State party”⁸⁵ to abide by Article 2 of the Covenant. When taken in conjunction with Article 3, which requires States to work to ensure the equal rights of men and women,

79. *Id.* ¶ 35.

80. *Id.* ¶ 36.

81. Belém do Pará, *supra* note 12, arts. 3–6; American Convention on Human Rights: “Pact of San José, Costa Rica,” art. 1(1), Nov. 22, 1969, 1144 U.N.T.S. 144, 145 [hereinafter Pact of San José].

82. Belém do Pará, *supra* note 12, art. 9.

83. REP. OF THE COMM. ON THE ELIMINATION OF RACIAL DISCRIMINATION, 48TH SESS., ANNEX IV AT 131–36, U.N. Doc. A/48/18; GAOR, 48TH SESS., SUPP. NO. 18 (SEPT. 15, 1993).

84. General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Human Rights Comm., 80th Sess., ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

85. *Id.* ¶ 4.

States parties are obligated to prevent GBV, which constitutes a form of discrimination.

Other internationally recognized standards also address gender discrimination, including the U.N. Guiding Principles on Internal Displacement.⁸⁶ These principles reflect and are consistent with international human rights law and humanitarian law. They are designed to provide guidance to States that are faced with the phenomenon of internal displacement. For example, Principle 11 explains that “[i]nternally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against: (a) Rape . . . and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault.”⁸⁷ Under the Guiding Principles, gender-specific violence is understood “as an act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering on account of one’s gender, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”⁸⁸ This definition follows the 1993 U.N. Declaration on the Elimination of Violence Against Women and the Belém do Pará.

International law requires States, including Haiti, to implement additional or special measures that are specifically designed to ensure due diligence, including preventative measures that address the causes of such violence. With respect to violations of bodily integrity in particular, the Haitian government has a duty to prevent, investigate, and prosecute such abuses, including when the perpetrator is a private citizen. Where the State does not prohibit gender-based violence or routinely fails to respond to evidence of rape or assault of women, it sends a message of impunity—that such attacks are justified or, at a minimum, will go unpunished. In this way, the Government of Haiti fails to take the minimum steps required under international law to protect women’s rights to bodily integrity and, in some cases, to life.

When States fail to bring perpetrators to justice, they implicitly condone such violence, giving rise to impunity that facilitates further abuses and normalizes GBV. This lack of accountability leads to further endangerment for women. Furthermore, women begin to lose faith in the justice system as prevailing gender inequalities are reinforced. The State must act with due diligence in preventing violence against women and providing justice for women who have already suffered violence by

86. See Guiding Principles, *supra* note 14.

87. *Id.* at 9 annex princ. 2(a).

88. Walter Kälin, *U.N. Guiding Principles on Internal Displacement*, 2008 STUD. IN TRANSNAT’L LEGAL POL’Y, no. 32, at 1, 29. These principles are designed to provide guidance to States that are faced with the phenomenon of internal displacement.

implementing effective measures to ensure thorough and timely investigation, prosecution, and punishment, as well as by providing access to redress for victims.

C. Inclusion of Grassroots Women's Groups Under International Law

Poor women, especially displaced women, have been excluded from full participation and leadership in the relief effort, despite mandates of the recent decision by the IACHR,⁸⁹ the OAS Charter, U.N. Security Council Resolution 1325, the recommendations of the U.N. Guiding Principles on Internal Displacement, and other internationally recognized standards that require a gender perspective be integrated into ongoing discussions and planning.⁹⁰ As affirmed by the OAS, such a human rights-based approach is crucial to addressing and preventing the sexual violence women and girls living in displacement camps face:

Under the Charter, OAS Member States recognize as an objective "the full participation of their peoples in decisions relating to their own development." A rights-based approach facilitates this by requiring, among other things, that the population be routinely consulted—both in providing input on project design and in ensuring necessary modifications to the projects to maximize the realization of human rights. A high degree of participation from communities, civil society, minorities, indigenous peoples, women, and other vulnerable groups is required.⁹¹

U.N. Security Council Resolution 1325, which constitutes binding international law,⁹² calls for the equal participation of women in all levels of peace processes, protection from sexual violence, and the prevention of conflicts, recognizing that women are disproportionately impacted by armed conflict.⁹³ Additionally, it calls for "increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, man-

89. See discussion, *infra* Part IV.

90. See, e.g., S.C. Res. 1325, *supra* note 13; Guiding Principles, *supra* note 14.

91. The Human Rights Obligations of OAS Member States Providing International Assistance in the Region: A Brief to the Inter-American Commission on Human Rights for a Hearing on the Economic & Social Rights Situation in Haiti Following the Earthquake & the Human Rights Obligations of OAS Member States Scheduled for March 23, 2010, at 15 (Inter-Am. Comm'n H.R. Mar. 9, 2010), available at <http://www.chrgj.org/projects/docs/100309-IACHRHearingHaitiEng.pdf> (quoting the Charter of the Organization of American States, art. 34, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3).

92. Security Council resolutions are considered binding under international law, unlike General Assembly resolutions which are not obligatory but persuasive for States that respect and adhere to international law.

93. See S.C. Res. 1325, *supra* note 13, pmbl.

agement, and resolution of conflict.”⁹⁴ Although on its face Resolution 1325 applies specifically to post-conflict settings, in September of 2010 the Security Council convened a provisional meeting concerning Haiti and the Secretary General’s report on MINUSTAH.⁹⁵ Resolution 1325 was specifically referred to by the representative of Chile in the context of post-disaster, who stated:

Chile favours direct action to support Haitian women, whose ability to play a central role will make a huge contribution to the reconstruction process. We support the work carried out by MINUSTAH with the Ministry of Women’s Affairs and Rights and local authorities, including the provision of legal assistance to women and young people who are victims of violence. In accordance with our national plan for the implementation of Security Council resolution 1325 (2000), we reiterate the importance of developing sustainable initiatives that will reinforce and promote the involvement of women in MINUSTAH’s activities.⁹⁶

Then, in October, at its 6399th meeting, the Security Council adopted Resolution 1944 (2010), which states that the Council

[s]trongly condemns the grave violations against children affected by armed violence, as well as widespread rape and other sexual abuse of women and girls, and calls upon the Government of Haiti, with the support of MINUSTAH and the United Nations country team, to continue to promote and protect the rights of women and children as set out in Security Council resolutions 1325 (2000), 1612 (2005), 1820 (2008), 1882 (2009), 1888 (2009), and 1889 (2009).⁹⁷

This new development in the use of Resolution 1325 expands its applicability to women displaced by natural disasters and the obligation of women’s participation from post-conflict settings to post-disaster settings.

Several U.N. Special Rapporteurs and Representatives have also called attention to the post-earthquake sexual violence against Haiti’s displaced women as an issue that must be addressed by the international community. In a speech to the General Assembly, Rashida Manjoo, the U.N. Special Rapporteur on Violence Against Women, Its Causes and Consequences, highlighted the disproportionate vulnerabilities of women in post-disaster settings and their increased risk of violence. She specifically cited the sexual violence faced by Haitian women and girls in the displacement camps.⁹⁸

94. *Id.* ¶ 1.

95. See U.N. Sec’y Gen., *Rep. of the Secretary-General on the U.N. Stabilization Mission in Haiti*, U.N. Doc. S/2010/446 (Sept. 1, 2010).

96. U.N. SCOR, 65th Sess., 6382d mtg. at 25, U.N. Doc. S/PV.6382 (Sept. 13, 2010).

97. S.C. Res. 1944, ¶ 14, U.N. Doc. S/RES/1944 (Oct. 14, 2010).

98. Special Rapporteur on Violence Against Women, Its Causes & Consequences, Statement

That same month, Walter Kälin, then U.N. Special Representative to the Secretary-General on the Human Rights of Internally Displaced Persons, linked preexisting vulnerabilities of “violence and exploitation” with the post-disaster occurrence of sexual violence in Haiti’s camps.⁹⁹ He drew attention to “important levels of rape and gang-rape and also domestic violence in the camps, which [women’s groups] identified to be problems that are growing in number and brutality.”¹⁰⁰ Special Representative Kälin reiterated that grassroots women’s groups are integral to securing human rights for internally displaced persons and recommended that “grassroots Haitian women’s organizations” be fully included in referral mechanisms in place throughout the camps.¹⁰¹

Walter Kälin has made clear that the U.N. Guiding Principles on Internal Displacement call on States to consult women and ensure their participation in decisions that impact their lives. Effective consultations enable participants to actually influence outcomes and are anchored in formal partnerships with Haitian women’s groups (particularly local grassroots groups), which are empowered and resourced to take public leadership in the process of reconstruction.¹⁰² Specifically included in these principles is the principle of participation.¹⁰³

Haitian women are both disproportionately impacted by the crisis and the key to their country’s recovery. Haitian women’s organizations should therefore be consulted and included in needs and damage assessments, and the design, implementation, monitoring, and evaluation for addressing and preventing sexual violence as well as all relief and reconstruction programs. Representatives of grassroots women’s organizations must be materially compensated for time spent working on relief

by Ms. Rashida Manjoo, at 5–6 (Oct. 11, 2010), <http://www.un.org/womenwatch/daw/documents/ga65/vaw.pdf>. The Special Rapporteur also noted that she has “received numerous reports on the rise in violence against women and girls, in particular rape and domestic violence in IDP camps and elsewhere.” *Id.* at 6.

99. Representative of the Sec’y-Gen. on the Human Rights of Internally Displaced Persons, Human Rights of Internally Displaced Persons in Haiti: Memorandum Based on a Working Visit to Port-au-Prince (12–16 October 2010), ¶ 11, <http://ijdh.org/wordpress/wp-content/uploads/2010/11/Kalin-Statement-2010-Haiti-English.pdf>.

100. *Id.* ¶ 32.

101. *Id.* ¶ 35.

102. One methodology to measure Haitian women’s groups’ involvement is the U.N. High Comm’r for Refugees, The UNHCR Tool for Participatory Assessment in Operations (May 2006), <http://www.unhcr.org/450e963f2.html>.

103. See Representative of the Sec’y-Gen., *Rep. of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39*, at 5 annex princs. 18(3), 23(3), U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998); see also Third High Level Forum on Aid Effectiveness, Sept. 2–4, 2008, *ACCRA Agenda for Action*, ¶ 21(b), (Sept. 4, 2008), <http://siteresources.worldbank.org/ACCRAEXT/Resources/47007901217425866038/AA-A-4-SEPTEMBER-FINAL-16h00.pdf>.

and recovery efforts and offered childcare, transportation, and other support to enable their full and equal participation.

IV. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RESPONDS TO DEMAND FOR ACTION TO END SEXUAL VIOLENCE IN HAITI

On October 21, 2010, attorneys along with Haitian grassroots groups submitted a Request for Precautionary Measures to the Inter-American Commission on Human Rights.¹⁰⁴ The petition called on both the Government of Haiti and the international community to take immediate action in ensuring security, lighting, and access to medical care in camps, as well as meaningful participation by grassroots women's groups in planning sessions for addressing gender-based violence in camps. Attorneys requested the Commission grant the request as an urgent measure to address the multiple acts of sexual violence women in the twenty-two named displacement camps face.

In response, the Commission issued the Government of Haiti a letter requesting that the government investigate sexual abuse in the displacement camps, both to document current abuses and to curb future violence. The Commission also released a public statement:

According to information received by the Inter-American Commission, the extremely precarious conditions and lack of security in the camps for internally displaced persons (IDP camps) is generating a situation of extreme vulnerability for the women and girls who live in them. The number of sexual violations committed in the camps is apparently on the rise, and rapes of girls as young as five years old have been reported. Organizations working on the ground have observed that most of the rapes are committed at night by two or more attackers, who are usually armed. According to the data provided to the IACHR, the victims of these attacks do not have adequate medical services available, nor do they have accessible, effective judicial recourse, which creates a situation of impunity which allows the violence against women and girls to be perpetuated.¹⁰⁵

After receiving no response from the Haitian government, the Commission issued a decision in favor of the petitioners, highlighting the importance of respecting international human rights obligations at all

104. See Request for Precautionary Measures, *supra* note 6. Attorneys and grassroots groups who filed the petition include KOFAVIV, KONAMAVID, and FAVILEK; the International Women's Human Rights Clinic at the City University of New York (CUNY) School of Law; MADRE; Women's Link Worldwide; Center for Constitutional Rights; Institute for Justice and Democracy in Haiti; Bureau des Avocats Internationaux; and Morrison & Foerster LLP.

105. Press Release, Inter-Am. Comm'n H.R., IACHR Expresses Concern Over Situation in Camps for Displaced Persons in Haiti, No. 114/10 (Nov. 18, 2010), available at <http://www.cidh.org/Comunicados/English/2010/115-10eng.htm>.

times, specifically non-derogable rights, as well as the rights of the most vulnerable populations including women and girl victims of sexual violence. The Commission's decision includes the following legally binding recommendations:

1. Ensure medical and psychological care is provided in locations available to victims of sexual abuse of the twenty-two camps for those internally displaced. In particular, ensure that there be:
 - a. privacy during examinations;
 - b. availability of female medical staff members, with a cultural sensitivity and experience with victims of sexual violence;
 - c. issuance of medical certificates;
 - d. HIV prophylaxis; and
 - e. emergency contraception.
2. Implement effective security measures in the twenty-two camps; in particular, provide street lighting, an adequate patrolling in and around the camps, and a greater number of female security forces in police patrols in the camps and in police stations in proximity to the camps;
3. Ensure that public officials responsible for responding to incidents of sexual violence receive training enabling them to respond adequately to complaints of sexual violence and to adopt safety measures;
4. Establish special units within the police and the Public Ministry to investigate cases of rape and other forms of violence against women and girls; and
5. Ensure that grassroots women's groups have full participation and leadership in planning and implementing policies and practices to combat and prevent sexual violence and other forms of violence in the camps.¹⁰⁶

The Commission's groundbreaking decision calls for immediate measures to be taken to prevent sexual violence against women and girls in displacement camps. Of the hundreds of requests for precautionary measures the Commission receives each year, few are granted.¹⁰⁷ Out of these only a handful has been granted to protect beneficiaries from rape, and those have been in response to rape committed by State actors—never by private actors. This precautionary measures decision is the first ever to recognize that Haiti, like all States, has a responsibility to prevent third-party violence against women.

Under domestic and international law, Haiti is obligated to take seriously measures called for by the Commission and to respect, protect,

106. IACHR Decision Re: Women and Girl Victims in Haiti, *supra* note 3 (recommendations translated from French).

107. For example, in 2009, the Commission granted only 34 requests out of 324 received. *Annual Report 2009*, ch. III(B)(2) tbls. (a)–(b), OEA/Ser.L/V/II. (Dec. 30, 2009).

and fulfill the human rights of its citizens. According to the Haitian Constitution, upon approval and ratification, international or regional treaties become part of domestic law and abrogate any conflicting laws.¹⁰⁸ This provision makes the Commission's ruling legally binding under Haitian law.¹⁰⁹

Moreover, the measures apply to an unnamed group of women and girls—another striking precedent as previous protections issued for women under threat of sexual violence have been applied only to individual women. In contrast, this “class action” decision calls on the Haitian government to protect the rights of all women and girls living in the twenty-two named displacement camps, precisely because they face an elevated threat of sexual violence. This precedent strengthens customary international law's recognition of women's human rights, including the right to be free from sexual violence. It also recognizes that sexual violence is one of the gravest forms of human rights violations and calls for immediate action by the State.

The Commission has also made clear that the international community shares responsibility for the human rights situation as it exists in this catastrophic context. The decision serves as a reminder that the Haitian government's inadequate response to the crisis of sexual violence is due in part to sheer lack of capacity resulting from international policies that predate the earthquake. Such policies include a demand to constrain public spending on the very programs and services that prevent and address sexual violence, such as healthcare, education, job training and disaster-resistant housing.

The IACHR has reminded the international community and non-governmental organizations of the importance of respecting international human rights obligations, “in particular non-derogable rights and the rights of those most vulnerable,” in all circumstances in their relief and assistance efforts in Haiti.¹¹⁰ According to the International Law Commission, international actors who have taken on a number of critical governmental functions essentially operate as agents of the government.¹¹¹ It can be argued that the United Nations GBV Sub-Cluster is

108. LA CONST. DE LA REPUBLIQUE D'HAÏTI art. 276.2 (Mar. 10, 1987). *See also id.* art. 19 (obligating the State to guarantee “the right to life, health, and respect of the human person for all citizens without distinction”).

109. The Commission has also noted that its decisions are understood to be binding on member States. *See supra* note 18.

110. Press Release, Inter-Am. Comm'n H.R., IACHR Stresses Duty to Respect Human Rights During the Emergency in Haiti, No. 11/10 (Feb. 2, 2010), available at <http://www.cidh.oas.org/Comunicados/English/2010/11-10eng.htm>.

111. The International Law Commission states that “[t]he conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under

one such agent operating in Haiti, performing traditional government functions including providing lighting and security among other things. It would follow then that its continued prevention of grassroots women's groups from meaningful participation in addressing sexual violence in the displacement camps is in violation of the Commission's orders.

Despite the important role they have played in relief operations in Haiti, U.N. agencies and NGOs cannot be a substitute for Haitian government or civil society. Indeed, the design and execution of a disaster response that at times has lacked the participation of Haitians, in particular Haitians living in the camps, has meant that some relief efforts have reproduced structural inequalities that predate the earthquake, leaving the most vulnerable members of Haitian society even more at risk.

V. CONCLUSIONS AND RECOMMENDATIONS

To meet its obligations to combat sexual violence and fully implement the Inter-American Commission on Human Rights' binding recommendations, the Government of Haiti must be provided the resources necessary to do so by donor States. The international community should recommit to a reconstruction process that is Haitian-led and that promotes international standards of human rights, including women's human right to a life free of violence. To meet its obligations to combat gender-based violence and fully implement the Commission's requests, the Government of Haiti needs enhanced capacity to provide for its own citizens. Pledged funds must be spent effectively and transparently and prioritize addressing, preventing and punishing sexual violence.

Under international law, the primary responsibility for the protection of human rights falls to the government of the individual State. However, this principle does not exempt foreign States and international organizations from sharing this responsibility when donating to and operating within the receiving State.¹¹² When the devastation is such

international law, provided the person or entity is acting in that capacity in the particular instance." Int'l Law Comm'n, Responsibility of States for Internationally Wrongful Acts: Draft Resolution, art. 5, U.N. Doc. A/C.6/56/L.20 (Nov. 12, 2001).

112. It is worth noting that OAS member States have explicit obligations to one another to ensure the protection of human rights beyond their own national boundaries. Under the OAS Charter, member states agree "[t]o promote by cooperative action, their economic, social and cultural development" and "proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex." Protocol of Amendment to the Charter of the Organization of American States "Protocol of Washington," arts. 2(f), 3(l), Dec. 14, 1992, 33 I.L.M. 981. Just after the earthquake, the Inter-American Commission on Human Rights reminded the Haitian government, the international community, and implementing organizations on the ground of "the importance of respecting international human rights obligations in all circumstances, in particular non-derogable rights and the rights of those most vulnerable." Press Release, Inter-Am. Comm'n

that the government of the receiving State cannot adequately perform its core functions, donor States must pursue a course of action that protects human rights in partnership with the recipient government. Key aspects of a human rights approach are accountability and monitoring of donor assistance. Moving forward, policies and practices of the United Nations, donor States, and NGOs in Haiti should uphold the sovereignty of the Government of Haiti and the recommendations of the IACHR.

Haiti is at a crossroads, and as it moves into through this second year dealing with the earthquake the international community faces a choice: whether to recycle the same types of policies that generated the same type of vulnerability experienced when the earthquake hit or support the Haitian government in being able to meet its obligations to its citizens.

H.R., *supra* note 110. Furthermore, under Article 8(i) of the Convention of Belém do Pará, "States Parties agree to undertake progressively specific measures, including programs to foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence." Belém do Pará, *supra* note 12, art. 8(i).