
Extraordinary Conditions:

A Statutory Analysis of Haiti's Qualification for TPS



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Global Justice Clinic

The Global Justice Clinic (GJC) at New York University School of Law* provides high-quality, professional human rights lawyering services to individual clients and nongovernmental and intergovernmental human rights organizations, partnering with groups based in the United States and abroad. Acting as legal advisers, counsel, co-counsel, or advocacy partners, GJC students work side by side with human rights activists from around the world. Since its founding, GJC has worked on human rights issues in Haiti. Margaret Satterthwaite is Director of GJC; Ellie Happel is Director of the GJC Haiti Project and Staff Attorney.

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Executive Summary

Since the U.S. government designated Haiti for Temporary Protected Status (TPS) in January 2010 after one of the world's worst natural disasters, the country has undergone two additional catastrophes: the outbreak of cholera, introduced into Haiti's waterways through reckless sanitation at a United Nations military base, and Hurricane Matthew, the strongest hurricane to hit Haiti in more than half a century. The Department of Homeland Security (DHS) designates countries for TPS in cases of ongoing armed conflict, natural disaster, or other extraordinary and temporary conditions that prevent the nationals of those countries who have emigrated from safely returning to their home country. The DHS redesignated Haiti for TPS in 2011, emphasizing the gravity of the damage that the earthquake had caused and the severity of one of the world's worst cholera outbreaks. TPS has been extended for Haiti four times since redesignation.¹

The conditions for which TPS is in effect remain, making it unsafe for Haitian nationals to return. These conditions include a housing crisis that has left families stranded in camps and in unsafe, makeshift shelters to this day; a cholera outbreak, sparked by United Nations troops just 10 months after the earthquake, which has caused nearly 10,000 deaths and more than 815,000 cases of illness—in a country of fewer than 11 million people;² and a period of extreme hunger and malnutrition caused by drought and storms and exacerbated by the economic shocks of the earthquake and Hurricane Matthew. Matthew hit one of Haiti's key food-producing areas.

Although these events and conditions are

extraordinary and harsh, they are temporary. The Haitian government has made impressive progress in reducing the number of cases of cholera and resulting deaths. As of 2017, Haiti finally has an elected president and a full parliament, for the first time since 2012.

This report presents the extraordinary conditions in Haiti that prevent nationals from safely returning today. This report also discusses the unique political moment in which Haiti finds itself—a moment which contributes to the country's challenges with stability and security, impeding its ability to safely receive its nationals. But it also shows where progress has been made, demonstrating that the conditions described here—while together constituting a pressing social and public health crisis—remain temporary.

Displacement Continues

The Haitian government is still working to provide effective solutions to the massive displacement caused by the 2010 earthquake and Hurricane Matthew. Immediately after the 2010 earthquake, more than 2.3 million individuals were displaced.³ As of September 2017, an estimated 37,967 of those uprooted by the earthquake remain in formal displacement camps, though the data is incomplete and likely does not reflect the full extent of the problem.⁴ The ongoing migration crisis on the Haiti-Dominican Republic border, coupled with Hurricane Matthew's recent devastation of homes and livelihoods in the southern departments of Haiti, has caused further homelessness. Hurricane Matthew displaced 180,000 individuals in October 2016, many of whom have

fled to overcrowded and unsafe living situations in Port-au-Prince and other larger cities to access shelter, food and education.⁵ Thousands more Haitians live in squalid camps on the Haiti-Dominican Republic border.

Unsafe Housing Remains a Challenge

It is unsafe for Haitians living in the United States to return to Haiti at this time because of the continuing housing crisis and the degradation of living conditions in Haiti occasioned by the earthquake, which have been exacerbated by Hurricane Matthew. Most of the post-earthquake reconstruction and response efforts were temporary measures, leaving individuals vulnerable to inadequate housing conditions and to further devastation from future natural disasters. In 2016, Hurricane Matthew destroyed 104,000 houses and damaged 133,000 others, affecting the well-being of more than two million people.⁶ Living conditions across Haiti—particularly in internally displaced person (IDP) camps and informal settlements—continue to be largely inadequate and unsafe. This report profiles Canaan, a makeshift, informal settlement outside of Port-au-Prince created shortly after the earthquake. Upwards of 200,000 people live in Canaan.⁷ The conditions there are dire: individuals lack access to basic government services—including water, health care, and waste management—and violence has erupted at times due to uncertain land tenure. Canaan is but one example of the many informal and unsafe settlements across Haiti into which many returning Haitian nationals might be forced to move, due to insufficient housing stock across the country.

Cholera Continues to Kill

While Haiti has made considerable progress in responding to the cholera outbreak with support

from the international community, the ongoing epidemic continues to make Haiti unsafe for return at this time. In 2016, Haiti was home to nearly one in three cases of cholera worldwide.⁸ After Hurricane Matthew, the monthly number of suspected cholera cases more than doubled, from 2236 in September 2016 to 5100 in October 2016.⁹ Hurricane Matthew not only exacerbated the cholera epidemic but also has impeded progress on the necessary infrastructure to keep Haitians safe from cholera. The United Nations has projected that 30,000 people in Haiti will fall ill with cholera by the end of 2017.¹⁰ The Haitian government needs more time to effectively address cholera; today, it is focused increasingly on long-term control efforts, such as improving the water and sanitation systems necessary to provide a durable cholera solution.

Food Insecurity Spiked Following Matthew

Recent Caribbean-wide drought and violent hurricanes have caused a spike in food insecurity in Haiti. Between 2012 and 2015, Haiti's food security showed overall improvement, but food security declined rapidly from 2015 to 2016 due to natural disaster.¹¹ In 2016, Hurricane Matthew hit one of Haiti's key food-producing areas, affecting two million people and killing more than 350,000 farm animals.¹² At the beginning of August 2017, 2.4 million Haitians (22 percent of the population) faced acute food insecurity.¹³ Hurricanes Irma and Maria skirted north of Haiti but caused significant damage, turning streets into rivers and destroying farmland.¹⁴ The nation remains the most food-insecure country in the Western Hemisphere.¹⁵

Given the follow-on disasters of cholera and Hurricane Matthew, the conditions that led the DHS to designate Haiti for TPS continue to exist. Haiti's government, overwhelmed by the need to

cope with these devastating conditions, has requested an extension of 18 months. The loss of TPS would risk undermining the progress that Haiti has made addressing post-earthquake conditions. Haiti is incapable of safely receiving its

nationals. In addition, the Haitian economy depends on remittances from its diaspora: Haitian TPS beneficiaries working in the United States support an estimated 250,000 of their relatives in Haiti.¹⁶

I. TPS Designation: Statutory Criteria

On January 21, 2010, the Department of Homeland Security (DHS) designated Haiti for Temporary Protected Status (TPS) for 18 months, the maximum time allowed under law for designation.¹⁷ As stated below, the statute provides that the DHS secretary may extend TPS designation as long as conditions for which TPS is in effect remain.

In 2011, 15 months after the earthquake, the DHS reviewed conditions in Haiti. The agency documented the gravity of the catastrophic blow the earthquake had delivered Port-au-Prince and

the nation. It also noted the emergence of a new extraordinary condition: cholera. It concluded that Haitian nationals “still cannot safely return due to continued extraordinary and temporary conditions.”²⁴ The DHS extended TPS for Haiti for 18 months and, at the same time, redesignated Haiti for TPS, which permitted individuals who arrived in the United States before January 12, 2011, to apply for and receive TPS.²⁵

Many countries have had TPS longer—in some cases, far longer—than Haiti, reflecting the

Temporary Protected Status

Temporary Protected Status (TPS) is an immigration status granted under the Immigration and Nationality Act (INA) that provides humanitarian protection to noncitizens who are unable to safely return to their country of origin due to an ongoing armed conflict, environmental disaster, or “other extraordinary and temporary conditions.”¹⁸ TPS does not provide a path to permanent residency. Rather, the status provides protection against deportation, the opportunity to obtain an employment authorization document (EAD), and travel authorization.

Individuals from countries designated for TPS must apply to receive the status. To receive TPS, an individual must have been “continuously physically present” since the date of most recent designation (Haiti’s initial designation date of January 10, 2010, was updated when Haiti was redesignated for TPS on July 23, 2011). In addition, applicants must not have been convicted of any felony or two or more misdemeanors; must not be found inadmissible as an immigrant under INA section 212(a) (which presents the classes of foreigners ineligible for visas or admission);¹⁹ and are subject to all of the mandatory bars to asylum—for example, participation in persecution of another individual or engaging in terrorist activity.²⁰

The DHS can grant TPS for 6, 12, or 18 months. The DHS Secretary must perform a review of the designated countries at least 60 days prior to the expiration of the designation period,²¹ and if the conditions for such designations²² are found to continue to exist, the DHS may extend TPS to the country for an additional 6, 12, or 18 months.²³ The DHS Secretary makes the decision after consultation with appropriate government agencies. TPS is terminated when the DHS determines that the foreign state no longer meets the conditions for designation.

The DHS granted TPS to Haiti due to the earthquake ((B)(i)), Haiti's temporary inability to adequately handle the return of its citizens ((B)(ii)), and the existence of "extraordinary and temporary conditions ... that prevent aliens ... from returning to the state in safety" ((C)). In addition, the Haitian government has officially requested (B)(iii) designation.

§244 b) Designations: 1) DHS can designate a foreign state for TPS only if:

A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

B) the Attorney General finds that-

i. there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting substantial, but temporary, disruption of living conditions in the area affected,

ii. the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

iii. the foreign state officially has requested designation under this subparagraph; or

C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interests of the United States.

INA §244 b) 3): Periodic review, terminations, and extensions of designations:

A) A periodic review. At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met....

B) Termination of designation. If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination)....

reality that extraordinary and temporary conditions cannot always be remedied within a short time. Somalia has held TPS for 26 years; Liberia held TPS for 26 years; Sudan held TPS for 20 years; Honduras and Nicaragua have each held TPS for 17 years; El Salvador has held TPS for 16 years; Sierra Leone held TPS for 10 years; and Guinea-Bissau held TPS for 9 years.²⁶

Even under the best of pre-disaster circumstances, recovery from major disasters—of the sort Haiti has endured three separate times since 2010—can take many years, as the experience of New Orleans following Hurricane Katrina, for example, exemplifies.²⁷ The Department of Homeland Security Disaster Relief Fund reported to Congress that for 2017, it anticipates spending USD 439 million on relief efforts related to hurricanes Katrina, Rita, and Wilma. The three hurricanes hit in 2005, twelve years ago.²⁸

Since redesignation, the DHS has extended

TPS for Haiti four times. It has noted that conditions of designation for TPS remain and, more recently, that new, extraordinary conditions (tropical storms, instability and increasing food insecurity) have emerged that make Haiti unable to safely receive its nationals. Most recently, in July 2017, the DHS extended TPS for Haiti for a “limited period” of six months, noting progress and concluding that conditions that merit extension remain.²⁹

This report demonstrates that the conditions for extension remain—and that, if anything, the July 2017 extension overestimated progress in key areas. While Haiti has made partial but substantial progress toward stabilizing the extraordinary and temporary conditions caused by the earthquake and cholera outbreak, it is definitively not yet ready for the safe return of its nationals. Further, the termination of TPS for Haiti could have destabilizing consequences.

Government of Haiti Requests 18-Month Extension

On October 4, 2017, the Haitian Ambassador to the United States, Paul G. Altidor, formally requested³⁰ an extension of TPS for 18 months on behalf of Haiti’s government. Ambassador Altidor invited U.S. officials to visit Haiti to “personally see the efforts underway to address the issues that warranted TPS for Haiti in the first place.” Ambassador Altidor explained that the Haitian government “sincerely believe[s] that once you see the conditions on the ground, it will become clear that an additional eighteen months extension or re-designation is in the shared national interests of both Haiti and the United States.”³¹

Ambassador Altidor wrote that conditions caused by the 2010 earthquake, the cholera outbreak, and Hurricane Matthew—and the more recent hurricanes Irma and Maria—have slowed Haiti’s post-earthquake recovery but that he is hopeful: the administration of President Jovenel Moïse, he notes, is “in the process of implementing a robust and expansive recovery and redevelopment plan The redevelopment plan is meant not only to significantly improve the lives of Haitians at home, but also to encourage the return of those living overseas to contribute in the long-term sustainability and economic prosperity of our country.”³²

II. Introduction: An Unprecedented Natural Disaster and Public Health Crisis—Compounded by Hurricane Matthew

In 2009, Haiti was the poorest country in the Western Hemisphere.

In 2010, a devastating earthquake struck Port-au-Prince, killing 222,570 people,³³ displacing 2.3 million others—roughly one quarter of the population³⁴—and destroying more than 300,000 homes.³⁵ In a matter of seconds, the earthquake wiped out 120 percent of Haiti's 2009 GDP.³⁶ Further, the earthquake left Haiti hamstrung in terms of response capacity: nearly 20 percent of the civil servants were killed,³⁷ and 60 percent of government, administrative, and economic infrastructure—including courts—was destroyed.³⁸ Indeed, the United Nations' humanitarian coordinator recounted that the international relief effort “swamped” a government that had been “weakened” and was “unable to take charge of [] coordination.”³⁹

Earthquake damage debilitated Haiti's already fragile political state, weakening the rule of law and making the Haitian people more vulnerable to violence, including sexual and gender-based violence (SGBV). Conditions in Haiti, while poor, had been improving in 2009, but the January earthquake shook the nation into shock and crisis.

Five days after the earthquake, the Department of Homeland Security (DHS) designated Haiti for Temporary Protected Status (TPS).⁴⁰ The DHS secretary found that “there exist in Haiti extraordinary and temporary conditions” preventing Haitian nationals from safely returning to Haiti. Further, the DHS found that “permitting eligible Haitian nationals to remain

temporarily in the United States would not be contrary to the national interest.”⁴¹

But the unprecedented devastation wrought by the earthquake would soon be paired with another catastrophe of historic proportions: In October 2010, one of the most deadly cholera outbreaks in modern history erupted. Haiti's devastated infrastructure, including a public health system still reeling in the aftermath of the quake, was overwhelmed with the scale of the challenge posed by these twin disasters.

In the ensuing years, Haiti has struggled with the four country conditions that constituted the core of the crisis, and on which the DHS has based its TPS designation, redesignation, and extensions: (1) more than two million internally displaced persons (IDPs); (2) decimated housing and public infrastructure; (3) intertwined public health emergencies, including cholera; and later (4) hunger and malnutrition, exacerbated by the earthquake and cholera epidemic. Although Haiti is slowly recovering from the country conditions that underpin its TPS designation, it faces serious challenges. In October 2016, natural disaster struck again, when much of Haiti was devastated by Hurricane Matthew, a Category 4 storm that struck with 145-mph winds. The worst hurricane to hit Haiti in 52 years, Matthew caused Haiti USD 2.7 billion in damage.⁴² This latest major natural disaster was a serious setback to a nation still striving to emerge from the dual calamities of earthquake and cholera.

This report describes Haiti's fragile progress in each of the four areas highlighted above,

and explains why an influx of returnees from the United States at this time would jeopardize that progress, potentially sparking new crises. It also describes Haiti's current political and security transition. As the nation seeks to regain its footing, achieve political stability, and a professional police force, the destabilizing effects of a major population influx would pose an acute risk to progress and peace.

It is important to emphasize that an analysis that focuses exclusively on the number of TPS beneficiaries (50,000) in the United States understates the size of the potential influx to Haiti if

TPS is terminated, since returnees to Haiti would, in many cases, be accompanied by their families. These families include 27,000 U.S.-born children and nearly 5,000 Lawful Permanent Resident (LPR) or citizen spouses, along with other partners and dependent family members.⁴³ Thus, Haiti could be facing the return of as many as 200,000 individuals. For the reasons detailed in this report, forced return on this scale risks plunging our Caribbean neighbor back into the crisis from which it has steadfastly been seeking to extricate itself. Furthermore, the governing statute does not merit the termination of TPS.

III. Extraordinary and Temporary Conditions Continue to Prevent the Safe Return of Haitian Nationals

Even as Haiti makes progress in remedying the extraordinary and temporary country conditions that justified the TPS designation, its progress in many respects remains fragile. Haiti's efforts to improve country conditions suffered a serious setback in 2016 when it was hit with the country's most powerful hurricane in more than half a century. Thus, the conditions that led the Department of Homeland Security (DHS) to designate Haiti for Temporary Protected Status (TPS) continue to exist. First, more than 37,000 people remain in internally displaced person (IDP) camps, and many tens of thousands more are displaced but not recorded in official statistics because tracking ends when people leave formal camps or when camps are reclassified. Second, a housing and physical infrastructure crisis means that many people have left camps only to settle in equally inadequate homes—many of which were damaged in the earthquake—in neighborhoods where structurally unsound buildings are the rule rather than the exception. Third, Haiti continues to combat cholera as the disease sickens and kills Haitian people. In addition to these conditions, which existed in Haiti when it was last designated for TPS in 2011, food insecurity is now worse.

A. Country Condition 1: IDP Camps Have Shut Down, but Displacement Persists

Although the destruction of infrastructure and housing was the most visible consequence of the earthquake, the plight of displaced families and individuals has been the most lasting and difficult to address.⁴⁴

In the immediate aftermath of the earthquake, roughly 2.3 million people, including more than 300,000 children, were displaced.⁴⁵ This number constituted more than one fifth of the Haitian population—the equivalent proportion of the U.S. population would mean 64 million Americans displaced. In July 2010, when standardized data first became available, there were an estimated 1.5 million people registered in IDP⁴⁶ camps.⁴⁷ An additional 600,000 were estimated to be in temporary arrangements with host families outside the quake-affected area.⁴⁸ The whereabouts of many hundreds of thousands more were simply unknown to the government and its international partners.

Displaced people, especially women and girls, faced heightened risks of sexual and gender-based violence in the insecure environment of the tent camps.⁴⁹ According to one study of pregnant teenagers after the earthquake, approximately two thirds reported that their pregnancies had resulted from rape, while more than one third reported trading sex for goods and services such as food or shelter.⁵⁰ Young women were especially vulnerable: through the end of 2011, surveys found that more than 60 percent of all reported rape cases involved a minor victim.⁵¹ The sexual violence crisis afflicted camp-dwellers generally, beyond just minors: in a survey of households in four displacement camps, 14 percent of respondents reported that one or more members of the household had been a victim of sexual violence.⁵²

Those who left the camps often did not leave by choice: a plurality were evicted from camps,



Figure 1: Displaced People Camp in Delmas 33, Port-au-Prince. January 2010. Credit: Ellie Happel

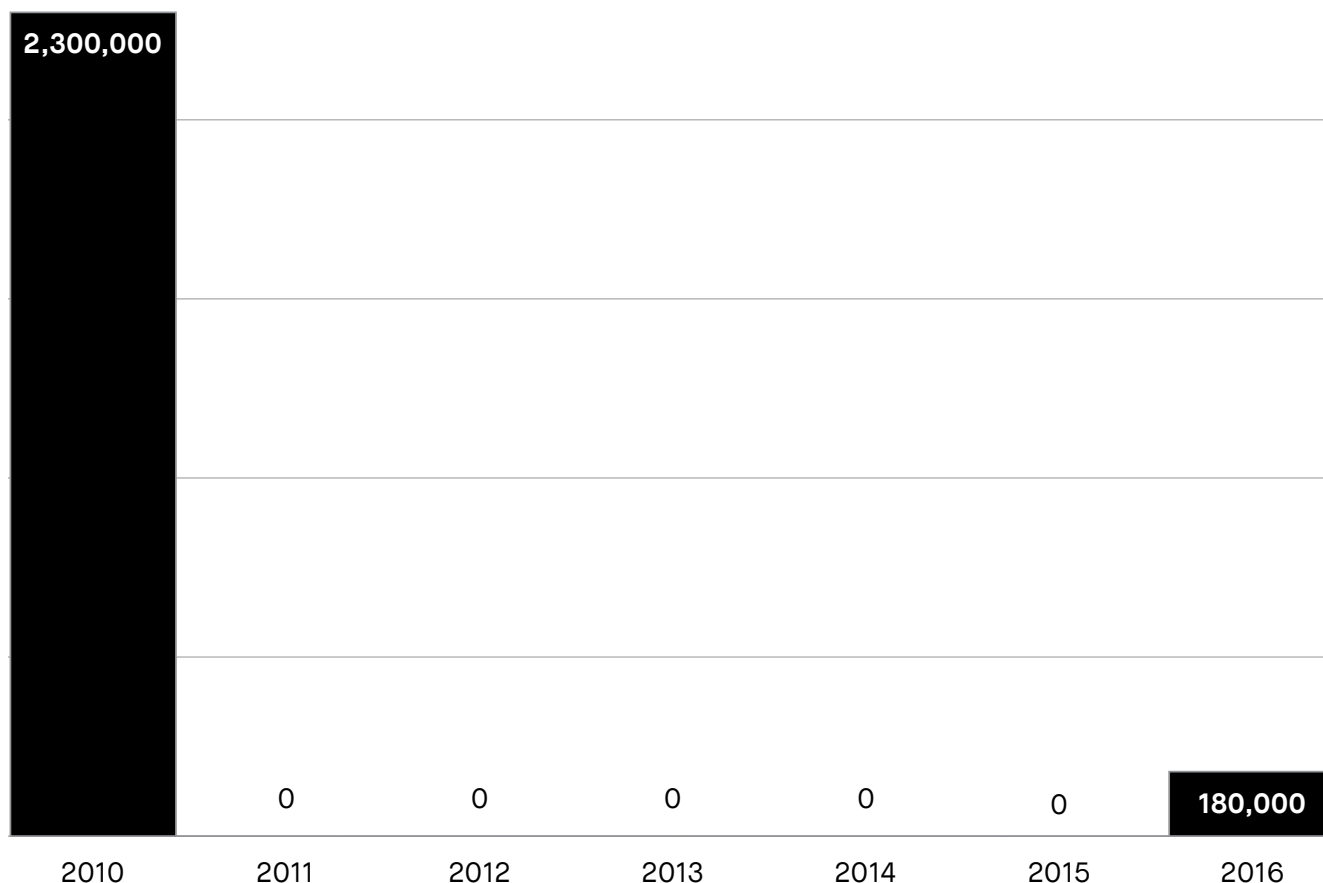
while others left due to poor material conditions, security concerns, or flooding caused by extreme weather events.⁵³ Over time, service provision within the camps diminished, making living conditions in many camps dire⁵⁴ and further accelerated involuntary departures from IDP camps. All told, fewer than one in twenty residents of IDP camps reported leaving because their home had been repaired.⁵⁵ As described in detail in the next section, many returned to homes that were so structurally unsound that a survey undertaken by engineers indicated the only safe course of action was demolition.

Even according to the International Organization for Migration (IOM), which was primarily responsible for tracking and reporting on

the number of IDPs, the numbers dramatically understated the problem of insecure housing.⁵⁶ Indeed, at certain points, drops in numbers of reported IDPs merely reflected a decision by IOM to reclassify existing IDP sites.⁵⁷ Thus, transitioning off of the IDP rolls did not necessarily signify that a family had obtained safe housing; indeed, such falling numbers may have actually been associated with a decrease in livelihood security. Nothing illustrates how dramatically IDP figures understate the reality of displacement more clearly than the dire situation of Canaan.

The existing crisis was dramatically exacerbated last year when Hurricane Matthew displaced 180,000 people⁷⁸—a figure that humanitarian relief workers believe to be an undercount.

Displacements Due to Natural Disaster



The conditions in the displacement centers were described as “squalid,” and displaced families were again subjected to an increased risk of sexual and gender-based violence.⁷⁹ Further, as after the earthquake, IDPs experienced forced evictions and forced closures.⁸⁰ Finally, many of the most vulnerable displaced people “fell between the cracks.”⁸¹ Most hurricane victims have not received adequate aid needed to rebuild their homes, farms and businesses, and a severe hunger crisis is spreading in the area. As a result, many hurricane victims are migrating to other cities such as Port-au-Prince to access resources. Often these living situations with family or friends are overcrowded, squalid, and pose security risks to women, especially young women. The migration

to the larger cities from Hurricane Matthew areas also make it nearly impossible for these host families to receive additional family members from the United States if TPS were terminated.

B. Country Condition 2: The Earthquake Decimated Homes and Physical Infrastructure—and After Years of Rebuilding, Matthew Caused Setbacks

Given the scale of the challenge and the recent setbacks caused by Hurricane Matthew, new housing plans need time to yield results. The problems of insecure housing—and the broader IDP crisis that comprised Country Condition 1—can be remedied only if there is sustainable progress in constructing durable housing. The

Canaan

Canaan, which sits on the hills above the ocean approximately 20 kilometers north of Port-au-Prince, is a jarring visual reminder of the impact of the earthquake. It lies in plain view, and challenges the notion that Haiti has been able to provide an adequate solution to its crisis of displacement. After withholding aid for fear of drawing additional settlers, the government and international organizations have finally recognized the need to provide services to, and support the development of, Canaan. More time is needed to improve living conditions and establish a government presence. Canaan would be a likely destination for TPS beneficiaries if forced to return to Haiti, and would no doubt see new insecurity and discontent following a population influx.



Figure 2: Canaan, February 2010.
Credit: Ellie Happel

Canaan is not a camp for internally displaced persons (IDPs).⁵⁸ Rather, it is a makeshift settlement that arose out of the devastation of the 2010 earthquake in Haiti.⁵⁹ Residents of Canaan have constructed most of the makeshift infrastructure in the area.⁶⁰ Many live in shacks or other shoddy housing constructed in a manner similar to that of homes that collapsed during the earthquake.⁶¹ Before 2010, the area of Canaan was uninhabited.⁶² Individuals and families started settling on the barren, windswept hills after President René Préval issued a presidential decree declaring the area of Canaan a public utility zone. Although the decree never became law, earthquake victims—desperate to escape the horrors of the tent camps but without other options—settled in Canaan by the thousands.⁶³ Today, an estimated 200,000 individuals live in Canaan.⁶⁴ The legal status of Canaan continues to be contested.⁶⁵ Its residents thus live in great insecurity and many now face forced evictions⁶⁶ and, in some cases, violence.

Living conditions in Canaan are generally worse than the already poor living conditions in the rest of Haiti. Canaan residents have less access to sanitation,⁶⁷ waste management,⁶⁸ and healthcare⁶⁹ than the average Haitian. Canaan is on exposed, wind-blown, dusty hills; dust inhalation is a serious health risk.⁷⁰ Cholera and malaria appear in waves.⁷¹ Residents have very limited access to electricity.⁷²

While residents demand greater access to basic services and opportunities for economic participation, the government has no steadfast implementation strategies for developing

infrastructure or for creating economic opportunities.⁷³ Even though UN Habitat and the Haitian government agency in charge of reconstruction have jointly devised the Urban Development Initiative for Canaan as a collaborative effort between international and local actors, implementation of urban projects for Canaan remain incomplete.⁷⁴ As yet, no plans exist to assist residents in Canaan with housing construction.⁷⁵ Finally, the exclusion of Canaan from the International Organization for Migration (IOM)'s Displacement Tracking Matrix—which counts, and tracks aid to, those displaced—has essentially *prevented* humanitarian interventions in Canaan.⁷⁶

Canaan illustrates that despite decreases in IDP figures, permanent solutions to Haiti's displacement crisis have yet to materialize. Closing or reclassifying IDP camps is no guarantee of improved living conditions, and certainly not a sign that Haiti is ready to receive its nationals back from the United States.⁷⁷

possible return of more than 200,0000 nationals could impede progress on housing, creating a bottleneck and sparking a new crisis as demand outstrips capacity. TPS should be extended to allow new housing efforts to come to fruition.

The earthquake destroyed or severely damaged more than 300,000 homes, all within a matter of seconds.⁸² The most visible scar left by the earthquake was the rubble where houses, hospitals, and civil service buildings had stood—and the related problem of roads rendered impassable by this debris. In addition to destroying the housing sector, the earthquake took a dramatic toll on vital public institutions. For example, 4992 schools were affected, among which 3978 were destroyed or damaged to such an extent that they had to close.⁸³ This figure accounts for 60 percent of the schools in the South and West departments—areas that include the most populous, highest-density cities in the country—and roughly one quarter of all schools in the country.⁸⁴ In affected areas, 60 percent of hospitals—sixty-seven in total—were also severely damaged or destroyed.⁸⁵ The earthquake claimed “most of

the Ministry and public administration buildings” in the capital, including the Presidential Palace, Parliament, and the country's highest court.⁸⁶

The disaster touched every sector of the Haitian economy and every facet of Haitian life. The sheer scale of the debris is hard to describe. The 190 million cubic meters of rubble blocked roadways and hampered reconstruction efforts.⁸⁷ By the time the DHS redesignated Haiti for TPS in 2011, less than 5 million cubic meters had been cleared.⁸⁸

In the months after the earthquake, the Haitian government undertook an assessment of more than 360,000 buildings to determine their structural stability, need for repairs, and fitness for habitability or other use.⁸⁹ Engineers working under the direction of the Haitian government coded buildings green (safe to inhabit), yellow (limited occupation feasible, but structural repairs needed), or red (unsafe to inhabit, demolition needed) depending on the level of damage.⁹⁰ The results, released in January 2011, were telling: almost half of the buildings surveyed—more than 165,000—were coded either yellow or red.⁹¹



Figure 3: Port-au-Prince, January 2010. Credit: Ellie Happel

While the estimated number of people displaced in Haiti has steadily decreased, there is great uncertainty as to where residents have gone. Declining IDP numbers does not, alone, suggest substantive progress. Many studies suggest that families move on to live in conditions that are no better than those that characterize camps. A May 2011 Building Assessments and Rubble Removal (BARR) report estimated that two thirds of Port-au-Prince's 84,866 buildings marked "red" as beyond possible repair had been re-inhabited.⁹² Consistent with this finding, a March 2011 IOM report found that only about 40 percent of those who had left camps made it back to a structurally

sound house; the remainder were living in tents or similarly makeshift structures, damaged homes, or other precarious and temporary situations.⁹³

The problem of unsafe returns as IDPs leave official camps is related to a lack of investment in permanent housing solutions. Although the international community pledged over USD 13.34 billion to post-earthquake humanitarian relief efforts, only a fraction of pledged funds was directed to housing reconstruction efforts. Further, the money pledged remains greater than the money delivered.⁹⁴ Moreover, less than 20 percent of post-earthquake reconstruction initiatives have resulted in long-term housing solutions.⁹⁵ Most

Unsafe Returns: The Housing Crisis in Haiti

- A March 2010 assessment of more than 350,000 buildings concluded that less than half were safe to inhabit.
- A May 2011 assessment reported that 64 percent of the homes marked red for “unsafe to inhabit” had been re-inhabited.
- A March 2011 International Organization of Migration (IOM) report estimated that only 40 percent of those who had left camps made it back to a structurally sound house. That same report found that fewer than 5 percent reported leaving because their home had been repaired. The majority of camp residents left due to eviction or threats of eviction.

of the post-earthquake reconstruction response efforts were temporary measures, leaving individuals and households vulnerable to inadequate housing conditions in the long term and to further devastations from future natural disasters.

1. Progress in the Face of Incredible Challenges

Nonetheless, the progress in Haiti since the earthquake is visible: the vast majority of rubble—which could have filled 4000 Olympic-size swimming pools⁹⁶—has now been removed. Clearing the rubble was an essential hurdle; progress on rubble management is allowing for other development and recovery efforts to proceed at a faster pace. Roads have been paved, and a new Supreme

Court building is near completion. Construction on the new National Palace is set to begin before the end of 2017.

2. New Setbacks, but also New Possibilities

Hurricane Matthew delivered a significant blow to Haiti’s effort to provide housing to its people. The storm destroyed another 104,000 houses and damaged an additional 133,000, affecting more than two million people.⁹⁷ Housing loss and damage totaled USD 856 million. The hurricane destroyed or damaged 133 hospitals, clinics, and health posts and affected 1670 schools. The 2017 Haiti Humanitarian Needs Overview reported that “in the worst hit areas, 90 per cent of homes are estimated to be destroyed” and that “approximately 525,000 [people] need shelter and non-food-item (NFI) assistance.”⁹⁸

There is new hope, however, as the international community and the Haitian government start on a new chapter in housing redevelopment, the goal of which is to “create the conditions necessary for Haitians to obtain improved housing and secure settlement solutions themselves.”⁹⁹ By emphasizing access to finance, working with local developers to build supply-side capacity, and prioritizing local control, the United States Agency for International Development (USAID) and the Haitian government promise to turn a new page on Haiti’s housing crisis.¹⁰⁰ An extension of TPS is necessary to allow new housing efforts to come to fruition.

C. Country Condition 3: Public Health: from Earthquake to Outbreak, Incomplete Cholera Response Puts Public Health at Risk

In October 2010, what was at the time the worst cholera outbreak in recent history exploded in central Haiti.¹⁰¹ In the first six months of the



Figure 4: Father and Son, Cholera Victim. Credit: Allison Shelley

epidemic, nearly 4000 people died.¹⁰² The international community bears heavy responsibility for cholera in Haiti, since the United Nations' peacekeeping force, the *Mission des Nations Unies pour la stabilisation en Haïti* (United Nations Stabilization Mission In Haiti, or MINUSTAH), sparked the Haitian cholera outbreak. The outbreak quickly overwhelmed the country's already stunned health system—one that had never before experienced a cholera outbreak. However, Haiti's *Ministère de la Santé Publique et de la Population* (Ministry of Public Health and Population, or MSPP) and *Direction Nationale d'Eau Potable et d'Assainissement* (National Directorate for Water

Supply and Sanitation, or DINEPA) have done their utmost to address the crisis since the beginning.

The devastation caused by the cholera epidemic can be understood only in light of the effects of the earthquake that had struck 10 months earlier. The earthquake had dramatically undermined Haiti's already limited capacity to respond to new public health crises. In the South and West departments, 60 percent of hospitals—sixty-seven in total—were severely damaged or destroyed by the earthquake.¹⁰³ This figure included the only national teaching and reference hospital, as well as the Ministry of Health building.¹⁰⁴ An estimated 50 percent of health care professionals were

living in tents in the immediate aftermath of the quake.¹⁰⁵

Even before the cholera outbreak, the public health situation was precarious. Water, sanitation, and hygiene (WASH) services were extremely limited after the earthquake. At the end of 2011, in light of the shelter, displacement, and infrastructure challenges detailed above, access to toilets and clean water was extremely limited. The internationally led WASH initiative had to deliver the daily minimum of water for one million individuals—amounting to 7000 cubic meters of water daily.¹⁰⁶ To meet the needs of displaced families and the broader homeless population, relief workers installed 15,309 emergency latrines and delivered 327,300 hygiene kits (to be used by families of five for one to three months).¹⁰⁷

While international actors and the Haitian government struggled to meet basic needs following the earthquake, the quake's aftermath created new public health threats. Lack of facilities and inability to clear rubble led to intermingling of domestic waste with urban debris.¹⁰⁸ Decomposing bodies, blocked wastewater drainage, and hazardous or polluting materials trapped under debris further exacerbated public health threats within the capital and surrounding region.¹⁰⁹

And then came the cholera epidemic. Cholera appeared in Haiti in October 2010 for the first time in the country's history.¹¹⁰ The first suspected case was recorded on October 16; four days later, national authorities confirmed an epidemic.¹¹¹ Genetic and epidemiological studies have established that cholera was introduced to Haiti by a United Nations peacekeeping contingent from Nepal, where cholera is endemic.¹¹² The soldiers were stationed at a MINUSTAH base where improper sanitation practices resulted in untreated sewage entering into the Meye Tributary. This tributary flows into the Artibonite River,¹¹³ which

Ebola and TPS

The DHS designated three West African countries—Guinea, Liberia and Sierra Leone—for TPS in 2014 due to the Ebola outbreak.¹¹⁶ In total, 2544 deaths were recorded in Guinea, 3956 in Sierra Leone, and 4810 in Liberia.¹¹⁷ The DHS terminated TPS for those nations in 2017, many months after the last case of Ebola was documented in West Africa.¹¹⁸

tens of thousands of Haitians rely on for drinking, washing, and farming.

Just more than a week after the confirmation of the outbreak, Hurricane Tomas made landfall in Haiti. Significant flooding caused a spike in cholera cases, as pit latrines overflowed and tent camps flooded. The weekly number of cases reached 25,000 in November and December 2010.¹¹⁴ By mid-2011, there had been 200,000 cases and nearly 4000 deaths.¹¹⁵ The speed and scale of the cholera outbreak, accelerated by its coincidence with the hurricane season, stretched Haiti's struggling post-quake public health infrastructure past the breaking point.

Fragile Progress: Despite A Spike Following Hurricane Matthew, Cholera Cases Continue to Decline

In 2010 and 2011, more than half of the cases of cholera worldwide were in Haiti.¹¹⁹ There was a precipitous drop in cholera cases between 2011 and 2012, following concerted mitigation efforts by the Haitian government and international community.¹²⁰ These numbers dropped nearly in half in 2013 and again in half in 2014.

As with Country Conditions 1 and 2, Hurricane

Matthew reversed progress on Country Condition 3. After Matthew struck in October 2016, the number of suspected cholera cases spiked from 2236 to 5100.¹²¹ Hurricane Matthew not only exacerbated the cholera epidemic but also has impeded progress in eliminating the disease across the island. After Hurricane Matthew, half of new cases nationwide were reported across the southern peninsula, in the Grand'Anse and Sud departments.¹²² The southern peninsula has since effectively addressed the cholera spike. Before the hurricane, less than 10 percent of cases came from those areas. In August 2017, cases of cholera were concentrated in the capital city and in the Artibonite and Central departments.¹²³ The lingering effects of Matthew partly account for the United Nations' projection that by the end of 2017, 30,000 people in Haiti will have contracted cholera this year.¹²⁴ This represents a steady decline in the number of annual cases—demonstrating progress—and yet 30,000 projected victims to a violent disease makes cholera a continued, concerning threat.

Nonetheless, the overall trajectory is one of progress, and the government of Haiti and international actors are poised to finish the job of controlling—if not eliminating—future cholera cases. In late 2016, the MSPP created a document (the National Cholera Elimination Plan—Medium Term, or PNEC-MT) that set out specific steps to eliminate cholera.¹²⁵ Shortly after the publication of the plan, the United Nations committed to mobilizing a total of USD 400 million for three years to support the plan.¹²⁶ Although the plan is far from fully funded, several countries have recently committed to redirecting the unspent funds from MINUSTAH—which finishes its withdrawal in October 2017—to the cholera control effort.¹²⁷

When considered in conjunction with the displacement and housing crises, the public

health situation makes Haiti unsafe for nationals to return. People in unstable or temporary housing have been the most vulnerable—and most difficult to treat—victims of the cholera epidemic. This fact became evident as cholera ripped through IDP camps and poor neighborhoods in post-quake Haiti and again when cholera surged with displacement from Hurricane Matthew. On each of the first three country conditions—displacement, housing, and cholera—Haiti has made, and is poised to continue making, substantial progress. However, nothing would jeopardize progress on these interrelated areas more surely than a large-scale return of individuals for whom housing and medical treatment may be lacking.

D. Country Condition 4: Continued Food Insecurity Constitutes a Major Threat to Potential Returnees

The twin natural disasters of the earthquake and Hurricane Matthew have had devastating effects on Haiti's agriculture.

Although food insecurity is not one of the enumerated conditions for TPS, the DHS found that the agricultural crisis leading to extreme hunger warranted an extension of TPS in 2012 and 2017.¹²⁸ Those conditions remain. In July 2017, the DHS again named food insecurity as a condition that makes Haiti an unsafe destination for return.¹²⁹

The quake directly caused USD 295 million in damage in the food and nutrition sector.¹³⁰ However, between 2012 and 2015, Haiti's food security showed moderate overall improvements. Under the pressure of extreme weather events from 2015 to 2016, that progress rapidly came to a halt.¹³¹ USAID says that the devastating food security impact of Hurricane Matthew, combined with three years of drought (2014-2016) stemming from El Niño, significantly exacerbated Haiti's



Figure 5: Les Irois, after Hurricane Matthew, October 2016. Credit: Jessica Hsu

structural food insecurity in the last few years. As a result, fully half of the population is now undernourished, and more than one in five preschool children suffer from stunting due to chronic malnutrition.¹³² Half of Haitian women of reproductive age experience anemia, as do 65 percent of preschoolers, primarily because of iron-deficient diets. Just 30 percent of pregnant women get adequate dietary iron, with negative consequences for themselves and their babies.¹³³

Sustainable access to food is a major problem for many Haitians. According to USAID, 60 percent of the population lives on less than USD 2 per day, and nearly one in four people live on less than USD

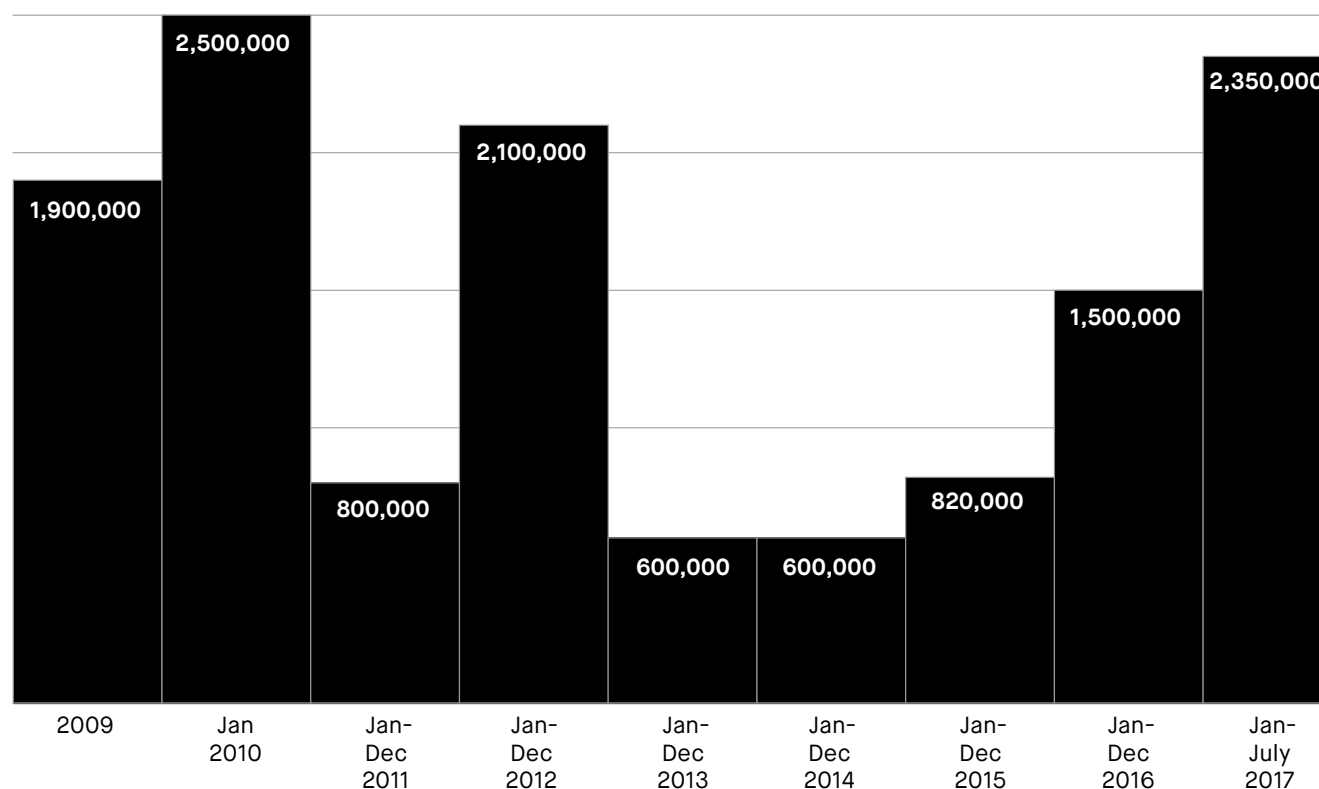
1 per day.¹³⁴ In March 2017, USAID found that “Haiti has made progress but still ranks ‘alarming’ in the 2015 Global Hunger Index.... [R]oughly 50 percent of Haiti’s population is undernourished, which has been exacerbated by a longstanding drought and a devastating hurricane in 2016 that severely affected 2 million people.”¹³⁵

In 2016, Haiti was the most food-insecure country in the Western Hemisphere, according to the *Global Hunger Index*.¹³⁶

Matthew Makes Hunger Worse—Nutrition Needs Remain Unmet

Matthew hit one of Haiti’s key food-producing

Number of people facing food insecurity



The table above demonstrates the trend in the number of people facing food insecurity in Haiti. It should be noted that the number fluctuates throughout the year depending on the seasonal food availability and, therefore, the numbers are only approximations of the situation at any given time.

areas. The hurricane affected some 428,000 agricultural households, affecting more than 2 million people and killing more than 350,000 farm animals.¹³⁷ Irrigation systems, crop and livestock farms, agricultural processing enterprises, cacao trees, coffee ecosystems, and fisheries all suffered considerable damage and loss, including loss of equipment. In all, the USD 573 million damage and loss in the agriculture and fishing sector was equivalent to 31 percent of the country's agricultural GDP.¹³⁸ The small-scale producers who account for the vast majority of the food production in the affected areas have very weak capacity to restart farming and fishing activities

without assistance. In the hurricane's aftermath, more than 800,000 people urgently needed food assistance.¹³⁹

In August 2017, the United Nations Office for the Coordination of Humanitarian Affairs reported that 2.35 million Haitians (22 percent of the population) still faced acute food insecurity.¹⁴⁰ The United Nations World Food Programme reports that agricultural productivity remained low in Haiti through the end of June 2017 as a result of Hurricane Matthew. This diminished production led to 22 percent increases in the price of locally produced rice in the South and South-East departments.¹⁴¹ Damaged infrastructure meant

significant inflation (between 13 and 30 percent, depending on the department) for imported wheat flour.¹⁴² Favorable spring harvests nationwide between June and August 2017 increased supplies of corn, beans, and other vegetables and reduced prices in local markets.¹⁴³ However, Haiti imports more than half of its food and 80 percent of its rice, its dietary staple.¹⁴⁴ The prices of imported rice and corn remain high, despite recent exchange rate stability.¹⁴⁵ In September and October of 2017, heavy rainfall and flooding associated with Hurricanes Irma and Maria destroyed

1,300 hectares of crops in the Northeast department, with likely increases in food insecurity as a result.¹⁴⁶

USAID considers Haiti's high levels of both chronic and transitory food insecurity to pose a serious challenge to sustainable development: "Haiti cannot achieve economic growth and national stability if food security is not addressed."¹⁴⁷ With so many already in need of food assistance and with Haitians struggling to stabilize the agricultural sector, a massive influx of families could only exacerbate an already dire situation.



Figure 6: Les Irois Farmland after Hurricane Matthew, October 2016. Credit: Jessica Hsu

IV. Haiti is in a Moment of Unique Transition: The Need for Stability is Particularly Acute and Would be Jeopardized by the Termination of TPS

Haiti finds itself in the midst of a crucial transition, during which the effect of an influx of returnees could be particularly destabilizing. After two years of political dysfunction—in 2015, Parliament was dissolved and President Martelly ruled by decree;¹⁴⁸ in 2016, elections failed due to irregularities and fraud, and an interim government was installed¹⁴⁹—in February 2017 a new executive assumed power and a new Parliament took seat. The government negotiated the withdrawal of forces from the *Mission des Nations Unies pour la stabilisation en Haïti* (United Nations Stabilization Mission In Haiti, or MINUSTAH).¹⁵⁰ MINUSTAH was replaced by the *Mission des Nations Unies pour l'appui à la justice en Haïti* (United Nations Mission for Justice Support in Haiti, or MINUJUSTH), a smaller force with the primary goal to “strengthen rule of law” and support the *Police Nationale d’Haïti* (Haitian National Police, or PNH),¹⁵¹ which do not yet adequately provide the protection and security that Haitian people need.

The newly installed Haitian government must have time to establish itself; now is not the moment to return thousands of Haitian nationals who are making important contributions to the Haitian economy through remittances. The diaspora is, in fact, an important contributing factor to domestic progress and recovery. Were Haiti to experience a large influx of individuals who would transform instantly from net contributors into a population requiring support from the country—especially when Haiti’s inability to resettle people

will inevitably result in many being housed in temporary shelter—conditions would worsen so significantly that they would threaten to reverse the security and protection progress made in recent years.

In addition to continuing recovery from political turmoil and recurring natural disasters, another vital area for human protection in which Haiti has made fragile progress is policing and the rule of law. A national police academy was created in 2012 to professionalize, as well as to increase the numbers and capacity of, the police force.¹⁵³ It has made significant progress, meeting two thirds of its personnel training and development goals.¹⁵⁴ However, nearly one quarter of police supervisory positions remain unfilled, and the police have a presence in fewer than half of Haiti’s 570 communal sections.¹⁵⁵ Through the end of the mission, the PNH relied on MINUSTAH police patrols to discharge their basic functions, with tens of thousands of joint patrols and hundreds of joint operations in a six-month period.¹⁵⁶

Moreover, a well-functioning police force requires oversight, the capacity for which is developing, albeit slowly. The Office of the Inspector General (OIG)—tasked with oversight of the PNH—has made rapid progress in developing institutional capacity in recent years, but it has far to go to ensure an effective and safe police force. In 2013, for example, the OIG conducted a large-scale investigation into police misconduct that resulted in recommendations to dismiss several

USAID Statement on Democracy and Governance in Haiti, March 2017

“Haiti has experienced a series of political set-backs in recent history that continue to detract from efforts to improve governance institutions and enforceable legal norms. Although the country has the formal structures of a democracy, many of these have yet to become fully functional, as evidenced by recurring periods of political and institutional instability. Haiti’s state institutions are under-resourced, and provide limited services to only a small percentage of the population. Despite these challenges, some progress has been made in recent years to advance the functioning of national and local government, civic engagement, voter education, access to justice services, and protection of human rights.”¹⁵²



Figure 7: Ragged Coast of Abrikots, after Hurricane Matthew, November 2016.
Credit: Jessica Hsu

PNH officers; however, the Ministry of Justice dismissed the Inspector General shortly thereafter—before any punitive action could be taken.¹⁵⁷ In contrast, by the end of 2015, the oversight functions of the OIG were working more robustly: 76 police officers had been dismissed for police rule infractions, and there were nearly 1000 ongoing investigations.¹⁵⁸ Nevertheless, investigations continue to be pursued only after great delay, and reform of the OIG’s function is a centerpiece of the strategic development plan for the police from 2017 to 2021.¹⁵⁹

Although the PNH is clearly not yet ready to provide for comprehensive physical security and civilian protection, important progress is being made—and will continue to be made under MINUSTAH’s successor mission, MINUJUSTH. One of MINUJUSTH’s key goals is to consolidate gains in the security sector.¹⁶⁰ Toward that end, MINUJUSTH primarily consists of a small police unit, providing patrols and enforcement support as well as continued technical assistance, in order to “strengthen rule of law institutions in Haiti; [and] further support and develop the [PNH].”¹⁶¹

As Haiti struggles to establish a safe,

effective, and responsive police force, women and children suffer most from failures of the current system. It is important to note that Haitian Temporary Protected Status (TPS) beneficiaries have nearly 30,000 U.S.-born, citizen children, who, along with many thousands more spouses and other dependent family members, could all be forced to migrate to Haiti upon the deportation or return of TPS beneficiaries.

Haiti needs time to solidify the progress it has made in achieving greater security and stability. For example, PNH has recently launched 36 reception units for the management and investigation of SGBV cases.¹⁷² However, these reception units are largely untested. The reduction of SGBV is a core focus of the MINUJUSTH police support mission and has been recognized as essential to improving security conditions in Haiti as a whole.¹⁷³ Personnel training¹⁷⁴ and governance and oversight of the police force have similarly been recognized as areas of priority and are new endeavors.¹⁷⁵ In these and other areas, MINUJUSTH will be doing vital work with PNH and the justice sector to promote security and protection.

Women and Children at Risk

The women and children at risk of deportation to Haiti if TPS is terminated face particularly concerning conditions. More than 200,000 children are involved in the worst forms of child labor.¹⁶² Already, one in four women experiences physical violence by the time she reaches age 15; a significant number of these cases involve sexual and gender-based violence (SGBV).¹⁶³ Given post-earthquake security concerns, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has determined that currently “children, elderly, women and single-headed households are particularly exposed to abuse, exploitation and violence, including sexual and gender-based violence.”¹⁶⁴ And Haitian women face violence at work as well as at home: one study found that nearly three quarters of female workers have been victimized by harassment—mainly sexual harassment—at work, and nearly two thirds have been induced to have sexual relations with employers or supervisors simply to keep their jobs.¹⁶⁵ Prosecution of such work-place violence, as with violence against women generally, is extremely rare.¹⁶⁶ The Secretary-General of the United Nations has described the “culture of impunity” surrounding gender-based violence as “pervasive.”¹⁶⁷

Women’s rights monitors have found that the earthquake made it difficult, if not impossible, to make concrete improvements to respect for human rights and rule of law. They note that SGBV increased since the earthquake:

women and girls continue to be subjected to widespread gender discrimination and mistreatment and . . . pervasive gender-based violence against women and girls represents the most severe manifestation of discrimination in the country, and . . . it has increased significantly after the earthquake owing to the increased poverty and disastrous housing situation.¹⁶⁸

Currently, the country lacks specific legislation criminalizing rape, domestic violence, or sexual harassment.¹⁶⁹ In 2015, Haiti noted in response to human rights monitors that legal reforms on gender violence were necessary and under consideration but had yet to be adopted due to political turmoil and delayed elections.¹⁷⁰ In recent years, the *Ministère à la Condition Féminine et aux Droits de la Femme* (Ministry of Women’s Affairs, or MCFDF) has worked toward comprehensive violence against women legislation; however, progress has stalled, and a law has not yet been passed.¹⁷¹

IV. Conclusion

The Temporary Protected Status statute under the Immigration and Nationality Act requires a periodic review, at least 60 days before the end of designation, of the conditions in Haiti for which Temporary Protected Status (TPS) is in effect. This report demonstrates that Haiti continues to meet the conditions for designation and shows that the country remains unable to safely repatriate its nationals.

The 2010 earthquake was one of the most devastating disasters in recorded history. More than 220,000 people were killed, and much of Port-au-Prince was decimated, including public health and government institutions and infrastructure. Despite unprecedented challenges, Haiti has made steady, albeit limited, progress on remedying problems posed by each of these country conditions. Yet, in October 2016, Haiti's progress to improve country conditions suffered a serious setback when the country was hit with its most powerful hurricane in more than half a century.

Thus, the conditions that led the DHS to designate Haiti for TPS continue to exist: (1) more than 37,000 people remain in IDP camps, with many tens of thousands more displaced but not recorded in official statistics because tracking ends when people leave formal camps or when camps are reclassified; (2) a housing and physical infrastructure crisis means that many people have left camps only to settle in equally inadequate homes—many of which were damaged in the earthquake—in neighborhoods where structurally unsound buildings are the rule rather than the exception; (3) Haiti continues to combat one of the world's most violent cholera outbreaks; and (4) hunger and malnutrition are now worse.

It is in the best interest not only of Haiti but also the United States to extend TPS for 18 months. Haiti has requested this extension, which it sees as necessary to ensure that those returning can “contribute in the long-term sustainability and economic prosperity of our country.”¹⁷⁶

Endnotes

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- 4 U.N. OCHA, *Haiti: Humanitarian Snapshot* (Aug. 2017) [hereinafter *Haiti: Humanitarian Snapshot*], https://www.humanitarianresponse.info/system/files/documents/files/hti_humanitarian_snapshot_august2017-en_0.pdf.
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- 11 THE ECONOMIST INTELLIGENCE UNIT, *Global Food Security Index: Year-on-year trends* (Sept. 2017), <http://foodsecurityindex.eiu.com/Index> (last visited Oct. 11, 2017).
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- 13 U.N. OCHA, *Haiti: Humanitarian Snapshot* (July 2017), https://reliefweb.int/sites/reliefweb.int/files/resources/HTI_Humanitarian_Snapshot_july%202017-EN.pdf.
- 14 See, e.g., Jacqueline Charles, *Irma Mostly Spared Haiti. But for Struggling Farmers, the Damages are Devastating*, *Miami Herald* (Sept. 30, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article172268857.html>.
- 15 THE ECONOMIST INTELLIGENCE UNIT, *Global Food Security Index: Haiti* (Sept. 2017), <http://foodsecurityindex.eiu.com/Index> (last visited Oct. 11, 2017).
- 16 Estimates based on email exchange with Dr. Manuel Orozco, Director, Migration, Remittances and Development, Inter-American Dialogue (Aug. 18, 2017) (on file with authors). Haiti is the most

remittance-dependent nation in the world. See MANUEL OROZCO, REMITTANCES TO LATIN AMERICA AND THE CARIBBEAN IN 2016, at 16 (Appendix) (Feb. 10, 2017) <http://www.thedialogue.org/wp-content/uploads/2017/02/Remittances-2016-FINAL-DRAFT.pdf>

- 17 See Designation of Haiti for Temporary Protected Status, *supra*, note 1.
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- 19 INA § 212(a) (presenting health related grounds, criminal grounds, security grounds, public charge, labor certification, illegal entry, documentation, ineligibility for citizenship, prior removal, and requirement of a guardian to maintain health as classes that are ineligible for a visa).
- 20 INA § 244 (c)(2)(B)(i), 8 U.S.C. §1254 (2012).
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- 22 INA § 244(b)(1), 8 U.S.C. § 1254 (2012).
- 23 INA § 244(b)(3)(C), 8 U.S.C. § 1254 (2012).
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- 33 U.N. OCHA, *Haiti: One Year Later* (Jan. 2011), <http://www.unocha.org/story/haiti-one-year-later>.
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- 43 Robert Warren and Donald Kerwen, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, 5(3) J. Migration & Hum. Sec. 577, 581 (2017).
- 44 *IASC RESPONSE*, *supra* note at 38 (“The biggest operational challenge of all continues to be the safe settlement of the displaced population. . .”).
- 45 See *Lessons*, *supra* note 3; see also *SITUATION, CHALLENGES*, *supra* note 36 at 16.
- 46 Francis M. Deng (Representative of the Secretary-General), *Guiding Principles on Internal Displacement*, U.N. Doc E/CN.4/1998/53/Add.2 (Feb. 11 1998) [hereinafter *Guiding Principles on Internal Displacement*]. Under the *Guiding Principles on Internal Displacement*, an IDP is defined as a “person ... forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of ... situations of generalized violence, violations of human rights or natural or human-made disasters.” *Id.* Annex, para 2.
- 47 *SITUATION, CHALLENGES*, *supra* note 36, at 12.
- 48 INTER-AGENCY STANDING COMMITTEE, *Response to the Humanitarian Crisis in Haiti* 5 (2010) (https://www.unicef.org/evaldatabase/files/IASC-Haiti_6Mos_Review_USA-2010-005-1.pdf).
- 49 WORLD BANK GROUP, *HAITI: TOWARDS A NEW NARRATIVE: SYSTEMATIC COUNTRY DIAGNOSTIC* 25 (2015), http://www.lessonsfromhaiti.org/download/Report_Center/haiti-scd-final.pdf [hereinafter *NEW NARRATIVE*] (“Vulnerability [to sexual violence] is particularly high among internally displaced people in camps and areas affected by the 2010 earthquake”); see also *SITUATION, CHALLENGES* *supra* note 36 at 51.
- 50 POTOFI HAITI GIRLS INITIATIVE, *GENDER AFTERSHOCKS: TEEN PREGNANCY AND SEXUAL VIOLENCE IN HAITIAN GIRLS: FINAL RESULTS OF AN ADOLESCENT FIELD SURVEY* 1 (2012), <https://potofi.files.wordpress.com/2012/12/summary-report-poto-fi-girls-gbv-field-survey.pdf>.
- 51 *Id.*
- 52 CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE, *SEXUAL VIOLENCE IN HAITI’S IDP CAMPS: RESULTS OF A HOUSEHOLD SURVEY* 3 (2011), <http://www.chrgj.org/publications/docs/HaitiSexualViolenceMarch2011.pdf>; see also MADRE ET AL., *Gender-Based Violence Against Haitian Women & Girls in Internal Displacement Camps*, in *UNIVERSAL PERIODIC REVIEW, REPUBLIC OF HAITI: SUBMISSION TO THE UNITED NATIONS* 87, 88 (Inst. for Justice & Democracy in Haiti and Bureau des Avocats Internationaux, eds., 2011), <http://www.ijdh.org/>

wordpress/wp-content/uploads/2011/04/LERN-Compiled-UPR-Submissions1.pdf (“The Solidarité des Femmes Haïtiennes, a civil society organization providing medical assistance to rape victims, documented 718 cases of gender-based violence in its clinics between January and June 2010.”).

53 *Id.*

54 INT’L ORG. FOR MIGRATION, HAITI CAMP COORDINATION CAMP MANAGEMENT CLUSTER DISPLACEMENT TRACKING MATRIX V2.0 UPDATE 9 n.65 (2011), http://www.lessonsfromhaiti.org/download/Report_Center/DTM_V2_Report_16_March_2011_English.pdf.

55 *Id.* See also TIMOTHY T. SCHWARTZ ET AL., U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, BUILDING ASSESSMENTS AND RUBBLE REMOVAL IN QUAKE-AFFECTED NEIGHBORHOODS IN HAITI (2011), http://pdf.usaid.gov/pdf_docs/Pnady468.pdf.

56 INT’L ORG. FOR MIGRATION, HAITI CAMP COORDINATION CAMP MANAGEMENT CLUSTER DISPLACEMENT TRACKING MATRIX V2.0 UPDATE 9 (2011), http://www.lessonsfromhaiti.org/download/Report_Center/DTM_V2_Report_16_March_2011_English.pdf (“[W]hile it is observed that the number of IDPs living in IDP sites continues to decrease, this does not necessarily imply that durable solutions have been achieved . . . [A] considerable number of IDPs that have left the sites have moved into precarious and temporary situations in the neighborhoods”).

57 Jake Johnston, *IOM Reports Big Drop in IDP Population after Removing 3 Areas from “Official” Camp List*, CTR. FOR ECON. & POLICY RESEARCH: HAITI: RELIEF & RECONSTRUCTION WATCH (Oct. 22, 2013), <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/iom-reports-big-drop-in-idp-population-after-removing-3-areas-from-official-camp-list> (describing reclassification of three areas, housing 54,045 individuals, as no longer IDP sites but new permanent settlements).

58 NOËL RICHENER, RECONSTRUCTION AND THE ENVIRONMENT IN THE METROPOLITAN REGION OF PORT-AU-PRINCE: CANAAN – A NEIGHBOURHOOD BUILT FROM SCRATCH 2 (2012) [hereinafter RECONSTRUCTION], http://www.urd.org/IMG/pdf/Canaan_-_a_neighbourhood_built_from_scratch_Abstracts.pdf (“Canaan is unusual in that it is not really an IDP camp and it is not yet a neighbourhood.”).

59 Steffen Nijhuis & Daniel Jauslin, *Urban Landscape Infrastructures: Designing Operative Landscape Structures for the Built Environment*, 3.1 RESEARCH IN URBANISM SERIES 13 (Apr. 2015), <http://dx.doi.org/10.7480/rius.3.874>.

60 Stephanie Ott, *Haiti Earthquake: A New Start in Canaan for Survivors*, AL JAZEERA, (Mar. 21, 2016) [hereinafter *New Start in Canaan*], <http://www.aljazeera.com/indepth/features/2016/03/haiti-earthquake-start-canaan-survivors-160308083308750.html> (“The area was completely uninhabited before the earthquake.”).

61 Jacob Kushner, *Haiti: They Call It Canaan*, PULITZER CENTER, (Apr. 14, 2017) [hereinafter *They Call It Canaan*], <http://pulitzercenter.org/reporting/haiti-they-call-it-canaan> (“Tens of thousands of Haitians flocked to the area, arriving from the camps that had erupted throughout the capital”).

62 See RECONSTRUCTION, *supra* note 58.

63 *They Call It Canaan*, *supra* note 61 (“Tens of thousands of Haitians flocked to the area, arriving from the camps that had erupted throughout the capital”).

64 15 MINUTES TO LEAVE *supra* note 7 at 48 (2015), <https://www.amnestyusa.org/files/amr360012015en.pdf> (“At present the settlement is estimated to be home to around 200,000 people”).

65 Alice Corbet, *Community After All? An Inside Perspective on Encampment in Haiti*, 29 J. OF REFUGEE STUD. 166, 175 (2015) (discussing how NGOs had been kept waiting for the legal status of Canaan, which was contested by some landowners).

66 15 MINUTES TO LEAVE, *supra* note 7 at 24. (“Several families living in informal settlements located on the northern outskirts of Port-au-Prince, commonly known as Canaan, were also victims of forced eviction.”)

- 67 15 MINUTES TO LEAVE, *supra* note 7 at 49.
- 68 *Id.*
- 69 Compare Anna D. Gage et al., *Assessing the Quality of Primary Care in Haiti*, 95 BULLETIN OF THE WORLD HEALTH ORGANIZATION, (Feb. 8, 2017), <http://www.who.int/bulletin/volumes/95/3/16-179846/en/> (discussing how over 90% of Haiti’s population lives within 5 kilometers of a primary care provider), with *They Call It Canaan*, *supra* note 61 (discussing how there are no hospitals in Canaan).
- 70 Etant Dupain and Bri Kouri Nouvèl Gaye, *Kanaran: Haiti’s Largest New Shantytown*, LET HAITI LIVE, (Jul. 24, 2014, 9:05 AM), <http://www.lethaitilive.org/news-english/2014/7/24/kanaran-haitis-largest-new-shantytown.html> (describing that dust is a major cause of illness in the area).
- 71 *New Start in Canaan*, *supra* note 60 (“[E]very month there are cases of diseases like cholera and malaria.”).
- 72 *They Call It Canaan*, *supra* note 61 (“A few years after people began arriving, there was still no electricity in Onaville”).
- 73 *They Call It Canaan*, *supra* note 61 (explaining that while UCLBP hopes to encourage microfinance but that neither economic opportunities nor infrastructure have materialized).
- 74 RECONSTRUCTION, *supra* note 58 (discussing that development plans have not yet been made public)..
- 75 15 MINUTES TO LEAVE, *supra* note 7, at 49 (“The programme does not include a housing component”).
- 76 15 MINUTES TO LEAVE, *supra* note 7, at 49 (“In September 2013 ... Canaan was excluded from the IOM’s Displacement Tracking Matrix” ... Exclusion ... had the consequence of leaving thousands of IDPs outside the scope of intervention by humanitarian organizations”).
- 77 INS. FOR JUST. & DEMOCRACY IN HAITI, *Haiti Needs Sustainable Alternatives to IDP Camps* (Jul. 4, 2014), [http://www.ijdh.org/2014/07/topics/housing/haiti-time-to-push-for-development-to-achieve-durable-solutions-for-the-internally-displaced-and-the-vulnerable/\(citing Chaloka Beyani, former Special Rapporteur on the Human Rights of IDPs, who states that “the closure of IDP camps by itself does not mean that durable solutions have been found,” and that “much more needs to be done”\)](http://www.ijdh.org/2014/07/topics/housing/haiti-time-to-push-for-development-to-achieve-durable-solutions-for-the-internally-displaced-and-the-vulnerable/(citing%20Chaloka%20Beyani,%20former%20Special%20Rapporteur%20on%20the%20Human%20Rights%20of%20IDPs,%20who%20states%20that%20%E2%80%9Cthe%20closure%20of%20IDP%20camps%20by%20itself%20does%20not%20mean%20that%20durable%20solutions%20have%20been%20found,%E2%80%9C%20and%20that%20%E2%80%9Cmuch%20more%20needs%20to%20be%20done%E2%80%9C).).
- 78 STILL REELING *supra* note 5, at 13 (discussing that the Haitian Ministry of Interior initially estimated 175,000 to be displaced by the disaster).
- 79 *Id.* at 13 (“The squalid, unsafe conditions reported in these centers – including lack of functioning toilets, separate latrines and bathing facilities for men and women, and education for children – are particularly alarming”).
- 80 *Id.* (discussing that displacement was widespread and that some IDPs in collective centers were not profiled and registered).
- 81 *Id.* at 14.
- 82 *Id.* (describing that about one-third of homes were completely destroyed, and two-thirds were partially collapsed or otherwise badly damaged).
- 83 UNICEF, CHILDREN OF HAITI: MILESTONES AND LOOKING FORWARD AT SIX MONTHS 14 (July 2010) [hereinafter CHILDREN OF HAITI], [https://www.unicef.org/lac/UNICEF_Haiti_-_Six_Months_Report_Final_final_eng\(1\).pdf](https://www.unicef.org/lac/UNICEF_Haiti_-_Six_Months_Report_Final_final_eng(1).pdf).
- 84 *Id.* at 14.
- 85 IASC RESPONSE, *supra* note 38, at 6.
- 86 PDNA, *supra* note 36, at 24.
- 87 See ONE YEAR LATER, *supra* note 37, at 3; see also PDNA, *supra* note 36, at 53 (listing four ways that debris “represent[ed] a threat to the population and environment,” including through hazardous material exposure, trapping decaying human remains and waste, and disrupting wastewater drainage).

- 88 ONU-HAITI, REPORT OF THE UNITED NATIONS IN HAITI 2011 18 (2011), http://www.lessonsfromhaiti.org/download/Report_Center/un-haiti-2011-report.pdf (describing that 50 percent of debris had been cleared). Changing the denominator suggested that half the rubble had been cleared, as opposed to roughly one-quarter; however, it is not clear that early estimates reflecting a consensus of the international community had actually been revised, or whether the United Nations simply wished to contribute to a narrative of progress.
- 89 SITUATION, CHALLENGES, *supra* note 36, at 35.
- 90 15 MINUTES TO LEAVE, *supra* note 7, at 18 (listing the three types of codes and color tags that the Ministry of Public Works used to categorize earthquake-affected areas).
- 91 *Id.* at 18 (describing that 94,002 (26.12%) buildings were classified as Yellow, and 71,230 (19.79%) were classified as Red).
- 92 Timothy T. Schwartz et al., *Building Assessments and Rubble Removal in Quake-Affected Neighborhoods in Haiti* (May 13, 2011) [hereinafter BARR Report], http://pdf.usaid.gov/pdf_docs/Pnady468.pdf.
- 93 IOM/Camp Coordination Camp Management Cluster, *Displacement Tracking Matrix V2.0 Update* 11 (1Mar. 16, 2011) [hereinafter IOM March 2011], http://www.lessonsfromhaiti.org/download/Report_Center/DTM_V2_Report_16_March_2011_English.pdf.
- 94 AMNESTY INT'L, *Haiti: Three Years on from Earthquake Housing Situation Catastrophic* (Jan. 11, 2013) [hereinafter *Haiti: Three Years on*], <https://www.amnesty.org/en/latest/news/2013/01/haiti-three-years-earthquake-housing-situation-catastrophic/>.
- 95 15 MINUTES TO LEAVE, *supra* note 7 at 15 (describing repairing, rebuilding or building housing have accounted for less than 20% of the measures).
- 96 Jacqueline Charles, *Rebuilding Haiti: Still a Work in Progress*, MIAMI HERALD (Jan. 11, 2015, 7:46 PM), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article6031617.html> ("The rubble from collapsed buildings and homes that could have filled 4,000 Olympic-size swimming pools is gone.").
- 97 See EVALUATION DES BESOINS, *supra* note 6.
- 98 HUMANITARIAN COUNTRY TEAM, 2017 HUMANITARIAN NEEDS OVERVIEW 7 (Nov. 2016) [hereinafter HUMANITARIAN NEEDS OVERVIEW], https://www.humanitarianresponse.info/system/files/documents/files/haiti_hno_2017.pdf.
- 99 USAID, *Housing & Settlements*, <https://www.usaid.gov/haiti/shelter-and-housing> (last visited Oct. 11, 2017) [hereinafter *Housing & Settlements*].
- 100 *Id.* (suggesting collaboration between USAID, GOH, and other key partnerships in focusing on increasing access to housing finance and upgrading infrastructure in existing neighborhoods through locals' own efforts).
- 101 Note that Yemen is now home to the worst cholera outbreak in recent history, with nearly one million victims. See i.e., Kate Lyons, *Yemen's Cholera Outbreak Now the Worst in History as Millionth Case Looms*, THE GUARDIAN, (Oct. 12, 2017). <https://www.theguardian.com/global-development/2017/oct/12/yemen-cholera-outbreak-worst-in-history-1-million-cases-by-end-of-year>.
- 102 Dowell SF and Braden CR. *Implications of the introduction of cholera to Haiti*. Emerg. Infect. Disease (July 2011) <http://dx.doi.org/10.3201/eid1707.110625>.
- 103 IASC RESPONSE, *supra* note 38, at 6.
- 104 PDNA, *supra* note 36, at 24.
- 105 *Id.* at 60.

- 106 SITUATION, CHALLENGES, *supra* note 36, at 20.
- 107 *Id.*
- 108 PDNA, *supra* note 36, at 53.
- 109 *Id.*
- 110 Deborah Jensen et al., *Cholera in Haiti & Other Caribbean Regions, 19th Century*, 17 EMERGING INFECTIOUS DISEASES J. 2130, 2130 (Nov. 2011).
- 111 SITUATION, CHALLENGES, *supra* note 36, at 23.
- 112 See, e.g., ALEJANDRO CRAVIOTO ET AL., FINAL REPORT OF THE INDEPENDENT PANEL OF EXPERTS ON THE CHOLERA OUTBREAK IN HAITI 12 (2011) [hereinafter UN INDEPENDENT PANEL OF EXPERTS REPORT]; see also TRANSNATIONAL DEVELOPMENT CLINIC, YALE LAW SCHOOL, GLOBAL HEALTH JUSTICE PARTNERSHIP OF THE YALE LAW SCHOOL AND THE YALE SCHOOL OF PUBLIC HEALTH & ASSOCIATION HAÏTIENNE DE DROIT DE L'ENVIRONNEMENT, PEACEKEEPING WITHOUT ACCOUNTABILITY: THE UNITED NATIONS' RESPONSIBILITY FOR THE HAITIAN CHOLERA EPIDEMIC 23-25 (2013), http://www.law.yale.edu/documents/pdf/Clinics/Haiti_TDC_Final_Report.pdf [hereinafter YALE REPORT] (reviewing genetic studies of the Haitian cholera strain and finding that “molecular and genetic studies demonstrate that the Haitian cholera strain is genetically almost identical to the Nepalese strain”).
- 113 UN INDEPENDENT PANEL OF EXPERTS REPORT, *supra* note 112, at 21.
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- 120 UN HAITI FACT SHEET ON CHOLERA PREVENTION (Dec. 2012), <http://www.un.org/News/dh/infocus/haiti/Haiti%20Cholera%20Factsheet%20Dec%202012.pdf>.
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- 122 Paul Namphy, Coord. Nat. Response, Symposium: Responding to, and Eliminating, Cholera in Haiti, in the Context of Hurricane Matthew and Other Heightened Vulnerabilities (DATE UNKNOWN), Slides 31-38, http://www.colorado.edu/washsymposium/sites/default/files/attached-files/namphy_-_dinepa_cowash2017.pdf. [hereinafter Coord. Nat. Response] (showing detailed graphs and charts about the cholera epidemic in the Grand Anse department, where Matthew hit hardest).
- 123 UN OCHA, *Haiti: Cholera Figures*, *supra* note 4.
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- 127 UN NEWS, *General Assembly Resolution Reaffirms United Nations Support for New Approach to Cholera in Haiti, Including through Trust Fund* (July 13, 2017), <https://www.un.org/press/en/2017/ga11929.doc.htm>.
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- 143 COORDINATION NATIONALE DE LA SECURITE ALIMENTAIRE [Nat'l COORDINATION OF FOOD SEC.], FAMINE EARLY WARNING SYSTEMS

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- 145 FAMINE EARLY WARNING, *supra* note 143.
- 146 FAMINE EARLY WARNING SYSTEMS NETWORK, *Pas de changement de phase pour la période projetée suite aux cyclones pour l'instant* (Sept. 2017), <http://www.fews.net/fr/central-america-and-caribbean/haiti/key-message-update/september-2017>.
- 147 *Agriculture & Food Security Fact Sheet*, *supra* note 132.
- 148 Jacqueline Charles, *Martelly Assumes Responsibility for Crisis as Haiti Gets New Government*, MIAMI HERALD (Jan. 19, 2015), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article7601129.html>.
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<http://www.ijdh.org/wp-content/uploads/2009/12/CEDAW-Haiti-Gender-Issues-22.1.16.pdf>.

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- 173 S.C. Res. 2350 (Apr. 13, 2017) (“Recognizing that strengthening . . . respect for human rights, including of women and children, due process and combating criminality, sexual and gender-based violence, and putting an end to impunity and ensuring accountability are essential to ensuring the rule of law and security in Haiti. . .”).
- 174 S.C. Res. 2350 (Apr. 13, 2017).
- 175 *Id.*
- 176 *Letter to the Honorable Elaine C. Duke, supra* note 30 (requesting an 18 month extension or re-designation of TPS for Haiti).



Northwest coast of Haiti after Irma. September 2017. Credit: Samuel Nesner