



Volume 22 | Issue 1

Article 5

2011

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Recommended Citation

Amanda A. Doran, *Where Should Haitians Go - Why Environmental Refugees are up the Creek without a Paddle*, 22 Vill. Evtl. L.J. 117 (2011).

Available at: <https://digitalcommons.law.villanova.edu/elj/vol22/iss1/5>

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2011]

WHERE SHOULD HAITIANS GO? WHY “ENVIRONMENTAL REFUGEES” ARE UP THE CREEK WITHOUT A PADDLE

I. INTRODUCTION

On January 12, 2010, a 7.0 moment magnitude earthquake shook the island nation of Haiti, with the quake’s epicenter a mere sixteen miles from Haiti’s capital, Port-au-Prince.¹ The earthquake was the strongest Haiti had experienced in over two centuries, and thirty-three equally devastating aftershocks followed that ranged from 4.2 to 5.9 moment magnitudes.² Haitians, no strangers to natural disasters, political unrest, and extreme poverty, were left to cope with the homeless, injured, and dying.³ Although many bodies are likely still entombed in the rubble, the current death toll stands between 200,000 and 250,000 people—a staggering two percent of Haiti’s total population.⁴ Beyond those who have died, the Haitian government estimates that as many as three million people, one third of the total population, are in need of medical care, and at least one million are homeless.⁵

A natural disaster of such magnitude would be challenging for any country to recover from, but the earthquake has been particu-

1. *Magnitude 7.0 – HAITI REGION*, USGS EARTHQUAKE HAZARDS PROGRAM, <http://earthquake.usgs.gov/earthquakes/eqinthenews/2010/us2010rja6/> (last visited Jan. 11, 2011) (listing facts about recent Haitian earthquake). While researching and writing this Comment, another earthquake occurred off the shore of Chile. *Magnitude 8.8 – OFFSHORE MAULE, CHILE*, USGS EARTHQUAKE HAZARDS PROGRAM, <http://earthquake.usgs.gov/earthquakes/recenteqsww/Quakes/us2010tfan.php#details> (last visited Jan. 11, 2011). This latest earthquake’s death toll and property damage were significantly less than those of the Haitian earthquake, but the disaster may have also created a significant population of environmentally displaced migrants because about 400,000 homes were damaged. *Id.* Although this Comment focuses on the situation in Haiti, most conclusions can be applied equally to the Chilean disaster with the exception of Part V.

2. *FAST FACTS: Haiti Earthquake*, FOXNEWS.COM (Jan. 13, 2010), <http://www.foxnews.com/story/0,2933,582940,00.html> (giving statistics about Haiti’s history with earthquakes and severity of recent quake).

3. *See id.* (describing poverty and political unrest already existing in Haiti before earthquake).

4. *See* Associated Press, *Haiti Earthquake: Conflicting Death Tolls Lead to Confusion*, GUARDIAN.CO.UK (Feb. 11, 2010), <http://www.guardian.co.uk/world/2010/feb/11/haiti-earthquake-conflicting-death-tolls> (stating that official number of Haitians killed by earthquake is unknown because number of deaths was so high that government lost track).

5. *FAST FACTS: Haiti Earthquake*, *supra* note 2 (reporting number of Haitians injured and rendered homeless by recent quake).

larly overwhelming for Haiti. Haiti is the poorest country in the Western Hemisphere, with over eighty percent of its population living below the poverty line.⁶ Poverty is not the only challenge Haiti faces; the country also has a tumultuous, unstable government and no established military.⁷ As a result, Haitian rebuilding efforts have relied on monetary and humanitarian aid from foreign countries, and it will likely take years to fully recover.⁸

As countries rushed to bring surviving Haitians food, water, shelter, and medical care, one major question lingered: Where will the homeless Haitians go during the decades-long rebuilding process?⁹ The crumbling Haitian Presidential Palace, yet another casualty of the earthquake, serves as a haunting symbol of the government's current powerlessness to care for its remaining citizens.¹⁰ Haiti's rainy season began about six months after the earthquake struck, and the temporary shelters erected by the Red Cross and other aid organizations were unable to protect the homeless against the harsh weather.¹¹ Moreover, the relief efforts could not rebuild the destroyed infrastructure in time.¹² Fearing the home-

6. *Id.* (providing statistics about Haiti's poverty level). "Most Haitians live on less than \$2 a day" and "more than two-thirds of the labor force do [sic] not have formal jobs." *Id.*

7. *See id.* (describing Haiti's political turmoil since gaining independence from France); *see also* Vanessa Buschschluter, *The Long History of Troubled Ties Between Haiti and the US*, BBC NEWS (Jan. 16, 2010), <http://news.bbc.co.uk/2/hi/americas/8460185.stm> (explaining how, even after Haiti won independence in first successful slave rebellion in western history, its government was plagued by series of coups, assassinations, occupation, intervention by U.S. and U.N., and periods of dictatorship).

8. *See* Associated Press, *International Aid to Haiti: Who's Giving*, CBS NEWS.COM (Jan. 14, 2010), <http://www.cbsnews.com/stories/2010/01/14/world/main6097735.shtml> (diagramming monetary, military, and other support pledged to Haiti by various countries).

9. *See* Rory Carroll & Tom Phillips, *Haiti Earthquake: Sovereignty Takes Back Seat to US Command*, GUARDIAN.CO.UK (Jan. 29, 2010), <http://www.guardian.co.uk/world/2010/jan/29/haiti-us-aid-role> (acknowledging impotence of Haitian government and predicting that it will take decades of international aid to rebuild Haiti).

10. Alan Taylor, *Earthquake in Haiti*, BOSTON.COM (Jan. 13, 2010), http://www.boston.com/bigpicture/2010/01/earthquake_in_haiti.html (depicting photo of Presidential Palace crumbling to ground after earthquake).

11. *See* Andrea Koppel, *Rainy Season in Haiti Presents Another Major Challenge to Red Cross*, AMERICAN RED CROSS (Feb. 11, 2010), <http://www.redcross.org/portal/site/en/menuitem.1a019a978f421296e81ec89e43181aa0/?vgnnextoid=0fe6e0b8da8b6210VgnVCM10000089f0870aRCRD> (discussing need for more weather-proof shelters to protect homeless Haitians from rainy season).

12. *See* Joe Mozingo, *Rainy season Threatens Earthquake-battered Haiti*, LOS ANGELES TIMES (Apr. 18, 2010), <http://articles.latimes.com/2010/apr/18/world/la-fg-haiti-rain18-2010apr18> (discussing lack of available permanent shelter options for relocation).

less would drown or catch malaria or tuberculosis, which thrive in the humid rainy season, aid workers rushed to relocate people to more permanent shelters.¹³

The earthquake's environmental devastation has added Haitians to the ever-growing list of people displaced by environmental phenomena or failing ecosystems, otherwise known as "environmental refugees."¹⁴ Environmental refugee is a term of art created in the late 1970s to describe people who are forced to migrate from their homelands because environmental conditions made it too dangerous to stay.¹⁵ The legitimacy of this classification, however, has been subject to controversy.¹⁶ The traditional definition of "refugee" applies to a person seeking refuge from persecution or violence, which makes remaining in the country dangerous or intolerable.¹⁷ Environmentally-forced migrants do not fit the traditional refugee definition, and, consequently, many countries refuse to grant them asylum.¹⁸ Nonetheless, forced environmental migration is a genuine human rights dilemma; currently, an estimated

13. See *id.* (explaining difficulties associated with moving people to safer conditions, including lack of remaining infrastructure, difficulty coordinating different aid groups and governments, and cultural barriers to relocation). People "rely on their communities to survive" and would rather risk danger than be separated from their livelihood. *Id.*

14. Andrew Lam, *Haitians Now Join Environmental Refugees*, ONEWORLD.NET (Jan. 20, 2010), <http://us.oneworld.net/article/368605-haitians-now-join-environmental-refugees> (describing how Haitian earthquake moved environmental refugees and their plight into spotlight, highlighting issue that is potentially most pressing of our time: people forced to flee because of inhabitable ecosystems).

15. See Ethan Goffman, *Environmental Refugees: How Many, How Bad?*, CSA, 4 (June 2006), <http://www.csa3.com/discoveryguides/refugee/review.pdf> (outlining origin of term "environmental refugee").

16. See Richard Black, *Environmental Refugees: Myth or Reality?* 2 (Univ. of Sussex, Working Paper No. 34, 2001), available at <http://www.unhcr.org/research/RESEARCH/3ae6a0d00.pdf> (refusing to recognize environmental refugees as legitimate class of refugees without statistical proof that environmental triggers are definitely causing migration).

17. See Goffman, *supra* note 15, at 4 (quoting 1951 Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 19 U.S.T 6577, 189 U.N.T.S. 150) (noting that refugee asylum was born out of World War II, so refugees were defined as people with a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion").

18. See *Appendix E: Overview of U.S. Refugee Policy*, U.S. DEP'T OF STATE, <http://www.state.gov/g/drl/rls/irf/2001/5562.htm> (last visited Jan. 11, 2011) [hereinafter *U.S. Refugee Policy*] (explaining that "[t]he United States considers for admission as refugees persons of special humanitarian concern who can establish persecution or a well-founded fear of persecution in their home country on account of race, religion, nationality, membership in a particular social group, or political opinion[,] which does not include environmental refugees).

twenty-five million environmental refugees exist, and the number is expected to increase to 200 million in the next fifty years.¹⁹

This Comment will examine the hesitation of the United Nations (U.N.) and the United States (U.S.) to include environmental refugees in their traditional definition of refugee, and the implications of this exclusion for asylum-seekers from Haiti and other areas of environmental devastation.²⁰ Part III of, this Comment will address the danger in refusing to grant asylum to environmentally-forced migrants.²¹ Next, Part IV will discuss possible solutions to this growing human rights crisis, including an expansion of the traditional definition of refugee and a solidification of the definition of environmental refugee.²² Lastly, Part V will assess the situation in Haiti under the existing U.S. asylum framework and suggest practical solutions to the current crisis as well as the best way for countries and individuals to help.²³

II. THE HESITATION TO RECOGNIZE ENVIRONMENTAL REFUGEES AS LEGITIMATE ASYLUM-SEEKERS

International recognition of the plight of refugees was a product of World War II and the continent-wide devastation that left thousands of people homeless.²⁴ The U.N. responded by creating international law mandating countries to provide asylum to people who had been forced from their homelands because of persecution.²⁵ Recently, a new group of forced migrants has emerged—those forced to flee their homelands because of environmental dev-

19. See Goffman, *supra* note 15, at 4 (estimating number of existing and future environmental refugees). Although the term environmental refugee has only surfaced within the last fifty years, the phenomenon is nothing new. *Id.* at 1. One early example of environmentally-forced migration is the Dust Bowl, which forced many to move after a period of erosion and drought. *Id.*

20. For a further discussion of why environmental refugees are not currently recognized as legitimate refugees, see *infra* notes 24-85 and accompanying text.

21. For a further discussion of the danger in ignoring environmental migration, see *infra* notes 86-115 and accompanying text.

22. For solutions to the current environmental migration phenomenon, see *infra* notes 116-37 and accompanying text.

23. For a further discussion of the current situation in Haiti, what to expect, and how everyone can help, see *infra* notes 138-78 and accompanying text.

24. Ray Wilkinson, *The Refugee Convention at 50*, 2 REFUGEES, no. 123, 2001 at 2, available at http://www.unhcr.se/SE/Protect_refugees/pdf/magazine.pdf (explaining how many victims of World War II atrocities had been forcibly moved across Europe and did not have means or resources to move back to their homes).

25. See *id.* (describing origins of refugee asylum).

astation.²⁶ The current U.N. definition of refugee, however, does not protect these migrants.²⁷ Scarce statistical data, vague definitions, and a reluctance to change the traditional refugee definition have all made the international community hesitant to recognize environmental refugees.²⁸

A. The History of Refugee Asylum

In response to the destruction caused by World War II, the United Nations General Assembly created the United Nations High Commissioner for Refugees (UNHCR), whose mandate was to assist victims of the war who were homeless, displaced, and uprooted by persecution.²⁹ The U.N. delegates gathered at the 1951 Convention Relating to the Status of Refugees (1951 Convention) and adopted the first worldwide treaty providing legal protection and assistance for refugees.³⁰ Although the delegates narrowly tailored the 1951 Convention to protect only victims of World War II genocide, it has been considered the “Magna Carta” of international refugee law—the first document to provide international protection for individuals who have been persecuted in their homelands.³¹

The 1951 Convention also defined the term refugee.³² In particular, the delegates defined refugee as a person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution.³³ This definition has remained largely unchanged since the

26. See Goffman, *supra* note 15, at 4 (introducing growing phenomena of forced migration due to environmental devastation, such as “natural disasters, drought, flood, [and] famine”).

27. See *id.* (explaining why environmental refugees do not fit traditional definition of refugee).

28. For a further discussion of the criticism surrounding the expansion of refugee asylum to include environmental refugees, see *infra* notes 51-85 and accompanying text.

29. Wilkinson, *supra* note 24, at 2 (describing how U.N. recognized plight of World War II victims rendered homeless and displaced through no fault of their own).

30. *Id.* (detailing how and why refugee asylum was created).

31. *Id.* (recognizing impact of 1951 Convention and creation of refugee asylum for persecuted populations worldwide).

32. *Id.* (noting creation of term refugee as establishment of new class of people worthy of protection).

33. 1951 Convention Relating to the Status of Refugees art. 1, *opened for signature* July 28, 1951, 19 U.S.T. 6577, 189 U.N.T.S. 150 [hereinafter 1951 Convention Treaty] (defining refugee).

1951 Convention, and the U.S. later adopted it in its refugee legislation, the Refugee Act of 1980.³⁴ The 1951 Convention also made clear that no country may return refugees back to their homelands if they still fear persecution.³⁵ While voluntary resettlement in the refugees' homeland is the ultimate goal, permanent residence in the host country is possible.³⁶

The U.N. delegates met again in 1967 to amend the 1951 Convention treaty, removing the limitations on who could apply for refugee status.³⁷ Recognizing the human rights incentive in expanding refugee asylum to more populations than just those affected by World War II, the 1967 Protocol Relating to the Status of Refugees (1967 Protocol) removed the time and nationality restrictions included in the 1951 Convention.³⁸ The 1967 Protocol also expanded the refugee definition to include people forced to move for human rights violations, violence, and political conflict.³⁹

The U.S. adopted the 1967 Protocol definition of refugee when it drafted the Refugee Act of 1980, the statute for admitting refugees into the U.S.⁴⁰ Under this statute, people can apply for refugee status if they are suffering from or fear persecution based on "race, religion, nationality, membership in a particular social group, or political opinion" and are living outside the U.S.⁴¹ Potential refugees apply through the United States Refugee Admissions Program (Admissions Program), an interagency executive initiative that reviews applications and decides whether to accept refugee

34. See *U.S. Refugee Policy*, *supra* note 18 (acknowledging that U.S.'s refugee definition mirrors 1951 Convention definition and its 1967 Protocol).

35. 1951 Convention Treaty, *supra* note 33 (emphasizing successful resettlement in home country as desired outcome); see also Goffman, *supra* note 15, at 5, 15 (describing that goals of refugee asylum include successful resettlement and explaining conditions upon which resettlement depends).

36. 1951 Convention Treaty, *supra* note 33 (noting that when resettlement is undesirable or impossible, permanent resettlement in host country may occur).

37. See Jack Straw, *The Convention: Britain's View*, 2 REFUGEES, no. 123, 2001 at 12-13, available at http://www.unhcr.se/SE/Protect_refugees/pdf/magazine.pdf (explaining how 1967 Protocol removed geographic restrictions and time limit to apply for refugee asylum).

38. See *id.* (recognizing different refugee scenarios that arose in modern times, such as Bosnian and Kosovo conflicts).

39. See Goffman, *supra* note 15, at 5 (explaining that broader definition of refugee extended availability of refugee asylum to more displaced people).

40. See *U.S. Refugee Policy*, *supra* note 18 (noting current authority for admission of refugees under U.S.'s immigration legal framework).

41. *Questions & Answers: Refugees*, U.S. CITIZENSHIP & IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=e4eabcf527f93210VgnVCM100000b92ca60aRCRD&vgnnextchannel=385d3e4d77d73210VgnVCM100000082ca60aRCRD> (last visited Jan. 12, 2011) (defining who qualifies for refugee status).

candidates for asylum.⁴² The UNCHR is one agency included in the Admissions Program, and it makes recommendations of populations that are most in need of asylum based on its research.⁴³ Notably, the U.S. gives top priority to refugees applying from needy populations recommended by the UNHCR.⁴⁴

In the late 1970s, the term environmental refugee was crafted by Lester Brown, founder of the Worldwatch Institute, the first research organization dedicated solely to global environmental issues.⁴⁵ Although the exact definition of environmental refugee is disputed, advocates of aligning environmentally displaced migrants with traditional refugees argue that the former are similarly forced to move and are not afforded protection by their own governments.⁴⁶ The only difference between these groups is the cause of the displacement—environmental conditions, rather than persecution, violence, or human rights violations.⁴⁷ Nevertheless, the current U.N. and U.S. definitions of refugee do not include environmental refugees.⁴⁸ Indeed, some countries have relished in the creation of the term environmental refugee because it allows them to identify a category of people they will *not* accept as refugees.⁴⁹ As a result of the worldwide hesitation to recognize environ-

42. *Id.* (listing agencies that consider and ultimately decide each refugee's application).

43. *Id.* (detailing UNHCR's role in U.S. Refugee Admissions Program).

44. *Id.* (describing substantial impact UNHCR's recommendations have on admission decisions).

45. See Goffman, *supra* note 15, at 5 (explaining origin of term environmental refugee); see also *Biography of Lester Brown*, EARTH POLICY INSTITUTE, http://www.earth-policy.org/index.php?/about_epi/C32/ (last visited Jan. 12, 2011) (describing Lester Brown's life, scholarship, and dedication to environmental work).

46. See Fabrice Renaud et al., *Control, Adapt or Flee: How to Face Environmental Migration*, in 14 UNU INSTITUTE FOR ENVIRONMENT AND HUMAN SECURITY 2007 (Ilona Roberts ed., 2007), available at <http://www.ehs.unu.edu/file.php?id=259> (arguing that only missing element of traditional refugee asylum is "persecution" element, unless one reads term persecution broadly and includes environment as "persecutor").

47. See *id.* (indicating how displacement element is same in both traditional and environmentally-forced migration, with type of trigger being only difference).

48. Goffman, *supra* note 15, at 5 (explaining that even extended definition does not include environmental refugees).

49. See Renaud, *supra* note 46, at 14 (recognizing downside of environmental refugee notion). At least one critic believes the term environmental refugee was created in part to distinguish their plight from that of traditional refugees, so that states have no obligation to grant asylum to refugees forced to move by environmental devastation. See *id.*

mental refugees, millions of environmental migrants are unable to apply for asylum, and the number is growing.⁵⁰

B. Problems With the Term “Environmental Refugee”

There are several reasons why the UN, U.S., and many refugee scholars do not recognize environmental migrants as legitimate asylum-seekers under current refugee laws.⁵¹ Most critics argue that a more precise definition of environmental refugee is necessary before such a category can even be considered.⁵² Others claim that the data connecting forced migrants to strictly environmental triggers is not statistically sound, and thus it is difficult to know if environmental migration is actually a widespread problem.⁵³ Still, some critics go further, arguing that such a classification does not fit within the traditional idea of a refugee and would undermine the goals of refugee asylum.⁵⁴

1. Imprecise Definition

One of the principal obstacles to expanding the term refugee to include environmental migrants is the lack of a universally accepted definition.⁵⁵ Because the environment affects people in a variety of ways, the term environmental refugee is not specific enough.⁵⁶ For example, are individuals who choose to move because of an unfavorable environmental change considered refugees, or only those plagued by a natural disaster?⁵⁷ A more precise

50. See Goffman, *supra* note 15, at 4-5 (explaining why environmental refugees do not fit into most traditional asylum programs, and how problem is increasing in severity).

51. See generally Renaud, *supra* note 46, at 11 (outlining some criticisms of extending refugee asylum to environmental refugees).

52. For a further discussion of criticism surrounding the vagueness of the term environmental refugee, see *infra* notes 55-66 and accompanying text.

53. For a further discussion of criticism surrounding the existing statistical data supporting the environmental refugee phenomenon, see *infra* notes 67-75 and accompanying text.

54. See generally Kara K. Moberg, *Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protection*, 94 IOWA L. REV. 1107, 1114-17 (2009) (criticizing attempts to include environmental migrants in refugee definition).

55. See Goffman, *supra* note 15, at 5-7 (listing different definitions, classifications, sub-categorizations, and theories that attempt to characterize environmentally-induced migration).

56. See Black, *supra* note 16, at 13-14 (lambasting vagueness of term environmental refugees and lack of clarity about what different typologies actually mean).

57. See *id.* at 1 (discussing problems that may arise from vagueness of term environmental refugee).

definition of environmental refugee is needed to answer that question.⁵⁸

Some scholars attempt to define the term specifically, so it can help assess candidates for asylum.⁵⁹ For example, Norman Myers, a British environmentalist, defined environmental refugees as “persons who no longer gain a secure livelihood in their traditional homelands because of what are primarily environmental factors of unusual scope.”⁶⁰ Such proposed definitions have been criticized as overly vague and unhelpful, however, and no comprehensive definition has been agreed on.⁶¹

Other scholars have dealt with the lack of an adequate definition by distinguishing different typologies of environmental migrants.⁶² Even these categorizations vary, however, with scholars focusing on various considerations including whether the displacement is temporary or permanent; whether the environmental stressor was an emergency or had a slow onset; and the type of environmental stressor, such as desertification, natural disasters, or global warming.⁶³ One article, written by an inter-disciplinary research team from the U.N. University Institute for Environment and Human Security, advocates for a concrete examination of an environmental event and whether there are correlated patterns of mass migration.⁶⁴ For example, to determine whether desertification was a primary motivator for migration from the African country Mali, one would measure the increase or decrease in migration from Mali once the desertification began.⁶⁵ Still, disagreement over which method to use to evaluate the severity and legitimacy of

58. *Id.* (concluding that it is premature to consider environmental refugees a widespread phenomenon before defining the term).

59. *See id.* (recognizing attempts by environmentalists Norman Myers and Jennifer Kent to define environmental refugee and determine scope of term’s application).

60. *Id.* (internal citations omitted) (stating Norman Myers’s definition).

61. *See Black, supra* note 16, at 1 (noting that despite scholars’ attempts to define term, it is still “vigorously criticized” as “poorly defined and legally meaningless and confusing”).

62. *See id.* at 1-2 (addressing approach where, instead of defining term, scholars distinguish different types of environmental migrants and determine which categories should be granted asylum).

63. *See id.* (outlining various ways scholars have categorized environmental refugees into typologies).

64. *See Renaud, supra* note 46, at 17 (noting assumptions that must be made to estimate worldwide number of environmental refugees and advocating examination of migration situations on case-by-case basis).

65. *See id.* at 19 (illustrating authors’ favored approach for measuring current number of environmental refugees).

environmental migrants has left the scholastic and international community divided.⁶⁶

2. Scarce Statistical Data

Statistics show that about 191 million people in the world are migrants, which is nearly three percent of the global population.⁶⁷ It is difficult to determine a single reason behind a person's decision to migrate because a variety of factors often influence the decision.⁶⁸ Without more precise criterion for defining environmental refugees, it is impossible to distinguish between those who are literally forced to flee due to an uninhabitable environment and those who chose to move merely because of an undesirable environment.⁶⁹ Until a universal definition is established, some scholars believe that the number of migrants who need asylum cannot be accurately calculated.⁷⁰

Because of the inability to pinpoint the exact reason why migrants move, compiling reliable empirical data is challenging.⁷¹ Thus, scholars vehemently disagree not only about the number of environmental migrants needing asylum, but also whether these refugees even exist at all.⁷² For example, Richard Black, an environmental correspondent for BBC News, argues that there are currently no environmental refugees because not enough empirical data has been compiled to prove that the phenomenon actually exists.⁷³ To the contrary, Norman Myers views the correlations between environmental change and migration as sufficient evidence to demonstrate that environmental migration is a real and present

66. See Black, *supra* note 16, at 1 (pointing out differing opinions regarding how to approach and classify environmentally-forced migration).

67. Renaud, *supra* note 46, at 9 (providing statistical figures from International Organisation for Migration for total number of worldwide migrants, both environmentally-forced and otherwise).

68. See *id.* at 9-10 (conceding that almost all decisions to migrate are multifaceted).

69. See Black, *supra* note 16, at 13-14 (stressing need for precise definitions and reliable statistical data before legal change is possible).

70. See *id.* (criticizing advocates of including environmentally-forced migrants into refugee definition as being swayed by migrants' emotion plight, without "hard evidence" and statistics confirming phenomenon's existence).

71. See *id.* (stating that fundamental cause of environmental migrants' decisions to move is typically multifaceted).

72. See Renaud, *supra* note 46, at 15 (relating how some scholars estimate that upwards of 200 million environmental refugees exist, while others maintain there are none).

73. See *id.* (noting that Black advances empirical approach to conclude there are no pure environmental refugees, meaning those who flee solely because of environmental triggers).

problem.⁷⁴ Without more research to explain the complex set of factors that induce migration, or empirical evidence to prove that environmental change alone forces people to move, disagreement amongst scholars regarding the severity of the problem will likely persist.⁷⁵

3. *Including Environmental Refugees in the Traditional Definition Will Undermine the Goals of Refugee Asylum*

In addition to practical and statistical concerns, some scholars argue that expanding the definition of refugee to encompass environmental migrants will flood the pool of applicants seeking asylum.⁷⁶ The global population already has up to 8.4 million refugees, and including environmental refugees will only make it more difficult for all refugees to obtain asylum.⁷⁷ As it stands, the current refugee definition encompasses millions of individuals who cannot be accommodated quickly enough.⁷⁸ Expansion of this definition would broaden the applicant pool, forcing countries to adopt stricter asylum policies or accept only the most egregious cases of persecution and displacement.⁷⁹ Countries already limit the number of refugees they accept each year, and, in recent years, only about fifty percent of refugees seeking asylum were granted relief.⁸⁰ Broadening the definition of refugee, therefore, may not

74. *See id.* (outlining Myers's macro-level approach of linking population shifts to environmental triggers as proof that environmental refugees exist, instead of relying on research studies and statistical certainties).

75. *See generally* Black, *supra* note 16, at 13-14 (acknowledging that "there remains a danger that the academic and policy writing on environmental refugees has more to do with bureaucratic agendas of international organizations and academics than with any real theoretical or empirical insight"); *see also* Renaud, *supra* note 46, at 15 (advocating for acceptance of environmental refugees, but recognizing that "complexity of the interactions between environmental degradation and migrants" is a "complicating factor").

76. *See* Moberg, *supra* note 54, at 1128-31 (urging lawmakers *not* to include environmental migrants in pool of recognized refugees because this would make it even harder for nations to accommodate traditional refugees).

77. Renaud, *supra* note 46, at 16 (estimating amount of worldwide migrants, internally displaced people, and refugees).

78. *See* Moberg, *supra* note 54, at 1128 (expressing concern that increase in applicants will make it more difficult for both traditional and environmental refugees to obtain asylum).

79. *Id.* at 1129 (arguing that expanding refugee definition will "undermine the concept of refugee" and dramatically increase number of people applying for asylum).

80. *Id.* at 1129-30 (explaining how it already takes up to "ten years before an applicant receives a decision on an asylum application" in U.S. and, in 2008, less than fifty percent of refugees in need of resettlement were accommodated).

provide environmental migrants with sufficient protection and may also inadvertently deny traditional refugees protection.⁸¹

Furthermore, current international asylum laws were written with persecution victims in mind, like the victims of World War II, and the ultimate goal is safe resettlement in the refugee's home country.⁸² Environmental migrants' situations are not always conducive to that goal, and including these individuals in the current refugee pool could undermine the goal.⁸³ International law does not force countries to accept every refugee that applies for asylum, but a refugee already within a country's borders is entitled to an asylum hearing before deportation.⁸⁴ By classifying environmental migrants as refugees and providing them this protection, international-law-abiding countries could find their borders suddenly overwhelmed in times of mass devastation with millions of new refugees and asylees who may never be able to resettle successfully in their home countries.⁸⁵

III. PROBLEMS WITH SIMPLY IGNORING THE ENVIRONMENTAL REFUGEE PHENOMENA: WHY ENVIRONMENTAL REFUGEES DESERVE ASYLUM

Even without a firm definition for environmental refugee or the ability to determine the exact cause of migration in many cases, a relationship between environmental triggers and migration can be observed on a case-by-case basis.⁸⁶ Global warming has added new environmental triggers into the mix, rapidly exacerbating mi-

81. See *id.* at 1135 (arguing that refugee asylum is also improper for environmental refugees because it is not tailored to their needs and would not offer them adequate protection).

82. See *U.S. Refugee Policy*, *supra* note 18 (explaining that American refugee policy is in place to protect people persecuted in their home countries, with ultimate goal of safe resettlement back in their homelands).

83. See Moberg, *supra* note 54, at 1129 (emphasizing that adding environmental refugees to pool of asylum-seekers will undermine asylum's traditional goal of protecting persecution victims).

84. See *id.* at 1128 (describing how international law mandates countries to provide asylum eligibility hearings to any potential refugee on their soil and to provide asylum if refugee is determined to fit requirements). Notably, "[t]he Refugee Convention requires countries to offer protection to refugees only after they have entered the country's borders." *Id.* at 1132.

85. See *id.* at 1128 (warning that expanded definition may lead to stricter border control and cause some countries to completely deny protection to refugees because of heavier burden).

86. See generally Renaud, *supra* note 46, at 17-22 (tracking specific instances of environmental decline or disaster that led to mass migration from devastated areas, such as 2005 Hurricane Katrina, 2004 Indian Ocean tsunami, sea level rise in Tuvalu, and desertification in Mali and Mexico).

gration.⁸⁷ Ignoring environmental migration because of semantics could have disastrous consequences for the global population; the number of environmentally displaced people could increase to as many as 200 million in the next fifty years.⁸⁸

A. Evidence Exists that Environmental Migration is a Serious Phenomenon

Despite the inability of researchers to determine exactly why migrants move, examining correlations between significant environmental events and the resulting rate of migration indicates that environmental devastation is a predominant factor in forced migration.⁸⁹ A recent study established the relationship between desertification and migration in Northern Africa, as persistent droughts forced people to West Africa.⁹⁰ A similar correlation was established between Mexico's desertification, soil erosion, and mass migration to the U.S.⁹¹ The link between natural disasters and forced migration is perhaps the easiest to establish.⁹² Environmental catastrophes such as Hurricane Katrina, the Indian Ocean tsunami of 2004, and, most recently, the Haitian earthquake, have made it impossible for victims to remain in their homelands and survive.⁹³ A survey conducted after the 2004 tsunami demonstrated that people with damaged homes had a higher migration rate than those whose homes did not sustain property damage, confirming the link between this environmental trigger and migration.⁹⁴

87. Stephanie Rogers, *Environmental Refugees*, MOTHER NATURE NETWORK (Feb. 15, 2009), <http://www.mnn.com/earth-matters/climate-change/stories/environmental-refugees> (reporting that environmental refugees are "hidden cost" of global warming).

88. Goffman, *supra* note 15, at 4 (predicting exponential increase in environmental refugees in near future).

89. See Renaud, *supra* note 46, at 17 (discussing correlation between environmental devastation and migration established in certain areas).

90. See *id.* at 19 (describing how two-thirds of Malian families had relatives emigrate overseas because desertification and repetitive droughts devastated their land).

91. See *id.* (estimating that approximately "900,000 people left arid and semi-arid areas every year in part because of their inability to make a living from the land due to dry conditions and soil erosion").

92. See *id.* at 21-22 (discussing natural disaster situations that have forced migration).

93. See *id.* (providing examples of natural disasters that resulted in homelessness). Hurricane Katrina displaced 1.5 million people, while the 2004 tsunami displaced 2 million people and the Haitian earthquake displaced about 2 million people. *Id.*

94. Renaud, *supra* note 46, at 22 (arguing that link between environmental triggers and migration is difficult to ignore in light of survey results).

Recently, the correlation between global warming and displacement has emerged as a new link between environmental triggers and migration.⁹⁵ Global warming has caused a rise in sea levels, which, in recent years, has become increasingly evident in small island countries and coastal cities located only a few meters above sea level.⁹⁶ Some of these countries and cities, discussed in more detail below, have already begun making arrangements to relocate their citizens because their homelands are at risk of becoming completely submerged in the next few decades.⁹⁷ Although the exact cause and effect relationship of these events cannot be determined, the correlation between the environmental triggers and subsequent rises in migration suggests that a real phenomenon exists.⁹⁸

B. Climate Change: Creating a Special Class of Tomorrow's Environmental Refugees

Climate change and global warming undoubtedly contribute to the rising number of environmental refugees.⁹⁹ The earth's increasing temperature is melting the polar ice caps, resulting in rising sea levels, severe soil erosion, flooding, and harsh storms.¹⁰⁰ Coastal and island communities are particularly in peril and face permanent displacement as the water swallows their homelands.¹⁰¹ The island country of Tuvalu, for example, has already lost one of its ten islands to rising sea levels.¹⁰² Scientists predict that the country's other nine islands will also become fully submerged within the

95. *See id.* at 20 (listing series of studies by Intergovernmental Panel on Climate Change that concluded rising sea levels may displace millions).

96. *See id.* (offering Tuvalu as example of global warming causing environmental migration).

97. Moberg, *supra* note 54, at 1109 (reporting how the first of Tuvalu's islands, Tepuka Savilivili, succumbed to rising sea levels in 1997).

98. *See generally* Renaud, *supra* note 46 (concluding that lack of precision should not halt implementation of new policies addressing environmental refugeeism).

99. *Climate Change: Basic Information*, EPA, <http://www.epa.gov/climatechange/basicinfo.html> (last visited Jan. 12, 2011) (explaining how climate change occurs). Global warming, in short, is the increase in the earth's temperature resulting from excessive amounts of greenhouse gases being emitted into the atmosphere, which prevents heat from escaping into space. *Id.*

100. *See id.* (describing effects of global warming).

101. *See* Goffman, *supra* note 15, at 11-12 (noting that sea levels have already risen at least one foot in certain places and are expected to rise more in next hundred years).

102. *See* Moberg, *supra* note 54, at 1109 (illustrating problems rising sea level can cause for low-elevation island communities).

next fifty years due to rising sea levels.¹⁰³ Knowing that the country's demise is inevitable, Tuvalu's government has begun relocation plans for its approximately 11,000 residents.¹⁰⁴ Nearby New Zealand and Australia have not committed to accepting Tuvalu's entire population, however, and Tuvaluans are not guaranteed support from the international community without international recognition of environmental refugees.¹⁰⁵

Coastal communities, especially those in the arctic region, face similar challenges.¹⁰⁶ For example, rising sea levels are flooding the Native Village of Kivalina, a subsistence community along the Alaskan coast, and the villagers have no choice but to move inland.¹⁰⁷ The soil erosion and harsh storms resulting from global warming have also destroyed Kivalina's land and put its people in danger.¹⁰⁸ The estimated cost of the city's total relocation is \$400 million.¹⁰⁹ Not only is the economic impact of relocation vast, but native Arctic communities simply cannot afford to protect themselves from the habitat changes caused by global warming.¹¹⁰ The sad irony for most of these small-island and coastal communities is that they contribute very little to the greenhouse gas emissions that cause global warming, yet they are harmed the most.¹¹¹

Environmental refugeeism will very likely increase as the effects of global warming play out over the next few decades.¹¹² Ig-

103. *Id.* (highlighting predicted devastation facing Tuvalu due to global warming).

104. *See id.* (reporting how Tuvaluan government has been unsuccessfully soliciting nearby countries to secure asylum for its citizens).

105. *See id.* (emphasizing that environmental migration is not just academic; it is very real for some communities and needs to be addressed with urgency).

106. *See* Felicity Barringer, *Flooded Villages File Suit, Citing Corporate Link to Climate Change*, N.Y. TIMES, Feb. 27, 2008, at A16, available at, <http://www.nytimes.com/2008/02/27/us/27alaska.html?n=Top/News/Science/Topics/Global%20Warming> (describing effects of rising sea level on Alaskan native villages).

107. *Id.* (reporting that environmental devastation forced native Kivalinans to leave their village).

108. *Id.* (illustrating some dangers villagers are currently facing due to global warming).

109. *Id.* (reporting total cost of relocation).

110. *See* John Crump, *Snow, Sand, Ice, and Sun: Climate Change and Equity in the Arctic and Small Island Developing States*, 8 SUSTAINABLE DEV. L. & POL'Y 8, 10 (2008) (discussing how lack of resources only exacerbates climate change problems for native communities who still live off land).

111. *See* Goffman, *supra* note 15, at 12 (highlighting environmental injustice inherent in populations primarily affected by climate change and challenging wealthiest, highest consuming countries to take accept responsibility).

112. *See id.* at 2 (estimating that environmental refugee class will increase from twenty-five million to 200 million in next fifty years due global warming's effects).

noring environmental refugees forced to flee from the effects of climate change would not only be an injustice, but would also be a poor strategy for the future.¹¹³ Natural hazards expert Anthony Oliver-Smith warns:

Around the world vulnerability is on the increase, due to the rapid development of megacities in coastal areas. Combine this trend with rising sea levels and the growing number and intensity of storms and it is a recipe for a disaster, with enormous potential to create waves of environment-driven migration.¹¹⁴

Whether forced out of their homes at gunpoint or natural disaster, “people who are forced to flee through no fault of their own deserve a chance at decent futures.”¹¹⁵

IV. SOLUTIONS

Current refugee laws are unwelcoming to environmental refugees, but the severity of their plight deserves attention, especially in light of its predicted increase in the coming decades. Those who advocate for working within the current refugee framework push for more defined terms and statistics such that environmental migrants can be recognized as legitimate asylum-seekers by the international community.¹¹⁶ An alternate solution is the implementation of additional immigration laws specifically tailored to admitting environmental migrants through a new visa program.¹¹⁷ Lastly, preventing future environmental devastation by preserving natural resources and slowing global warming goes hand-in-hand with asylum solutions—reducing the number of environmental migrants at the outset is perhaps the ultimate solution.¹¹⁸

113. See Rogers, *supra* note 87 (addressing multiple reasons why environmental migration should be taken seriously).

114. *Id.* (cautioning that even wealthy countries are not immune from environmentally-forced migration).

115. Goffman, *supra* note 15, at 15 (analogizing environmental refugees to traditional refugees in sense that humanitarian goal is same for both).

116. For a further discussion of what the author deems the “integration approach,” see *infra* notes 119-27 and accompanying text.

117. For a further discussion of what the author deems the “creation approach,” see *infra* notes 128-31 and accompanying text.

118. For more information about preventing environmental disasters to reduce the number of environmental refugees, see *infra* notes 132-37 and accompanying text.

A. The Integration Approach: Solidify and Narrow the Definition of Environmental Refugee

If the international community can agree on a definition of environmental refugee, the U.N. and participating countries may be more willing to include environmental migrants in their asylum programs.¹¹⁹ An interdisciplinary committee from the U.N. University Institute for Environment and Human Security advocates classifying environmental migrants in three subcategories: environmentally-motivated migrants, environmentally-forced migrants, and environmental refugees.¹²⁰ An environmentally-motivated migrant chooses to leave because of a temporary or permanent “steadily deteriorating environment.”¹²¹ Environmentally-forced migrants, however, *must* leave their homes due to environmental devastation.¹²² Migrants leaving Tuvalu because of rising sea levels would fall into this category.¹²³

Environmental refugees are distinguished from environmentally-forced migrants only by the immediacy of the necessary migration: migrants forced to move immediately because of environmental devastation would be considered refugees instead of environmentally-forced migrants.¹²⁴ Haitian citizens displaced by the recent earthquake would fall into this category.¹²⁵ Whatever the agreed-upon definitions may be, “internationally agreed standards are needed” in order to measure the severity of the global environmental migration problem, decide which migrants are most in need of asylum, and assist migrants in the best way possible.¹²⁶ Both critics and supporters of creating a new class of refugees agree that, while more statistical research is needed to determine the cause and effect relationship between environmental triggers and migration, the terminology must be solidified first.¹²⁷

119. See Renaud, *supra* note 46, at 30 (noting that precise definition is essential for building foundation upon which international discourse can begin).

120. *Id.* at 29 (describing suggested categories of environmental refugees).

121. *Id.* (defining environmentally-motivated migrants).

122. See *id.* at 29-30 (explaining distinction between environmentally-forced and environmentally-motivated migrants).

123. See *id.* at 30 (giving example of who would classify as environmentally-forced migrant).

124. See Renaud, *supra* note 46, at 30 (distinguishing refugees from environmentally-motivated migrants by “swiftness of necessary actions” taken by migrants).

125. See *id.* (providing examples of environmental refugees).

126. See *id.* at 35-36 (arguing that sub-categorization is necessary to accurately assess needs of different types of displaced persons).

127. See *id.* at 33 (reviewing available research on environmental migration and noting that most studies thus far are incomplete or too site-specific for generalizations to be drawn).

B. The Creation Approach: Abandon the Attempt to Stretch Refugee Law and Create New Immigration Programs for the Environmentally Displaced

Instead of amending the refugee definition, another proposed solution is to create new asylum and relief programs for the environmentally displaced.¹²⁸ Similar to traditional refugee asylum, all countries would share the burden of supporting the environmentally displaced.¹²⁹ Rather than forcing countries to fit environmental migrants into their current asylum systems, new visa-type programs would allow the countries to start fresh and tailor their new programs to the particular needs of environmental migrants.¹³⁰ Environmental migrant visa programs have the potential to grant environmental migrants appropriate relief without over-extending traditional refugee laws and flooding the pool of refugees needing asylum.¹³¹

C. Being Proactive and Avoiding Future Environmental Triggers

In addition to defining and recognizing the plight of environmental refugees, the best solution to this growing phenomenon is to slow it down by lessening the severity of future environmental events.¹³² Maintaining ecosystems and natural resources prevents migration resulting from deforestation, desertification, and resource depletion.¹³³ Pollution and climate change, potentially the largest future triggers of environmental migration, are man-made and, thus, controllable.¹³⁴ If global warming continues to melt arctic ice at the current rate, it will cause island nations to disappear into the sea, coastal property to be submerged and destroyed, and

128. See Moberg, *supra* note 54, at 1135-36 (advocating for and envisioning new, international "Environmentally Based Immigration Visa Program").

129. See *id.* (explaining proposed visa distribution process). This program would rely more heavily on wealthy nations, which are better able to sustain such populations. *Id.* at 1135. Further, the program would prioritize acceptance based on the immediacy of applicants' needs. *Id.*

130. See *id.* at 1135-36 (explaining that proposed plan could assist those already displaced as well as those facing future environmental displacement, which would be impossible under traditional refugee definitions).

131. See *id.* at 1135 (expressing doubt that traditional definition of refugee could sufficiently protect environmental migrants).

132. See Goffman, *supra* note 15, at 15 (encouraging environmental preservation as means of avoiding conditions that cause migration).

133. *Id.* (stressing importance of reducing number of environmental refugees by preventing controllable environmental triggers).

134. See *id.* (describing how policies relating to man-made causes of migration can help alleviate future disasters).

the number of environmental migrants to increase by millions.¹³⁵ International cooperation in regulating greenhouse gas emissions worldwide would significantly help combat the problem by slowing down climate change.¹³⁶ Although little can be done to prevent natural disasters, implementing policies to regulate environmental triggers that *are* within human control will help keep the number of environmental refugees low, such that those in need may obtain asylum.¹³⁷

V. WHERE WILL HAITIANS GO?

Although Haitians may intuitively appear to be perfect candidates for asylum, those displaced by the earthquake would not be granted asylum under current American refugee laws.¹³⁸ Additionally, a history of turbulent Haitian refugee policies indicates that the U.S. is unlikely to make an exception in this situation.¹³⁹ Regardless, the U.S. has been at the forefront of the relief effort in Haiti since the earthquake occurred and has committed to providing more assistance and funding in the future.¹⁴⁰ Moreover, although refugee asylum will likely not be available for Haitians, other programs exist that allow temporary protection for some earthquake victims.¹⁴¹

A. Recent History of U.S.-Haiti Refugee Relationship

Following the coup of the Haitian government in 1991, President William J. Clinton and the U.S. government imposed harsh sanctions on Haiti in an effort to pressure the over-throwers to step down and reinstate democratically-elected president Jean-Bertrand

135. See Rogers, *supra* note 87 (outlining how global warming and other environmental factors will lead to increase in number of environmental migrants).

136. See *id.* (asserting that “darkest” effects of global warming can still be prevented, but international cooperation is necessary).

137. See Goffman, *supra* note 15, at 15 (reasoning that prevention and due diligence are best policies for coping with growing number of environmental refugees).

138. See Moberg, *supra* note 54, at 1126-27 (noting that U.S. refugee definition has never been interpreted to include environmental refugees).

139. For a further discussion of America’s record of accepting Haitian refugees, see *infra* notes 142-48 and accompanying text.

140. For a further discussion of the U.S.’s response to the Haitian earthquake, see *infra* notes 149-61 and accompanying text.

141. For alternative options to aid Haitians besides permanent asylum and a discussion of current and proposed relief work, see *infra* notes 163-71 and accompanying text.

Aristide.¹⁴² The American plan also included turning back Haitian “boat-people,” refugees that fled the political conflict by raft and attempted to gain asylum in the U.S.¹⁴³ This plan garnered much international criticism because many boat-people who were turned away were killed by the Haitian military upon their return to Haiti.¹⁴⁴ Some critics even considered the policy racist, as “white Cubans who reach[ed] Florida [were] welcomed” while black Haitians were turned away.¹⁴⁵

Even prior to the 1991 coup, U.S. refugee policies fluctuated between acceptance and rejection when Haitians would flee to the U.S. to escape poverty and starvation.¹⁴⁶ Then, in 2008, when four major hurricanes devastated Haiti and killed approximately 800 people, the U.S. denied the Haitian government’s request for protected status for Haitian refugees.¹⁴⁷ Glancing at this history, it appears the U.S. accepts a limited number of Haitian refugees because almost the entire population of Haiti qualifies, and the U.S. simply cannot grant asylum to nine million people.¹⁴⁸

B. The U.S.’s Response to the Earthquake Thus Far and its Expected Future Response

On January 13, 2010, President Barack Obama pledged rapid response and aid to help Haiti recover from the earthquake’s devas-

142. See Patrick Cockburn, *US Does U-turn and Toughens Haiti Policy*, THE INDEPENDENT (London), Apr. 30, 1994, available at <http://www.independent.co.uk/news/world/us-does-urn-and-toughens-haiti-policy-1373284.html> (outlining American pressure on Haiti to restore democracy).

143. See *id.* (discussing opposition to President Clinton’s decision to stop boat-people at U.S. border).

144. See *id.* (describing international criticism of plan to return boat-people to Haiti); see also Arthur C. Helton, *Introduction: Context of the Current Immigration Debate and Future Prospects*, 11 N.Y.L. SCH. J. HUM. RTS. 451, 457 n.26 (1994) (stating that exiled President Aristide condemned policy because Haitians who were returned were being killed).

145. Cockburn, *supra* note 142 (citing political consequences of policy).

146. Goffman, *supra* note 15, at 9 (describing U.S. government’s reaction to Haitians’ attempted entry off Florida’s coast).

147. Julia Preston, *Haitians Illegally in U.S. Given Protected Status*, N.Y. TIMES, Jan. 16, 2010, at A9, available at <http://www.nytimes.com/2010/01/16/world/americas/16immig.html> (discussing history of Haitians’ refugee status in U.S. prior to Obama administration).

148. See Cockburn, *supra* note 142 (stating that boat-people were returned out of fear that “flight” of refugees would begin flooding borders if they were accepted into U.S.); see also Goffman, *supra* note 15, at 10-11 (describing factors that created widespread poverty and conflict in Haiti, and naming those affected as legitimate candidates for refugee asylum even before recent earthquake).

tation.¹⁴⁹ This pledge included a promise “to respond with a swift, coordinated, and aggressive effort to save lives.”¹⁵⁰ President Obama prioritized locating all U.S. embassy personnel stationed in Port-au-Prince.¹⁵¹ The federal and many state governments mobilized rescue teams to deliver food, water, and medicine to Haiti and arrived on the scene as early as twenty-four hours after the earthquake.¹⁵² President Obama also pledged \$100 million in funding to support the U.S. relief and rescue mission, which focused on search and rescue operations, food and water assistance, shelter, sanitation, as well as structural and transportation logistics headed by the U.S. military.¹⁵³

Domestically, the federal government extended Temporary Protected Status (TPS) to Haitians living in the U.S. both legally and illegally.¹⁵⁴ Those who receive TPS cannot be deported for eighteen months and are allowed to live and work in the U.S. during that time.¹⁵⁵ TPS covers approximately 100,000 Haitians living in the U.S. illegally and about 30,000 Haitians who had already been ordered to be deported.¹⁵⁶ The protection only applies to Haitians who were already living in the U.S. at the time of the earthquake because of a fear that the announcement would cause an influx of new boat-people.¹⁵⁷ Haitians airlifted to the U.S. for medical care were treated for free, but were only given temporary legal status in the U.S.¹⁵⁸ The American aid initiative has been swift and

149. Quinn Bowman, *Obama: U.S. Coordinating Swift Response to Haitian Earthquake*, PBS NEWSHOUR: THE RUNDOWN (Jan. 13, 2010, 11:05 AM), <http://www.pbs.org/newshour/rundown/2010/01/obama-us-coordinating-swift-response-to-haitian-earthquake.html> (outlining President Obama’s directives following Haitian earthquake).

150. *Id.* (quoting President Obama’s pledge of assistance).

151. *Id.* (summarizing President Obama’s plan of action, beginning with finding all U.S. embassy personnel).

152. *Id.* (pointing out that rescue teams are most important immediately after disaster).

153. *U.S. Response Efforts to Haiti Earthquake*, GOP.GOV (Jan. 15, 2009), <http://www.gop.gov/policy-news/10/01/15/u-s-response-efforts> (providing details about U.S. monetary response to earthquake).

154. *See* Preston, *supra* note 147 (describing U.S. TPS policy after Haitian earthquake).

155. *See id.* (explaining benefits of TPS).

156. *See id.* (estimating number of Haitians protected by TPS and explaining rationale for granting TPS).

157. *See id.* (noting U.S.’s hesitation to grant TPS).

158. Julia Preston, *U.S. Expands Medical Care for Haitians*, N.Y. TIMES (Feb. 3, 2010), <http://query.nytimes.com/gst/fullpage.html?res=9507E3D6133DF930A35751C0A9669D8B63> (reporting that, while many American hospitals accepted Haitians with life-threatening injuries, federal government would not grant indefinite refugee status).

vast.¹⁵⁹ It ranges from healthcare to rebuilding infrastructure, and includes federal, state, and volunteer workers.¹⁶⁰ Currently, however, Haitians' protected status is only temporary and it does not allow Haitians to permanently settle in the U.S.¹⁶¹

C. What Should Haiti Do and What Can Be Done, Given the Current Laws?

American refugee law does not include environmental refugees and, thus, Haitians displaced by the recent earthquake will not receive permanent asylum in the U.S.¹⁶² There are other ways Haitians can receive temporary relief, however.¹⁶³ Haitians living in the U.S., legally or illegally, before the date of the earthquake may be eligible for TPS.¹⁶⁴ Additionally, Haitian refugees who were granted traditional refugee asylum within the last two years can petition to bring their spouses and children to the U.S.¹⁶⁵ Finally, parents who had already legally adopted a Haitian child, were in the process of adopting a Haitian child, or have a Haitian orphan residing with them in the U.S. may apply for permanent residence status for the child.¹⁶⁶ Although this program is typical for adopted children, parents may apply for extended temporary status for their

159. See, e.g., Carroll & Phillips, *supra* note 9 (emphasizing expeditious nature of aid effort); Bowman, *supra* note 149 (describing rapid response to earthquake).

160. See Bowman, *supra* note 149 (noting diversity of groups participating in relief effort).

161. See generally Preston *supra* note 147 (explaining restrictions on TPS).

162. See Moberg, *supra* note 54, at 1126-27 (discussing ineffectual inclusion of environmental refugees into refugee definition).

163. See generally *Refugees & Asylum*, U.S. CITIZENSHIP & IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=1f1c3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=1f1c3e4d77d73210VgnVCM100000082ca60aRCRD> (last visited Jan. 13, 2011) (defining refugee and asylum conditions in U.S.).

164. See *TPS Designated Country – Haiti*, U.S. CITIZENSHIP & IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=e54e60f64f336210VgnVCM100000082ca60aRCRD&vgnnextchannel=e54e60f64f336210VgnVCM100000082ca60aRCRD> (last visited Jan. 13, 2011) (listing requirements and forms necessary to apply for TPS).

165. See *Asylum*, U.S. CITIZENSHIP & IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=f39d3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=f39d3e4d77d73210VgnVCM100000082ca60aRCRD> (last visited Jan. 13, 2011) (explaining how refugees can apply for admission of spouses and children into U.S.).

166. See *Questions & Answers: Information for Adoptive Parents of Paroled Haitian Orphans*, U.S. CITIZENSHIP & IMMIGRATION SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=8c8df66872bf6210VgnVCM100000082ca60aRCRD&vgnnextchannel=4653d5e587096210VgnVCM100000082ca60aRCRD> (last visited Jan. 13, 2011) (detailing options for adoptive parents).

children until their applications are processed domestically and the legal adoption is finalized in Haiti, which is expected to take longer than usual.¹⁶⁷

Still, because permanent resettlement abroad is not an option for Haitians, the best way to help Haitians in need may be to rebuild Haiti as quickly and efficiently as possible. Former U.S. Presidents William J. Clinton and George W. Bush have teamed up to create the Clinton Bush Haiti Fund, to raise funds for both immediate relief efforts and the long-term challenges of rebuilding Haiti both structurally and economically.¹⁶⁸ The fund works with non-governmental and nonprofit organizations and provides a unified place for concerned Americans to donate to the relief effort, with confidence that their donations will be put to good use.¹⁶⁹ Many relief teams are also traveling to Haiti to physically help the relief effort.¹⁷⁰ People with a variety of different skills, such as trained disaster relief workers, doctors, nurses, and construction teams, can help rebuild Haiti.¹⁷¹

Haiti is a prime example of how an uncontrollable and unpredictable act of nature can destroy a country's ecosystem overnight.¹⁷² Natural disasters are nothing new, but as technology advances and makes the world a more global community, an increased sense of responsibility to protect others has arisen.¹⁷³ As nations become more economically interdependent, natural disasters in one part of the world affect everyone.¹⁷⁴ Asylum and refugee programs have recognized this new international responsibility to care for each other by offering asylum to other countries' citi-

167. *Id.* (assuring pending adoptive parents that deadlines will be extended to accommodate delays in processing adoption paperwork).

168. *About the Clinton Bush Haiti Fund*, CLINTON BUSH HAITI FUND, <http://www.clintonbushhaitifund.org/pages/about> (last visited Jan. 13, 2011) (explaining fund's mission and partners).

169. *See id.* (providing information about fund's operations).

170. Diane Herbst, *How to Volunteer in Haiti*, TONIC (Jan. 17, 2010, 7:15 PM), <http://www.tonic.com/article/how-to-volunteer-in-haiti/> (listing variety of organizations looking for volunteers to go to Haiti).

171. *Id.* (explaining how people with variety of skills may be able to assist with rebuilding Haiti and providing relief to those in need).

172. *See Lam, supra* note 14 (expressing that situation in Haiti has resulted in failed state).

173. *See id.* (discussing political scientist Walt Anderson's conclusion that one country's problems and solutions are shared by everyone as world becomes smaller).

174. *See id.* (explaining increased attention to plight of environmental refugees in modern times).

140 VILLANOVA ENVIRONMENTAL LAW JOURNAL [Vol. XXII: p. 117

zens in need.¹⁷⁵ Most of these programs have not been updated to address modern-day problems, however, like environmentally-forced migration, leaving many displaced people with nowhere to go.¹⁷⁶ Haiti presents the world with a challenge—to mobilize forces and provide aid for a failed state to help it recover from unimaginable devastation.¹⁷⁷ However, the challenge does not end there. The Haitian earthquake has thrust environmental refugees and the issue of environmental displacement in front of the entire world, making it impossible to ignore and begging the international community for a solution.¹⁷⁸

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175. *See id.* (describing great strides made by U.N. in recognizing refugees and mandating their protection).

176. *See id.* (criticizing current U.N. definition of refugee as outdated).

177. *See Lam, supra* note 14 (stating that “[a]ll eyes are now on Haiti” while waiting to see how world responds).

178. *See id.* (describing how Haiti’s future hinges on “whether or not the world can provide protection and asylum to those whose lives are on the brink due to failing habitats”).

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