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Island in Distress: State Failure in Haiti

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ISLAND IN DISTRESS: STATE FAILURE IN HAITI

*Mario Silva**

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I. INTRODUCTION

Haiti's turbulent history has been filled with serious challenges relating to such issues as national development, politics, and the economy, as well as recurring natural disasters. The January 2010 earthquake in Haiti killed over 200,000 people,¹ making it one of the world's most devastating natural disasters in recent history. The Inter-American Development Bank has estimated the cost of rebuilding Haiti to be as much as \$14 Billion (U.S.), "more than double the country's annual GDP."²

The international community was quick to respond in the immediate aftermath of the earthquake.³ However, it remains to be seen whether potentially positive change can emerge from this tragic and catastrophic event, bringing Haiti closer to becoming a more secure, economically

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1. Daniel P. Erikson, *Obama and the Haitian Earthquake*, FOCALPOINT, Mar. 2010, at 1, available at <http://www.focal.ca/publications/focalpoint/214-march-2010-daniel-p-erikson>.

2. *Id.*

3. *See, e.g., id.* at 1 ("[t]he enormity of the challenge has mobilized the Obama administration to mount an unprecedented effort to help provide relief and assistance in the recovery of its badly damaged neighbour").

viable, and stable state. Consistent with Haiti's troubled history, recent events have done little to assure either Haitians or the international community that viability and stability are reasonable expectations in the near term for this troubled country.

In Haiti, state failure both creates and perpetuates overwhelming human need. Even before the earthquake and the immediate humanitarian assistance that was needed to deal with the recovery, the country demonstrated several types of competency gaps in terms of providing its citizens with their most basic needs, including food, health, education, and security.⁴

State failure, the flow of economic and political refugees, poverty, disease, and violence can strain foreign aid budgets and philanthropic resources. Thus far, the international response in Haiti has not been well-coordinated or consistent. If history is any indication, the response to this crisis will be inadequate to meet the challenges facing Haiti.⁵

Various historical, economic, ethnic, nationalistic, and political situations can lead to different degrees of state failure. In addressing these challenges, the international community must develop appropriate mechanisms and concepts if there is to be success. Weak states eventually become failed states and pose not only security and development challenges for the international community, but also legal challenges.⁶ In an international system premised upon state sovereignty and state consent, dysfunctional governments create a range of problems when they are unable to effectively grant that consent.

When states fail, they suffer from five primary competency gaps: legitimacy, order, security, maintenance of the rule of law, and an inability to deliver minimum public services. These competency gaps almost always result in the international community assuming responsibility for repairing failed states. Effective policies and resources are required to overcome the competency gaps and break the cycles of violence, economic collapse, and state failure. Tailoring assistance to the specific competency gaps in specific failing states requires active

4. See, e.g., *id.* at 3 (discussing the 2008 riots caused by "a 40 percent rise in the costs of basic food commodities, which cut deeply into the standard of living of a majority of the population subsisting on less than two dollars per day."); see Marlye G lin-Adams & David M. Malone, *Haiti: A Case of Endemic Weakness*, in *STATE FAILURE AND STATE WEAKNESS IN A TIME OF TERROR* 287 (Robert I. Rotberg ed., 2003) [hereinafter *STATE FAILURE AND STATE WEAKNESS*].

5. See Alex Dupuy, *Beyond the Earthquake: A Wake-Up call for Haiti*, *WESLEYAN ARGUS*, Jan. 26, 2010, available at <http://wesleyanargus.com/2010/01/26/beyond-the-earthquake-a-wake-up-call-for-haiti/> (stating, "local actors did not create these conditions alone but did so in close partnership with foreign governments and economic actors with long-standing interests in Haiti").

6. *WHEN STATES FAIL: CAUSES AND CONSEQUENCES* 3 (Robert I. Rotberg ed., 2004) [hereinafter *WHEN STATES FAIL*].

and unprecedented international cooperation to help deal with the security, development, and political institutions.

II. HISTORICAL CONTEXT

Haiti's long history of political instability and corruption magnified the negative impact of the earthquake. Haiti has been victimized by large, global powers since the moment it won independence. This, along with calamities such as the recent earthquake, has led Haiti to become the poorest country in the Americas.⁷

"The colonial conquest [of Haiti], which began in 1492 with the arrival of Christopher Columbus . . . led to the eradication of the original inhabitants," who were quickly replaced by African slaves.⁸ "Aided by a decline in Spanish power, France acquired the western third of the island and named it Saint Domingue" in 1697.⁹ "The increasing number of French settlers was accompanied by a massive importation of slaves to toil on plantations of coffee, sugar cane, cotton, and indigo."¹⁰ "Disagreements between absent plantation owners . . . and emerging local elites," as well as the fallout from the French Revolution, "fueled a thirteen-year multiracial independence movement in Saint Domingue that gave birth to the Republic of Haiti on January 1, 1804."¹¹ This movement was the first successful slave-based revolt against a colonial power.¹² Haiti became the second republic in the Western Hemisphere, and the first to be ruled by blacks.¹³ "[T]he Haitian Revolution left an indelible mark on the liberation movement of many continents."¹⁴

Haiti was punished for its rebellion with blockades and quarantines

7. *Haiti Country Profile*, BBC News, http://news.bbc.co.uk/2/hi/americas/country_profiles/1202772.stm (last visited Jan. 28, 2011).

8. STATE FAILURE AND STATE WEAKNESS, *supra* 4, at 289; *see also* PATRICK BELLEGARDE-SMITH, *HAITI: THE BREACHED CITADEL* 31-32 (1990).

9. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 289; BELLEGARDE-SMITH, *supra* note 8, at 33. *See* Eric Margolis, *Haiti Must Be Rescued From Itself*, HUFFINGTON POST, Jan. 19, 2010, available at http://www.huffingtonpost.com/eric-margolis/haiti-must-be0rescued-fro_b_428409.html.

10. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 289.

11. *Id.*; *see also* LAENNEC HURBON, *COMPRENDRE HAITI: ESSAI SUR L'ETAT, LA NATION, LA CULTURE* 76 (1987).

12. STEEVE COUPEAU, *THE HISTORY OF HAITI* 4 (2008); STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 287.

13. Ben Macintyre, *The Fault Line in Haiti Runs Straight to France*, TIMES ONLINE, Jan. 21 2010, http://www.timesonline.co.uk/tol/comment/columnists/ben_macintyre/article6995750. *ece* (last visited Jan. 29, 2011); *see also* COUPEAU, *supra* note 12, at 34.

14. COUPEAU, *supra* note 12, at 34.

from such nations as France and the United States.¹⁵ It was not until Abraham Lincoln became President in 1860 that the United States finally extended diplomatic recognition to Haiti.¹⁶ France imposed a massive financial penalty in the form of indemnity that Haiti did not finish paying back until 1947.¹⁷ Thus, Haiti remained endemically weak even after achieving independence.¹⁸

The former colonial structures of control were never destroyed following Haiti's independence but, rather, were simply maintained under a new domestic force, while rival leaders of the liberation began to fight amongst themselves.¹⁹ The country's new rulers actually became more powerful after determining that some labor and economic discipline had to be restored in order to preserve the plantation economy. The Haitians feared that if they failed to generate sufficient income to pay the required indemnity, the former colonial powers would use this as an excuse to retake the island.

Jean-Jacques Dessalines, who had been a revolutionary leader, wasted little time in declaring himself Haiti's Emperor in 1804.²⁰ Corruption was rife during Dessalines's regime, which virtually emptied the national treasury.²¹ As a result, the state was unable to pay the salaries of the members of its armed forces.²² In 1806, with his military support collapsing, the emperor was assassinated by army officers.²³

The following decades were characterized by violence, corruption, and racial tensions.²⁴ What emerged was a ruling elite that effectively controlled the national economy for self-interested purposes.²⁵ These

15. *Id.* at 37.

16. *Id.*; STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 290; MICHEL-ROLPH TROUILLOT, HAITI: STATE AGAINST NATIONS, THE ORIGINS AND LEGACY OF DUVALIERISM 53 (2000).

17. Macintyre, *supra* note 13.

18. *Id.*

19. See STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 289-90; see also Margolis, *supra* note 9.

20. REVOLUTIONARY FREEDOMS: A HISTORY OF SURVIVAL, STRENGTH AND IMAGINATION IN HAITI 55 (Cécile Accilion et al. eds., 2006) [hereinafter REVOLUTIONARY FREEDOMS].

21. *Haiti: Historical Setting*, in DOMINICAN REPUBLIC AND HAITI: COUNTRY STUDIES (Helen C. Metz ed., 2001), available at [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+ht0019\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+ht0019)) [hereinafter *Haiti: Historical Setting*].

22. *Id.*

23. *Id.*; see REVOLUTIONARY FREEDOMS, *supra* note 20, at 55.

24. See STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 291. For further discussion, see generally Charles R. Venator Santiago, *Race, Nation-Building and Legal Transculturalism During the Haitian Unification Period (1822-1844): Towards a Haitian Perspective*, 16 FLA. J. INT'L L. 667 (2004).

25. See Margolis, *supra* note 9 (stating, "[f]or the next century, Haiti was ruled by a feuding mulatto minority and petty dictators who did nothing for the people."); see also STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 291.

elites “reproduced the . . . colonial system by taxing all of the . . . crops that the population produced for its own consumption.”²⁶ During this period, the military adopted an interventionist role, characterized by repression and corruption that continued for most of Haiti’s modern history.²⁷

The role of the United States in Haiti grew steadily, culminating with overt intervention in Haitian affairs between 1911 and 1915.²⁸ During this period, the United States perceived great instability in Haiti. Seven Haitian presidents were either assassinated or overthrown during these four years.²⁹ Furthermore, in 1915, Haitian President and General Vilbrun Guillaume Sam had to contend with a revolt led by Rosalvo Bobo.³⁰ The United States perceived Bobo as a serious threat by virtue of his strong anti-American beliefs.³¹ Additionally, the United States was also concerned with growing German interests and presence in Haiti.³²

In July 1915, General Sam was murdered and dismembered by an angry mob.³³ The United States used this occurrence to justify a military invasion and the occupation of the troubled island that lasted until 1934.³⁴ The Haitian-American Treaty of 1915³⁵ established a U.S.-controlled police force, or gendarmerie, made up of both Americans and Haitians.³⁶ The Treaty gave the United States control over Haiti’s finances and provided for direct American intervention on the island whenever the United States saw fit to exercise this power.³⁷

Despite American efforts to build roads, bridges, and schools, and to reform the healthcare system during its occupation, life for the average Haitian did not appreciably improve.³⁸ Haiti’s political structure during

26. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 291.

27. *See id.*

28. COUPEAU, *supra* note 12, at 75; *see also* STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 292.

29. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 292.

30. COUPEAU, *supra* note 12, at 71.

31. *Id.*

32. *Id.* at 57.

33. Navy Dep’t Libr., *U.S. Occupation of Haiti, 1915-1934*, http://www.history.navy.mil/library/online/haiti_main.htm (last visited Jan. 28, 2011).

34. COUPEAU, *supra* note 12, at 71, 75 (stating, “[t]he bilateral convention remained in effect until 1935”).

35. HANS SCHMIDT, *THE UNITED STATES OCCUPATION OF HAITI, 1915-1934*, at 115 (2d ed. 1995).

36. U.S. Dep’t of State, *U.S. Invasion and Occupation of Haiti, 1915-34*, <http://history.state.gov/milestones/1914-1920/Haiti> (last visited Jan. 18, 2010) [hereinafter U.S. Dep’t of State].

37. *Id.*

38. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 293; *see also* *Haiti: Historical Setting*, *supra* note 21.

the U.S. occupation featured a succession of de facto regimes that were essentially instruments of the United States.³⁹ Election results were clearly manipulated.⁴⁰ The constitution was written by future U.S. President Franklin Delano Roosevelt, who, at the time, was Secretary of the Navy.⁴¹ Despite these efforts, or perhaps because of them, insurrections continued and international criticism of the U.S. occupation resulted.⁴² In the face of mounting pressure, the United States withdrew from Haiti in 1934.⁴³

The entire period of the U.S. occupation of Haiti was demoralizing to Haitians, after having been the first country to achieve independence from a colonial power in the previous century. After the U.S. withdrawal from Haiti, there was a feeble attempt by elite Haitians to form a Communist party system, but the population opposed any outside labels, whether they were rightist or leftist in nature.⁴⁴

The succeeding years saw the formation and collapse of no less than eight governments in Haiti.⁴⁵ Some were civilian and some were military in nature, but all were doomed to failure. Their demise was largely the result of greed, corruption, oppression, and profound self-interest. In 1957, President François Duvalier rose to power.⁴⁶ Duvalier (a.k.a. Papa Doc) used manipulation and oppression, much more effectively than his predecessors, so that he quickly consolidated power.⁴⁷

After surviving an attempted coup, Papa Doc removed the entire military leadership and replaced them with officers loyal to him.⁴⁸ He also created his own private militia, the Tonton Macoutes (known simply as the Macoutes).⁴⁹ His opponents either fled or were

39. See STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 293.

40. U.S. Dep't of State, *supra* note 36.

41. *Haiti: Historical Setting*, *supra* note 21.

42. See U.S. Dep't of State, *supra* note 36.

43. See *id.*

44. MATTHEW J. SMITH, RED & BLACK IN HAITI: RADICALISM, CONFLICT, AND POLITICAL CHANGE, 1934-1957, at 14-23 (2008).

45. The U.S. occupation of Haiti was from 1915-1934 and during that time the list of Presidents are as followed: 1. Sternio Vincent (1930-1941); 2. Élie Lescot (1941-1946 overthrown); 3. Franck Lavaud (1946 Military Council); 4. Dumarsais Estime (1946-1950 overthrown); 5. Paul Eugène Magloire (1950-1956 overthrown); 6. Joseph Nemours Pierre-Louis (1956-1957); 7. Franck Sylvain (1957); 8. Executive Government Council (1957); 9. Antonio Thrasybule Kebreau (Chairman of the Military Council 1957); François Duvalier (1957-1971).

46. COUPEAU, *supra* note 12, at x; see also STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 294.

47. See STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 294.

48. *Haiti: Historical Setting*, *supra* note 21.

49. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 294; see also COUPEAU, *supra* note 12, at 88.

murdered.⁵⁰ The Macoutes operated with volunteers who were essentially criminals practicing intimidation and extortion as a means of survival and profit.⁵¹ Throughout rural Haiti, the Macoutes maintained control, while in the capital, the Presidential Guard was increased to protect Papa Doc's authority.⁵² Corruption was rampant.⁵³

In 1961, Papa Doc won the general election as the only candidate on the ballot.⁵⁴ In 1964, he declared himself Haiti's president for life.⁵⁵ He amended the constitution to eliminate one of the legislative houses, thereby providing greater control in the unicameral body that survived.⁵⁶ Duvalier created a cult of personality and fueled rumours that he was a voodoo priest who had become the corporeal embodiment of Haiti itself.⁵⁷

Prior to his death in 1971, Papa Doc ensured familial succession by naming his son, Jean-Claude Duvalier (a.k.a. Baby Doc) the next Haitian president for life.⁵⁸ Baby Doc was only 19 years old at the time and had little interest in running the country; he essentially deferred power to his mother.⁵⁹ Baby Doc's tenure was marked by unfulfilled commitments for reform, both domestically and internationally. He did permit more freedom of the press and the existence of human rights groups, but substantive democratic reform did not occur, and corruption ran rampant through the regime.⁶⁰ Eventually, a dictatorial crackdown commenced, radio stations were closed, and opposition leaders arrested (and in some cases, killed).⁶¹

As a result of these developments, U.S. President Ronald Reagan threatened to withdraw American aid to Haiti.⁶² Under pressure from the Reagan administration, Baby Doc appointed his chief of staff, General Namphy, the new head of the provisional National Council of Government (CNG).⁶³ He then escaped to France with his family and what was believed to be a pilfered fortune of approximately \$400

50. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 294.

51. *See Haiti: Historical Setting*, *supra* note 21.

52. *Id.*

53. *Id.*

54. *Id.*

55. *See id.*; *see also* COUPEAU, *supra* note 12, at x.

56. *Haiti: Historical Setting*, *supra* note 21.

57. *See id.*

58. *See id.*

59. *Haiti: Historical Setting*, *supra* note 21; *see also* DAVID NICHOLLS, FROM DESSALINES TO DUVALIER: RACE, COLOUR AND NATIONAL INDEPENDENCE IN HAITI (London: Macmillan Caribbean 1996) (1979).

60. *Haiti: Historical Setting*, *supra* note 21.

61. *See id.*

62. *Id.*

63. *Id.*

million.⁶⁴ Remarkably, Baby Doc re-emerged in January 2011, unexpectedly and mysteriously returning to Haiti from France.⁶⁵ While it appears he had intended to remain in Haiti for only a brief period, he is now the subject of a criminal investigation that has prevented his return to France.⁶⁶ The impact of his return on Haiti remains to be seen, although it is more likely than not that his presence will only create greater instability.⁶⁷

The CNG did little to curb the actions of the Macoutes, and did even less to bring those responsible for past indiscretions to justice.⁶⁸ This led to instances of violence against present and former members of the Macoutes.⁶⁹ The CNG's half-hearted handling of the Macoutes, who had killed and tortured many innocent victims, fueled discontent among the masses.⁷⁰

In 1987, a new constitution established Haiti as a presidential republic, whereby the president was the head of state, elected by popular vote, and the prime minister was chosen from the ruling party in the elected National Assembly.⁷¹ This constitution reduced the powers of the army and police, by separating them, and recognized Creole, in addition to French, as an official language of Haiti.⁷² The constitution also removed the 1935 prohibition on voodoo, recognizing it as a religion.⁷³ Power was decentralized from the capital city, instead being wielded by provincial councils.⁷⁴ Additionally, military personnel now had to resign one year before entering politics.⁷⁵

In 1990, Haiti's general election was monitored by the United Nations and the Organization of American States (OAS).⁷⁶ Jean-Bertrand Aristide, a former Jesuit priest, was elected president with 67% of the vote.⁷⁷

It was unknown how Aristide would govern when he came to power. Many hoped that Aristide's moderate persona, expressed during the

64. John Moody, *Haiti End of the Duvalier Era*, TIME, June 24, 2001.

65. Randal C. Archibold, *A Former Dictator Reappears in Haiti*, N.Y. TIMES, Jan. 16, 2011, available at <http://www.nytimes.com/2011/01/17/world/americas/17haiti.html>.

66. *Id.*

67. *Id.*

68. Moody, *supra* note 64.

69. *Id.*

70. *Haiti: Historical Setting*, *supra* note 21.

71. CONSTITUTION OF HAITI (1987) arts. 133, 134, & 137.

72. *Id.* arts. 5, 263.

73. *See id.* art. 35.

74. *Id.* ch. 1.

75. *Id.* art. 132.

76. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 296.

77. *Id.*

campaign, would prevail.⁷⁸ However, those who financially controlled Haiti were very concerned about a change in the status quo.⁷⁹

Aristide's unyielding criticisms of the Duvalier regime made him popular with Haiti's poor.⁸⁰ He survived repeated assassination attempts, and his popularity actually grew among other sectors of society.⁸¹ However, Aristide's criticism of certain elements of democracy and capitalism was troubling to many observers.

It was only a matter of months before Aristide lost the confidence of the Chamber of Deputies and the Haitian Senate. In order to hold power, he encouraged mob violence to intimidate his opponents.⁸² However, he did not have control of the military, and General Raoul Cedras launched a coup.⁸³ In the aftermath of the coup, the OAS instituted a full hemisphere-wide economic embargo on Haiti and demanded Aristide's return to power.⁸⁴ Aristide fled Haiti for the United States, where he established a government in exile in Washington.⁸⁵

It was during this time, with Aristide trying to negotiate his return, that thousands of Haitians boarded boats and tried to enter the United States.⁸⁶ However, the Clinton and (George H.W.) Bush administrations denied them asylum, and they were forcibly returned to Haiti.⁸⁷ The United States also imposed a crushing trade embargo in order to facilitate the return of President Jean-Bertrand Aristide.⁸⁸ This embargo

78. *See id.*

79. *See id.*

80. Michael F. Gallo, *Hope in Haiti? An Interview with Jean Bertrand Aristide*, available at <http://www.touchstonememag.com/archives/article.php?id=03-03-026-i#ixzz1GEYNcGyA>.

Aristide first came to international attention in 1985 when during a Mass he preached a landmark sermon severely criticizing the regime of President-for-life Jean-Claude ("Baby-Doc") Duvalier. This was one of the sparks which set off the popular uprising ousting the tyrant Duvalier in February, 1986. Participating in marches and working with peasants throughout the country, he became perhaps the most popular priest in Haiti and leader of the "Little Church" movement (congregations inspired by liberation theology).

Id.

81. *Id.* at 296.

82. Maureen Taft-Morales, *Haiti: Developments and U.S. Policy Since 1991 and Current Congressional Concerns*, CRS Report for Congress, May 4, 2006, at 7.

83. *Id.* at 297.

84. *See id.* at 297 n.30.

85. *See id.* at 297.

86. *Id.*

87. *See id.*

88. Jeffrey D. Sachs, *After The Earthquake, How To Rebuild Haiti From Scratch*, WASH. POST, Jan. 17, 2010.

destroyed Haiti's fragile manufacturing industries.⁸⁹

General Cedras's regime defied the OAS embargo, while the Bush administration unilaterally exempted the United States from the OAS policy, and rampant smuggling occurred from the Dominican Republic to Haiti.⁹⁰ Aristide asked that the U.N. support the embargo and that a civilian mission be established for Haiti.⁹¹

By July 1993, the United Nations and the OAS had worked out an agreement for the return of Aristide.⁹² The so-called Governors Island Accord provided that General Cedras would retire, Aristide would become president again, and the embargo would be lifted.⁹³ The Agreement, signed by all parties, ran into trouble when General Cedras refused to retire.⁹⁴ Sanctions were thus reinstated by the United Nations.⁹⁵

In 1994, the regime attempted to bypass the accord by appointing Supreme Court Justice Emile Jonassaint to be a provisional president.⁹⁶ As a result, more severe sanctions were imposed by the United Nations.⁹⁷ With thousands of U.S. troops landing in Haiti, Aristide was returned to power and General Cedras was allowed to leave the country.⁹⁸ Aristide's return was followed by a period of economic growth in the country.⁹⁹ However, with increasing migration to the cities, an underdeveloped infrastructure led to problems with security.¹⁰⁰

89. *Id.*

90. James Morrell, *The Governors Island Accord on Haiti*, available at <http://www.haitipolicy.org/archives/Publications&Commentary/governors.htm>.

91. *See id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. GlobalSecurity.org, *Operation Uphold Democracy*, http://www.globalsecurity.org/military/ops/uphold_democracy.htm (last visited Jan. 28, 2011) [hereinafter *Operation Uphold Democracy*].

97. S.C. RES. 917, U.N. Doc. S/RES/917 (May 6, 1994). By July 31, 1994, the United Nations had adopted Resolution 940 authorizing:

Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti.

S.C. RES. 940, U.N. Doc. S/RES/940 (July 31, 1994)

98. *Operation Uphold Democracy*, *supra* note 96.

99. Peace Operations Monitor, *The Impossible Join Nat'l Project: 1804-2004*, available at <http://pom.peacebuild.ca/haitiConflicts.shtml> [hereinafter *Peace Operations Monitor*].

100. *Id.*; *see also* STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 298 (stating

In 1996, René Préval, Aristide's former prime minister, was elected president.¹⁰¹ Préval completed his five-year term uninterrupted.¹⁰² This was the first time this occurred in Haitian history. However, Parliament was dissolved in 1999, and he ruled by decree for the remaining twelve months of his presidency.¹⁰³

With Préval as president, unemployment hit an all-time low, public entities were privatized, and a national police force replaced the army.¹⁰⁴ Unfortunately, conflict between pro-Aristide and anti-Aristide factions precluded any real success for the Haitian economy, and the country's infrastructure began to collapse.¹⁰⁵ Trafficking in cocaine became an enormous industry in Haiti, and the country became one of the main transit points for illicit narcotics in the Americas.¹⁰⁶

In 2000, Aristide was returned to power with 92% of the vote in an election that was boycotted by all major opposition parties.¹⁰⁷ A multinational peacekeeping force struggled to hold nominal control.¹⁰⁸ A dramatic increase in the number of homicides and kidnappings led to a complete meltdown in the political system.¹⁰⁹

Between 2000 and 2004, the political situation deteriorated even further.¹¹⁰ The president contributed to the problems with rhetorical speeches and by using the militia to intimidate and murder opponents.¹¹¹ Armed offensives started to occur throughout the country and Haiti descended into chaos.¹¹² Aristide was forced to leave the country in 2004, and the newly formed United Nations Stabilization Mission in Haiti (MINUSTAH) was charged with restoring stability to the country.¹¹³

“security sector reform remained limited in Haiti”).

101. Embassy of Haiti, *Biography of His Excellency René Préval, President of Haiti*, http://www.haiti.org/index.php?option=com_content&view=article&id=50&Itemid=117 (last visited Jan. 28, 2011).

102. *See id.*

103. Taft-Morales, *supra* note 82, at 9.

104. *Id.*

105. *Id.*

106. *See WHEN STATES FAIL*, *supra* note 6, at 19.

107. Peace Operations Monitor, *supra* note 99.

108. Freedomhouse overview and at 2, <http://www.freedomhouse.org/uploads/WoW/2006/Haiti2006.pdf>.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. Robert Fatton Jr., *The Fall of Aristide and Haiti's Current Predicament*, in *HAITI: HOPE FOR A FRAGILE STATE* 20 (Yasmine Shamsie & Andrew S. Thompson eds., 2006).

III. HUMAN RIGHTS, SECURITY AND THE RULE OF LAW

Civil, political, economic, and social rights in Haiti are all tenuous. Haiti has yet to ratify the International Convention on Economic, Social, and Cultural Rights. According to U.N. independent expert Michel Forst, ratification of the convention would send a clear message to Haitians that their government is determined to fight social and economic inequalities, as well as to seek international and bilateral technical assistance and cooperation to provide universal access to “education . . . a [viable] health-care system, drinking water and sanitation services, adequate and decent housing, [as well as guaranteed] employment income and training.”¹¹⁴ The Forst report also outlined six human rights concerns, including: the country’s penitentiary situation and prison overcrowding; violence against women; lynching; human trafficking; deportation; and the lack of economic, social, and cultural rights.¹¹⁵

Haiti has started to demonstrate a commitment to curbing violence against women by ratifying important regional and international treaties and establishing domestic laws in this regard.¹¹⁶ Although rape and indecent assault can be dealt with under provisions of the Criminal Code, there is a concern that sexual harassment is tolerated by society and the State.¹¹⁷ Many victims are dissuaded from reporting such incidents by the perpetrator or the perpetrator’s family, or even from their own families, for fear of reprisals.¹¹⁸ Following the January 2010 earthquake there were numerous reports of rape reported to Amnesty International and as of January 2011 the organization continues to document widespread rapes in Haiti and in particular within the tent cities housing displaced persons.¹¹⁹ In addition, many instances of vigilante justice have been reported, often in the form of killing those who commit theft, murder, kidnapping, witchcraft, and other criminal acts.¹²⁰ These incidents stem from a profound lack of confidence in the police and justice system.¹²¹

114. U.N. Hum. Rights Council [HRC], Technical Assistance and Capacity-Building, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, ¶ 85, U.N. Doc. A/HRC/11/5 (Mar. 26, 2009) (prepared by Michel Forst) [hereinafter Forst].

115. *Id.* ¶¶ 15-20.

116. *Id.* ¶ 67 (Haiti ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women).

117. *Id.* ¶ 68.

118. *Id.* ¶ 69.

119. Amnesty Int’l, *Haiti: Sexual Violence Against Women Increasing*, Jan. 6, 2011, available at <http://www.amnesty.org/en/news-and-updates/report/haiti-sexual-violence-against-women-increasing-2011-01-06>.

120. Forst, *supra* note 114, ¶ 73.

121. *Id.*

Human trafficking is another significant problem, especially in border regions between Haiti and the Dominican Republic.¹²² Children are especially at risk.¹²³ Many births in the region go unregistered, exacerbating issues such as kidnapping, adoption, and forced child labor, particularly under the “restavek” or “stay with,”¹²⁴ system—a form of domestic servitude which the United Nations considers a “modern form of slavery.”¹²⁵

Canada and the United States were criticized in the U.N. report for deporting individuals who have committed criminal acts in their host country.¹²⁶ Given the likelihood that a deportee will reoffend once in Haiti, deportees increase Haiti’s crime rate and further burden Haiti’s ineffectual justice system.¹²⁷ However, there are no statistics available to show the extent to which deportees reoffend once in Haiti. Still, the Haitian government has perpetuated the notion that all deportees are dangerous criminals, causing them to be immediately stigmatized upon their arrival in Haiti.¹²⁸

Establishing the rule of law in Haiti is a necessary precursor to improving human security. This will make it possible to contemplate the country’s sustainable development, and reform the police force and the judiciary. However, it is essential that reforms in these two areas are implemented equitably, with neither one taking precedence over the other.¹²⁹

Judicial and penitentiary reforms are required. At present, both lawyers and judges are abusing the use of pretrial detention, the average length of which is about two years for felonies.¹³⁰ Prisoners held in

122. *Id.* ¶ 74.

123. *Id.* ¶¶ 74-76.

124. *Id.* ¶ 76.

125. Press Release, U.N. Hum. Rights Off. of the High Comm’r, *UN Expert on Slavery Expresses Concern Over ‘Restavek’ System in Haiti*, (June 10, 2009), available at [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/BB364919CAC954A3C12575D100448C20?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/BB364919CAC954A3C12575D100448C20?OpenDocument).

126. See Forst, *supra* note 114, ¶¶ 77-78, 80 (discussing the human rights issue of respecting citizens’ rights and the U.S. stated plan of “expel[ling] tens of thousands of migrants unlawfully residing in its territory”).

127. *Id.* ¶ 78.

128. *Id.* ¶¶ 77-78.

129. *Id.* ¶ 15.

130. Human Rights Council 11th Sess. (Item 10 of the Agenda) Technical Assistance and Capacity-Building Report of the Independent Expert on the Situation of Human Rights in Haiti, Michel Forst (Mar. 26, 2009), at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.5.pdf>.

While the situation relating to prolonged pretrial detention in Haiti has been the subject of much literature and many recommendations, the independent expert nevertheless notes with regret the delays in the implementation of

pretrial detention constitute eighty percent of the prison population.¹³¹ Haitian prisons lack hygiene and healthcare, and are generally dangerous.¹³² Many prisons lack medicine and food.¹³³ Moreover, many Haitian prisons have been destroyed as a result of political and environmental crises, leading to an increase in prisoners detained at police stations ill-equipped for this task.¹³⁴

Young offenders are especially vulnerable.¹³⁵ In some cases, juveniles have been remanded in custody for up to two years due to the lack of children's magistrates in certain districts.¹³⁶ Juveniles are also required to share accommodations with adult prisoners.¹³⁷ According to Forst, Haiti needs to establish alternative measures for juveniles, such as rehabilitation and reintegration programs.¹³⁸

Combating corruption and police reform are necessary. Although implementation has been slow, President Préval appeared to make a political commitment to making the fight against corruption a strategic objective.¹³⁹ Haiti was ranked 155 out of 159 countries surveyed in Transparency International's 2005 Corruption Perceptions Index.¹⁴⁰ The relationship between the Haitian people and the National Police "is still

most of the recommendations. It should be pointed out that, according to the figures supplied by MINUSTAH, in November 2008 the rate of pretrial detention was still 80 per cent, being higher in the jurisdiction of the West Department (86 per cent) than in the other jurisdictions of the country (70 per cent on average). The average length of pretrial detention is about two years for felonies and between 12 and 18 months for misdemeanours. Over 4 per cent of detainees awaiting trial for petty offences, their confinement being unlawful or arbitrary, 80 per cent of remand prisoners' cases are held up at the prosecution or investigation stage and only 7 per cent of cases are currently being tried.

Id. Also on April 24, 2007 USAID did an audit of Haiti's Justice Program and found major delays in pretrial but does not specify the number of years. USAID, Audit of USAID/Haiti's Justice Program, Audit Report #1-521-07-008-P, Apr. 24, 2007, at http://www.usaid.gov/ht/docs/eqdocs/budget_documents/office_of_the_inspector_general_reports/1-521-07-008-p.pdf.

131. *Id.* ¶ 64.

132. *Id.* ¶ 61.

133. *Id.*

134. *Id.* ¶ 60.

135. *Id.* ¶ 49.

136. *See id.* (stating, "juveniles were remanded in custody but not brought before a judge owing to the lack of a children's magistrate in the jurisdiction concerned").

137. *Id.*

138. *Id.* ¶ 51.

139. *Id.* ¶ 26 (stating, "[s]uccessive speeches by President Préval since 2007 appear to have sent out a clear and renewed signal of the political commitment to making the fight against corruption a strategic objective but implementation seems to be slow").

140. Transparency Int'l, Ann. Rep. (2005), at 16-17, available at http://www.transparency.org/publications/publications/annual_reports/annual_report_2005 (follow appropriate hyperlink for desired language).

characterized by suspicion, accusations of brutality, human rights violations[,] and complicity with criminal and corrupt elements,” including “allegations of brutality, violence[,] and rape by uniformed officers.”¹⁴¹ In addition, “the judicial branch never received a systematic overhaul,” creating mob justice and further alienating the general population.¹⁴²

The Haitian government has also been associated with deep failures in public security services. Since these problems derive in “large part from a traditionally weak Haitian state incapable of effectively addressing the country's needs, understanding Haiti today requires an analysis of the persisting systemic weaknesses of the state.”¹⁴³

Finally, trafficking in narcotics has been a serious problem in Haiti since the 1980s, with the government either unwilling or unable to prevent the smuggling of drugs.¹⁴⁴ Moreover, the “prevailing political turmoil . . . poverty rate [and poor economic conditions], ha[ve] generated a rise in crime and violence, which the police and judiciary have been unable to tackle effectively.”¹⁴⁵ Despite over \$2 billion spent on international efforts to develop an independent police force in Haiti, this goal has yet to be achieved.¹⁴⁶

IV. CAPACITY GAPS

Haiti is the poorest country in the Western Hemisphere, and contends with multi-faceted challenges stemming from weak public institutions. Of Haiti's nine million people, 75% live on less than \$2 per day.¹⁴⁷ In the book *State Failure and State Weakness in a Time of Terror*, Marlye Gélin-Adams and David Malone suggest that Haiti has always been on the edge of failure.¹⁴⁸ This considerable disparity in incomes leaves the majority of the population with very limited means.¹⁴⁹

141. Forst, *supra* note 114, ¶ 35.

142. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 299. Additionally, “the justice system remains inaccessible to large segments of the population, particularly in the rural areas. It lacks resources, competent judges, and the necessary credibility to serve the citizenry Meanwhile, overcrowded prisons hold alleged offenders for years without trial and under appalling conditions.” *Id.*

143. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 287.

144. WHEN STATES FAIL, *supra* note 6, at 19.

145. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 298.

146. *Id.* at 297.

147. Dupuy, *supra* note 5.

148. See STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 287.

149. REPUBLIC OF HAITI, PREPARATORY COMM., GROWTH AND POVERTY REDUCTION STRATEGY PAPER, MAKING A QUALITATIVE LEAP FORWARD 8 (2007), available at <http://siteresources.worldbank.org/INTHAITIINFRENCH/Resources/HaitiDSNCRPEnglish.pdf>.

Another factor adversely affecting the average Haitian's quality of life is population density. In the last 20 years, Haiti's population has grown at a rate of between 1.9% and 2.4%.¹⁵⁰ This is a major problem for such a tiny island. As of 2008, there was an estimated 354.9 people for every square kilometre in Haiti, compared to 203.3 people per square kilometre in the Dominican Republic.¹⁵¹

Life expectancy remains relatively low, and only 60% of the adult population is literate.¹⁵² The vast majority of schools are private, and only 20% of schools in Haiti are controlled by the State.¹⁵³ The functioning of the system is largely ensured through private financing.¹⁵⁴ Over one hundred NGOs are involved in the education sector.¹⁵⁵

The International Food Policy Research Institute compiled a Global Hunger Index, which ranked Haiti 78th out of the 84 countries on the list.¹⁵⁶ In 2006, only half of the rural population had access to improved drinking water sources.¹⁵⁷ The 2010 earthquake has only heightened the food insecurity facing certain segments of the population.

In addition, "[i]t is estimated that one of every twelve Haitians has contracted HIV/AIDS."¹⁵⁸ One forecast predicts that the number of orphaned children in Haiti will be 350,000 with the next 10 years.¹⁵⁹

150. U.N. Dev. Programme, *Overcoming Barriers: Human Mobility and Development*, 2009 HUM. DEV. REP. 193, available at http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf [hereinafter UNDP].

151. WORLD BANK, *MIGRATION AND REMITTANCES FACTBOOK 2011*, at 107, 133 (2d ed. 2011), available at <http://issuu.com/world.bank.publications/docs/9780821382189> [hereinafter *MIGRATION AND REMITTANCES FACTBOOK*].

152. See UNDP, *supra* note 150, at 183 (Haiti's male life expectancy in 2007 was 62.9 years and female life expectancy in 2007 was 59.1 years; Haiti's male adult literacy rate was 64% and its female adult literacy rate was 60.1%).

153. Jeffrey Puryear & Michael Lisman, *Haiti's Educational Moment*, 9 FOCALPOINT: CANADA'S SPOTLIGHT ON THE AMERICAS 8 (2010), http://www.focal.ca/pdf/focalpoint_march_2010.pdf (last visited Jan. 29, 2011).

154. *Id.*

155. REPUBLIC OF HAITI, *supra* note 149, at 40.

156. *The Challenge of Hunger: Focus on the Crisis of Child Undernutrition*, 2010 INT'L FOOD POLICY RESEARCH INST. 17.

157. See REPUBLIC OF HAITI, *supra* note 149, at 24; UNDP, *supra* note 150, at 178.

158. Paper on The Role for Canada in Post-Aristide Haiti prepared by Carlo Dade & John W. Graham, Senior Advisor with and Chair of FOCAL (Canadian Found. for the Americas), for the House of Commons Comm. on Foreign Aff. and Int'l Trade, in response to the Committee's Request 2 (Apr. 2004), available at http://www.focal.ca/pdf/Haiti_post-Aristide_Graham%20April%202004_e.pdf [hereinafter *The Role for Canada in Post-Aristide Haiti*].

159. *Id.*

V. THE HAITIAN ECONOMY

Haiti has the least developed economy in the Western Hemisphere, with a GDP of about \$11.9 billion in 2009.¹⁶⁰ The Haitian banking system is weak, with limited access to credit, and the agriculture and transport sectors, the lifeblood of the domestic economy, “remain woefully inadequate.”¹⁶¹ Poverty, corruption, limited infrastructure, and insecurity are among the serious barriers to economic development, growth and prosperity in Haiti.¹⁶² Few Haitians have steady incomes. Even before the earthquake, the percentage of Haitians with steady incomes was estimated at between 60% and 80%.¹⁶³ Most Haitians scrape by “doing odd jobs or relying on remittances from abroad that make up a quarter of Haiti’s \$7 billion gross domestic product.”¹⁶⁴

Although Haiti has become reliant on food imports, nearly two-thirds of the Haitian labor force works in the agricultural sector.¹⁶⁵ The manufacturing sector is small, accounting for 7.6% of GDP.¹⁶⁶ In his 2009 report for the United Nations, Former World Bank economist and Oxford Professor Paul Collier argued that Haiti has several advantages that can enable it to become globally competitive in the garment assembly industry, given the advantages extended to that country under HOPE II and its proximity to the U.S. market.¹⁶⁷

There are a multitude of challenges facing Haiti’s infrastructure. Only 24% of the country’s roads are covered with asphalt, and transportation networks are vulnerable to storms and mudslides.¹⁶⁸ As a result, businesses struggle to operate within Haiti’s difficult economy. The World Bank’s 2010 Ease of Doing Business index placed Haiti 162nd out of 183 countries.¹⁶⁹ Haiti’s capacity to provide political goods has steadily been compromised by autocratic and corrupt leadership, weak institutions, an intimidated civil society, high levels of

160. CIA, THE WORLD FACTBOOK, HAITI, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> [hereinafter CIA].

161. See REPUBLIC OF HAITI, *supra* note 149, at 54 (stating the agriculture sector receives less than 1% of the available credit).

162. See generally *id.*

163. Jonathan M. Katz, *Can Low-Paying Garment Industry Save Haiti?*, ABCNEWS, Feb. 21, 2010, <http://abcnews.go.com/International/wireStory?id=9902789>.

164. *Id.*

165. CIA, *supra* note 160; see also EconomyWatch, Haiti Industry Sectors, http://www.economywatch.com/world_economy/haiti/industry-sector-industries.html (last visited Jan. 29, 2011).

166. J.F. HORNBECK, CONG. RES. SERV., THE HAITIAN ECONOMY AND THE HOPE ACT, RL34687, at 8 (2010).

167. Katz, *supra* note 163.

168. CIA, *supra* note 160.

169. World Bank, Ranking of Economics–Doing Business, <http://doingbusiness.org/rankings> (last visited Jan. 29, 2011).

crime, low GDP levels per capita—a per capita GNI of \$510 in 2000—high rates of infant mortality, suspicion from or outright hostility by its neighbors, and many other deficiencies.¹⁷⁰

There is a large Haitian Diaspora, which has caused a significant “brain drain,” but which also provides some much needed foreign remittances.¹⁷¹ Such remittances amounted to \$1.8 billion in 2008.¹⁷² Haitians rely on remittances more than any other country in the Western Hemisphere.¹⁷³

Multiple challenges face the Haitian banking system’s role in supporting the domestic economy: weak legal and institutional frameworks, lax security, poor governance, poverty, low savings rates, and the limited number of individuals involved in the formal economy. There is also limited access to credit: the agriculture and transport sectors, the lifeblood of the domestic economy, receive less than 3.2% of the available credit.¹⁷⁴

“The lack of electricity contributes to further increases in non-technical losses and it affects the economic growth.”¹⁷⁵ Of Haiti, 75% lacked access to electricity, and the few that have it are unable to pay for it.¹⁷⁶

Prerequisites to reform include modernization of the country’s agricultural sector and transportation infrastructure, improvement of the electricity supply, and enhancement of telecommunications services, tourism, and other sectors.¹⁷⁷ Improvements in education and healthcare are also required.¹⁷⁸ Greater respect for the rule of law, a restructured and modernized justice system, and effort to create a professional and effective national police force should not be delayed due to the humanitarian crisis created by the earthquake.¹⁷⁹

Long-term strategies are already being proposed by world leaders, including French President Nicholas Sarkozy, which would highlight

170. WHEN STATES FAIL CAUSES AND CONSEQUENCES, *supra* note 6, at 19.

171. Barbara MacLaren, *Engaging the Haitian Diaspora in Development*, FOCAL, Mar. 29, 2010, http://www.focal.ca/pdf/diaspora_MacLaren_engaging%20Haitian%20diaspora%20in%20development_March%2029%202010.pdf (last visited Jan. 29, 2011).

172. Yves Savain, *Building Big in Haiti*, 9 FOCALPOINT: CANADA’S SPOTLIGHT ON THE AMERICAS 14 (2010), http://www.focal.ca/pdf/.focalpoint_march2010.pdf (last visited Jan. 29, 2011).

173. See MIGRATION AND REMITTANCES FACTBOOK, *supra* note 151, at 14.

174. Int’l Monetary Fund [IMF], Haiti: Selected Issues, 71, IMF Staff Country Report 05/205 (June 2005), available at <http://www.imf.org/external/pubs/ft/scr/2005/cr05205.pdf>.

175. Dan Schnitzer, *Avoid the Old Poverty Traps*, FOREIGN POL’Y MAG., Jan. 19, 2010, available at http://www.foreignpolicy.com/articles/2010/01/19/how_to_help_haiti_rebuild?.

176. *Id.*

177. See REPUBLIC OF HAITI, *supra* note 149, at 9.

178. *Id.*

179. *Id.* at 12.

improvement in agricultural production and tourism, as well as decentralization of power away from Port-au-Prince.¹⁸⁰ In addition, in February 2010, the G7 Finance Ministers announced that all bilateral debt extended to Haiti by the G7 nations had been forgiven, and they asked that the remaining \$1 billion in debt owed to the Inter-American Development Bank, Venezuela, the World Bank, and the IMF be cancelled.¹⁸¹

Notwithstanding these commitments, past policies advocated by major powers, such as the United States, France, the World Bank, and the IMF, have proven disastrous for the Haitian economy.¹⁸² Moreover, according to a World Bank report, 15 years of development assistance have produced “no noticeable effect.”¹⁸³ “Equally detrimental to Haiti’s economy ha[ve] been the unsuitable policies that the international financial institutions have advocated for the country” in the past.¹⁸⁴ Unable to compete with cheaper and subsidized food imports, the country has become dependent on them.¹⁸⁵

VI. REBUILDING HAITI’S DEVASTATED NATURAL ENVIRONMENT

Past governments have neglected Haiti’s natural environment and mismanaged its resources, rendering it vulnerable to natural disasters. The country

is one of the world’s most natural disaster-prone . . . due to its location in the high latitude tropics, [with] mountainous terrain rising to almost 2,700 metres above sea level Steep slopes alternate with a few arable plains and valleys bordered by rivers. This topography forces the population to farm the hillsides and reside in plains beneath now deforested watersheds.¹⁸⁶

Haiti’s widespread poverty is a cause and a symptom of the general deterioration of its natural environment. For example, “75 percent of the

180. *In Historic First, Sarkozy Visits Haiti*, MSNBC.COM, Feb. 17, 2010, http://www.msnbc.msn.com/id/35438470/ns/world_news-haiti_earthquake/ (last visited Jan. 29, 2011).

181. *G7 Nations Pledge Debt Relief for Quake-Hit Haiti*, BBC NEWS, Feb. 7, 2010, <http://news.bbc.co.uk/2/hi/8502567.stm> (last visited Jan. 29, 2011).

182. Dupuy, *supra* note 5.

183. *The Role for Canada in Post-Aristide Haiti*, *supra* note 158.

184. *Id.*

185. *Id.*

186. *Haiti: Saving the Environment, Preventing Instability and Conflict*, Policy Briefing, 2009 INT’L CRISIS GROUP 1, available at http://www.crisisgroup.org/~media/Files/latin-america/haiti/haiti_saving_the_environment_preventing_instability_and_conflict.ashx.

country's energy demands are met with firewood and charcoal."¹⁸⁷ The United Nations estimated that in 2005, only 3.8% of Haiti's territory was still covered by forest.¹⁸⁸ The management of Haiti's natural environment must be a key element in any long-term development strategy for the country.¹⁸⁹ The vulnerability of Haiti to cyclical disasters has only pushed many Haitians further into poverty.

Before the earthquake hit, Haiti had been devastated by a series of hurricanes in 2008, and a food shortage in 2009.¹⁹⁰ The response to such disasters from the international community has historically been ineffectual and uneven,¹⁹¹ but support for Haiti's long-term development requires concerted, coordinated, and consistent action.¹⁹² These actions need to be coupled with institutional change on the part of Haiti's government; otherwise, effective change will not occur.¹⁹³

The collapse of important government buildings, as well as power plants, hospitals, and schools, have only exacerbated already immense development issues. Any recovery plan needs to focus first on restoring the basic services needed for survival. Jeffrey Sachs, director of the Earth Institute at Columbia University and the author of *End of Poverty*, argues that the recovery operation requires "a single, transparent, multi-donor recovery fund," such as the Inter-American Development Bank, to finance its survival and reconstruction.¹⁹⁴ IMF Chief, Dominique Strauss-Kahn, has repeatedly stated that something akin to the Marshall Plan is needed for Haiti, but with full ownership of the Haitian people.¹⁹⁵

Following the 2010 earthquake, donor countries came together again with the Haitian government in Montreal, Canada to build a strategy for

187. Jeneen Interlandi, *The Looming Threat*, NEWSWEEK, Jan. 25, 2010, available at <http://www.newsweek.com/2010/01/24/the-looming-threat.html>.

188. UNstats, Millenium Indicators, <http://unstats.un.org/unsd/mdg/Data.aspx> (follow hyperlink for Goal 7 and then Goal 7A) (last visited Jan. 29, 2011).

189. Interlandi, *supra* note 187.

190. See Erickson, *supra* note 1 (discussing the 2008 food riots); see also Paul Collier & Jean-Louis Warnholz, *How to Help Rebuild Haiti: Endow a Multibillion-Dollar Haiti Fund*, FOREIGN POL'Y MAG., Jan. 19, 2010, available at http://www.foreignpolicy.com/articles/2010/01/19/how_to_help_haiti_rebuild? (stating that "four hurricanes wreaked devastation," in 2008).

191. Dupuy, *supra* note 5.

192. See Erikson, *supra* note 1 (stating, "co-ordination will be key to reconstruction efforts in Haiti").

193. See Margolis, *supra* note 9 (stating, "[f]ood and medical help are essential, but Haiti also must have an effective government that cares for its desperate people. Otherwise, Haiti will again fall into the abyss the next time a major natural disaster occurs.").

194. Sachs, *supra* note 88.

195. Interview with Christiane Amanpour with Dominique Strauss-Kahn, Managing Director of the Int'l Monetary Fund, in Haiti (Jan. 22, 2010), available at <http://archives.cnn.com/TRANSCRIPTS/1001/22/ampr.01.html>.

the country's future, outlining a 10-year rebuilding effort.¹⁹⁶ The conference focused more on planning and needs-assessment, rather than on the commitment of funds.¹⁹⁷ However, it has been estimated that Haiti's reconstruction could cost as much as \$14 billion.¹⁹⁸

A central issue is whether donor countries will be working with Haiti's government to build its capacity to administer programs. In the past, faced with institutional weakness and corruption, the preferred approach has often been to circumvent government agencies in favor of NGOs, the private sector, and donor-directed projects.¹⁹⁹ There are an estimated 10,000 NGOs operating in Haiti.²⁰⁰ In his 2009 report for the U.N. Secretary General on Haiti's economic future, Paul Collier went so far as to propose the creation of an "Independent Service Authority" as a pilot project, through which money would come in from the government and international donors, be channelled to NGOs and the private sector on a contractual basis, and then be evaluated for performance.²⁰¹

Since the earthquake, Paul Collier has been promoting an economic development plan for Haiti that is centered on the garment industry.²⁰² Collier likens it to the opening of the American West: "[t]he earthquake could usher in such a boom in Haiti."²⁰³ Former President Bill Clinton, a U.N. Special Envoy to Haiti, shares the vision in which garments play a central role in Haiti's economy, arguing that "[t]he rich will get richer, but there will be a much, much bigger middle class, with poor people pouring into it at a rapid rate."²⁰⁴ Their argument is predicated on the assumption that the garment industry could quickly produce hundreds of thousands of jobs, due to an existing preferential trade deal with the

196. Alexandre Deslongchamps & Peter S. Green, *Haiti Seeks Reconstruction Aid at Montreal Meeting (Update 1)*, BLOOMBERG BUSINESSWEEK, Nov. 15, 2010, available at <http://www.businessweek.com/news/2010-01-25/haiti-premier-seeks-rebuild-help-at-montreal-meeting-update1-.html>.

197. *Id.*

198. Merle David Kellerhals, Jr., *Rebuilding Haiti May Cost \$14 Billion, Study Shows*, AMERICA.GOV., Feb. 18., 2010, <http://www.america.gov/st/develop-english/2010/February/2010021811337dmslahrellek0.898266.html> (last visited Jan. 29, 2011).

199. Paul Collier, *How to Fix Haiti's Fixers*, FOREIGN POL'Y MAG., Feb. 18, 2010, available at http://www.foreignpolicy.com/articles/2010/02/18/how_to_fix_haitis_fixers.

200. Michele Wucker, *Let Haitians Take the Lead*, FOREIGN POL'Y MAG., Jan. 19, 2010, available at http://www.foreignpolicy.com/articles/2010/01/19/how_to_help_haiti_rebuild?page=0,1.

201. Report from Paul Collier, Professor, Oxford U., to Ban Ki-moon, Sec'y Gen. of the U.N., *Haiti: From Natural Catastrophe to Economic Security* (2009), available at <http://www.focal.ca/pdf/haiticollier.pdf>.

202. Katz, *supra* note 163.

203. *Id.*

204. *Id.*

United States, and cheap Haitian labor.²⁰⁵ The deal in question is the Haiti Hemispheric Opportunity Through Partnership Encouragement Act, or “HOPE II,” which was passed by the U.S. Congress in 2008 and allows Haiti to export textiles duty-free to the United States for a decade.²⁰⁶ Collier and Clinton believe that alternatives to manufacturing—agriculture exports or natural resource exports—are much less likely to lift a country from poverty over the long term.²⁰⁷ However, Clinton and Collier fail to consider that “in 1984 . . . 125,000 Haitians were employed in light manufacturing. But within 10 years those jobs were gone, the result of . . . corrupt, incapable governments and resulting trade embargoes.”²⁰⁸

It is unclear whether cheap labor is the solution to Haiti’s chronic unemployment and poverty. This plan will only “take the jobs away from Dominican, Mexican, and Central American workers—and pay the Haitians even less for doing the same work.”²⁰⁹ Prime Minister Jean-Max Bellerive, has stated that the garment industry should not be ignored, but has also sought increased investment in more enduring sectors such as agriculture and tourism.²¹⁰

“The recovery effort after the 2008 disasters . . . was stalled by political deadlock, allegations of electoral fraud and corruption, infighting among wealthy elites, limited resources, and a lack of coordinated results-based management by Haiti’s aid partners.”²¹¹ In past efforts to develop Haiti “there was never enough money available to meet Haiti’s needs. Much of the money that Haiti did receive went to repaying debt and shoring up the currency, and too little was left over to invest in education, health care, and other essential infrastructure.”²¹²

“To avoid past mistakes, [Michele Wucker argues that] plans for recovery must actively involve Haitians and use the rebuilding as a chance to engage Haitian civil society.”²¹³ There must also be “more coordination among the over 10,000 NGOs working in Haiti.”²¹⁴ “The

205. *Id.*

206. *Id.*

207. See generally Jennifer Wells, *Haiti’s Garment Industry Hanging by a Thread*, THESTAR.COM, Oct. 15, 2010, <http://www.thestar.com/haiti/economic/article/875952-haiti-s-garment-industry-hanging-by-a-thread>.

208. Adrienne Arsenault, *The Experts Wade In, All Suggestions Welcome*, CBC NEWS, Jan. 20, 2010, <http://www.cbc.ca/world/story/2010/01/20/f-rfa-arsenault.html> (last visited Jan. 29, 2011).

209. David L. Wilson, “*Rebuilding Haiti*”—*the Sweatshop Hoax*, MRZINE, Apr. 3, 2010, <http://mrzine.monthlyreview.org/2010/wilson040310.html> (last visited Jan. 29, 2010).

210. Katz, *supra* note 163.

211. Collier & Warnholz, *supra* note 190.

212. Wucker, *supra* note 200.

213. *Id.*

214. *Id.*

Haitian government needs financial support and technical assistance to build its own capacity to partner with private groups.”²¹⁵ Clare Lockhart, co-founder and CEO of the Institute for State Effectiveness and co-author of *Fixing Failed States: A Framework for Rebuilding a Fractured World*, argues for training Haitians, but with full transparency in terms of funding.²¹⁶

Rebuilding Haiti clearly presents enormous challenges with respect to accountability and sustainability, particularly in the absence of local ownership or through imposed solutions of state-building.

On March 31, 2010, over 150 U.N. member states and international organizations gathered in New York and pledged \$5.3 billion over the next eighteen months for the Haiti recovery plan.²¹⁷ “As we move from emergency aid to long-term reconstruction,” stated Secretary General Ban Ki-Moon, “what we envision is a wholesale national renewal, a sweeping exercise in nation-building on a scale and scope not seen in generations.”²¹⁸ The amount pledged over the next three years totalled \$9.9 billion from 59 countries and international organizations.²¹⁹

There is, however, growing frustration with the provision of international aid to Haiti both in terms of fulfillment of donor country commitments and realization of earlier stated objectives.²²⁰ In January 2011, the Right Honorable Michaëlle Jean, Canada’s former Governor General and now the U.N. Special Envoy to Haiti, expressed exasperation with the lack of results, including the fact that one million Haitians remain in tent cities, deaths from cholera continue, and as a result this has left Haitians feeling “abandoned and disheartened.”²²¹ She has been critical of the international community and the manner in which it has honored its post-earthquake fiscal and development commitments to Haiti.²²²

Past patterns need to be broken to ensure state accountability, and to create institutions capable of meeting the most basic needs. Factors which have contributed to an ineffective government in Haiti include a “tradition of repression; the lack of consensus and an absence of vision among Haiti’s leaders; and the lack of legitimacy of state officials in the

215. *Id.*

216. Clare Lockhart, *Focus on the Structure of Aid*, FOREIGN POL’Y MAG., Jan. 19, 2010, available at http://www.foreignpolicy.com/articles/2010/01/19/how_to_help_haiti_rebuild?page=full.

217. Deslongchamps & Green, *supra* note 196.

218. *Id.*

219. *Id.*

220. *Haiti Raises Quake Death Toll on Anniversary*, CBC NEWS, Jan. 12, 2011, available at <http://www.cbc.ca/world/story/2011/01/12/haiti-anniversary-memorials.html>.

221. *Id.*

222. *Id.*

eyes of the Haitian population.”²²³

In the past, donor coordination has been problematic. Foreign assistance was fragmented, “poorly planned, mutually undermining . . . and of insufficient duration.”²²⁴ Moreover, foreign governments have assumed that “domestic economic growth would inherently and automatically yield social and political stability without taking into account the negative impact of regional and even global economic policies on the local economy.”²²⁵ Clearly, donor coordination continues to plague the reconstruction of Haiti. In fact, the U.N. Office for the Special Envoy for Haiti in its year-end (2010) report indicated that “[d]onors have disbursed 63.6% of that \$2.01 billion,” referring to only the amount promised for 2010, not the entire multi-year relief effort commitment package.²²⁶ The perennial problems associated with the delivery of aid to Haiti continue unabated, consistent with the historic challenges that have repeatedly manifested themselves.

VII. CONCLUSION

Past efforts by the international community to improve the quality of life and governance in Haiti have generally failed, and a new paradigm is needed. Hopefully, international organizations such as the United Nations, OAS, and CARICOM will learn from past mistakes and be prepared to implement a long-term leadership plan that actively involves the Haitian people.

International actors attempting to “fix” Haiti have essentially caused the state to fail in the first place. Although there are no simple solutions, by addressing the gaps of state failure and having a better understanding of the causes, it will at least be possible to work toward a framework for policymakers to better predict, prevent, and develop a global mode of statehood. There is an increasingly urgent need to build effective, capable, stable, and sustainable states in order to bring order and reduce poverty.

The growing disregard for Haitian political leaders has created a crisis of credibility within Haiti. A strong and sustained commitment to build democratic institutions, to promote the rule of law through a more merit-based appointment process, and to encourage orderly and systematic contributions from civil society, are all urgently required,

223. STATE FAILURE AND STATE WEAKNESS, *supra* note 4, at 299.

224. *Id.* at 300.

225. *Id.*

226. Office of the U.N. Special Envoy for Haiti, *Int'l Assistance to Haiti: Key Facts as of Dec. 2010*, at 1, available at http://s3.amazonaws.com/haiti_production/assets/22/1._Overall_financing_key_facts_FINAL_6_original.pdf.

and constitute key steps in the process of state-building.

Indeed, the situation in Haiti with respect to political stability and democratic reform has once again descended into a chaotic miasma that has pitted Haitian political figures against principal donor nations and international organizations. The obstinacy with which Haitian leaders have refused recommendations from the OAS to resolve the chaos that followed the November 28, 2010 election has led to potentially disastrous consequences for the people of Haiti. It has been reported that “the U.S. government warned that Haiti’s government risks losing aid for earthquake reconstruction if it does not accept the OAS recommendations.”²²⁷

The current reality is that Haiti is completely dependent upon external support structures, which provide financial contributions, foreign personnel, and an imposed security apparatus. Therefore, there must be sustained efforts to construct domestic governance institutions to avoid what could easily come to be a *de facto* trusteeship.

At present, there is perhaps an unprecedented level of resolve within the international community to assist Haiti, although as we have seen in early 2011, chronic and seemingly insoluble problems familiar to Haiti are appearing to undermine these commitments. The challenge, therefore, is to sustain and capitalize on this earlier resolve by creating stable domestic institutions, establishing workable infrastructure that will support economic recovery and self-sufficiency, and solve the country’s serious security problems.

The disastrous November 2010 elections, the conflict that has resulted in their wake, the ongoing failure to make substantive progress in restoring infrastructure, ongoing epidemics, chronic political instability, now further heightened by the return of Baby Doc, and the lack of progress despite the level of external financial assistance once again threatens to undermine and defeat yet another unique opportunity that emerged for Haiti following the tragic January 2010 earthquake. These developments in early 2011 are familiar to Haiti. One can only hope that with continuing outside assistance and direction this time the familiar pattern will not result in a familiar outcome.

227. Ingrid Arnesen & David Luhnow, *Election Dispute in Haiti Threatens Aid*, WALL ST. J., Jan. 22, 2011, available at <http://online.wsj.com/article/SB10001424052748704115404576096280418564212.html>.

