

A CHILD RIGHTS-BASED APPROACH TO RECONSTRUCTION IN HAITI

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The January 2010 earthquake in Haiti created a major humanitarian crisis for all of Haiti's population, not least for its children. The devastation resulting from any large scale natural disaster raises numerous children's rights issues. Immediately following the Haiti earthquake, however, public attention focused largely, and selectively, on only certain issues confronting children, most notably the threat of trafficking. Anti-trafficking initiatives are essential, but isolating trafficking as an issue can lead to overlooking the structural issues that heighten children's vulnerability to being trafficked as well as other equally pressing children's rights violations. This article proposes a more holistic rights-based approach to the post-earthquake reconstruction effort in Haiti. The article delineates the range of rights violations children have suffered, explores the interrelationship among these rights, and outlines measures needed to foster the realization of all children's rights and well-being.

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I. Introduction

The earthquake in Port-au-Prince, Haiti, in January 2010 created a major humanitarian crisis for all of Haiti's population, not least for its children. The aftermath of any large scale natural disaster raises many children's rights issues at every stage of the relief and reconstruction process. In the immediate aftermath, however, public attention focused largely, and selectively, on only certain issues confronting children, most notably the threat of trafficking.¹ Although no one questions the urgent need to prevent

¹ The following excerpt of a CNN interview is but one example of how public attention in the aftermath of the earthquake was pushed in the direction of the issue of child trafficking, brushing over other major threats to children (e.g., lack of access to food, water, basic sanitation and health care):

JOHN ROBERTS, CNN ANCHOR: Dave, we should point out that World Vision does a lot of its charitable work ... with children. What are your concerns for the children there in Haiti? There were a lot of them that were forced into slavery before any of this happened. There ... are obviously more that are orphaned now. So what's the concern for the children?

DAVE TOYCEN, PRESIDENT AND CEO, WORLD VISION: Oh, no absolutely. I mean, children are always the most vulnerable in situations like this. And so, when you see a -- a lack of clean water, for example, lack of sanitation, it's the children, especially the young ones, that will die first, that get sick and die of very simple things. So our focus, of course, has been on children and doing whatever we can to make sure that they're getting the basics, you know, within their families or if they've been separated from their families.

ROBERTS: And ... what about the ... issue of child trafficking, about slavery, as I mentioned just a moment ago?

TOYCEN: ... Yes. It's still an issue here, and we're a long way from having, you know, for that being banned and ... simply not existing. ... But in a sense, that becomes almost an underground issue when you're in the midst of all of this basic, you know, just direct human need that's going on. But it's still there, and that's part of what has to be fixed in this country as we look to the future.

ROBERTS: Right. I thought that part of the concern might be that some of these orphaned children, you know, incidents like this can bring out the best in people and it can also bring out the worst, that some nefarious characters may try to go along and sweep up some of these kids off the streets.

TOYCEN: Well, absolutely. I think there has to be vigilance in a situation like this, because it's a chance, once again, to make money. Because that's really what it's about, and ... children are so vulnerable. And, as you've indicated, once they're separated from their families, ... from a family structure, ... they're really vulnerable to, you know, the influence of adults that offer things or simply, you

child trafficking, isolating it as an issue can lead to overlooking both the structural issues that heighten children's vulnerability to being trafficked and other equally pressing children's rights violations.

This article seeks to advance a more holistic rights-based approach to child well-being in Haiti. The article begins in Part I by reviewing the post-earthquake response by the international community. Such a review reveals that, despite the development of the children's rights movement, children are still largely relegated to the margins of the reconstruction efforts, and when they are considered, they tend to be viewed as individuals needing protection and charity, not as individuals with rights. In Part II, the article then situates the experience of Haiti's children in the context of children's rights law. Employing a rights-based framework helps reveal the full range of rights violations children have suffered following the earthquake. It also provides the legal mandate for ensuring the rights and well-being of Haiti's children. Although a rights-based approach is essential, like any strategy, it comes with potential challenges. Part II highlights three key challenges confronting efforts to ensure children's rights in Haiti: the issue of available resources, the interrelationship among rights, and the time-sensitive nature of children's rights. Each of these issues presents special challenges to ensuring child rights and well-being in Haiti. Recognizing the breadth and severity of children's rights violations in Haiti following the earthquake and the interrelated and interdependent nature of rights, in Part III, the article proposes a number of steps as a starting

know, just abduct them and take them. So it's ... an issue that's here.

ROBERTS: All right. Well, Dave Toycen, great work that you and your organization are doing. Thanks so much for joining us from Port-au-Prince this morning with an update.

CNN American Morning, Supplies Slow to Reach Haiti Survivors; Haiti's Airport Overwhelmed; Rescuers Race Against Time to Save Lives in Haiti; World Vision Relief Efforts for Haiti; Inmates Crushed During Escape; "Please Let Her Know that I Love Her," (CNN television broadcast Jan. 15, 2010) available at <http://archives.cnn.com/TRANSCRIPTS/1001/15/ltm.01.html> (last visited Feb. 10, 2011) [hereinafter CNN Transcript]. See generally ABC News, *Trafficking Fears as Haiti's Children Go Missing*, ABC, Jan. 23, 2010, available at <http://www.abc.net.au/news/stories/2010/01/23/2799492.htm> (last visited Feb. 10, 2011) [hereinafter ABC News].

point for developing a reconstruction effort that will ensure every child's rights and well-being.

II. Children, Charity, and Trafficking

On January 12, 2010, a massive earthquake struck Haiti just outside of its capital, Port-au-Prince.² Prior to the earthquake, life for most children in Haiti was already difficult, and children's rights frequently went unrealized.³ The earthquake dramatically exacerbated the issues confronting Haiti and its children; it killed more than 220,000 people, injured approximately 300,000, displaced more than 1.3 million, and severely damaged infrastructure across all sectors.⁴ In short, it created a major humanitarian crisis.⁵

² U.N. Secretary-General, *Report of Secretary-General of United Nations Stabilization Mission in Haiti*, ¶ 2, U.N. Doc. S/2010/200 (Feb. 22, 2010), available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/200 (last visited Feb. 10, 2011) ("On 12 January 2010, Haiti was hit by a 7.0 magnitude earthquake, particularly affecting the capital, Port-au-Prince [and surrounding locations].") (last visited May 5, 2011); see also *7.0 quake hits Haiti; 'Serious loss of life' expected*, CNN WORLD (Jan. 12, 2010), http://articles.cnn.com/2010-01-12/world/haiti.earthquake_1_peacekeeping-mission-president-rene-preval-haiti?s=PM:WORLD (last visited May 5, 2011).

³ Prior to the earthquake, two-thirds of the population was living on less than \$2 per day. HAITI EARTHQUAKE PDNA: ASSESSMENT OF DAMAGE, LOSSES, GENERAL AND SECTORAL NEEDS 5 (2010), http://www.refondation.ht/resources/PDNA_Working_Document.pdf [hereinafter HAITI EARTHQUAKE PDNA]. Before the earthquake, 47 percent of the population had no access to health care, school attendance rates were low (76 percent of primary school age children, 22 percent of secondary school age children), 30 percent of children suffered from chronic malnutrition, and access to clean drinking water was limited (70 percent of the urban population; 51 percent of the rural population). *Id.* at 60, 62, 65-66.

⁴ U.S. Dep't of State & U.S. Agency for Int'l Development, FY 2010 Haiti Supplemental Budget Justification 4 (2010), <http://www.state.gov/documents/organization/141243.pdf> [hereinafter FY 2010 Haiti] ("The toppling of 28 out of 29 of the Haitian Ministries and the United Nations (UN) compound not only resulted in the death of 17% of the Haitian civil service and 101 UN senior employees, but also destroyed decades of administrative records, including land and civil registries, voter rolls, payrolls, tax maps and records, court records, financial management systems, and much more. ... [T]he earthquake caused a total of \$7.8 billion in damages and losses, amounting to 120% of Haiti's 2009 GDP."); U.S. Geological Survey, *Haiti Earthquake*, <http://earthquake.usgs.gov/earthquakes/>

As is typical, and understandable, in humanitarian emergencies, the immediate response to the destruction in Haiti was to speak of “rescue” and “relief.”⁶ Although no one questions the great need for emergency relief following a major earthquake, such an approach can lead to a particular framework for responding to the plight of survivors of a natural disaster. Often, it reinforces the notion that aid is undertaken as a charitable endeavor, overlooking the rights and agency of survivors and failing to acknowledge children in mainstream reconstruction plans.⁷ In Haiti, significant

recenteqsww/Quakes/us2010rja6.php#summary (last visited May 5, 2011).

⁵ HAITI EARTHQUAKE PDNA, *supra* note 3, at 1 (“The earthquake on January 12, 2010 has caused an unprecedented situation in Haiti with enormous repercussions affecting all sectors of society, well beyond the areas directly affected by the catastrophe.”).

⁶ *See, e.g.*, Press Release, U.N. General Assembly, General Assembly Expresses Solidarity, Support for Haiti After Massive Earthquake; Appeals for Speedy, Sustainable Aid for Relief, Early Recovery, Reconstruction, U.N. Press Release GA/10913 (Jan. 22, 2010), available at <http://www.un.org/News/Press/docs/2010/ga10913.doc.htm> (last visited May 5, 2011) (“[The U.N. Secretary General] said the United Nations had three priorities, the first of which was the humanitarian relief operation. ... The second priority was security, without which there could be no humanitarian relief or basis for reconstruction. Third, there must be a focus on the future, as the coming weeks and months would need to see a shift from emergency response to longer-term relief and recovery.”); Press Release, The White House, United States Government Haiti Earthquake Disaster Response Update (Jan. 21, 2010), available at <http://www.whitehouse.gov/the-press-office/united-states-government-haiti-earthquake-disaster-response-update-12110> (last visited May 5, 2011) (“President Obama has said, ‘at this moment, we are moving forward with one of the largest relief efforts in our history—to save lives and to deliver relief that averts an even larger catastrophe.’”); Press Release, U.S. Agency for Int’l Development, USAID Responds Immediately to Haiti Earthquake (Jan. 12, 2010), available at <http://www.usaid.gov/press/releases/2010/pr100112.html> (last visited Feb. 10, 2011) (“This is a tragic situation and we will work alongside the Haitian government to provide immediate assistance in the rescue effort.” (quoting USAID Administrator Rajiv Shah)).

⁷ A number of significant post-earthquake relief and reconstruction reports and plans made little or no reference to children’s rights. Those that included children in their reports or plans spoke largely of child protection, evidencing little recognition of children as rights holders. *See infra* note 8. *Compare* Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, S/2010/446, (Sept. 1, 2010), available at <http://reliefweb.int/rw/rwb.nsf/db900SID/VDUX-894S95?OpenDocument&rc=2&emid=EQ-2010-000009-HTI> (last visited

aspects of the early post-earthquake response failed to take full account of the rights of Haiti's children and the relevance of Haiti's children to the country's future.⁸

Feb. 10, 2011) (including limited discussion of children, focusing on child protection), and THE WORLD BANK ET AL., HAITI EARTHQUAKE RECONSTRUCTION: KNOWLEDGE NOTES FROM DRM GLOBAL EXPERT TEAM FOR THE GOVERNMENT OF HAITI (Sept. 2010), [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/EGUA-89JQTL-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/EGUA-89JQTL-full_report.pdf/$File/full_report.pdf) (devoting only 2-1/2 pages of a 46-page report to women and children, whose needs are considered together), with UNICEF, CHILDREN OF HAITI: MILESTONES AND LOOKING FORWARD AT SIX MONTHS (2010), available at http://www.unicef.org.uk/publications/pdf/haiti6_months.pdf (examining several sectors and discussing how reconstruction efforts in each are relevant to addressing children's needs).

⁸ For example, the Haitian government released a post-disaster needs assessment in March 2010. HAITI EARTHQUAKE PDNA, *supra* note 3, at 5. The PDNA suggests major areas of action in seven sectors, and then across sectors. *Id.* at 9 (identifying the major sectors as governance, regional development, environment, risk and disaster management, social, infrastructure, and production). For three of the seven sectors, the PDNA suggests no action item specifically geared to children. *Id.* at 9–17 (suggesting action items in sectors of regional development, environment, and production). Possibly most surprising is that there is no specific action item in risk and disaster management focusing on children's rights. *Id.* at 12. *But see id.* at 12 (making passing reference to girls: recommending the country “strengthen the country-wide network of [Risk & Disaster Management] committees . . . including among other things the special protection measures for women and girls in a post-disaster situation developed in 2008 by the [Ministry for the Female Condition and Women's Rights]”).

In the governance sector, the PDNA makes twenty separate recommendations for action, but only directly addresses children's rights twice: once, when recommending an overhaul of several aspects of law, one of which is legislation for child protection, and again by recommending “support [for] . . . young people's association.” *Id.* at 10. There is no other mention of bringing children's voices into the polity.

The social sector provides an entire section devoted to education, but many of the other subsections of the social sector make only passing mention of children's rights, or no mention at all. *See id.* at 13 (discussing health and mentioning children only with respect to “providing medical care for women and girls who are victims of violence”); *id.* at 14 (discussing nutrition and providing only one action item devoted to children, and only to children under the age of five); *id.* at 14 (discussing drinking water, sanitation, and hygiene and mentioning children only in the context of providing safe “sanitary installations . . . for women and girls”).

Finally, of the twenty-one action items in the infrastructure sector, only one mentions children in passing. *Id.* at 15–16 (recommending telecommunications

To begin, although some organizations, most notably UNICEF and other children's organizations, paid significant attention to Haiti's children after the earthquake, some of the key post-earthquake relief and reconstruction reports and plans gave only passing mention to children rights and more generally tended to speak of child protection as a side issue, despite the fact that children make up nearly 45% of Haiti's population.⁹ It is possible that such institutions presumed that children's issues should be left to UNICEF and non-governmental organizations (NGOs) that focus on children. However, although these latter organizations have significant expertise to bring to bear on children's issues and should be involved in efforts focused on children, failure to incorporate children's rights and needs into the primary post-earthquake plans leaves nearly half of Haiti's population out, or at best at the margins, of Haiti's plans for its future.

Next, the "rescue" or "saving" narrative used after the earthquake, although understandable, undervalues the agency of children and their families.¹⁰ Yet this narrative is particularly

facilities for "children, young people, and the public administration"). The PDNA provides a cross-sector set of recommendations, only one of which is specifically geared to children. *Id.* at 17 ("Invest in young people by putting children back to school and getting youth to participate in rebuilding the country").

In its section on cross-cutting themes, the PDNA does acknowledge that the "reconstruction strategy aims to ... [d]evelop and implement sector reform including a global policy for youth, to promote their wellbeing, with particular reference to international instruments relating to children's rights." *Id.* at 38. Despite this well-intentioned, aspirational statement, as noted above, the PDNA fails to operationize this idea by including children and their rights in the various sector plans. In a country in which children make up 44% of the population, their rights, needs, and voices must be a more central part of the reconstruction.

⁹ Simon Romero, *With Haitian Schools in Ruins, Children in Limbo*, NY TIMES, Mar. 7, 2010, at A6 ("Children make up about 45 percent of Haiti's population."); *see also* UNICEF, STATE OF THE WORLD'S CHILDREN: SPECIAL EDITION CELEBRATING 20 YEARS OF THE CONVENTION ON THE RIGHTS OF THE CHILD (2009) (showing that children make up 43.5 percent of Haiti's population per data provided in Statistical Tables 1 and 6).

¹⁰ I do not suggest that relief efforts are inherently flawed. When they are organized and run in partnership with the local affected population, they account for needs while also empowering people. My concern is with relief efforts that presume that only outsiders can "save" Haiti (or other poorer nations) from disaster.

prevalent in situations and processes in which children are the focus.¹¹ Following the earthquake, relief initiatives frequently characterized children as passive victims in need of rescue.¹² Concerns over child trafficking fit that narrative. The prevailing narrative in the discourse on child trafficking is one of saving children from the evil “Other.”¹³

In the aftermath of the earthquake, as the international community scrambled to respond and provide emergency relief, one story in particular captured the world’s attention when ten individuals from the United States, purporting to be on a “rescue” mission, were arrested by Haitian authorities for allegedly trafficking children out of Haiti.¹⁴ The ten missionaries were arrested when they

¹¹ See Shani King, *Challenging Monohumanism: An Argument for Changing the Way We Think About Inter-country Adoption*, 30 MICH. J. INT’L L. 413, 432–35 (2009) (discussing the dominant “rescue” narrative prevalent in inter-country adoptions). Prior to the advent of the modern children’s rights movement, children were seen as a special class of persons in need of special protections but without rights of their own. See generally STEVEN MINTZ, *HUCK’S RAFT: A HISTORY OF AMERICAN CHILDHOOD* (2004).

¹² MIA DAMBACH & CHRISTINA BAGLIETTO, INT’L SOCIAL SERVICE, HAITI: “EXPEDITING” INTER-COUNTRY ADOPTIONS IN THE AFTERMATH OF A NATURAL DISASTER. ... PREVENTING FUTURE HARM 22 (Aug. 2010), www.iss-ssi.org/2009/assets/files/Haiti%20ISS%20final-%20foreword.pdf (discussing the lack of restraint in post disaster situations and finding that “[u]nfortunately, the typical emotive response to a catastrophe was as prevalent as ever, ‘children need to be saved and adopted,’ but it is one that flies in the face of well established international norms.”); Letter from U.S. Senator Robert Menendez and Thirty-Three Senate Colleagues, to Secretaries Hillary Clinton, U.S. Dep’t of State, and Janet Napolitano, U.S. Dep’t of Homeland Sec. (Jan. 22, 2010), *available at* http://menendez.senate.gov/imo/media/doc/2010011tr_HaitiAdoptions.pdf (calling for enhanced efforts to “find and rescue” Haiti’s orphans and facilitate expedited adoptions).

¹³ King, *supra* note 11, at 432-35 (discussing the “rescue narrative” of human trafficking and stating that this narrative “generate[s] a sense of urgency to extract children from their home countries before they grow older and become ruined psychologically or physically by their environments.”); Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 628–29 (2009) (describing how conceptions of a virtuous Self and lesser Other shape the discourse on human trafficking and foster the notion that the West can save children in developing countries from their culture).

¹⁴ Evan Wilson, *North America and the Caribbean: Haiti’s Vulnerable*

tried to take thirty-three Haitian children across the border to the Dominican Republic.¹⁵ The Haitian government charged them with “criminal association” and “kidnapping.”¹⁶ In fact, most of the children were not orphans.¹⁷ Though eventually the charges against nine of the individuals were dropped and the tenth person—the group leader—pleaded guilty to a lesser charge, these events highlighted the dangers of a narrow rescue-centric narrative regarding children.¹⁸ Putting the group leader’s situation aside, if one were to take the other group members’ statements at face value and set aside questions as to their sincerity, their comments reflected the notion of the West as “savior/rescuer”: the group believed they were doing “the right thing” and that, in their view, doing right meant taking Haitian children away from their home to the United States.¹⁹

Children After the Earthquake, 17 No. 2 HUM. RTS. BRIEF 40, 40 (2010).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*; Frank Bajak, *No Quick Release for Missionaries in Haiti*, CHI. TRIB., Feb. 7, 2010 (explaining initial reports estimated that at least twenty-two of the thirty-three children had parents); *Missionaries’ Kids Not Truly Orphans*, DETROIT FREE PRESS, Feb. 21, 2010, at A16 (detailing reports that not one of the removed children was an orphan).

¹⁸ *See Haiti Drops Kidnapping Charge for Missionaries*, MSNBC NEWS (Apr. 26, 2010), <http://www.msnbc.msn.com/id/36788368/> (last visited Feb. 8, 2011) (reporting that charges of kidnapping and criminal association against all 10 members were dropped, and that the group leader faced only a lesser remaining charge of arranging illegal travel); Jonathan M. Katz, *Laura Silsby, U.S. Missionary Leader, Convicted in Haiti, But Free to Go*, HUFFINGTON POST, May 17, 2010, http://www.huffingtonpost.com/2010/05/17/laura-silsby-us-missionar_n_579644.html (last visited May 5, 2011).

¹⁹ *Haiti PM Says US Missionaries Knew They Were Doing Wrong*, THE TELEGRAPH (Feb. 2, 2010), available at <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/haiti/7132399/Haiti-PM-says-US-missionaries-knew-they-were-doing-wrong.html> (last visited May 5, 2011) (reporting that the group’s leader “admitted that she had not obtained the correct Haitian documents, but said that they were ‘just trying to do the right thing’ amid the chaos”); see also Paula Bustamante, *Mistrust in the Eyes of Rescued Haitian ‘Orphans’*, THE TELEGRAPH, Feb. 1, 2010, available at <http://www.telegraph.co.uk/expat/expatnews/7127824/Mistrust-in-the-eyes-of-rescued-Haitian-orphans.html> (last visited Feb. 10, 2011) (reporting on how many foreigners presume children to be orphans, when “[s]ome of the children may simply be out of parental sight, as mothers and fathers spend much of the day rushing from one place or another

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The story was compelling and made for the type of headlines that sells newspapers.²⁰ After all, human trafficking is a gross violation of individual rights and human dignity²¹ and an issue that has received increased attention in recent years.²² Indeed, the issue of trafficking of Haitian children merited attention and action.

The concern is that privileging the threat of trafficking as the most pressing issue confronting children in Haiti following the earthquake creates misperceptions as to the scope of the problems

trying to get a donated tent, or some food and water”); Ginger Thompson, *Case Stokes Haiti’s Fear for Children, and Itself*, NY TIMES, Feb. 2, 2010, at A1 (“Prime Minister Jean-Max Bellerive angrily denounced [the missionaries] as ‘kidnappers’ who ‘knew what they were doing was wrong.’”).

²⁰ See, e.g., *Haiti Arrests US Nationals Over Child ‘Abductions’*, BBC NEWS (Jan. 31, 2010), available at <http://news.bbc.co.uk/2/hi/americas/8489738.stm> (last visited Feb. 10, 2011).

²¹ See, e.g., Ursula Plassnik, Austrian Federal Minister for European and International Affairs, Opening Statement at the U.N. Global Initiative to Fight Trafficking, (Feb. 13, 2008), available at <http://www.ungift.org/ungift/vf/speeches/plassnik.html> (last visited May 5, 2011) (“Human Trafficking has many cruel faces. It is one of the most serious violations of fundamental human rights and human dignity.”).

²² See, e.g., President Barack Obama, *Presidential Proclamation - National Slavery and Human Trafficking Prevention Month*, Jan. 4, 2010, available at <http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-slavery-and-human-trafficking-prevention-month> (last visited May 5, 2011) (calling on all Americans to join together in the effort to end human trafficking); President George W. Bush, Address Before a Joint Session of the Congress on the State of the Union, 42 WEEKLY COMP. PRES. DOC. 145, 148 (Jan. 31, 2006); President William J. Clinton, Memorandum on Steps to Combat Violence Against Women and Trafficking in Women and Girls, 1 PUB. PAPERS 358, 359 (Mar. 11, 1998); European Union Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings, 2005 Official Journal of the European Union 2005/C311/01 (Dec. 9, 2005), available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:311:0001:0012:EN:PDF> (establishing a human rights and victims-centered approach to combating human trafficking); U.N. News Centre, *Secretary-General Calls for ‘Bold Action’ to End Human Trafficking*, <http://un.org/apps/news/story.asp?NewsID=30783&Cr=human+trafficking> &Cr1= (last visited Feb. 10, 2011) (“[U.N. Secretary-General Ban Ki-Moon] underscored the need for collective action to criminalize human trafficking, prevent victimization by teaching people about their rights, reduce demand, end impunity and protect the victims.”).

confronting Haiti's children and the most effective remedies.²³ A narrow focus on child trafficking not only misses other equally pressing children's rights violations, but can also lead to overlooking the structural issues that are at the root of vulnerability to trafficking.²⁴ Therefore, even for those who believe trafficking is the most important issue confronting children, a focus solely on trafficking is a recipe for failure in the short and long term.

First, concentrating on the threat of child trafficking reinforces the narrative of "rescuing" or "saving" children, which creates too narrow a focus to help ensure the rights and well-being of children long-term. A focus on trafficking also reinforces the prevailing narrative on human trafficking that the virtuous Self (read: the West) can "save" children from the plight in their home countries.²⁵ This quick fix approach focuses on "helping" children by removing them from the situation, rather than rebuilding and

²³ See CNN Transcript, *supra* note 1; ABC News, *supra* note 1.

²⁴ Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1718 (2010). As Chuang explains,

Regrettably, the savior mentality avoids nuance in its quest for salvation and leaves little room for self-doubt. ... But the trail of harms demands that one question be asked: whether at least some of the resources allocated to rescue might be better used to address the underlying root causes that fuel risky migration and exploitative labor conditions--if for no other reason than for the sake of those who invariably replace the rescued.

Id. Addressing the root causes of trafficking would require measures to reduce vulnerability of at-risk individuals (supply side) and initiatives to decrease demand for exploitative services. *Id.*

²⁵ Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1, 6 (2002) ("Women in the Third World are portrayed as victims of their culture, which reinforces stereotyped and racist representations of that culture and privileges the culture of the West"); King, *supra* note 11, at 433 ("[The rescue narrative] generate[s] a sense of urgency to extract children from their home countries before they grow older and become ruined psychologically or physically by their environments."); Todres, *supra* note 13, at 622-23 ("The dichotomous view of the virtuous Self and the barbarous Other leads many in the Global North to blame the problem [of human trafficking] exclusively on peoples and governments 'over there' who 'do not value life (or their children) the way we do'").

strengthening communities and reducing vulnerability to exploitation. A few then are “rescued” (and simultaneously taken away from their homes and cultures), while the rest are left behind with little or nothing done to address the dangers they face.

Second, a focus on trafficking orients relief and reconstruction efforts in a way that is a poor fit for addressing the needs of children in post-disaster settings. The prevailing approach to child trafficking has been a law-enforcement-centered model that often focuses on border security and pursuing perpetrators.²⁶ Law enforcement, though important, is but one component of the type of comprehensive effort needed to *prevent* child trafficking.²⁷

²⁶ See Mike Dottridge, *Introduction*, in COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD 1 (Global Alliance Against Traffic in Women ed., 2007), http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf [hereinafter COLLATERAL DAMAGE] (“[T]he priority for governments around the world in their efforts to stop human trafficking has been to arrest, prosecute and punish traffickers, rather than to protect the human rights of people who have been trafficked.”); Anna Zalewski, *Migrants for Sale: The International Failure to Address Contemporary Human Trafficking*, 29 SUFFOLK TRANSNAT’L L. REV. 113, 129 (2005) (finding “[a]ll existing international agreements that address human trafficking in detail take a law enforcement approach to the problem”). A law enforcement centered approach to human trafficking has been the subject of significant criticism. See, e.g., Jayne Huckerby, *United States of America*, in COLLATERAL DAMAGE, *supra*, at 230, 247 (describing how the U.S. government’s “prosecutorial focus often runs counter to the rights of trafficked persons”); Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 345–52 (2007) (describing detrimental effects of a law enforcement perspective to human trafficking including the inefficiency of prosecution and government officials’ inability to recognize victims); Ivy C. Lee & Mie Lewis, *Human Trafficking From a Legal Advocate’s Perspective: History, Legal Framework and Current Anti-Trafficking Efforts*, 10 U.C. DAVIS J. INT’L L. & POL’Y 169 (2003) (criticizing the requirement that T- and U-visa applicants cooperate with law enforcement to receive relief); Jonathan Todres, *Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation*, 43 VAND. J. TRANSNAT’L L. 1, 32-35 (2010).

²⁷ The international community has agreed upon a comprehensive, three-pronged response to human trafficking, which mandates (1) punishment for perpetrators of these crimes, (2) protection of and assistance for victims, and (3) prevention measures; and it has enshrined this approach in the major international

Moreover, a border focus in anti-trafficking efforts misses the reality that a far greater number of individuals are victims of intra-country trafficking than cross-border trafficking, and that children are suffering numerous other rights violations.²⁸ In Haiti, other threats to the safety, well-being, and survival of several hundred thousand internally displaced children were and remain more widespread and substantial than trafficking.²⁹

Third, the story of missionaries-as-possible-traffickers raised questions about rescue missions that remove children from their home countries. That specific incident led the Haitian government to

conventions aimed at combating human trafficking. *See, e.g.*, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, arts. 5-6, 9, G.A. Res. 55/25, Annex II, U.N. GAOR, 55th Sess., Supp. No. 49, U.N. Doc. A/45/49 (Vol. I) (Nov. 15, 2000) (*entered into force* Sept. 9, 2003) [hereinafter Trafficking Protocol] (providing for criminalization, assistance to victims, and preventive measures); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, arts. 3, 8-9, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. No. 49, U.N. Doc. A/54/49, Vol. III (2000) (*entered into force* Jan. 18, 2002) [hereinafter CRC Protocol on the Sale of Children] (mandating criminal liability for certain acts of trafficking, prostitution, and pornography involving children and directing States Parties to adopt appropriate victim assistance and prevention measures).

²⁸ Luis CdeBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Keynote Remarks to the Harvard Kennedy School's Ash Center for Democratic Governance and Innovation, *Best Practices: Human Trafficking in Disaster Zones* May 24, 2010, available at <http://www.state.gov/g/tip/rls/rm/2010/142160.htm> (last visited May 5, 2011) ("Focusing on movement instead of exploitation results in mis-deployment of counter-trafficking resources to border areas, thereby compromising interior enforcement, or resulting in confusion over practices such as adoption. This often undercuts local organizations' pre-disaster anti-slavery efforts.")

²⁹ *See* HAITI EARTHQUAKE PDNA, *supra* note 3, at 60-62, 65-68 (detailing the broad range of threats to children's survival including food insecurity, lack of access to health care, and lack of clean drinking water); *see also* INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI ET AL., OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN'S FIGHT AGAINST RAPE 7-8 (2010) [hereinafter INSTITUTE FOR JUSTICE] ("[T]here is overwhelming evidence that [gender-based violence]—specifically the rape of women and girls—has dramatically escalated in Haiti since the earthquake").

temporarily halt inter-country adoptions.³⁰ In the United States, this prompted some inter-country adoption advocates to criticize the Haitian government.³¹ This response shifted discussions to the “problem” caused by the Haitian government by stopping inter-country adoption,³² instead of using that moment to refocus

³⁰ Ginger Thompson, *Case Stokes Haiti's Fear for Children, and Itself*, N.Y. TIMES, Feb. 2, 2010, at A1.

Fearful of the possibility that unscrupulous traffickers would take advantage of Haiti's sundered justice system to take children from poor families for illegal adoptions, prostitution or slavery, the government had halted all adoptions except those already in motion before the earthquake. [The Prime Minister's] signature is now required for the departure of any child. For the government, the arrests provided an opportunity to send a strong message, and the message was outrage. 'If people want to help children of Haiti,' said Marie-Laurence Jocelin Lassegue, a government spokeswoman, 'this is not the way to do it.'

Id.; *Haiti PM Says US missionaries Knew They Were Doing Wrong*, *supra* note 19 (“Haiti's government has halted all adoptions unless they were in motion before the earthquake, amid fears that children who have become separated from their parents are more vulnerable than ever to being seized and sold.”).

³¹ Howard LaFranchi, *Haiti Earthquake Reignites Debate Over Fast-tracking Adoptions*, CHRISTIAN SCI. MONITOR (Jan. 25, 2010), available at <http://www.csmonitor.com/World/Americas/2010/0125/Haiti-earthquake-reignites-debate-over-fast-tracking-adoptions> (last visited May 5, 2011) (“Now unbeknownst to them[,] [children] are at the eye of a strengthening storm—one that is churning up the advocates of streamlined adoption procedures for Haiti against those who say too-hasty adoption can hurt the children and birth parents that in some cases still exist.”).

³² *Id.* For example, Professor Elizabeth Bartholet was critical of Haiti's decision to temporarily halt inter-country adoptions, stating “It is astoundingly hypocritical that people, in the name of helping children, would close down adoption.” *The Adoption Dilemma The Motive is Love, but There are Pitfalls*, WINNIPEG FREE PRESS, Feb. 13, 2010, at H1 (quoting Elizabeth Bartholet). In contrast, aid agencies including Save The Children, World Vision, and the British Red Cross encouraged Haiti to temporarily halt inter-country adoptions. See Bruno Waterfield & Nick Allen, *Fears for Orphans Being Fast-Tracked to the West Adoptions, Charities Say More Effort Should be Made to Keep Children Close to Their Haitian Families*, DAILY TELEGRAPH, Jan. 23, 2010, available at 2010 WLNR 1458681; Press Release, *Save the Children, Call for Halt to New Child Adoptions in Haiti*, Jan. 21, 2010, http://www.savethechildren.org.uk/en/41_call-for-halt-to-new-child-adoptions-in-haiti.htm (last visited May 5, 2011); Press Release, *World Vision, Haiti Aid Agencies Demand Halt to New Haiti Adoptions*, Jan. 20, 2010, <http://www.worldvision.org.uk/server.php?show=nav.3470> (last visited Feb. 10, 2011); see also Ian Atzet, *Post-Crisis Actions to Avoid*

assistance on the hundreds of thousands of internally displaced children whose survival was threatened. Whatever one's view on inter-country adoption, the fact is that it is a limited, resource-intensive approach to relief efforts in settings where over one million individuals are displaced; even in the best circumstances, inter-country adoption helps only a small number of children as compared to the total number of children left vulnerable following a natural disaster.³³ Moreover, the moment that the discussion regarding

International Child Trafficking, 12 J. L. & FAM. STUD. 499, 508-09 (2010) (arguing that in post-crisis situations, moratoria on inter-country adoptions are appropriate until the threat of child trafficking can be addressed); David Crary, *Divisions Arise Over Push for Adoptions From Haiti*, SUN SENTINEL, Apr. 12, 2010, available at 2010 WLNR 7535009 (discussing the debate over inter-country adoptions out of Haiti). See generally David Smolin, *Inter-country Adoption as Child Trafficking*, 39 VAL. U. L. REV. 281 (2004).

To some, intercountry adoption in itself is more or less a form of child trafficking, as it involves the transfer of children from poor nations to rich nations in order to meet the demand of those in rich nations for children. ... In broad terms, it is still a matter of the citizens of rich countries using their wealth and power to 'buy' the vulnerable children of the poor. From this perspective, those who really care about the suffering of children in developing nations should provide assistance and help to children within their own societies, rather than spending inordinate sums to strip children of their national identity, native culture, and language.... By contrast, those most supportive of inter-country adoption perceive literally millions of children in need of inter-country adoption in developing and transition economy nations.

Id. at 283.

³³ Kathleen Ja Sook Bergquist, *International Asian Adoption: In the Best Interests of the Child?*, 10 TEX. WESLEYAN L. REV. 343, 349 (2004) ("International adoption isn't the answer to improving the overall plight of children in developing countries. Even the strongest supporters admit the movement of adoptees across international borders represents only a tiny fraction of the neglected, abused and abandoned children in these countries. And supporters of international adoption are quiet about the children who are left behind.") (quoting Lawford L. Goddard, *Transracial Adoption: Unanswered Theoretical and Conceptual Issues*, 22 J. BLACK PSYCHOL. 273, 279 (1996)) (internal quotations omitted). Some scholars have expressed concern that inter-country adoption can be harmful to children. See, e.g., King, *supra* note 11, at 429 (expressing concern that "[t]he dominant narratives often conceptualize inter-country adoption solely as the rescue of an 'orphan.' These narratives also reflect a narrow conception of children outside of the context of their family, community, and culture and through a narrow prism as the potential child of Western adults"); Smolin, *supra* note 32, at 283-86 (2004) (detailing many potential dangers of inter-country adoption,

Haiti's children focused on inter-country adoption, it took attention away from the suffering experienced by the vast majority of internally displaced children who will never be part of any inter-country adoption program.

Finally, focusing on trafficking and "rescue" increases the likelihood of overlooking the breadth of rights violations that children experienced in the earthquake's aftermath and continue to suffer today. Though the threat of trafficking was and still is real, as the next Part details, far more children face much broader threats to their survival.

III. Children's Rights after the Earthquake

Several hundred thousand Haitian children have suffered as a result of the earthquake.³⁴ This Part examines the experience of Haiti's children, highlighting one young girl's experience. It then reframes children's experience in rights discourse. The hardships suffered by Haiti's children do not simply compel charitable responses; they constitute violations of fundamental human rights.

including child trafficking).

³⁴ See *USAID Programs: Sustainable, Scalable Solutions for Haiti's Present and Future*, USAID, www.usaid.gov/helphaiti/documents/0710_fourprograms.pdf ("[M]ore than 38,000 students ... died in the quake, and an estimated 302,000 children were displaced."); UNICEF, UNICEF HAITI EMERGENCY RESPONSE UPDATE: 10TH MARCH 2010 (2010), [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MDCS-83GCS4-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MDCS-83GCS4-full_report.pdf/$File/full_report.pdf) (reporting that half of those affected by the earthquake are children).

As of beginning of March, over 604,215 persons have reported their displacement to rural Departments (including over 302,000 children). ... There are also approximately 1.5 million persons (around 750,000 children) that are affected by the earthquake but they have not left their home communes. Of this number, some 619,140 persons (including over 309,500 children) are living in over 439 spontaneous temporary settlement sites. ... There are also an estimated 60,000-100,000 Haitians (20 per cent children) who fled to the Dominican Republic, seeking assistance or joining relatives.... A total of 494,600 children under-five years old and 197,840 pregnant and lactating women were estimated to have been affected by the earthquake. All are considered at risk of malnutrition and are being targeted through ongoing blanket supplementary feeding.

Id. at 1, 3.

This reframing changes the nature of children's claim – it is no longer a plea for charity, but a legal claim based on the violation of rights that every individual possesses.³⁵

A. Violations of Children's Rights

Johanne is ten years old, the oldest of four siblings.³⁶ Her father was killed in the earthquake. Since then, she has lived in an internally displaced persons (IDP) camp run by an NGO. Johanne lives with her mother and siblings in a one-room tent, no longer attends school, has little or no access to health care, and on many days has no food to eat. As her mother seeks work to feed the family, Johanne is left to care for her three younger siblings. She has been raped several times, including once when walking to the camp's communal bathrooms and another time in her family's tent, when her mother was out seeking work.

Through one child's experience, it is evident that although she is not a trafficking victim, she has suffered multiple violations of fundamental rights on a daily basis since the earthquake. Her experience is not unique. Thousands of Haitian children face similar plights, even a year after the earthquake.

³⁵ U.N. Secretary-General, Annual Report of the Secretary-General on the Work of the Organization, ¶174, U.N. Doc. A/53/1 (Aug. 27, 1998), available at <http://www.un.org/Docs/SG/Report98/ch5.htm> (last visited May 5, 2011) (“The rights-based approach to development describes situations not simply in terms of human needs, or of developmental requirements, but in terms of society's obligation to respond to the inalienable rights of individuals. It empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance where needed.”); see also Charles W. Gould, *The Right to Housing Recovery After Natural Disasters*, 22 HARV. HUM. RTS. J. 169, 173, (2009) (“a rights perspective shifts the moral framework for action from charity to justice”).

³⁶ The story of Johanne (not her real name) was told to me by a journalist documenting Haitian girls' experience after the earthquake. To protect Johanne's privacy, I have changed her name and avoided mentioning any identifying details, including the name of the camp in which she now lives. Her experience is by no means unique, and similar experiences have been documented by other organizations working in Haiti. See generally INSTITUTE FOR JUSTICE, *supra* note 29 (noting that sexual violence against girls is occurring at an alarming rate in the aftermath of the earthquake).

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Johanne's experience reveals that children in Haiti are experiencing a multitude of human rights violations, with devastating short- and long-term consequences. As Johanne's experience demonstrates, numerous rights are in jeopardy, including: the right to life, survival and development;³⁷ the right to live free from sexual abuse and exploitation,³⁸ the right to live free from gender-based discrimination as well as other forms of discrimination,³⁹ health rights,⁴⁰ education rights,⁴¹ the right to an adequate standard of living,⁴² and other related rights.⁴³

³⁷ See Convention on the Rights of the Child, art. 6, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/Res/44/25 (Nov. 20, 1989) [hereinafter CRC].

³⁸ See CRC, *supra* note 37, arts. 34-36 ("States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. . . . States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. . . . States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."); see also CRC Protocol on the Sale of Children, *supra* note 27; Trafficking Protocol, *supra* note 27; ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182), *adopted* June 17, 1999, 38 I.L.M. 1207, 1208, T.I.A.S. No. 13045, 2133 U.N.T.S. 161 [hereinafter ILO Convention No. 182].

³⁹ See, e.g., CRC, *supra* note 37, art. 2; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), G.A. Res. 34/180, 34 U.N. GAOR Supp. No. 46, U.N. Doc. A/34/46 (1979); International Covenant on Civil and Political Rights, art. 2(1), G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316, 999 U.N.T.S. 171 (1966) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, art. 2(2), G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316, 993 U.N.T.S. 3 (1966) [hereinafter ICESCR]; American Convention on Human Rights, art. 1, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (1969); see also Universal Declaration of Human Rights, art. 2(1), G.A. Res. 217A(III) (Dec 10, 1948) [hereinafter UDHR].

⁴⁰ See CRC, *supra* note 37, art. 24(1); ICESCR, *supra* note 39, art. 12(1) ("States Parties . . . recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health").

⁴¹ See CRC, *supra* note 37, art. 28(1); ICESCR, *supra* note 39, art. 13(1); see also UDHR, *supra* note 39, art. 26(1).

⁴² CRC, *supra* note 37, art. 27(1)-(3) (recognizing the right "to a standard of living adequate for the child's physical, mental, spiritual, moral and social development," and obligating States Parties to provide material assistance when

Without question, immediate and concerted efforts are needed following a natural disaster, and even today in Haiti, to prevent the trafficking of children. However, security-based responses to child trafficking are very limited, failing to account for systemic issues that make children vulnerable to exploitation and thus falling short of creating a climate in which children's rights will be protected over time.⁴⁴

needed with regard to nutrition, clothing and housing.); ICESCR, *supra* note 39, art. 11 (recognizing "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" and "the fundamental right of everyone to be free from hunger"); *see also* International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 43(1)(d), G.A. Res. 45/158, U.N. GAOR, 45th Sess., 69th mtg., U.N. Doc. A/RES/45/158 (1990) (recognizing the right to equality of treatment in access to housing and social housing programs); CEDAW, *supra* note 39, art. 14 (recognizing the need for states to take special account of the rights of rural women to an adequate standard of living).

⁴³ *See* CRC, *supra* note 37, art. 2 (the right to be free from discrimination in the realizing of any right), art. 31 (the right to leisure and play), arts. 7 & 9 (the right to know and be cared for by one's parents), art. 20 (the right to alternative means of care). Many other rights are at stake. For example, play (both structured and unstructured) is vital to child development; *see also* Kenneth R. Ginsburg et al., *The Importance of Play in Promoting Healthy Child Development and Maintaining Strong Parent-Child Bonds*, 119 PEDIATRICS 182, 183 (2007), available at <http://pediatrics.aappublications.org/cgi/content/full/119/1/182> (last visited Feb. 11, 2011) ("Play allows children to use their creativity while developing their imagination, dexterity, and physical, cognitive, and emotional strength. Play is important to healthy brain development."); J. Madeleine Nash, *Fertile Minds*, TIME, Feb. 3, 1997, at 48 ("Researchers at Baylor College of Medicine, for example, have found that children who don't play much or are rarely touched develop brains 20% to 30% smaller than normal for their age."). *See generally* ANTHONY PELLEGRINI, THE ROLE OF PLAY IN HUMAN DEVELOPMENT (2009). In the IDP camps, where children are at risk of being physically or sexually assaulted when they leave their tents, opportunities for play are constrained, if not eliminated.

⁴⁴ *See* Haynes, *supra* note 26, at 345–52 (detailing the shortcomings of a law enforcement centered approach to human trafficking); Jonathan Todres, *Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking*, 89 N.C. L. REV. 447, 456–63 (2011) (discussing how a criminal law approach fails to address root causes); Global Alliance Against Traffic in Women & Center for Human Rights and Global Justice, New York University School of Law, Beyond

Even as child trafficking and other forms of exploitation create an urgent need for protective measures, another set of issues with potentially life-altering consequences confronts Haiti's children. In the earthquake's aftermath, there are major obstacles to children realizing their economic and social rights. This article highlights four issues fundamental to children that are obscured by the focus on child trafficking but ultimately relate to trafficking prevention—health rights, education rights, the right to an adequate standard of living, and the right to a safe and secure environment.⁴⁵ The first three issues are economic and social rights, which frequently, and incorrectly, are accorded lesser significance.⁴⁶

Borders: Exploring Links between Trafficking, Globalization, and Security 23 (GAATW Working Papers Series, 2010), http://law.nyu.edu/ecm_dlv1/groups/public/@nyu_law_website_alumni/documents/documents/ecm_pro_067268.pdf (“A security approach has led to tighter border security and more restrictive migration regimes, which fuels clandestine and insecure movement and heightens the potential for trafficking.”).

⁴⁵ The “right to a safe and secure environment” is not expressly included in human rights treaties. However, I submit that the right to be free from various forms of exploitation and the right to be free from all forms of physical and mental violence and abuse together constitute a right to a safe and secure environment. *See, e.g.*, CRC, *supra* note 37, art. 19 (“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”); ICCPR *supra* note 39, art. 8 (prohibiting all forms of “forced or compulsory labour”); ICESR, *supra* note 39, art. 10 (“Children and young persons should be protected from economic and social exploitation.”); *see also* Montreal Declaration: People’s Right to Safety, 6th World Conference on Injury Prevention and Control, Montreal, Canada, May 15 2002, *available at* <http://www.hhrjournal.org/archives-pdf/4065441.pdf.banned.pdf> (Article 1 reads: “Safety is a fundamental right. It is essential for the attainment of health, peace, justice and well-being.”); Edward Cameron, *Human Rights and Climate Change: Moving From an Intrinsic to an Instrumental Approach*, 38 GA. J. INT’L & COMP. L. 673, 698 (2010) (“Although there is no formal or explicit human right to a safe and secure environment, the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights is recognized in varying formulations by the constitutions of 118 countries around the world.” (citing Svitlana Kravchenko, *Right to Carbon or Right to Life: Human Rights Approaches to Climate Change*, 9 VT. J. ENVTL. L. 513, 523 (2008))).

⁴⁶ *See* Hilary Charlesworth et al., *Feminist Approaches to International Law*,

Today in Haiti, access to health care is significantly impeded.⁴⁷ Even prior to the earthquake, Haiti suffered from a compromised and ineffective health care sector,⁴⁸ significant water and sanitation problems,⁴⁹ limited access to basic health care,⁵⁰ and food insecurity.⁵¹ According to UNICEF, “[t]he earthquake literally flattened the Ministry of Health, decimated an already weak health infrastructure, and heavily burdened health professionals.”⁵² The

85 AM. J. INT’L L. 613, 635 (1991) (“Economic, social and cultural rights are traditionally regarded as a lesser form of international right and as much more difficult to implement.”); Eric Heinze, *Even-Handedness and the Politics of Human Rights*, 21 HARV. HUM. RTS. J. 7, 43–45 (2008) (recognizing the debate over how developing nations should prioritize civil and political rights); see also Eva Brems, *Human Rights: Minimum and Maximum Perspectives*, 9 HUM. RTS. L. REV. 349, 365–66 (2009).

If all positive obligations under civil and political rights have an immediate character whereas state obligations under economic, social and cultural rights are progressive, resource constraints inevitably lead states to always give priority to implementing civil and political rights over the realisation of economic, social and cultural rights. This result is undesirable and incompatible with the principle of the indivisibility of human rights. *Id.*

⁴⁷ See KEITH CRANE ET AL., RAND CORPORATION, BUILDING A MORE RESILIENT HAITIAN STATE (2010), http://www.rand.org/pubs/monographs/2010/RAND_MG1039.pdf (highlighting the numerous issues confronting the Haitian health care delivery system after the earthquake). At the time of the earthquake, access was already a problem, as more than 40 percent of the country was without access to care prior to the earthquake. *Id.* at 121.

⁴⁸ WORLD HEALTH ORG., PUBLIC HEALTH RISK ASSESSMENT AND INTERVENTIONS: EARTHQUAKE: HAITI 6 (Jan. 2010), http://www.who.int/diseasecontrol_emergencies/publications/haiti_earthquake_20100118.pdf [hereinafter WHO Health Risk Assessment] (“Hospital and clinical facilities in Port-au-Prince have long been compromised by infrastructural deficiencies, electrical blackouts, water problems and general impoverishment.”).

⁴⁹ WHO Health Risk Assessment, *supra* note 48, at 6 (“In 2009, 45% of the population lacked access to clean water and 83% of Haiti’s total population did not have access to sufficient sanitation.”).

⁵⁰ *Id.* (“In 2007, 47% of the population lacked access to basic health care, with the majority of the population seeking care from traditional healers.”).

⁵¹ *Id.* (“An estimated 40% of households experience food insecurity, manifested by low birth weight and nutrient deficiencies.”).

⁵² UNICEF, CHILDREN OF HAITI: MILESTONES AND LOOKING FORWARD AT SIX MONTHS 22 (July 2010), http://www.unicef.org/media/media_54256.html (last visited Feb. 11, 2011) [hereinafter UNICEF Six Month Report].

Pan-American Health Organization (PAHO) reported that “twenty-two hospitals were seriously damaged and eight were destroyed in three of the most-affected regions.”⁵³ Further, aside from a lack of facilities, there is an alarming shortage of health care professionals within the country.⁵⁴ In the Port-au-Prince region, PAHO investigations reported that “many camps still do not have health care services and in some cases mobile clinics are just tents with a box of drugs.”⁵⁵ All of this dramatically curtails access to health care.

In the months after the earthquake, “[m]ost of the people displaced by the earthquake [ended up] in crowded tent camps that are prone to the spread of vector borne and communicable diseases” which further exacerbated health risks.⁵⁶ Acute respiratory infections (pneumonia, bronchitis, and bronchiolitis) are a major concern in the overcrowded resettlement areas due to inadequate ventilation, particularly for children under five years of age.⁵⁷ Because of food insecurity, nutrient-expelling diseases, and limited access to health care, vulnerable populations are at an even higher

⁵³ *Health Leaders Urge Action to Make Hospitals Safe in Disasters*, PAN AMERICAN HEALTH ORGANIZATION, Sept. 29, 2010, available at http://new.paho.org/hq/index2.php?option=com_content&do_pdf=1&id=3543 (last visited Feb. 11, 2011); see also HAITI EARTHQUAKE PDNA, *supra* note 3, at 60 (“Within the disaster zone, 30 out of 49 hospitals have been damaged or destroyed.”). For a chart summarizing damage to Haiti’s health care infrastructure from the earthquake, see HAITI EARTHQUAKE PDNA, *supra* note 3, at 61.

⁵⁴ UNICEF Six Month Report, *supra* note 52, at 22 (“The earthquake literally flattened the Ministry of Health, decimated an already weak health infrastructure, and heavily burdened health professionals in a country where there were only four doctors for 10,000 people.”).

⁵⁵ PAN AMERICAN HEALTH ORGANIZATION, SITUATION UPDATE: NINE MONTHS AFTER THE EARTHQUAKE IN HAITI 4 (Oct. 4, 2010), www.who.int/entity/hac/crises/hti/haiti_october2010.pdf [hereinafter PAHO’s 9 MONTH UPDATE].

⁵⁶ CRANE, *supra* note 47, at 125. See, e.g., *Cholera in Haiti—Update 3*, WORLD HEALTH ORG., (Nov. 17, 2010), http://www.who.int/csr/don/2010_11_17/en/index.html (last visited Feb. 11, 2011).

⁵⁷ See WHO Health Risk Assessment, *supra* note 48, at 8 (“[T]hose living in overcrowded conditions are at higher risk of acquiring pneumonia.”).

risk of malnutrition.⁵⁸

The international community has mobilized to help provide emergency care,⁵⁹ but the health care delivery system must be rebuilt to ensure child well-being over the long term.⁶⁰

Second, the education system, which Haiti itself conceded was “unfit to contribute to socio-economic development” prior to the earthquake,⁶¹ has been disrupted dramatically.⁶² The earthquake-affected areas were home to nearly fifty percent of Haiti’s student and university level population.⁶³ More than 4,200 school buildings were destroyed or damaged in the earthquake.⁶⁴ Lost with the buildings were books and other supplies vital to children’s education.⁶⁵ Many teachers were killed or injured in the earthquake, depleting the education system’s human resources.⁶⁶ The result is

⁵⁸ *Id.* at 11 (noting that after a disaster, vulnerable populations such as children, face risks of malnutrition due to the “lack of access to appropriate and adequate food, increased cases of diarrheal diseases and reduced access to health and nutrition services”).

⁵⁹ *See, e.g.*, PAN-AMERICAN HEALTH ORGANIZATION, EARTHQUAKE IN HAITI: PAHO/WHO SITUATION REPORT ON HEALTH ACTIVITIES POST-EARTHQUAKE 2 (May 18, 2010),

[http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MY-AI-85L2JW-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MY-AI-85L2JW-full_report.pdf/$File/full_report.pdf) [hereinafter PAHO/WHO Health Report] (reporting the 880,000 doses of vaccine distributed to Haitian earthquake victims as of May 2010).

⁶⁰ *Id.* at 2 (“Even before the earthquake, Haiti struggled to provide many with essential public health services.”).

⁶¹ CRANE, *supra* note 47, at 101.

⁶² HAITI EARTHQUAKE PDNA, *supra* note 3, at 62-64.

⁶³ *Id.* at 62.

⁶⁴ *Id.* at 63.

⁶⁵ Afua Hirsch, *Going to School in Haiti After the Earthquake*, GUARDIAN, June 1, 2010, at E1, available at <http://www.guardian.co.uk/education/2010/may/31/haiti-earthquakes-schools-trauma> (last visited Feb. 11, 2011) (noting the continued shortage of supplies, including basics such as desks and chairs, in schools).

⁶⁶ Paul Waldie, *‘I Was in Secondary School ... Now we Live on the Street’: Children of Haiti Have Long Found Little Hope in the Future, and Now the Earthquake Has Put Even That at Risk*, GLOBE & MAIL, Jan. 23, 2010, at A17 (reporting that since the Haitian earthquake “thousands of teachers are either dead, missing or long gone from the city”); Romero, *supra* note 9, at A6 (reporting that

that most children living in IDP camps are not attending school on a regular basis.⁶⁷

Third, the right to an adequate standard of living has also been dramatically curtailed for hundreds of thousands of children since the earthquake.⁶⁸ Housing was destroyed or damaged so severely that 1.3 million individuals ended up living in temporary camps.⁶⁹ Given the time it will take to rebuild housing for more than one million people, when infrastructure is so damaged, many children might end up living in these temporary camps or similar arrangements for years.⁷⁰ In addition, food is not getting to children on a daily basis.⁷¹ Food shortages are exacerbating malnutrition, weakening children's immunity to other diseases.⁷² As a result of

hundreds of teachers were killed in the earthquake).

⁶⁷ See UNICEF Six Month Report, *supra* note 52, at 14 ("Many schools have also registered an alarming drop in enrolment in a context where only four in ten children went to school before the earthquake. In Léogane, one of the hardest hit areas, less than 50 per cent of children have returned to school compared to pre-quake levels.").

⁶⁸ HAITI EARTHQUAKE PDNA, *supra* note 3, at 5, 65-68 (detailing earthquake's dramatic impact on housing, food security, nutrition, and drinking water).

⁶⁹ *Id.* at 5 ("Around 1.3 million people are living in temporary shelters in the Port-au-Prince metropolitan area and over 500,000 people have left the disaster areas to seek refuge in the rest of the country.").

⁷⁰ Deborah Sontag, *In Haiti, The Displaced Are Left Clinging to the Edge*, NY TIMES, Jul. 12, 2010, at A1 ("[Six months after the earthquake], [o]nly 28,000 of the 1.5 million Haitians displaced by the earthquake have moved into new homes, and the Port-au-Prince area remains a tableau of life in the ruins.").

⁷¹ INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI ET AL., "WE'VE BEEN FORGOTTEN": CONDITIONS IN HAITI'S DISPLACEMENT CAMPS EIGHT MONTHS AFTER THE EARTHQUAKE 7 (2010), [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MCOI-89GB3C-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MCOI-89GB3C-full_report.pdf/$File/full_report.pdf) [hereinafter WE'VE BEEN FORGOTTEN] (detailing a survey finding that "[o]ver half the families consulted in a camp indicated that their children did not eat for an entire day.").

⁷² HAITI EARTHQUAKE PDNA, *supra* note 3, at 65 (reporting that 52% of households are suffering from food insecurity after the earthquake); UNICEF, UNICEF MONTHLY SITUATION REPORT: CHILDREN IN HAITI ONE MONTH AFTER (Feb. 12, 2010), http://www.unicef.org/infobycountry/files/UNICEF_HAITI_One-Month_Sitrep_12_Feb.pdf [hereinafter UNICEF MONTHLY REPORT] ("At these levels, 17,500 of Haiti's affected children are suffering acute malnutrition and

food insecurity, many more children are at risk of illness and premature death.⁷³

Finally, so many children's right to a safe and secure environment has been jeopardized. Trafficking is a severe violation of that right. But as we see in the case of Johanne, that right is violated at times when children are engaged in the most basic day-to-day activities, such as walking to a latrine, or staying at home to care for younger siblings.⁷⁴ Reports from the IDP camps indicate that "[s]exual, domestic, and gang violence in and around the camps is rising."⁷⁵ Women and girls are being forced to have sex in exchange for food.⁷⁶ Johanne and hundreds of thousands of women and girls like her are at risk of sexual abuse and exploitation.

In short, by examining these four central needs of children—health care, education, an adequate standard of living, and safety—policy makers can begin to see the extent of harm children are suffering and the significant challenges in ensuring their well-being. Importantly, as the next section details, these needs of children correspond to rights, which converts their claims from requests for charity to entitlements.

3,100 of these are severely malnourished and in need of life-saving assistance").

⁷³ HAITI EARTHQUAKE PDNA, *supra* note 3, at 65 ("[T]his inability to meet food needs in terms of both quantity and quality is particularly pronounced among pregnant and breastfeeding women and very young children"). See generally WORLD FOOD PROGRAMME & FOOD & AGRICULTURE ORGANIZATION OF THE U.N., THE STATE OF FOOD INSECURITY IN THE WORLD: ADDRESSING FOOD INSECURITY IN PROTRACTED CRISES (2010), <http://www.fao.org/publications/sofi/en/> (last visited Feb. 11, 2011) [hereinafter WORLD FOOD PROGRAMME] (discussing risks, particularly to children, of food insecurity after a crisis).

⁷⁴ INSTITUTE FOR JUSTICE, *supra* note 29, at 4 (detailing the high numbers of women and girls who have been raped in the camps).

⁷⁵ REFUGEES INTERNATIONAL, HAITI: STILL TRAPPED IN THE EMERGENCY PHASE, 1 (2010), http://www.refugeesinternational.org/sites/default/files/100710_haiti_still_trapped.pdf [hereinafter REFUGEES INTERNATIONAL, HAITI].

⁷⁶ *Id.* at 2.

B. The Response of Children's Rights Law

International human rights law, and specifically children's rights law and the U.N. Convention on the Rights of the Child (CRC),⁷⁷ has a direct response to each of the violations experienced by Johanne and other children in Haiti.⁷⁸ Children's rights law provides a template for a recovery and rebuilding effort that will ensure the rights and well-being of Haiti's children. The CRC is the most comprehensive legal instrument on the rights of children, covering children's civil, political, economic, social, and cultural rights.⁷⁹ Other issue-specific children's rights treaties exist.⁸⁰ However, rebuilding Port-au-Prince and surrounding areas in a way that ensures children a positive future requires a comprehensive approach. The best template for that is the CRC.⁸¹ It is also apt as

⁷⁷ CRC, *supra* note 37.

⁷⁸ Although this section draws primarily upon the CRC and other children's rights law, it is important to recognize that other human rights law is relevant to children. First, children still count as persons under the ICCPR, ICESCR and other general human rights treaties. Second, other treaties, specifically CEDAW, can advance the rights of others (e.g., women) in a way that provides important benefit to children as well. For the benefits of women's rights to children, see Jonathan Todres, *Women's Rights and Children's Rights: A Partnership with Benefits for Both*, 10 CARDOZO WOMEN'S L.J. 603, 608–12 (2004) (discussing both the direct benefit of women's rights on young girls and the indirect benefit of women's rights on all children).

⁷⁹ BARBARA BENNETT WOODHOUSE, *HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE* 32 (2008); Tamar Ezer, *A Positive Right to Protection for Children*, 7 YALE HUM. RTS. & DEV. L.J. 1, 25 (2004) (stating that "[t]he CRC is the most recent and comprehensive charter on children's rights." Further, the CRC is "the first comprehensive international articulation of children's rights").

⁸⁰ See CRC Protocol on the Sale of Children, *supra* note 27; ILO Convention No. 182, *supra* note 38; Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption, May 29, 1993, S. Treaty Doc. No. 105-51, 32 I.L.M. 1134 (1993).

⁸¹ Ezer, *supra* note 79, at 25. Not only is the CRC the best template, Haiti ratified the CRC in 1995. See United Nations Treaty Collection, Status of Ratifications: Convention on the Rights of the Child, available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Feb. 10, 2011) [hereinafter Convention Rights of Child]. Haiti has also ratified ILO Convention No. 182 but not the Hague Convention on Inter-Country Adoption or the CRC Protocol on the Sale of Children.

Haiti became a party to the CRC in 1995, without any reservations.⁸²

By way of example, the CRC has a direct response in each of the four areas discussed in detail in the prior section. It requires that states parties ensure each child's "right to the highest attainable standard of health."⁸³ That right, like all others, must be assured to each child "without discrimination of any kind."⁸⁴ The CRC enshrines the government's obligation to ensure each child's access to care needed for "the treatment of illness and rehabilitation of health."⁸⁵ The CRC further emphasizes states' obligations to address primary health care, reduce infant and child mortality, ensure pre- and post-natal health care for mothers, combat disease and malnutrition, and respond to other issues that are particularly relevant in Haiti today.⁸⁶

The CRC also has a clear mandate that the state recognize each child's right to education.⁸⁷ It requires that each state party shall "[m]ake primary education compulsory and available free to all"; ensure secondary education is "available and accessible to every child"; and "[m]ake higher education accessible to all on the basis of capacity by every appropriate means."⁸⁸ Under the CRC, Haiti's government is obligated to "[t]ake measures to encourage regular attendance at schools and the reduction of drop-out rates."⁸⁹ Action to encourage regular school attendance in the camps is essential, in order to minimize the disruption to children's education and violation of their right to education.

The CRC also enshrines the child's right to "a standard of living adequate for the child's physical, mental, spiritual, moral and social development."⁹⁰ The combined efforts by Haiti and the

⁸² United Nations Treaty Collection, *supra* note 81.

⁸³ CRC, *supra* note 37, art. 24(1).

⁸⁴ CRC, *supra* note 37, art. 2(1).

⁸⁵ CRC, *supra* note 37, art. 24(1).

⁸⁶ CRC, *supra* note 37, art. 24(2).

⁸⁷ CRC, *supra* note 37, art. 28(1).

⁸⁸ CRC, *supra* note 37, art. 28(1).

⁸⁹ CRC, *supra* note 37, art. 28(1)(e).

⁹⁰ CRC, *supra* note 37, art. 27.

international community to date have fallen well short of ensuring each child's right to an adequate standard of living, with inadequate housing and heightened food insecurity.⁹¹

Finally the child's right to a safe and secure environment is protected by a combination of CRC provisions, including the right to be free from various forms of exploitation⁹² and the right to be free from all forms of physical and mental abuse, violence, and neglect.⁹³ With sexual, domestic, and gang violence all on the rise,⁹⁴ children's rights are at risk, if not violated, on a daily basis. The CRC mandates that the Haiti act to prevent such exploitation of children.⁹⁵

In each of the four areas highlight above, as well as others not discussed here, the CRC provides a clear mandate for government action. The legal requirement to ensure the rights and well-being of every child exists. Ensuring that the state fulfills its mandate in practice is more challenging.

C. Challenges in Enforcing Children's Rights

A review of children's experience in Haiti following the earthquake reveals extensive evidence that a broad range of children's rights are implicated. This section highlights three challenges encountered when seeking to ensure children's rights: available resources; the interrelated and interdependent nature of rights; and the time-sensitive nature of children's rights.

⁹¹ See *supra* notes 68-73 and accompanying text.

⁹² See CRC, *supra* note 37, art. 32 (economic exploitation); art. 34 (sexual exploitation); art. 35 (trafficking); art. 36 (all other forms of exploitation).

⁹³ CRC, *supra* note 37, art. 19 ("States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse").

⁹⁴ See REFUGEES INTERNATIONAL, HAITI, *supra* note 75, at 1.

⁹⁵ The obligation on states is not merely to pass relevant law but also to take the necessary additional steps to ensure effective implementation and protection of children's rights. See CRC, *supra* note 37, art. 4 ("States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.").

First, some might immediately ask as a practical matter how quickly Haiti's government and the international community can respond. Human rights law provides an answer. Under international human rights law, civil and political rights are not resource dependent.⁹⁶ The mandate on states parties to human rights treaties, including the CRC, is full realization of civil and political rights.⁹⁷ Therefore, a child's right to a safe and secure environment and the right to live free from various forms of exploitation must be ensured for all of Haiti's children, without discrimination of any kind.⁹⁸ More than a year after the earthquake, many children cannot even

⁹⁶ See, e.g., CRC, *supra* note 37, art. 4 ("States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."). Scholars have debated whether this distinction between the two types of rights reflects the reality of enforcement of such rights. See Brian Ray, *Policentrism [sic], Political Mobilization, and the Promise of Socioeconomic Rights*, 45 STAN. J. INT'L L. 151, 151-52 (2009) (describing the debate over the traditional construction of rights which held that "socioeconomic rights are uniquely 'positive' in that they require expenditures of state resources in contrast to civil and political rights, which are 'negative' in that they involve only limiting government intrusion into the private sphere."). Compare Cass R. Sunstein, *Why Does the American Constitution Lack Social and Economic Guarantees?*, 56 SYRACUSE L. REV. 1, 7 (2005) ("All constitutional rights have budgetary implications; all constitutional rights cost money.... It follows that insofar as they are costly, social and economic rights are not unique."), with Michael J. Dennis & David P. Steward, *Justiciability of Economic, Social and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?*, 98 AM. J. INT'L L. 462, 465 (2004) (asserting that "[f]rom the outset, and for good reason, economic, social and cultural rights, unlike civil and political rights, have been defined primarily as aspirational goals to be achieved progressively.").

⁹⁷ Philip Alston & Gerald Quinn, *The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights*, 9 HUM. RTS Q. 156, 172 (1987) (noting the prevailing view that states parties' obligations under the ICCPR include "immediate implementation" of the Covenant). Alston & Quinn argue that "[T]he reality is that the full realization of civil and political rights is heavily dependent both on the availability of resources and the development of the necessary societal structures." *Id.*

⁹⁸ See e.g., CRC, *supra* note 37, art. 2.

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walk to latrines without fear of being raped.⁹⁹ Collectively, the Haitian government and the international community have failed.

Economic, social, and cultural rights have a different mandate, one that is tied to states parties' obligation to use the "maximum extent of their available resources."¹⁰⁰ The earthquake depleted Haiti's resources.¹⁰¹ Yet it would make no sense to suggest that a state is free of obligations to comply with human rights law because of the occurrence of a natural event that jeopardizes the rights of so many children.¹⁰² To permit such a reading would be to suggest that when children's rights are at greatest risk, states have a reduced obligation to ensure them.

Given how depleted Haiti's resources are after the earthquake, the mandate under human rights law that states seek to ensure the rights of all children "within the framework of international co-operation"¹⁰³ suggests obligations for the

⁹⁹ See *supra* note 36 and accompanying text.

¹⁰⁰ CRC, *supra* note 37, art. 4; see also ICESCR, *supra* note 39, art. 2(1) ("Each State Party ... undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.").

¹⁰¹ See HAITI EARTHQUAKE PDNA, *supra* note 3, at 5-6, 13 (reporting huge destruction and losses to Haiti's infrastructure and environment). The Haitian government reported resource depletion in several contexts:

Some 105,000 homes have been completely destroyed and more than 208,000 damaged. Over 1,300 educational establishments, and over 50 hospitals and health centres, have collapsed or are unusable. Part of the country's main port is not operational. The President's Palace, Parliament, the Law Courts, and most of the Ministry and public administration buildings have been destroyed. . . [Further] [t]he total value of the damage and losses caused by the January 12 2010 earthquake is estimated at US\$7.804 billion, equivalent to slightly more than the country's GDP in 2009. . . . [Additionally] The January 12 earthquake . . . destroy[ed] much of social service infrastructure

Id.

¹⁰² Jonathan Todres, *Rights Relationships and the Experience of Children Orphaned by AIDS*, 41 U.C. DAVIS L. REV. 417, 472 (2007) (analyzing the same predicament in the context of countries hit hard by the AIDS pandemic).

¹⁰³ U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc. and Cultural Rights, *General Comment No 3: The Nature of States' Parties*

international community to assist Haiti during this difficult period. A limited number of scholars have explored the nature of the obligation created by human rights treaties including explicit reference to “international co-operation.”¹⁰⁴ On the one hand, human rights law imposes a mandate on states to ensure the rights of those subject to their jurisdiction.¹⁰⁵ Therefore, one might argue that it would be incorrect to read the international cooperation clause as imposing a specific obligation on wealthy nations to assist poorer countries. That is, when France ratified the CRC, for example, it undertook the obligation to ensure the rights of every child subject to its jurisdiction, and not the obligation to also ensure the rights of every child in every developing country. On the other hand, reading the international cooperation clause as creating no obligation at all creates a perverse result: It would mean that poorer states are obligated to seek assistance from the international community but the international community is free to say no, leaving children’s rights

Obligations, ¶ 13, U.N. Doc. E/1991/23, Annex III (Dec. 14, 1990) (“The Committee notes that the phrase ‘to the maximum of its available resources’ was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance.”); *see also* U.N. Econ & Soc. Council [ECOSOC], Comm. on Econ., Soc. and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12 of the Int. Cov. on Econ., Social and Cultural Rights), ¶40, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000). States parties have a joint and individual responsibility, in accordance with the Charter of the United Nations and relevant resolutions of the United Nations General Assembly and of the World Health Assembly, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task to the maximum of its capacities.

Id.

¹⁰⁴ *See, e.g.*, Judith Bueno de Mesquita, Paul Hunt & Rajat Khosla, *The Human Rights Responsibility of International Assistance and Cooperation in Health*, in *UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS* 104, 109–16 (Mark Gibney & Sigrun Skogly, eds., 2010) (discussing the legal foundation and scope of an international obligation to cooperation in health).

¹⁰⁵ *See, e.g.*, ICCPR, *supra* note 39, art. 2(1) (“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant”); CRC, *supra* note 37, art. 2(1) (“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction”).

unrealized. That would render that clause of human rights treaties effectively meaningless. Determining the precise contours and meaning of the “international co-operation” clause in all treaties is beyond the scope of this article, but it would seem that at the very least the clause must be read so as to not undermine the object and purpose of human rights treaties.¹⁰⁶ Sovereignty of nations must be respected, and states must have a clear understanding of the obligations they undertake when ratifying a treaty. However, the obligation to access the maximum available resources within the framework of international cooperation would appear to contemplate at least some collective role for the international community to ensure that Haiti, when damaged by a major earthquake, has adequate resources to ensure the economic, social, and cultural rights of its children. To allow a different reading would leave the rights and survival of Haiti’s children in doubt.

Second, the heightened vulnerability of Haiti’s children across multiple dimensions highlights a fundamental aspect of human rights: rights are interrelated and interdependent.¹⁰⁷ Take, for

¹⁰⁶ See Vienna Convention on the Law of Treaties, art. 31, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969) (“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”); see also Smita Narula, *The Right to Food: Holding Global Actors Accountable under International Law*, 44 COLUM. J. TRANSNAT’L L. 691, 725 (2006) (describing how the U.N. Special Rapporteur on the Right to Food has effectively expanded the “extraterritorial application of states’ obligations under the ICESCR”); Todres, *supra* note 102, at 471 (“[I]nternational cooperation and assistance is contemplated in human rights law, and explicitly so in the context of poorer nations’ available resources.”).

¹⁰⁷ See U.N. General Assembly, *Indivisibility and Interdependence of Economic, Social, Cultural, Civil and Political Rights*, G.A. Res 41/117, U.N. Doc. A/RES/41/117 (Dec. 4, 1986) (“Reaffirming the provisions of its resolution 32/130 of 16 December 1977 that all human rights and fundamental freedoms are indivisible and interdependent and that the promotion and protection of one category of rights can never exempt or excuse States from the promotion and protection of the other rights.”); Philip Alston, *Economic and Social Rights*, 26 STUD. TRANSNAT’L LEGAL POL’Y 137, 147-48 (1994) (“[S]upport for the notion that the two sets of rights [civil and political and economic, social and cultural rights] are interdependent is widespread and is clearly reflected in international human rights instruments.”); see also Craig Scott, *The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the*

example, the case of a child whose birth is not registered (she is one of roughly fifty million children globally whose births go unregistered each year).¹⁰⁸ Her right to birth registration has been violated.¹⁰⁹ Unregistered children do not exist in government records and, as a result, are at greater risk of being denied access to health care services.¹¹⁰ In turn, children without a regular source of health care more frequently have unmet health needs,¹¹¹ and children with unmet health needs are more likely to miss school, fall behind their peers, and drop out of school.¹¹² Children who do not finish school enter the workforce at a younger age with fewer skills, leaving them at heightened risk of various forms of exploitation, including

International Covenants on Human Rights, 27 OSGOODE HALL L.J. 769, 779–86 (1989).

¹⁰⁸ UNICEF, BIRTH REGISTRATION: RIGHT FROM THE START 7 (2002), available at http://www.childinfo.org/files/birthregistration_Digestenglish.pdf (recognizing that in 2000, over 50 million children were born without being registered).

¹⁰⁹ See MIKE DOTTRIDGE, KIDS AS COMMODITIES: CHILD TRAFFICKING AND WHAT TO DO ABOUT IT 69 (2004), <http://terredeshommes.org/pdf/commodities.pdf>; UNICEF, *supra* note 108, at 1, 4-6 (discussing the importance of birth registration).

¹¹⁰ UNICEF, *supra* note 108, at 5.

¹¹¹ See Paul W. Newacheck et al., *Health Insurance and Access to Primary Care for Children*, 338 N. ENG. J. MED. 513, 514-16 (1998) (demonstrating that children with no health insurance are consistently less likely to receive adequate medical care).

¹¹² MATTHEW C. H. JUKES ET AL., SCHOOL HEALTH, NUTRITION AND EDUCATION FOR ALL: LEVELING THE PLAYING FIELD 41 (2008); WORLD HEALTH ORG. ET AL., FOCUSING RESOURCES ON EFFECTIVE SCHOOL HEALTH: A FRESH START TO IMPROVING THE QUALITY AND EQUITY OF EDUCATION 5 (2000), available at <http://www.unicef.org/lifeskills/files/FreshDocument.pdf> (“Poor health and malnutrition are important underlying factors for low school enrollment, absenteeism, poor classroom performance, and early school dropout ...”); see also JOY MILLER DEL ROSSO & TONIA MAREK, CLASS ACTION: IMPROVING SCHOOL PERFORMANCE IN THE DEVELOPING WORLD THROUGH BETTER HEALTH AND NUTRITION 11 (1996) (“Healthier and better nourished children stay in school longer, learn more and become healthier and more productive adults.”); Deborah L. Crooks, *American Children at Risk: Poverty and Its Consequences for Children’s Health, Growth, and School Achievement*, 38 AM. J. PHYSICAL ANTHROPOLOGY 57, 57 (1995) (“Poor health and poor growth are likely to lead to poor school achievement via deficits in cognitive functioning, behavior and activity, and increased absenteeism and school failure.”).

trafficking.¹¹³ In addition, children who suffer discrimination, whether based on race, ethnicity, sex, religion, sexual orientation, or other protected characteristics, are more likely to be marginalized and thus at greater risk of being unable to realize other rights, leaving them at heightened risk of exploitation.¹¹⁴ All of this occurs in communities that have not been hit by natural disasters. In settings where natural disasters have occurred, the challenges are even greater. Following a natural disaster, when rights are in jeopardy, the infrastructure that might otherwise enable the government to ensure children's rights has often been damaged or destroyed.¹¹⁵ Thus, the downward spiral that results when multiple rights are violated is amplified.

¹¹³ See DOTTRIDGE, *supra* note 109, at 69 (explaining that formal and informal education decreases the risk of exploitation). Moreover, schools provide not only basic education but also information on the types of exploitation to which children may be subjected. *Id.* Missing school means losing out on these opportunities as well.

¹¹⁴ Jonathan Todres, *The Importance of Realizing "Other" Rights to Prevent Sex Trafficking*, 12 CARDOZO J.L. & GENDER 885, 893 (2006); see also Johanna Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L.J. 71, 124–25 (2003) (noting traffickers target women from particular racial or ethnic groups); Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms and Contexts*, 11 HARV. HUM. RTS. J. 65, 68 (1998) ("Trafficking in women is fueled by poverty, sexism, and racism."); UNITED NATIONS BACKGROUND, WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE, THE RACE DIMENSIONS OF TRAFFICKING IN PERSONS--ESPECIALLY WOMEN AND CHILDREN 1–2 (2001), http://www.un.org/WCAR/e-kit/trafficking_e.pdf; U.N. Econ. Soc. Council [ECOSOC], Comm. on Human Rights, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, ¶ 19, U.N. Doc. E/CN.4/2000/68 (Feb. 29, 2000) (*prepared by Radhika Coomaraswamy*, Special Rapporteur on Violence Against Women, Its Causes and Consequences) ("Gender-based discrimination intersects with discriminations based on other forms of 'otherness,' such as race, ethnicity, religion and economic status, thus forcing the majority of the world's women into situations of double or triple marginalization.").

¹¹⁵ See, e.g., HAITI EARTHQUAKE PDNA, *supra* note 3, at 6 (noting that the earthquake in Haiti caused extensive damage to infrastructure, "including amongst others housing units, schools, hospitals, buildings, roads and bridges, ports and airports"); see also FY 2010 Haiti, *supra* note 4, at 4.

Understanding and accounting for the interrelated and interdependent nature of rights is essential to ensuring the rights and well-being of Haiti's children. Consider Johanne. What will an anti-trafficking initiative that enhances border security do for her? Little, if anything. What will an education-specific initiative do for her, if her health is compromised such that she is too ill to attend school, or if she must stay home to care for her younger siblings? Very little. Johanne is living a life in which multiple rights of hers are violated on a daily basis. Moreover, each right in jeopardy further heightens the risk that other rights will be violated. In this sense, intersectionality discourse resonates,¹¹⁶ as it helps enhance our understanding of the experience of children such as Johanne. The key point is that it is not simply that a child like Johanne is at risk across multiple rights, but that this combination of risks further heightens her vulnerability to abuse and exploitation and simultaneously constrains her capacity to realize her rights. As one study on trafficking identified:

[t]here is no single reason why children are trafficked, but rather a wide range of factors and layers of vulnerabilities related to children as individuals, their families, and the socio-economic context in which they live. Child victims of trafficking are rarely affected by only one factor;

¹¹⁶ Intersectionality can be defined “as a way of conceptualizing a problem in a way that captures the dynamics of the interplay between two or more axes of subordination.” Rangita de Silva de Alwis, *Mining the Intersections: Advancing the Rights of Women and Children with Disabilities Within an Interrelated Web of Human Rights*, 18 PAC. RIM L. & POL’Y J. 293, 308 (2009) (quoting Kimberlé Crenshaw). For examples of how intersectionality analysis is applied in varying contexts, see de Silva de Alwis, *supra* at 301–08 (examining intersectionality in the context of the CEDAW, CRC, and International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities); Gould, *supra* note 35, at 169-70 (examining intersectionality in the context of natural disasters); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) (examining the intersection of race and sex in violence against women).

rather it is the compounding of several factors that renders them susceptible to being exploited.¹¹⁷

Recognizing and accounting for the essential interrelated and interdependent nature of rights is crucial to ensuring the rights and well-being of each child. The threat to, and violation, of Johanne's right to housing, health care, and education all position her as more likely to be a target of traffickers and other exploiters.¹¹⁸

We know that typically the most marginalized children are at greatest risk.¹¹⁹ The conditions for the hundreds of thousands of children in the camps, who are living in substandard housing without regular access to food and health care, pushes these children to the margins of society.

In addition, in accounting for the interrelated nature of rights, governments must recognize not only the horizontal aspect of rights relationships but also the vertical connections. In other words, it is not just that health rights, or lack thereof, affect a child's education rights, but that the status of the parents' rights affects the child's rights. These vertical relationships are evident in Johanne's experience. Her mother's compromised economic and social rights leave her unable to afford school for Johanne. Her mother's comprised rights restrict her ability to find work, forcing her to leave Johanne and her siblings home alone while she seeks work. In turn, left at home to care for her younger siblings without an adult present, Johanne has been a target of the sexual violence that persists in the IDP camps.

¹¹⁷ E. ASIA & PAC. REG'L OFFICE, UNITED NATIONS CHILDREN'S FUND, REVERSING THE TREND: CHILD TRAFFICKING IN EAST AND SOUTH-EAST ASIA 24 (2009), available at www.unicef.gr/pdfs/Unicef_Trafficking_Report_Aug09.pdf.

¹¹⁸ See Sally Cameron & Edward Newman, *Trafficking in Humans: Structural Factors*, in *TRAFFICKING IN HUMANS: SOCIAL, CULTURAL AND POLITICAL DIMENSIONS* 21–58 (Sally Cameron & Edward Newman, eds. 2008); see also Gould, *supra* note 35, at 171 (“[T]he poor face significant challenges to recovery after natural disasters, challenges that are often exacerbated by existing vulnerabilities to human rights violations and economic exploitation.”).

¹¹⁹ See DOTTRIDGE, *supra* note 109, at 28 (“[P]oor and marginalized communities . . . have been exposed to the risks of trafficking for much longer.”).

Ensuring women's rights is fundamental to advancing the rights and well-being of children.¹²⁰ The rights of all members of a family are interconnected. Food insecurity provides a simple, stark example. In Haiti earthquake-affected regions, more than half of households are experiencing food insecurity.¹²¹ The implications are frightening:

[T]his inability to meet food needs in terms of both quantity and quality is particularly pronounced among pregnant and breastfeeding women and very young children. More than half of all households are severely indebted following the earthquake. 95% of this debt is related to the purchase of food. There is evidence that many households have also sold their possessions to buy food.¹²²

In this situation, women are at a greater risk of exploitation. In turn, their children's rights are also at increased risk of being violated. As Haiti's government and the international community move forward with the reconstruction effort, ensuring children's rights is crucial. Equally important, if the reconstruction effort is to be successful in reaching the most marginalized children, Haiti and its international partners must account for the horizontal and vertical relationships among rights.

Third, with children, time is of the essence. Given the extensive damage done to Port-au-Prince and surrounding areas by the earthquake, it is understandable that government officials and the international community speak of the recovery effort as taking many years. Indeed, if certain parts of Haiti's infrastructure can be rebuilt within two to three years, that will be a significant achievement and

¹²⁰ See Todres, *supra* note 78, at 608-12 (arguing that ensuring women's rights benefits children). See generally SAVITRI GOONESEKERE & RANGITA DE SILVA-DE ALWIS, UNICEF, WOMEN'S AND CHILDREN'S RIGHTS IN A HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT 12-39 (2005), available at <http://www.unifem.org/cedaw30/attachments/resources/WomensAndChildrensRightsInAHumanRightsBasedApproach.pdf> (linking the CRC and the CEDAW to reveal the interconnected nature of women's and children's rights).

¹²¹ HAITI EARTHQUAKE PDNA, *supra* note 3, at 65.

¹²² *Id.*

will be considered a quick recovery. Such a time frame, however, is anything but brief to a child. The child who suffers adverse health consequences or is unable to attend school for a couple of years might never fully recover and might miss out on a lifetime of opportunities. The consequences for children could last decades.¹²³ In turn, these adverse consequences for children, who constitute nearly half of Haiti's population, will mean a significant loss of human resources and potential for Haiti, at a time when its needs are greatest. Developing a rapid, effective response that ensures children's fundamental rights so that they have an opportunity to develop to their fullest potential is vital to Haiti's immediate and long-term prospects.

Resource limitations, the interrelated and interdependent nature of rights, and the time-sensitive aspect of children's rights each presents significant challenges to the reconstruction effort. Addressing all three simultaneously further intensifies the challenge at hand. However, if the rights of Haiti's children are to be fulfilled, the Haitian government and the international community must confront these challenges head on, or a generation of children will be lost.

Overall, human rights law provides several important lessons. First, a human rights analysis of Haitian children's lives after the earthquake helps enrich our understanding of the breadth of violations and depth of suffering experienced by Haiti's children. Second, human rights law establishes that access to health care, education, food and shelter, and basic safety and security are not merely charitable items to be provided when possible, but that they are rights that each child possesses. Third, human rights law makes clear that the obligation on states is immediate and ongoing. Civil and political rights are not tied to available resources. And no sensible reading of economic, social, and cultural rights law would permit the very threat to children's rights and well-being to serve as

¹²³ See, e.g., *DISASTER RISK REDUCTION: A DEVELOPMENT CONCERN—A SCOPING STUDY ON LINKS BETWEEN DISASTER RISK REDUCTION, POVERTY AND DEVELOPMENT* 3, 21-22 (Philip White et al. eds., 2004), http://www.preventionweb.net/files/1070_drrscopingstudy.pdf.

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justification for failing to ensure children's rights. Given Haiti's limited resources, the burden to rebuild Haiti must be shared by the international community. In other words, it is not sufficient for Haiti or the international community to simply declare that children must wait indefinitely to realize their most fundamental human rights. Finally, an examination of the situation that children confront in Haiti today reinforces both the importance of accounting for the interrelationship among rights and the need to act expeditiously to ensure the rights, well-being, and survival of the most vulnerable children.

IV. Moving Forward Using a Holistic Child Rights-Based Approach

The challenge facing Haitian children and their government is enormous. The fact that the realization or violation of one right affects other rights makes it even harder still. If Haiti and the international community are to realize rights for all of Haiti's children and ensure their survival, well-being, and full development, a number of steps are necessary.

First, the reconstruction effort must employ a holistic human rights framework, so that every affected individual can participate in and realize the benefits of reconstruction. For Haiti's children, this means utilizing a child-rights based approach, ensuring that efforts are guided by the CRC, and making sure that children's issues are an integral part of the reconstruction agenda. Although the United States is not a party to the CRC, it must back a CRC-framed holistic approach when addressing the rights and needs of Haiti's children. Adopting a holistic child rights-based approach includes recognition of the interrelated and interdependent nature of rights and the essential importance of all rights. Haiti's government and its international partners cannot serve Haiti's children effectively by giving preference only to certain rights while ignoring others. Certainly the right to live free from various forms of exploitation including trafficking demands urgent attention. However, if combating trafficking is prioritized at the expense of health and education rights, then we will be confronting a never-ending supply of vulnerable children out of school who are pushed into increasingly

desperate scenarios and at risk of trafficking and other forms of exploitation.

Second, in the short term, Haiti and its international partners need to ensure that proper safeguards are in place and that there is a robust system for addressing children's safety and security. For any unaccompanied minors, family reunification must be a priority. The CRC offers important guidance in this regard, emphasizing the importance of family to children.¹²⁴ Moreover, as recent news on child trafficking in Haiti has taught us, although the desire to help is admirable, we must proceed cautiously and ensure compliance with the rule of law when contemplating termination of family relationships. Efforts to ensure child safety do not end with unaccompanied minors. Johanne's experience shows us that even children living with a parent or parents are at heightened risk of violence and exploitation. Security efforts must be ramped up, employing a human rights framework that ensures the rights and dignity of those we seek to protect.

Third, the reconstruction effort must ensure that children's economic and social rights, including health and education rights and the right to an adequate standard of living, do not take a backseat to civil and political rights.¹²⁵ As discussed above, human rights law

¹²⁴ See CRC, *supra* note 37, art. 7 (recognizing the child's "right to know and be cared for by his or her parents."), art. 8 (recognizing the child's right to family relations), art. 9 (recognizing the child's right to "not be separated from his or her parents against their will" except in limited circumstances when "such separation is necessary for the best interests of the child"), art. 10(2) ("A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents"); art. 11 ("States Parties shall take measures to combat the illicit transfer and non-return of children abroad."). In total, the CRC acknowledges the importance of parents, legal guardians, and family in the lives of children in nineteen provisions of the treaty. See CRC, *supra* note 37, arts. 2, 3, 5, 7, 8, 9, 10, 11, 14, 16, 18, 20, 21, 22, 23, 24, 27, 37, & 40.

¹²⁵ See, e.g., A. Yasmine Rassam, *International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach*, 23 PENN ST. INT'L L. REV. 809, 843-44 (2005) (arguing for "a paradigm shift from abolition to empowerment focused on the economic and social rights of the enslaved"); see also Int'l Comm'n of Jurists et al., *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, ¶ 4, Jan. 22-26, 1997 (U. N. 1997) ("It is now

ties states' obligations to ensure economic, social, and cultural rights to available resources.¹²⁶ The devastation caused by the earthquake and resulting depletion of Haiti's resources cannot eliminate the state's duty to ensure economic, social, and cultural rights. Therefore, wealthy countries have a duty to assist. Though the precise nature and scope of that duty has not been agreed upon, in the short term, it is vital that Haiti has sufficient resources to ensure the economic, social, and cultural rights of all its children. Failure to ensure economic, social, and cultural rights will ensure that violations of children's civil and political rights continue as well.

Fourth, youth and their families need to be given a voice in the reconstruction process. Recall that children account for nearly half of Haiti's population.¹²⁷ Equally important, children are experts on their own lives.¹²⁸ In one study where trafficked children were interviewed, children revealed where they had sought—but not received—information before being trafficked.¹²⁹ They also revealed “changing points” in their lives, some of which happened among

undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity.”); World Conference on Human Rights, June 14-25, 1993, Vienna Declaration and Programme of Action, ¶ 5, U.N. Doc. A/CONF.157/24 (Oct. 13, 1993), *available at* <http://www1.umn.edu/humanrts/instreet/11viedec.html> (last visited May 5, 2011) (“All human rights are universal, indivisible and interdependent and interrelated.”).

¹²⁶ See *supra* notes 100-06 and accompanying text.

¹²⁷ See *supra* note 9.

¹²⁸ See DOTTRIDGE, *supra* note 109, at 83 (“It seems obvious that young people should be consulted and involved in any decisions about their future, whether it concerns the possibility of their returning to their own country or the profession they would like to learn skills for.”); Ann M. Haralambie, *Recognizing The Expertise Of Children And Families*, 6 NEV. L.J. 1277 (2006) (exploring the value to an attorney in talking with families and children about their own experiences to improve the attorney's representation). For one example of efforts to provide children a voice in the reconstruction process, see Jill Van den Brule, *In Post-Earthquake Haiti, Children's Voices Are Integrated into Reconstruction Effort*, UNICEF, <http://www.educationandtransition.org/resources/in-post-earthquake-haiti-childrens-voices-are-integrated-into-reconstruction-effort/> (last visited May 5, 2011).

¹²⁹ Mike Dottridge, *Young People's Voices on Child Trafficking: Experiences from South Eastern Europe* 13 (UNICEF Innocenti Working Paper No. IWP-2008-05, 2008).

peers and thus were not seen by adults.¹³⁰ This information is vital to preventing trafficking. Children can contribute on other issues as well, and therefore they need a voice in the process. That does not mean they get to decide everything, but their input can be very valuable. Moreover, the CRC requires that Haiti affords children an opportunity to express their views on decisions affecting their lives to the extent they are capable, based on their age and maturity.¹³¹

Many other issues are crucial to Haiti's reconstruction, including ensuring that funding commitments by foreign governments are actually fulfilled,¹³² transparency in the reconstruction effort and use of funds is assured,¹³³ and Haiti's government prioritizes the needs of its people.¹³⁴ However, if Haiti and its partners can fully incorporate children and their families into the reconstruction agenda, employ a child rights framework, ensure

¹³⁰ *Id.* at 16-17.

¹³¹ CRC, *supra* note 37, art. 12.

¹³² See Richard Luscombe, *Bill Clinton Gets Tough as Donors Fail to Honour \$5bn Haiti Pledge*, THE GUARDIAN, July 16, 2010, at 22 (revealing that less than ten percent of the \$5.3 billion pledged for Haitian relief efforts had been delivered by July 2010); see also Jonathan M. Katz & Martha Mendoza, *U.S. aid for Haiti stalled by 'final' obstacle*, TULSA WORLD, Nov. 5, 2010, at A6, available at http://www.tulsaworld.com/news/article.aspx?subjectid=337&articleid=20101105_13_A6_AsifHa89932&rss_inlk=1 (last visited Feb. 11, 2011) ("In September, an AP investigation revealed that not one penny of the promised [\$1.5 billion] U.S. reconstruction money had arrived, due to a combination of bureaucracy, disorganization and a lack of urgency in Washington."). *But see* Michael McAuliff, *Undocumented Haitians Get a Six-Month Reprieve*, N.Y. DAILY NEWS, July 13, 2010, at 19 (on file with author) (reporting that the U.S. delivered about \$30 million to Haiti by July of 2010).

¹³³ *Haiti Donors Urge Transparency in Relief Spending* (PBS Newshour television broadcast Mar. 31, 2010), available at http://www.pbs.org/newshour/bb/weather/jan-june10/haiti1_03-31.html (last visited May 5, 2011) (quoting the U.S. Ambassador to the United Nations Susan Rice stressing the importance of transparency in Haitian relief efforts). See generally DAN LINDLEY, PROMOTING PEACE WITH INFORMATION: TRANSPARENCY AS A TOOL OF SECURITY REGIMES (2007).

¹³⁴ Historically, corruption has been an issue in Haiti. See generally BRIAN WEINSTEIN & AARON SEGAL, HAITI: THE FAILURE OF POLITICS (1992); see also HAITI EARTHQUAKE PDNA, *supra* note 3, at 41 (acknowledging that prior to the earthquake, Haiti's government suffered from corruption and lack of citizen trust). Some fear these problems are exacerbated by the January earthquake. *Id.*

children's basic security, prioritize economic and social rights, and ensure youth and their families have a voice in the process, then Haiti, in partnership with the international community, will be much closer to ensuring the rights and well-being of all its children.

V. Conclusion

The January 2010 earthquake had devastating consequences for Haiti's children. The roots of the harm to Haiti's children do not stem solely from the earthquake. Too many of Haiti's children suffered daily violations of human rights prior to the earthquake. Prior to January 12, 2010, the international community had failed Haiti's children. From the tragedy of the earthquake, however, emerges an opportunity. The global community has rallied to support Haiti, committing, among other things, roughly ten billion dollars in assistance.¹³⁵ It now must follow through on its commitment to assist Haiti. With the support of the international community, the Haitian government, in partnership with its people, can rebuild Haiti so that it ensures the rights and well-being of all its children. If Haiti and its global partners can achieve that, they will have transformed Port-au-Prince from disaster zone to a model of human rights and sustainable development. If we fall short, Haiti's children will have us to blame.

¹³⁵ *Billions Pledged for Haiti Recovery*, TULSA WORLD, April 1, 2010, at A6, available at http://www.tulsaworld.com/news/article.aspx?subjectid=337&articleid=20100401_13_A6_Countr717775&rss_lnk=1 (last visited May 5, 2011) (reporting international pledges of nearly ten billion dollars to aid Haiti in the aftermath of the January earthquake); Press Release, U.N. General Assembly, *International Conference Raises Almost \$10 Billion as More Than 130 Donors Contribute 'Towards a New Future for Haiti'; Secretary-General Urges 'Sweeping' Nation-building Exercise as Prime Minister Presents Blueprint to Guide National Reconstruction, Recovery*, U.N. Press Release GA/10932 (Mar. 31, 2010), available at <http://www.un.org/News/Press/docs/2010/ga10932.doc.htm> (last visited May 5, 2011).