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Right to Food, Water and Sanitation

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I. EXECUTIVE SUMMARY

1. The rights to food, water and sanitation are crucial to the enjoyment of all human rights, and rank high among the most severe of Haiti's many human rights challenges. The Government of Haiti has the primary obligation to guarantee these rights to its people, but the role of the international community—as a central actor in this post-disaster country—is also of crucial importance.
2. In the aftermath of the January 2010 earthquake, the Government of Haiti has needed increased assistance to meet its obligations. In March 2010, donors came together and pledged \$5.3 billion to aid in Haiti's reconstruction. Donors have played a critical role in providing humanitarian assistance over the past year, and they will likely continue to actively participate in the rebuilding of the country and provision of basic services.
3. When the international community intervenes in Haiti through international assistance, human rights obligations should guide those interventions, and the Government of Haiti should work to coordinate that assistance. Many inter-governmental organizations, including the United Nations, have affirmed that their work must be done in a rights-enhancing way and have adopted a rights-based approach to their development and humanitarian assistance work. Numerous international NGOs have also adopted a rights-based approach. A rights-based approach seeks to empower the beneficiaries of aid by ensuring they are informed of the processes that affect their lives and are given the opportunity to share their perspective in a meaningful way.
4. This report summarizes key concerns regarding the inadequate implementation of a rights-based approach to assistance and development by the Government of Haiti and international community. These shortcomings have at times contributed to violations of the rights to food, water and sanitation. To comply with its human rights obligations and support the realization of human rights in Haiti, the Government of Haiti should work with international actors to enable assistance efforts to:
 - Build the capacity of the Haitian government, to respect, protect, and fulfill human rights;
 - Enable the full participation of Haitian stakeholders in project design and policy development;
 - Ensure transparency in every facet of the humanitarian response and rebuilding process;
 - Reinforce or establish effective accountability mechanisms allowing Haitians to file complaints, have their complaints investigated and receive redress when their rights are violated as a result of international assistance.

II. HAITI'S NORMATIVE & INSTITUTIONAL FRAMEWORK

A. International and Domestic Principles to Protect the Right to Food, Water and Sanitation

5. All human rights are interconnected. Access to adequate food, clean water and sanitation are necessary for survival and the achievement of human dignity. They are human rights in and of themselves, but are also fundamental components of other rights.¹ Haiti codified the right to food in the Constitution of 1987, which states that “[t]he State recognizes the right of every citizen to decent housing, education, food and social security.”² The Constitution also assigns the State the absolute obligation to guarantee the right to life, health and respect of

the human person in accordance with the Universal Declaration of Human Rights (UDHR).³ The rights to clean water and adequate sanitation are implicitly protected by the constitutional right to health, decent housing, education, food, social security and work, as well as the international obligation to protect the rights to health and life.⁴ Furthermore, Haiti's Constitution provides that international treaties or agreements that have been approved and ratified are self-executing and automatically become part of the law of the country.⁵ Accordingly, Haiti's constitutional protections should be interpreted consistently with its international obligations to respect, protect and fulfill the rights to food, water and sanitation. Despite constitutional guarantees and efforts by the government to increase food security and accessibility, however, the right to food has been broadly violated, especially among the impoverished of Haiti and following the earthquake, as discussed in Section III.A, below.⁶

6. The right to food has been universally acknowledged as a fundamental human right. The realization of the right to food requires more than temporary alleviation of hunger. Under international law, food must be economically and physically accessible; adequate in quantity, quality and nutrition; culturally acceptable; available; and sustainable.⁷ Article 25 of the UDHR guarantees a human being's right to food and freedom from hunger.⁸ The right is also articulated in the Convention on the Elimination of Discrimination Against Women (CEDAW),⁹ and the Convention on the Rights of the Child (CRC),¹⁰ to which Haiti is a party. Furthermore, Article 12 of the Protocol of San Salvador and Article 11 of the American Declaration both recognize the right to food.¹¹ The right was subsequently codified in Article 11 of the International Covenant of Economic and Social Rights (ICESCR).¹² Haiti has signed, but not ratified this treaty, and has therefore agreed not to take actions that defeat the "object and purpose" of the ICESCR.¹³ Nevertheless, the Committee on Economic, Social, and Cultural rights has established that a minimum core of economic, social and cultural rights are customary international law and are thus binding on all States, regardless of whether they have signed or ratified treaties protecting those rights.¹⁴
7. In addition, Haiti has international human rights obligations to respect, protect and fulfill the rights to water and sanitation. The minimum core obligations in relation to the right to water are binding on Haiti under customary international law. The right to water entitles individuals to water that is sufficient in quantity, safe in quality, acceptable in taste and odor, physically accessible, available and affordable.¹⁵ In July 2010, the UN General Assembly recognized the right to safe and clean drinking water and sanitation as a separate human right that is essential for the full enjoyment of life and all human rights,¹⁶ and the UN Human Rights Council affirmed the legally binding nature of this right.¹⁷ The Independent Expert on the right to water has emphasized that "[s]anitation and water must be prioritized by according greater political priority to these sectors, which should be reflected in allocations in State budgets and donor commitments."¹⁸ The right to water is also protected in relation to specific populations in CEDAW¹⁹ and the CRC.²⁰
8. The Government of Haiti established the *Direction Nationale de l'Eau Potable et de l'Assainissement* (DINEPA) on March 25, 2009,²¹ to implement government policies related to water and sanitation, and to improve the efficiency, efficacy and equity of provision of these services.²² Prior to DINEPA, no agency was responsible for sanitation, and the strength of the water sector suffered from lack of political will and financial means.²³ These shortcomings contributed to the weak condition of water and sanitation infrastructure. Private

companies and internationally funded non-governmental organizations (NGOs) are active in water provision, and often operate without clear government oversight and quality control.²⁴ In an attempt to address this, DINEPA has established a framework agreement with NGOs to facilitate collaboration and ensure that the work of NGOs supports the state's long-term plans and sustainable development in the country,²⁵ but a DINEPA officer has noted that NGO compliance with this is inadequate.²⁶

B. International Cooperation and the Human Rights Based Approach to Assistance

9. The primary duty to realize the rights to food, water and sanitation rests with the Haitian state.²⁷ However, a lack of resources and personnel severely limits the government's ability to ensure access to these and other basic needs. The natural disasters Haiti has experienced over the last four years, including severe floods, hurricanes and the January 12, 2010 earthquake, have further diminished the government's capacity. In this context, the international community has played a role and with that role comes an obligation to work with and support the state towards the realization of these rights.²⁸
10. The earthquake severely damaged existing infrastructure and displaced 1.5 million people, drastically impacting access to food, water and sanitation. As components of the right to life,²⁹ the rights to food, water, and sanitation require special protection after natural disasters, and must be protected even in a situation of public emergency.³⁰ Moreover, special international obligations attach to the treatment of internally displaced persons (IDPs). The Guiding Principles on Internal Displacement published by the UN Office for the Coordination of Humanitarian Affairs (OCHA) state that "[a]t the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide IDPs with and ensure safe access to: (a) Essential food and potable water..."³¹ Similarly, the Sphere Project's Minimum Standards in Disaster Response demand that "[p]eople have access to adequate and appropriate food and non-food items in a manner that ensures their survival, prevents erosion of assets and upholds their dignity."³² The Guiding Principles on IDPs have the force of law in Haiti,³³ and along with the Sphere Standards, discuss human rights principles as applied to humanitarian contexts, and should therefore guide the Haitian government, international organizations and other relevant actors as they provide assistance and protection to IDPs.
11. The international community has a long and complex history of providing assistance in Haiti. Following the earthquake, international actors have played a particularly active role. On March 30, 2010, donors pledged a total of \$5.3 billion toward long-term reconstruction, and directed the funds toward specific priority sectors identified by the Government of Haiti in the Action Plan for Reconstruction and Development to achieve the reconstruction goals.³⁴ As such, the actions of the international community are central to any assessment of the human rights situation in Haiti and the government's actions.
12. The UN Charter commits states to take "joint and separate action" to protect economic and social rights.³⁵ The obligation of international cooperation with respect to the implementation of the right to food is embodied in Article 2(1) and Article 11 of the ICESCR,³⁶ and reiterated by the Committee on Economic, Social and Cultural Rights (CESCR), which has instructed States parties to take steps to respect the enjoyment of the right to food in other countries, to protect that right, to fulfill access to food and to provide the necessary aid when required.³⁷ Olivier de Schutter, the UN Special Rapporteur on the Right to Food, has also

stressed that governments have “extranational obligations” to respect, protect, and facilitate the right to food.³⁸ States and other actors must also cooperate towards the realization of the right to water and sanitation. The Independent Expert on the Right to Water, Catarina de Albuquerque, has reminded the international community that “[d]evelopment cooperation and assistance must be designed and implemented in line with human rights standards and principles, including the rights to water and sanitation and human rights obligations regarding non-discrimination, ensuring that there are adequate and effective measures in place to identify and address any negative impacts on human rights.”³⁹

13. In addition to these commitments to cooperate, Haiti’s regional neighbors who are members of the Organization of American States (OAS) have agreed to “join together in seeking a solution. . . whenever the economic development or stability of any Member State is seriously affected by conditions that cannot be remedied through the efforts of that State.”⁴⁰ Following the earthquake, the Inter-American Commission on Human Rights reminded the international community and implementing organizations on the ground of “the importance of respecting international human rights obligations in all circumstances, in particular non-derogable rights and the rights of those most vulnerable.”⁴¹
14. In order to fulfill these obligations, the Haitian state must work to strengthen its ability to lead and coordinate the activities of donor countries, inter-governmental organizations and NGOs to ensure that they take an approach that brings human rights to the forefront of all assistance efforts. A rights-based approach to assistance reinforces principles of international law, such as the indivisibility and interdependence of rights and the obligation of non-discrimination.
15. A rights-based approach prioritizes building the capacity of the Haitian state, to guarantee the rights of all Haitians. It seeks full participation by requiring, among other things, that information about aid is transparent and that the population is routinely consulted—both in providing input on project design and in ensuring necessary modifications to the projects to maximize the realization of human rights. Transparency necessitates that information about relief and rebuilding projects is easily accessible to the community in a language known to them. It also requires paying particular attention to groups that have been historically excluded from the political process and have not had access to basic services. Finally, in order to ensure respect for the rights of Haitians, those providing assistance, including foreign donors, must be accountable to the Haitian people. Accountability means that there are effective mechanisms for all Haitians to make complaints, have their complaints investigated and receive redress when their rights are violated. This could be accomplished by working to build up existing structures like the *Office de la Protection du Citoyen* or to develop a separate mechanism to oversee reconstruction activities.

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS IN HAITI

A. The State of Food, Water and Sanitation in Haiti

1. Access to Adequate Food

16. Violations of the right to food have been an ongoing problem in Haiti. Prior to the earthquake, nearly half the population suffered from malnutrition and one third from chronic food insecurity.⁴² The purchase of food constitutes a major financial burden for Haitians, 76

percent of whom live on less than \$2 per day.⁴³ In 2008, the percentage of income spent on food was 32.8 percent in urban areas and as much as 55.6 percent in rural areas.⁴⁴

17. By some accounts, as much as seventy percent of the Haitian population earns a living either directly or indirectly through the agricultural sector.⁴⁵ Therefore agricultural production has the potential to not only increase the availability of food but also to provide a significant source of income that enables people to purchase adequate food. The Haitian state had developed plans before the earthquake for international investment in the infrastructure of the agricultural sector to help promote sustainability and also included these initiatives in the reconstruction plans. In addition, technical assistance to build the capacity of Haitian farmers, distributors, packagers and other important components of the agricultural sector are essential to enabling the Haitian state to better fulfill its citizens' human rights. Stronger infrastructure would allow the country to respond better to its domestic needs, even in crisis situations.
18. In the 1980's, Haiti's agricultural sector fully met the food needs of its population and produced national income from exporting agricultural produce.⁴⁶ The agricultural sector collapsed, however, after the International Monetary Fund required Haiti to remove tariffs on imported rice and other staples.⁴⁷ In 1995, the United States pressured Haiti to drastically reduce tariffs on agricultural imports and slashed tariffs that had previously been between 45 to 50 percent to between zero to 15 percent.⁴⁸ Former President Bill Clinton later stated that this was a mistake that only benefited farmers in the U.S.⁴⁹ Without protection for Haitian products, subsidized U.S. agricultural imports flooded Haitian markets, and Haitian farmers could not compete.⁵⁰ Impoverished peasants fled to cities, particularly Port-au-Prince, in pursuit of work in the industrial or informal sectors. Within a matter of years, many who had once subsisted on their own food production found themselves in need of food aid to survive.
19. Today, Haiti suffers from a food deficit and is highly dependent on foreign sources to meet its food needs.⁵¹ Local food production amounts to only 42 percent of food consumption, and more than half of the food comes from commercial importation.⁵² Haiti's dependence on imported food and decreased capacity to produce food for local consumption in turn make it particularly vulnerable to price shocks, like the 2008 food crisis and the current increase in global prices of staples.⁵³ About 80 percent of Haiti's export earnings go to paying for these food imports.
20. Foreign food aid makes up a significant source of food in Haiti—currently about six percent—but it can negatively impact long-term food security. In 2009, the Center for Human Rights & Global Justice at NYU Law School, Partners In Health/Zanmi Lasante and the Robert F. Kennedy Center for Justice & Human Rights undertook a study of a direct food distribution program supported by food aid from the United States to evaluate the impact of food aid on the right to food in Hinche, the capital of the Central Plateau department of Haiti with a population of approximately 50,000 people. The results demonstrated that participation in direct food support programs does not protect families from hunger, because the assistance does not adequately address the family's food security in absolute terms or in nutritional diversity. Nearly 90 percent of people responding to the survey—and over 80 percent of their young children—had gone to sleep hungry at some point during the month before administration of the survey because there was not enough food. Study participants also

reported that programs often failed to provide food that is of acceptable quality, fulfills basic dietary needs and is culturally appropriate to Haitians.

21. Not only is the food provided through direct assistance often inadequate, but research also suggests that it can be harmful to the sustainability and availability of local food for purchase, interfering with the realization of Haitians' human rights and long-term economic stability. In particular, when foreign-grown food is either distributed for free or sold at a subsidized price, such aid may make it difficult for local food producers to compete with the imported food. At times it has also led farmers to abandon agricultural production. Former UN chief humanitarian officer John Holmes stressed that "[a] combination of food aid [and] cheap imports have ... resulted in a lack of investment in Haitian farming, and that has to be reversed."⁵⁴

2. Access to Clean Water & Sanitation

22. Widespread lack of access to clean water ranks as one of Haiti's most significant obstacles to fulfilling its human rights obligations. Studies conducted in 2006 demonstrate that only 55.2 percent of the population has access to an improved water source,⁵⁵ while close to 70 percent does not have direct access to potable water.⁵⁶ These figures, however, almost definitely overstate Haitians' access to improved water sources because public systems are highly dysfunctional and in some communities rarely available year round. As the World Bank has reported, "[i]n almost all urban areas water supply is intermittent."⁵⁷ In rural areas, water is often very difficult to access during the dry season.⁵⁸
23. The weak water infrastructure is neither a new problem nor a problem that arose through Haiti's fault alone. Continued and substantial debt service has disabled the government's ability to invest in social services like agricultural and water infrastructure; through 2009, Haiti was spending \$50 million a year to service its debt.⁵⁹ Nearly ten years ago, Haiti expressed an interest in improving and extending its public water system through a set of loans from the Inter-American Development Bank (IDB) that were in part earmarked for the water sector. However, the United States prioritized political interests and interfered to block the disbursement of these already-approved and much-needed development loans, significantly undermining the opportunity for the Haitian government to develop the water infrastructure.⁶⁰
24. Inadequate access to water impacts not only the ability to drink or bathe, but all aspects of life, including health, food, and educational opportunities.⁶¹ Combined with unsanitary conditions, the lack of water is a major factor in exacerbating Haiti's health crises – tens of thousands of people die each year from preventable illnesses related to a lack of clean water.⁶² Only 27 percent of the country benefits from basic sewerage, and 70 percent of households in Haiti have either rudimentary toilets (34.9 percent) or none at all (34.7 percent).⁶³ Just 52 percent of waste in the Port-au-Prince metropolitan area is collected.⁶⁴ Fecal contamination of the water supply is thus a leading cause of disease, and water-related diseases are a major factor in Haiti's health crisis. Intestinal parasitosis and amoebic dysentery are common illnesses.⁶⁵ Typhoid fever is endemic. Passed from person-to-person, it only persists in settings of poor hygiene and poor access to clean water. The cholera epidemic that broke out in Haiti in October 2010 is the latest manifestation of an ongoing violation of the right to water, and similar to typhoid, it is easily preventable and can be treated with clean water and sanitation. In spite of this, over 4,500 people have died and over

250,000 have been infected between October 2010 and the time of this submission.⁶⁶

B. The Earthquake and Reliance on International Assistance

1. Post-Earthquake Violations of the Right to Food, Water and Sanitation

25. The earthquake that struck Haiti in 2010 further exacerbated inadequate access to basic rights, including food.⁶⁷ Damage to existing infrastructure has disrupted the availability of food markets and economic and physical access to food. According to the Emergency Food Security Assessment (EFSA) conducted in the months following the earthquake, 52 percent of households in the earthquake-affected regions were experiencing food insecurity, equivalent to almost 1.3 million people.⁶⁸
26. In the immediate aftermath of the earthquake, humanitarian food and water relief was provided to meet immediate needs. In March 2010, however, President René Prével asked the international community to stop sending food and potable water aid to Haiti for fear that it would “undermine Haitian national production and Haitian trade.”⁶⁹ Consistent with this request, a human rights investigation conducted by the Institute for Justice & Democracy in Haiti (IJDH) confirmed that as of July 2010,⁷⁰ food aid largely stopped for the families it surveyed in IDP camps, despite findings in the EFSA that blanket distributions must continue to prevent further malnutrition.⁷¹
27. While motivated by a concern for the long-term sustainability of food production in Haiti given the history of foreign aid undermining domestic production, President Prével’s action interfered with the government’s duty to respect, protect and fulfill the right to food. Even where resource constraints exist, the government has a duty to meet its core obligation to ensure that everyone in its jurisdiction has the minimum essential food to be free from hunger, whether through making local food available or through international assistance. After the decision to stop food assistance, IJDH found that families consistently did not have enough food; three out of four respondents stated that someone in their family had gone a full day without eating in the week prior to being surveyed, and over half of the families indicated that their children did not eat for an entire day.⁷² Many were forced to eat food with next to no nutritional content.⁷³
28. Violations of the right to water have also been widespread after the earthquake. Humanitarian relief agencies manage the IDP camps under the broad supervision of the International Organization of Migration (IOM),⁷⁴ and are the primary distributors of water and sanitation in the camps. International law mandates that every person must have a supply of water that is sufficient and continuous for personal and domestic uses. While one study found that IDPs living in camps had increased access to potable water after the earthquake because of humanitarian aid,⁷⁵ needs are still not fully met: over 40 percent of camps surveyed in October 2010 still did not have any water supply at all.⁷⁶ Water must also be safe and free from hazards that constitute a threat to a person’s health, yet the majority of water distributed in camps studied by IJDH was not treated to potable levels.⁷⁷ The right to water is not fulfilled unless water is physically and economically accessible, yet 61 percent of IDPs surveyed in December 2010 had to purchase potable water outside their camps every day.⁷⁸ Only 8 percent of families received *all* or *most* of their drinking water from aid agencies; 20 percent received *some* of their drinking water from aid agencies; 50 percent received *no* potable water at all.⁷⁹ Due to the financial burden, the study found that 21 percent of the

families surveyed never had access to potable water.⁸⁰

29. Squalid living conditions in camps and limited access to latrines have created a sanitation crisis in the IDP camps and are a major public health threat. Of 108 camps surveyed in October 2010, one third of the camps lacked latrines.⁸¹ Two months after the cholera outbreak, this number had only improved slightly, with a quarter of the camps surveyed still lacking latrines. The Sphere Project's Minimum Standards in Disaster Response state that the maximum number of people sharing a toilet should not exceed 20 – in the camps surveyed, each toilet is shared by an average of 273 people.⁸² The latrines need to be emptied regularly but this does not happen, rendering them unusable because they are filled to capacity. Twenty-five percent of respondents surveyed by IJDH reported that they defecate in plastic bags or other containers because of a lack of latrines or because of their inhumane state.⁸³

2. Implementation of the Rights Based Approach to International Assistance

30. Both the pre- and post-earthquake situations in Haiti underscore the importance of delivering aid in a rights-based framework that builds the capacity of the state to realize rights in the long-term. The Haitian Government has an obligation to cooperate with the international community to fulfill the right to food, water and sanitation for its people, and should be the leader in designing and implementing programs to improve access to basic services. The international community has a duty to use a rights-based framework for aid delivery that enables sustainability, incorporates community participation, and is accountable and transparent, while not causing harm to the local economy.
31. Non-state actors in Haiti have historically worked outside the government framework, and international financing has been directed to NGOs rather than government entities, weakening the capacity of the state. While the Haitian state has a limited capacity to oversee service provision in the camps, it retains the responsibility to ensure that non-state actors engage proactively with the state and stakeholders to detect potential human rights abuses and find solutions to address them. The international community has a heightened responsibility to build the capacity of the state and ensure participation of communities. Prior to the earthquake, a cluster system was established by the UN to organize the humanitarian response.⁸⁴ The government has not been sufficiently empowered in the management and leadership of these clusters since the earthquake. This has been in part due to practical obstacles⁸⁵ or language barriers that hinder meaningful participation.⁸⁶ At the same time, it is important for the state to maintain standards and mechanisms to oversee the activities of the various actors working in Haiti to ensure that their actions are effective and do not undermine human rights. Reports show that the interface between the government and cluster system could be improved.⁸⁷ There are, however, many exceptions where the government and NGOs work closely together,⁸⁸ though the results are often varied.⁸⁹
32. The Interim Haiti Reconstruction Commission (IHRC) was established after the 2010 donors conference to improve coordination, build state capacity and bring donors and the government together to lead the reconstruction process effectively. The body is designed to play a central role in Haiti's reconstruction, and could be an important step towards increased coordination and transparency. Some feel that the IHRC has not adequately engaged the Haitian population, however. While some sectors including Health and Housing have been able to work closely with ministries, donors, and partners to coordinate meetings and review the budget process, this has not been the case with all sectors. This should be something that

is consistently carried out and mandated throughout the IHRC activities. The IHRC has twelve Haitian members, but their ability to participate effectively in the activities and decision-making of the IHRC has been limited.⁹⁰ Due to weaknesses in staff capacity, the IHRC has not done enough to include the government and Haitian stakeholder participation. Additional constraints limit the ability to work closely with the government. The IHRC must work closely with the government to help the Haitian people understand the Commission and its role; without this information, the Haitian Government and people have had little ownership over the activities of the IHRC. An Oxfam poll found that only 17.5 percent of the Haitians surveyed supported the goals contained within the official Action Plan of the IHRC. As the Interim body transitions to the permanent Haitian Development Agency, improvements must be made to be more inclusive representative of Haitians.

33. Recent assessments have found that inconsistent with the rights-based approach, humanitarian services have in many circumstances been provided through a top-down approach, with international agencies making decisions about peoples' needs without securing meaningful input from the communities they are intended to benefit.⁹¹ Local communities, Haitian civil society groups and other stakeholders in the rebuilding process cannot meaningfully access the fora where decisions that directly impact them are being made. Haiti's impoverished majority is especially marginalized from the rebuilding process. In many settings, the UN and the IHRC alike inappropriately rely on international NGOs to "be the voice of the people."⁹²
34. Transparency is lacking, as rights-holders do not receive essential information about critical aspects of the reconstruction process. The state has a responsibility to communicate with the people about the programs of international actors, and the actors must therefore provide this information to the state for dissemination. Less than one third of camp residents surveyed in October 2010 said they were informed about the future – be it aid delivery or resettlement.⁹³ The lack of transparency inhibits participation in reconstruction decision-making and also hinders collaboration.⁹⁴ Moreover, it hinders Haitians' ability to hold international actors accountable for their work in Haiti. The government should strengthen the OPC or establish an effective complaint mechanism where Haitians can submit a complaint, have it investigated and receive redress when their rights are violated by international actors. One example, is that the lack of accountability has resulted in distrust of MINUSTAH among the local population due to the recent cholera outbreak, leading people to demonstrate and protest against the peacekeeping presence.⁹⁵ The absence of participation and transparency also negatively impacts local ownership over the rebuilding process. This hurts efficiency, continuity and sustainability of the projects. It also perpetuates a dependency on non-governmental actors, and exposes communities to vulnerability when funding for projects run out.

IV. CONCLUDING RECOMMENDATIONS

Recognizing the powerful and significant role that donors play in the provision of services and the reconstruction, these recommendations are focused on the Government of Haiti as well as the international donors actively working in Haiti.

A. General Recommendations

1. Ensure equal and adequate access to food, water and sanitation, and afford special attention to vulnerable groups such as IDPs, rural populations, women and children.
2. Implement a rights-based approach in all facets of international assistance to Haiti.
3. Consult and integrate the UN Guiding Principles on Internal Displacement into all policies and procedures relating to aid distribution, resettlement and disaster reconstruction.
4. Ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR).

B. Specific Recommendations

1. The Government of Haiti and International Actors should ensure transparency throughout all stages of aid planning and distribution, including making information about plans and policies available in Creole. The government should enforce requirements on reporting from donors and disseminate this information.
2. Establish accessible accountability mechanisms:
 - a. The Government of Haiti should work to build the capacity of the OPC or create a national office to receive, investigate, and respond to complaints about violations of human rights relating to international assistance. The international community should provide financial and technical support to this effort.
 - b. Concurrently or in the alternative, donor states and international aid agencies should provide and publicize their own effective complaint mechanisms for aid recipients.
3. Build Local Capacity: The government and donors should encourage the use of local or regional purchase of commodities by donor countries.
4. International actors should coordinate with the government of Haiti to ensure the implementation of a rights-based approach. Donors and international aid agencies are encouraged to coordinate among themselves and with the Haitian government and civil society to develop a strategy to address the basic needs of the individuals affected by the earthquake. The IHRC must ensure consistent Haitian participation in project planning and implementation across all sectors.
5. The international community should prioritize building the Haitian state's capacity to fulfill its human rights obligations, and encourage donors to actively assist in this process.
6. Participation of IDPs and other stakeholders must be promoted at every stage of development. Formal consultations on needs assessment, aid distribution, and evaluation of programming should be mandated into project plans and policies.
7. Mobilize resources to support the government's long-term plan to construct a system of drinking water supply and sanitation using cost-effective and socially adapted technology. Realize the government's plan to achieve 60% coverage of drinking water in metropolitan zones and 73 % in other urban and rural areas; sanitation coverage of 58 % in metropolitan zones and 50 % in other urban and rural areas by 2015.

APPENDIX: Endnotes

¹ Universal Declaration of Human Rights art 25(1), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); International Covenant on Civil and Political Rights art 6, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. (every human being has the right to life). The rights to water and sanitation derive from the right to an adequate standard of living, the right to life and human dignity, are inextricably linked to the highest attainable standard of physical and mental health.

² Constitution of the Republic of Haiti March 10, 1987 art. 22 (Haiti).

³ *Id.* art 19.

⁴ CTR. FOR HUMAN RTS. & GLOBAL JUSTICE ET AL., WÒCH NAN SOLEY: THE DENIAL OF THE RIGHT TO WATER IN HAITI 41-45(2008) [hereinafter WÒCH NAN SOLEY].

⁵ Haitian Constitution *Id.* art. 276-2 (1987).

⁶ In Haiti, the *Coordination Nationale de Sécurité Alimentaire* under the *Ministère de l'Agriculture* monitors food security with the goal of identifying particularly vulnerable areas, including in post-disaster situations.

⁷ This definition of the right to food is derived from UN Committee on Economic, Social and Cultural Rights (ESCR Committee), General Comment No. 12, *The Right to Adequate Food*, ¶ 7, UN Doc. E/C.12/1999/5 (1999).

⁸ Universal Declaration of Human Rights art 9, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR]

⁹ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) art. 12(2), adopted December 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981. (recognizing the right of pregnant and lactating women to food and nutrition).

¹⁰ Convention on the Rights of the Child (CRC), G.A. Res. 44/25, art. 24(2)(c), U.N. Doc. A/44/49 (1989), entered into force September 2, 1990 (recognizing the right of children to adequate food and clean drinking water).

¹¹ See U.N. FAO Legal Office, *The Right to Food in National Constitutions*, in THE RIGHT TO FOOD IN THEORY AND PRACTICE, available at <http://www.fao.org/Legal/rtf/bkl.htm>.

¹² This encompasses two separate but related norms: the right to adequate food and the right to be free from hunger.

¹³ With respect to donor states' obligations, many of the donors operating in Haiti have signed and ratified the ICESCR, and thus are bound by the obligations contained therein.

¹⁴ ESCR Committee, Concluding Comments (Israel), E/C.12/1/Add.90 (May 23, 2003), ¶ 31 ("basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law"); see also WÒCH NAN SOLEY, *supra* note 4, at 45.

¹⁵ ESCR Committee, General Comment No. 15, *The Right to Water*, U.N. Doc. E/C.12/2002/11 (Nov. 11-29, 2002) [hereinafter ESCR Committee General Comment No. 15]; see also World Health Organization, *Health and Hum. Rts. Pub. Series No. 3, The Right to Water*, 12 (2003), available at http://www.who.int/water_sanitation_health/rtwrev.pdf.

¹⁶ G.A. Res. 65/254, U.N. Doc A/RES/65/254 (July 28, 2010)

¹⁷ H.R.C. Res. 15/L14, Human rights and access to safe drinking water and sanitation, U.N. Doc [A/HRC/15/L.14](#) (Sept. 30, 2010).

¹⁸ G.A. Res. 65/254, ¶63, U.N. Doc A/RES/65/254 (July 28, 2010).

¹⁹ CEDAW, *supra* note 9, art. 14(h).

²⁰ CRC, *supra* note 10, art. 24(2)(c).

²¹ Loi Cadre de portant sur l'Organisation du secteur de l'Eau Potable et de l'Assainissement, *Le Moniteur No. 29*, March 25, 2009. DINEPA consolidated and replaced the former *Service National d'Eau Potable* (SNEP), which was responsible for water services outside of the capital, and the *Centrale Autonome Métropolitaine d'Eau Potable* (CAMEP), in charge of water supply for Port-au-Prince.

²² *Id.* at art. 1.

²³ World Bank, *Project Appraisal Document on a Proposed Grant In the Amount of SDR 3.4 Million (US\$5 Million Equivalent) to the Republic of Haiti for a Rural Water and Sanitation Project*, World Bank Report No: 38080, 28 [hereinafter "World Bank Appraisal"], available at http://www.wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rendered/PDF/38080.pdf; Office of the Special Envoy for Haiti, Water and Sanitation, <http://www.haitispecialenvoy.org/about-haiti/water-sanitation/> (noting that water and sanitation is chronically underfunded).

²⁴ WÒCH NAN SOLEY, *supra* note 4, at 16-17; Interview with DINEPA officer, in Port-au-Prince, Mar. 16, 2010 (on file with author).

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- ²⁵ Accord cadre entre la Direction Nationale de l'Eau Potable et de l'Assainissement et les Organisations Non Gouvernementales Intervenant dans le Secteur Eau Potable et de l'Assainissement.
- ²⁶ Interview with DINEPA officer, *supra* note 24 (on file with author).
- ²⁷ See e.g., Catarina de Albuquerque, Independent Expert on the Right to Water and Sanitation, U.N. Doc. A/65/254, ¶19, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/477/84/PDF/N1047784.pdf?OpenElement> (“While States have the primary legal obligation for the realization of human rights domestically, all States have responsibilities to create an enabling environment for human rights realization.”).
- ²⁸ See e.g., *id.*
- ²⁹ See, e.g., U.N. Hum. Rts. Committee, General Comment No. 6, The Right to Life, ¶ 5, U.N. GAOR, 16th Sess., Supp. No. 40, Annex V, U.N. Doc. A/37/40 (1982) (“The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures... [It] would be desirable...to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”).
- ³⁰ International Covenant on Civil and Political Rights (ICCPR) art. 4, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.
- ³¹ U.N. Office of the Coordination of Humanitarian Affairs (OCHA), Guiding Principles on Internal Displacement, Principle 18(2)(a), U.N. Doc. E/CN.4/1998/53/Add.2 (1998)[hereinafter Guiding Principles].
- ³² Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response (2004).
- ³³ The Guiding Principles have the force of law in Haiti through Haiti’s ratification of the American Convention on Human Rights. The Inter-American Commission on Human Rights, one of two bodies charged with interpreting State Parties’ obligations under the American Convention, adopted the Guiding Principles on Internal Displacement as the authoritative instrument when interpreting human rights law as applied to communities of displaced persons. Inter-Am. [Comm’n on Human Rights](#), Third Report on the Human Rights Situation in Colombia, ¶ 10, [OEA/Ser. L/V/II.102 \(Feb. 26, 1999\)](#). Moreover, the Guiding Principles “reflect and are consistent with international human rights law and international humanitarian law and to a large extent thus codify and make explicit guarantees protecting internally persons that are inherent in these bodies of law.” *Id.*
- ³⁴ Office of the Special Envoy for Haiti, Recovery grant activities by sector for 2010 and beyond in USD millions, Food security, GOH 18 month budget is 140.0, and donors have committed or disbursed 24.4 in 2010. For Water and sanitation, the GOH has an 18 month budget of 160.0, and donors have committed or disbursed 231.3 in 2010 to support this.
- ³⁵ UN Charter art. 56.
- ³⁶ International Covenant on Economic, Social and Cultural Rights (ICECSR) art. 11(1), adopted December 16, 1966, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 993 U.N.T.S. 195, entered into force January 14, 1969 (“States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”) *Id.* art. 11(2) calls on States Parties to take measures, “individually and through international co-operation,” to ensure the fundamental right to be free from hunger.
- ³⁷ General Comment 12, *supra* note 15, ¶36.
- ³⁸ ECOSOC, U.N. CHR, Report Submitted by the Special Rapporteur on the Right to Food in Accordance with Commission on Human Rights Resolution 2002/25, 59th Sess., ¶ 35, U.N. Doc. E/CN.4/2003/54 (Jan. 10, 2003) (prepared by Jean Zielger); see also Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNATIONAL LAW 691, 725 (2006).
- ³⁹ Albuquerque, *supra* note 27, ¶63.
- ⁴⁰ Charter of the Organization of American States, art. 37 Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 [hereinafter OAS Charter].
- ⁴¹ Inter-Am. C.H.R., Press Release No. 11/10, IACHR Stresses Duty to Respect Human Rights During the Emergency in Haiti (Feb. 2, 2010), available at <http://www.cidh.org/Comunicados/English/2010/11-10eng.htm> [hereinafter IACHR Press Release 11/10].
- ⁴² Rights & Democracy, The Human Right to Food in Haiti 23-24 (2008)(citing 2008 report from Coordination Nationale de la Sécurité Alimentaire); World Food Programme Fact Sheet, <http://www.wfp.org/countries/Haiti/Overview>. Food insecurity is characterized by poor or borderline food consumption, severe and unsustainable coping practices and unreliable sources of food and income. Coordination Nationale de la Sécurité Alimentaire et al., Executive Brief on the Haiti Emergency Food Security Assessment (Mar. 8, 2010)[hereinafter EFSA Brief].

- ⁴³ World Food Programme, *supra* note 42, <http://www.wfp.org/countries/Haiti/Overview>.
- ⁴⁴ REPUBLIC OF HAITI GROWTH AND POVERTY REDUCTION STRATEGY PAPER 19 (2008), <http://www.imf.org/external/pubs/ft/scr/2008/cr08115.pdf>
- ⁴⁵ COORDINATION NATIONALE DE LA SECURITE ALIMENTAIRE, HAÏTI : IMPACT DE LA CRISE ALIMENTAIRE SUR LES POPULATIONS URBAINES DE PORT-AU-PRINCE 13 (Nov. 2008).
- ⁴⁶ Beverly Bell, *Miami Rice: The Business of Disaster in Haiti*, HUFFINGTON POST, Dec. 9 2010, *available at* http://www.huffingtonpost.com/beverly-bell/miami-rice-the-business-o_b_794504.html.
- ⁴⁷ Bill Quigley, The U.S. Role in Haiti's Food Crisis, <http://www.counterpunch.org/quigley04212008.html>
- ⁴⁸ *Id.* at 11-12. ; Nathaniel Gronewold, *Post-Quake Revitalization Plans Collide in Haiti's Breadbasket*, GREENWIRE, Mar. 8, 2010, *available at* <http://www.nytimes.com/gwire/2010/03/08/08greenwire-post-quake-revitalization-plans-collide-in-hai-15994.html> .
- ⁴⁹ Bill Clinton, Statement to the U.S. Foreign Relations Committee, March 10, 2010; *see also* Center for Economic and Policy Research, Bill Clinton Apologizes for Past Rice Policies, Mar. 22, 2010, <http://www.cepr.net/index.php/relief-and-reconstruction-watch/bill-clinton-apologizes-for-past-rice-policies/>
- ⁵⁰ *Id.*
- ⁵¹ World Food Programme, *supra* note 42.
- ⁵² World Food Programme, Food Aid Information System, *available at* <http://www.wfp.org/fais/quantity-reporting>.
- ⁵³ GOV'T OF THE REPUBLIC OF HAITI, ACTION PLAN FOR NATIONAL RECOVERY & DEVELOPMENT 22 (2010).
- ⁵⁴ Under Secretary General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes, interview with the Associated Press, March 2010, http://www.msnbc.msn.com/id/35967561/ns/world_news-americas/,
- ⁵⁵ 53 percent in urban areas, 52 percent in rural. Office of the Special Envoy, *supra* note 23
- ⁵⁶ UNDP, La vulnérabilité en Haïti: Chémin inévitable vers la pauvreté? Rapport national sur le développement humain – Haïti 74 (2004) (DHS study).
- ⁵⁷ World Bank, *Project Appraisal Document on a Proposed Grant In the Amount of SDR 3.4 Million (US\$5 Million Equivalent) to the Republic of Haiti for a Rural Water and Sanitation Project*, World Bank Report No: 38080, 28 [hereinafter “World Bank Appraisal”], *available at* http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rendered/PDF/38080.pdf.
- ⁵⁸ FOKAL, ETUDE SUR L'APPROVISIONNEMENT EN EAU POTABLE EN HAÏTI: ETAT DES LIEUX, PROPENSION A PAYER, MODE DE GESTION ET POSSIBILITES D'APPROPRIATION DES SYSTEMES D'ADDUCTION EN EAU POTABLE POUR LES USAGERS 28 (2005).
- ⁵⁹ *See* Dennis Coday, Forging Haiti's Debt Called Key to Recovery, NATIONAL CATHOLIC REPORTER, Feb. 15, 2010, <http://ncronline.org/news/global/forgiving-haitis-debt-called-key-recovery>.
- ⁶⁰ *See* Wòch Nan Soley, *supra* note 4, at 10-14.
- ⁶¹ *See id.* The burden of collecting water often falls disproportionately on women and children, which hinders children from attending school.
- ⁶² World Health Organization, *supra* note 32.
- ⁶³ PAHO, SITUATION OF POTABLE WATER IN HAITI (2004), *available at* www.paho.org/english/dd/ped/Water.ppt; MICHEL CAYEMITES ET AL., ENQUETE MORTALITE, MORBIDITE ET UTILISATION DES SERVICES, HAÏTI, 2005-2006 21 (2007)[hereinafter “EMMUS-IV”], *available at* <http://www.measuredhs.com/pubs/pdf/FR192/FR192.pdf>.
- ⁶⁴ Haiti Earthquake, Post-disaster needs assessment: Assessment of damage, losses, general and sectoral needs, (Annex to the Action Plan for National Recovery and Development), March 2010.
- ⁶⁵ CP Raccurt et al., *Enteric Parasites and AIDS in Haiti: Utility of Detection and Treatment of Intestinal Parasites in Family Members*, 66 MED. TROP. 461 (2006).
- ⁶⁶ Ministère de la sante publique et de la population, *Rapport de cas*, (March 2, 2010), *available at* www.mspp.gouv.ht/.../Rapport%20journalier%20MSP%20du%2001%20mars%202011.pdf. The UN estimates that these numbers may actually be two to four times higher due to high levels of unreported incidents where

individuals do not make it to the hospital Meeting of the U.N. Protection Cluster, Port-au-Prince, Haiti, Nov. 23, 2010 (notes on file with author).

⁶⁷ UNITED NATIONS, HAITI: SIX MONTHS AFTER, 37, *available at*

http://www.un.org/en/peacekeeping/missions/minustah/documents/6_months_after_commemoration.pdf (noting that already high unemployment was exacerbated by the earthquake); *see also* Haiti Protection Cluster, *Situation Report 2* (June 2010), *available at*

onerresponse.info/.../Haiti/Protection/.../Haiti%20Protection%20Cluster%20Sitrep%20June%202010.doc.

⁶⁸ EFSA Brief, *supra* note 42, at 1.

⁶⁹ *Haiti's President Calls for Stop to Food Aid*, TELEGRAPH, Mar. 8, 2010.

⁷⁰ INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI (IJDH) ET AL., WE'VE BEEN FORGOTTEN: CONDITIONS IN HAITI'S DISPLACEMENT CAMPS EIGHT MONTHS AFTER THE EARTHQUAKE 6-7 (2010). When the families were surveyed again in December 2010, the results were nearly identical, showing little improvement in the realization of the right to food. IJDH, ONE YEAR AFTER THE EARTHQUAKE – HAITIANS STILL LIVING IN CRISIS (2011).

⁷¹ EFSA Brief, *supra* note 42, at 4;

⁷² IJDH ET AL., WE'VE BEEN FORGOTTEN, *supra* note 70, at 7.

⁷³ One respondent reported eating meals of bread and sugared water, another family stated that when they could not find food, they "fill up with water," and one mother stated that she had resorted to eating and feeding her family mud cakes. *Id.*

⁷⁴ The July 7, 2010 Displacement Tracking Matrix database showed that only 20.8 percent of camps (171 of 822 camps listed in the metropolitan area) have an official NGO management agency. Mark Schuller, UNSTABLE FOUNDATIONS: IMPACT OF NGOS ON HUMAN RIGHTS FOR PORT-AU-PRINCE'S INTERNALLY DISPLACED PEOPLE 18 (2010).

⁷⁵ Kimberly A. Cullen & Louise C. Ivers, *Human Rights Assessment in Parc Jean, Marie Vincent, and Port-au-Prince, Haiti*, 12 :2 HEALTH & HUMAN RIGHTS 61 (2010).

⁷⁶ SCHULLER, UNSTABLE FOUNDATIONS, *supra* note 74, at 3.

⁷⁷ IJDH ET AL., ONE YEAR AFTER THE EARTHQUAKE, *supra* note 70, at 7.

⁷⁸ *Id.*, at 6.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ SCHULLER, UNSTABLE FOUNDATIONS, *supra* note 74, at 11.

⁸² *Id.*

⁸³ IJDH ET AL., WE'VE BEEN FORGOTTEN, *supra* note 70, at 10.

⁸⁴ Andrea Binder and François Grünewald, Haiti, IACS Cluster Approach Evaluation, 2nd Phase Country Study (April 2010), *available at* <http://www.alnap.org/pool/files/gppi-urd-haiti-en.pdf>. This evaluation found that the cluster system "enhanced partnership between the UN and other international humanitarian actors, facilitated information sharing, improved the predictability of leadership, limited duplications and enhanced coherence. At the same time, the evaluators found a number of important shortcomings of the cluster approach in Haiti: it was weak on ownership and connectedness, demonstrated only a low level of accountability - both toward the Humanitarian Coordinator and affected populations - and could not significantly improve coverage. The report shows that the cluster approach in Haiti has not realized its full potential."

⁸⁵ For example, many clusters have met on MINUSTAH's Logistics Base located on the outskirts of Port-au-Prince, which is not easily accessible.

⁸⁶ Some cluster meetings are held in English, not French or Creole, effectively excluding participation by government officials and Haitian civil society.

⁸⁷ Abhijit Bhattacharjee & Roberta Lossio, Evaluation of OCHA Response to Haiti Earthquake 10 (2010) [hereinafter OCHA Evaluation].

⁸⁸ For example, the Water and Sanitation (WASH) Cluster is co-chaired by DINEPA and UNICEF, and meets in downtown Port-au-Prince at an accessible location

⁸⁹ *See e.g.*, MARK SCHULLER, MÈT KÒ, VEYE KÒ: FOREIGN RESPONSIBILITY IN THE FAILURE TO PROTECT AGAINST CHOLERA AND OTHER MAN-MADE DISASTERS 8 (2011) [hereinafter SCHULLER, MÈT KÒ].

⁹⁰ In November 2010, the Haitian members submitted a letter of complaint to the Executive Committee, protesting that their membership in the IHRC only makes the Commission representative on paper, as they are routinely notified of meetings last minute and are not given adequate opportunities to review or provide feedback on project proposals, many of which are only available in English.

⁹¹ OCHA Evaluation, *supra* note 87, at 32. This was demonstrated in the OCHA evaluation, where one staff member admitted that “[w]e do not interact with local NGOs or government, forget about interacting with communities.”

⁹² SCHULLER, MÈT KÒ, *supra* note 89, at 32.

⁹³ *Id.* at 27.

⁹⁴ Kathleen Bergin & Nicole Phillips, *Facing Man-Made Disaster in Haiti*, HOUSTON CHRONICLE, Nov. 8, 2010, available at <http://www.chron.com/disp/story.mpl/editorial/outlook/7285602.html>. This was demonstrated in the lead-up to Hurricane Tomas in November 2010, when residents of Camp Corrail-Cesselesse chose not heed the advice of international agencies to evacuate because they were not told where they would be taken and feared that they would not be allowed to return to their camp.

⁹⁵ The cholera outbreak is a particularly pertinent example of this – as increasing evidence points to an introduction of the bacteria by UN peacekeeping forces, people’s anger at the UN’s delayed investigations and the absence of other accountability mechanisms has resulted in loud discontent with the MINUSTAH mission, challenging the international community’s ability to carry out their functions.