

WÒCH NAN SOLEY:

THE DENIAL OF THE RIGHT TO WATER IN HAITI

CHR&GJ
center for human rights and global justice
nyu school of law

Partners In Health

RFK MEMORIAL
CENTER FOR HUMAN RIGHTS

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The Center for Human Rights and Global Justice (CHRGJ) brings together and expands the rich array of teaching, research, clinical, internship, and publishing activities undertaken within New York University (NYU) School of Law on international human rights issues. Philip Alston is the Center's Faculty Chair; Smita Narula and Margaret Satterthwaite are Faculty Directors; Jayne Huckerby is Research Director; and Veerle Opgenhaffen is Program Director.

The International Human Rights Clinic at NYU School of Law (a program of the Center) provides high-quality, professional human rights lawyering services to individual clients and non-governmental and intergovernmental human rights organizations, partnering with groups based in the United States and abroad. Working as legal advisers, counsel, co-counsel, or advocacy partners, clinic students work side-by-side with human rights activists from around the world. The Clinic is co-directed by Professor Smita Narula and Professor Margaret Satterthwaite of the NYU faculty; Mattie Johnstone is Clinical Fellow and Michelle Williams is Clinic Administrator.

Partners In Health is a Boston-based non-profit organization committed to eradicating poverty, improving health and strengthening social justice around the globe. More than 20 years ago in Haiti, Paul Farmer began what would become a worldwide movement to provide community-based health care to those who need it most. While Haiti is PIH's largest project site, PIH also works in Boston, Peru, Russia, Rwanda, Lesotho and Malawi.

PIH operates by forming lasting relationships with in-country sister organizations that coordinate all program activities. Its sister organization in Haiti, Zanmi Lasante (ZL), is an independently-registered local organization. ZL is responsible for day-to-day operations of the health, socio-economic, education, and other projects successfully operating in Haiti.

Today, PIH and ZL have become one of the largest health care providers in central Haiti, reaching a catchment area of nearly one million people. Beyond its full-service hospital and socio-medical complex in Cange, PIH and ZL provide medical care through eight public health centers and hospitals in central Haiti and the Artibonite, where they have renovated dilapidated clinics, trained staff, and provided essential supplies, medicines, and equipment to a population of over 1 million. In addition, PIH and ZL implement other key projects including building houses, treating and preventing malnutrition, providing clean water, and improving access to education for children and adults to meet other critical needs of some of the most impoverished citizens in Haiti.

The Robert F. Kennedy Memorial Center for Human Rights (RFK Center) is a 501(c)(3) nonprofit charitable organization dedicated to advancing the human rights movement through long-term partnerships with courageous human rights defenders around the world. The RFK Center works under the direction of partners on the ground—recipients of the Robert F. Kennedy Human Rights Award—using innovative tools to achieve sustainable social change. These tools include litigation, technical initiatives, advocating with governments, UN and other international entities and NGOs, and launching consumer campaigns aimed at fostering corporate responsibility. By forging long-term partnerships with international human rights leaders and taking on their social justice goals, the RFK Center ensures that its work concretely contributes to important social movements and impacts the global human rights movement.

In 2002, the RFK Center awarded its Human Rights Award to Loune Viaud, the Director of Strategic Planning at Zanmi Lasante, one of the leading health NGOs in Haiti and the world. In partnership over the past six years, the RFK Center and Viaud have worked to transform the international community's interventions in Haiti, many of which undermine human rights, including the right to health. They have launched aggressive advocacy plans for government accountability in international financial institutions and to ensure that funds entering Haiti are implemented within a human rights framework.

The RFK Center is part of the Robert F. Kennedy Memorial (RFK Memorial) which was created in 1968 to carry forward Robert Kennedy's unfinished work supporting social justice and human rights. His family and friends created a living memorial that would inspire young people, fight injustice, and apply renewed energy and bold solutions to seemingly intractable problems. In addition to the RFK Center, the RFK Memorial supports investigative journalists and authors who bring injustice to light and encourage the human rights movement through the RFK Book and Journalism Awards. The *Speak Truth to Power* program educates the public on the value of the human rights and the courage of its defenders.

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DEDICATION

To the people of Port-de-Paix, Haiti, for their gracious reception of the investigative team; for their invaluable insight, participation, and support; and, most importantly, in the hope that their time of suffering in the sun may soon end with the realization of the right to the cooling life-force of clean, accessible, and sufficient water.

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PREFACE

Wòch nan dlo pa konnen doulè wòch nan soley.
The rocks in the water don't know the suffering of the rocks in the sun.
— Haitian Proverb

This report is the culmination of many years of work aimed at examining obstacles to achieving the right to health in Haiti. It is dedicated to the Haitian people, who have a right to clean water, to health, to food, and to a life of dignity, even though they live in one of the most impoverished countries in the world. This report is for the people of Haiti, who are so often treated as victims deserving of charity, but rarely as individuals whose rights should not be undermined by the political or other agendas of outside parties and foreign States.

The four organizations that authored this report have worked together for several years to uncover and expose the actions of countries, institutions, and non-governmental actors that stand in the way of Haitians' ability to enjoy their rights. What we have found—and what this report demonstrates—is that in countries like Haiti, where the State has inadequate resources to fulfill the rights of its own people, actors with greater resources often wield significantly more power than the State. This report argues that these powerful actors have corresponding obligations which they should observe. The impetus for our report was the disturbing reality that actions taken by particular governments, institutions, and non-State actors have persistently obstructed the rights of Haitians and the capacity of the Haitian State to ensure those rights, including the right to water.

Although the United States has a long and well-documented history of this kind of interference in Haiti's political and economic matters, one of the most egregious examples of malfeasance by the United States in recent years was its actions to block potentially lifesaving loans to Haiti by the Inter-American Development Bank (IDB). The IDB's mandate is to provide development and financial support for Member States in the Western Hemisphere. As the most impoverished nation in the region, Haiti has long been a prime candidate for IDB loans.

In July 1998, the IDB approved $54 million in loans for the Haitian government to implement water and sanitation improvements. One of the goals of these loans was to improve potable water and sanitation services and to establish a regulatory framework for the development of sanitation services. The original loan documents identified two communities in Haiti as recipients of the initial potable water assistance: Les Cayes and Port-de-Paix. The IDB had conducted extensive research on the water systems of both municipalities in 1997, focusing on the health impacts of the contemporaneous failures of the public water system and projecting that many of these health concerns would be ameliorated by the implementation of the IDB-funded water project.

By their own assessments, IDB officials believed that the socio-economic impact of the project in Port-de-Paix would be overwhelmingly positive, particularly because of its potential to alleviate common and dangerous water-related illnesses, such as gastro-intestinal disease. Further, the IDB anticipated a significant benefit to poverty reduction, largely because its loans would facilitate a decline of up to 90 percent in water costs for the poor. Despite the enormous potential benefits of the loans—and following approval and ratification of the loan package—the United States blocked the scheduled disbursal in 2001, effectively shutting down all prospects for the projects to proceed.

The widespread and devastating consequences of these actions forced our organizations to seek avenues to confront and bring to light the inevitable connections between health, water, and human rights issues in Haiti. It also forced us to recognize that the scope of complicity with policies like the one examined in this report went far beyond the United States and the IDB, to include a long list of countries and non-State actors. Those actors, in fact, played the role of passive bystanders—a stance that lost all credibility by the beginning of the twenty-first century—as Haitians suffered from an increase in violations of their basic subsistence rights. The IDB case exposes the dynamics behind the violation of basic human rights in the world's poorest countries.

Inter-governmental organizations, including international financial institutions (IFIs) and the States that form such institutions—in effect the international community—are able to turn a blind eye to the impacts of such policies because they are not forced to confront the human faces of those who die or become ill through their action or inaction. The international community does not go into the homes of families who have lost young children to water-related diseases, nor does it meet those who are sick and have no access to medical care or the clean water necessary to heal them or to prevent their family members from getting sick. It is not forced to witness young children traveling miles to gather often-contaminated water for their families, nor does it have to hear parents' daily anguish as they lament over providing their children with water they know will make them sick.

The investigators in our study did just that. We surveyed or interviewed nearly 70 families and met with hundreds of people in Port-de-Paix before preparing our findings. The conditions we found were far worse than originally expected: at the time of the study, there were no functioning public water sources in the city and 14 of 19 different sites throughout the city that investigators tested for water quality were bacterially contaminated. Access to health care was also found to be severely limited.

To make sense of these findings, and to analyze them through the framework of the right to water, we drew on two disciplines: human rights and public health. We believe that the methodologies used to produce this report—which have never before been employed in this manner in respect to Haiti—have allowed us to comprehend and assess violations of the right to water in what we believe is an accurate and holistic manner. We hope that our use of human rights, international law, and public health expertise engenders a rich public discussion with the capacity to spur real reforms, not only in Haiti, but in other impoverished countries facing similar challenges.

In addition to examining the status of the right to water in Haiti, this report offers recommendations for all actors involved in the water sector in Haiti. Specifically, we call on all those involved in the water sector, in addition to the government of Haiti, to adopt a human rights-based approach at all stages of intervention, from needs assessment and priority setting, to implementation and monitoring. Our hope is that, if systematically employed, the rights-based approach will not only shift the rhetoric of aid intervention toward a recognition of Haitians as legitimate rights-holders, but it will empower Haitians to demand that their rights be met, thereby transforming the human rights situation in Haiti. Given its focus on the empowerment of rights-holders, community participation is central to the rights-based approach. In recognition of this, community participation became a fundamental guiding principle for our work in Port-de-Paix. This report seeks to amplify the voice of the community so that it may be heard in the international and national arenas.

Our findings may be difficult to confront but, as always, the greater challenge lies in finding ways to transform these findings into action. The impact of actions taken by donor States and the institutions they largely control require that the citizens of those States—the "rocks in the water"—not turn away. We must strive to hold our own governments—and the institutions to which they belong—accountable and, moreover, we must commit to ensuring that the right to water is realized in rich and poor countries alike. We hope that you will join us by supporting our efforts so that the rights of the "rocks in the sun" may finally be realized.

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TABLE OF ACRONYMS AND TERMS

American Convention:	American Convention on Human Rights
American Declaration:	American Declaration on the Rights and Duties of Man
Assessment Report:	Environmental Impact Assessment conducted by the Inter-American Development Bank (1997)
CAMEP:	*Centrale Autonome Métropolitaine d'Eau Potable*
CEDAW:	Convention on the Elimination of All Forms of Discrimination Against Women
CHRGJ:	Center for Human Rights and Global Justice, NYU School of Law
COHRE:	Centre On Housing Rights and Evictions
CREPA:	*Conseil de Régulation de l'Eau Potable et de l'Assainissement*
CRC:	Convention on the Rights of the Child
EPA:	United States Environmental Protection Agency
ESCR Committee:	United Nations Committee on Economic, Social and Cultural Rights
FGD:	Focus Group Discussion
FSO:	Inter-American Development Bank Fund for Special Operations
Gourde:	Unit of Haitian Currency (1 U.S. Dollar = approximately 35 *Gourdes*)
GPS:	Global Positioning System
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
IDB:	Inter-American Development Bank
IFI:	International Financial Institution
IHRC:	International Human Rights Clinic, NYU School of Law
IMF:	International Monetary Fund
Loi cadre:	Haiti's draft water and sanitation sector framework law

MDGs:	Millennium Development Goals
MINUSTAH:	United Nations Mission in Haiti
MTPTC:	*Ministère des Travaux Publics Transports et Communication*
NGO:	Non-Governmental Organization
NYU:	New York University
OAS:	Organization of American States
ONEPA:	*Office National de l'Eau Potable et de l'Assainissement*
PEPA:	*Plateforme des ONGs en Eau Potable et Assainissement*
PIH:	Partners In Health
RFK Center:	Robert F. Kennedy Memorial Center for Human Rights
SMP:	Staff Monitored Program (by the International Monetary Fund)
SNEP:	*Service National de l'Eau Potable*
Treasury Department:	United States Department of the Treasury
UCAIHS:	University Committee on Activities Involving Human Subjects (NYU)
UDHR:	Universal Declaration of Human Rights
UN:	United Nations
UNICEF:	United Nations Children's Fund
URSEP:	*Unité de Réforme du Secteur de l'Eau Potable*
USED:	United States Executive Director's Office of the Inter-American Development Bank
WHO:	World Health Organization
ZL:	Zanmi Lasante

EXECUTIVE SUMMARY

Widespread lack of access to clean water ranks as one of Haiti's most significant obstacles when it comes to meeting basic human rights standards. Historical legacies of inequality, disempowered or corrupt governance, and persistent levels of extreme poverty have all contributed to the Haitian government's systemic inability to deliver clean water to its people. Lack of access to this crucial resource continues to impact all aspects of life for the vast majority of Haitians, contributing to poor health, food shortages, and diminished educational opportunities. The result: a vicious cycle of contaminated water consumption, ineffective public hygiene, persistent health crises, and—beneath it all—chronic and deeply embedded poverty.

Research undertaken in Haiti—both at the national level and in the coastal city of Port-de-Paix—has indicated that Haiti's water system is severely dysfunctional. Public water systems are rarely available throughout the year and close to 70 percent of the entire population lacks direct access to potable water at all times. Combined with unsanitary conditions, the lack of water is a major factor in exacerbating Haiti's health crises. Moreover, the problem is actually worsening, as shown by the fact that the percentage of the population without access to safe drinking water has increased by at least seven percent from 1990 to 2005.

Continual requirements to pay its debilitating debts—which date back to its early days of independence, when Haiti was essentially forced to purchase its freedom from the French for an exorbitant sum, and which has further amassed during two centuries of political turmoil, foreign occupation, and corruption—have left the Haitian government unable to funnel its limited resources into social infrastructure programs like water and sanitation systems, with catastrophic effects on the health and well-being of the Haitian people. In 2007, Haiti was ranked 146th out of 177 nations surveyed in the United Nation's (UN) Human Development Index, the lowest in the Western Hemisphere. The effects of limited spending on crucial social infrastructure reverberate across all but the very top social classes and throughout the country.

In 1997, an Inter-American Development Bank (IDB) report assessing some of the most dire infrastructure and resource problems in Haiti determined that "the potable water system in Port-de-Paix is functionally incapable of meeting the basic water requirements of the population." In 1998, this finding prompted the IDB to choose Port-de-Paix as one of two original project sites for a package of loans targeting infrastructure, quality, and water distribution systems in what it had concluded was one of Haiti's most under-resourced areas in terms of access to clean water and sanitation. Through this, Haiti faced a unique opportunity to vastly improve its public water system. Yet, in 2008—a full ten years after the IDB loans were first approved—the water projects have yet to be implemented in Port-de-Paix. This is largely the result of aggressive attempts by the U.S. government to block the disbursement of these loans, which not only halted the potential for progress in the target water delivery and infrastructure programs, but also dragged Haiti further into poverty and debt. The prolonged and deliberate nature of these delays—not to mention the additional financial costs to the Haitian government—has aggravated a context already severely weakened by a long history of suffering from a lack of basic resources.

This report represents a comprehensive attempt to address the failure to respect, protect, and fulfill the right to water in Haiti from multiple relevant vantage points, following extensive collaboration among our coalition of organizations, whose work in Haiti has led us all to draw

conclusions about the right to water that transcend our respective disciplines. To be truly comprehensive, our report follows a path that by necessity starts with a historical introduction to the roots of Haiti's complex economic and political problems. ***Chapter I*** explores the historical development of the troubled relationship between power and water in Haiti, tracing the nation's deep inequities, political problems, and resource constraints from its independence from France in 1804—when it first plunged into what would become a legacy of increasingly insurmountable debt—to its more recent history, which continues to be marred by intense political turmoil and ongoing attempts to climb out of debt. Emerging directly from these historical handicaps, Haiti quickly became a nation unable to meet its own basic needs, whose statistical indicators of health and wellness consistently place it far below its neighbors in Latin America and the Caribbean, and whose broken infrastructure clearly places its people in a perpetual state of emergency.

Having set the stage, the report's ***Chapter II*** then turns to an examination of the events that started in 1997, when the IDB first concluded that the dysfunctional state of Port-de-Paix's infrastructure and the resulting lack of access to hygiene and clean water made it a prime candidate for a series of loans aimed at overhauling the water infrastructure. Providing extensive detail about the structure of the IDB's decision-making processes—and the role played by the United States within the organization—the chapter aims to provide a thorough understanding of exactly how the 1998 loan packages to Haiti were blocked. What emerges in this chapter is a high level of strategic interference by U.S. personnel to stall the disbursement of these loans indefinitely in order to use them as leverage for political change. The chapter concludes by observing that, as a result of U.S. interference—and IDB complicity—to stall the loans, ten years after the loans were first approved, the water projects have yet to be implemented in Port-de-Paix.

To fully understand the consequences of this deliberately orchestrated failure—and to set the stage for a rights-based argument later in the report—***Chapter III*** turns to a comprehensive assessment of why Haiti's drinking-water system is in a state of complete dysfunction, examining the issue on both a national and local scale. The chapter draws heavily on research undertaken by the authors of this report, using traditional international human rights methodologies, which included: interviews with Haitian officials and members of the public; direct observation of the systems under examination; participant observation; and review of primary and secondary literature concerning the Haitian water system. The chapter concludes that, despite the large amount of money already committed by the IDB, investigators found no tangible improvements in the system in Port-de-Paix.

Chapter IV expands on the report's overview of the water crisis in Haiti by presenting the findings of our research in Haiti, which entailed an in-depth community-based study on access to water in Port-de-Paix. Given the previous lack of systematic data available on Haitians' access to potable water in the areas that would have benefited from the IDB social sector loans, in 2007, the organizations that wrote this report collaborated on a full-fledged study. An interdisciplinary approach guided the study, which included a household survey, focus group discussions, in-depth medical history interviews, and water quality analyses at various sites. The study aimed at systematically documenting violations of the right to water in Port-de-Paix as defined by international standards and, more specifically, at assessing whether water was accessible, affordable, and of acceptable quality and quantity. In addition, the study aimed to document unfair burdens or discrimination experienced by particular groups, such as women and children, with respect to the right to water, as well as to describe and assess health outcomes that are prevalent in settings with compromised water quality. The in-depth results from the household survey—all documented in

this chapter—indicate that the water quality, quantity, accessibility, and affordability were considerably sub-standard with respect to international human rights norms.

The community-based study relied heavily on the normative framework contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) as elaborated upon by the UN Committee on Economic, Social and Cultural Rights—which recognizes the right to water as "inextricably related" to the rights to health, housing, and food and as fundamentally related to the right to life. In addition, our organizations also sought to establish a fuller understanding of the right to water by outlining all of the relevant sources and contents for legal protections of that right. The result is ***Chapter V***, which provides an overview of the legal rights implicated by the deficient water conditions in Haiti, and concludes that under international law individuals have a human right to the minimum set of resources required for human life—including water—and emphasizes that these legal protections generate a responsibility for States to respect, protect, and fulfill the right to water. The chapter then explains that under international law there are three primary factors relevant to determining whether the right to water has been respected, protected, and fulfilled: availability—the water supply for each person must be sufficient and continuous for personal and domestic uses; quality—the water required for personal and domestic use must be safe; and, accessibility—water and water facilities and services must be accessible to everyone without discrimination. It further determines that the right to water is inextricably linked to democracy, the rule of law, and development and that because these rights are domestically protected by the Haitian Constitution, Haiti has an obligation to safeguard these rights.

Chapter VI elaborates on this latter assertion, by detailing the Haitian government's responsibility to ensure the protection and achievement of human rights for those under its jurisdiction. Drawing on the understanding that a State's human rights obligations are based on national, regional, and international law, the chapter describes how, as the primary duty-bearer, the Haitian government is chiefly responsible for guaranteeing and fulfilling the human rights of all Haitians. The inability of many Haitians to access even the most basic forms of the right to water means that the Haitian population is suffering from widespread violations of the right to water. While the Haitian government is the primary guarantor of Haitians' rights, however, the international community is not without obligations. The chapter elaborates on this notion by examining how the principle of jurisdiction means that human rights treaty obligations apply both territorially and also to States' extraterritorial behavior. This has implications for States acting as members of international financial institutions (IFIs), as actions taken by these institutions may directly help with the fulfillment of human rights, or conversely, may harm the enjoyment of human rights. At a minimum, the report asserts that member States must abide by their duty to respect human rights in their actions as members of IFIs and that inasmuch as many of the IFIs' Member States have ratified core human rights treaties, including the ICESCR and the International Covenant on Civil and Political Rights (ICCPR), they are bound by the duty to uphold the rights enshrined by those treaties.

Drawing on all of these obligations, the report comes to the conclusion that U.S. efforts to block the IDB development loans constitute a direct violation of its human rights obligations. Not only did the Haitian people suffer as a result of the blocking of the loans, which were essential for the development of the water sector, but the government of Haiti paid arrears out of its budget in expectation that the loans would be delivered and that the IDB would fulfill its promise to implement the water projects. In this case, the United States actively impeded the Haitian

government's capacity to fulfill Haitians' human right to water through its actions, thus breaching its duty to respect human rights.

In ***Chapter VII***, this report concludes by emphasizing that in addition to the government of Haiti, all entities involved in the development and implementation of water projects in Haiti should adopt a rights-based approach. This is the most effective strategy since water projects are unlikely to succeed without a focus on accountability and sustainability. A rights-based development approach would integrate international human rights norms, standards, and principles into the plans, policies, and processes of development projects. It would privilege the individual as a "rights-holder," with the goal of providing people the collective power and capacity to change their own lives, both independently and through the institutions that represent or otherwise affect them. In Haiti, such an approach would enable Haitians to express their rights priorities, make demands on their government and donors, and have input on project design and modification.

Key elements to the rights-based approach include:

- *Empowerment*—power is transferred from the duty-bearer, who now has a legal responsibility to develop access to rights, to the rights-holder, who is entitled to a right rather than being a passive recipient of a charitable donation;

- *Indivisibility*—and interdependence—rights are indivisible, interdependent, and interrelated, and policies affecting one will impact the others;

- *Non-discrimination and attention to vulnerable groups*—there must be special consideration for vulnerable groups, with particular attention paid to those that have been historically excluded from the political process and prohibited access to basic services;

- *Accountability*—duty-bearers must protect and fulfill obligations as well as abstain from violating the rights of rights-holders; and,

- *Participation*—each level of the development process must involve a wide range of individuals and sectors and must include measures to address structural inequalities or disadvantages.

In order to comply with its international human rights obligations and to lay a solid foundation for the right to water in Haiti, the Haitian government should develop a national water strategy which follows a rights-based approach. With this foundation, all actors—whether States, international entities, non-governmental organizations (NGOs), or private water companies—would have to adhere to the principles of the national water strategy, which would include mechanisms for participation, transparency, and accountability. This approach would ensure coordination among the various entities involved in water projects in Haiti with the goal of strengthening the Haitian government's ability to respect, protect, and fulfill the right to water.

Without the rights-based framework described in this report, it is doubtful that Haiti's water and health crises can be resolved in any sustainable or meaningful way. We therefore urge all entities involved in the development and implementation of water projects in Haiti to adopt this approach in order to ensure that Haitians may realize their fundamental rights to good health and clean water.

I. POLITICS OF POWER: THE HISTORY OF WATER IN HAITI

Lack of clean water ranks high among the most severe of Haiti's many dire human rights challenges. In 2002, Haiti was ranked 101st out of 127 countries based on indicators such as the quantity and quality of fresh water; the existence of wastewater treatment facilities; and the presence of legal structures, such as pollutant regimes.[1] Problems with Haiti's water system did not develop in isolation; historical legacies and persistent, extreme poverty have long affected the Haitian government's ability to deliver clean water to its people. The effects of this severe deprivation reverberate beyond the basic capacity to drink or bathe; the scarcity of clean water impacts all aspects of life, from health and food to educational opportunities. Weakened by political violence, interference from external parties, institutional weaknesses, and a long history of crushing debt, the Haitian government has long been unable to provide reliable water to its exploding urban population or to its rural communities. This failure continues to feed a vicious cycle of contaminated water, weak public hygiene, poor health, and chronic poverty.

Nearly ten years ago, Haiti had a chance to greatly improve and extend its public water system through a set of loans from the IDB that were in part earmarked for the water sector. However, the United States interfered to block the disbursement of these already-approved and much-needed development loans, significantly undermining a rare opportunity for the Haitian government to pull the nation out of its cycle of entrenched poverty and underdevelopment. The result was that communities slated to benefit from the loans—including Port-de-Paix in northern Haiti—were left high and dry.

This chapter puts the current water situation into context by highlighting the relevant historical background and general social context in Haiti.

A. NATION IN JEOPARDY: HISTORICAL BURDENS AND CURRENT SITUATION

The Republic of Haiti is the only nation born from a successful slave revolution.[2] Haiti declared its independence from France on January 1, 1804, after a brutal 12-year revolutionary war.[3] In the decade prior to the revolution, living conditions for the majority of the population were inhuman, even by standards of the day. Colonists imported nearly 30,000 slaves each year, of whom approximately one-third died within one to two years.[4] The revolution claimed well over 100,000 Haitian lives and destroyed much of the country's colonial infrastructure, including its hospitals.[5] Most physicians fled the country during the revolution. Clean water, adequate sanitation, health care, and stable food supplies were virtually eliminated.[6]

Following this first successful anti-colonial uprising, Haiti entered a long period of extraordinary political and economic struggle for independence from foreign powers. To retaliate for Haiti's revolution, France and the United States enforced a commercial embargo in the early 1800s, which immediately crippled prospects for economic development by ensuring that the newly independent country was effectively prohibited from participating in the international economic community.[7]

In an attempt to end its isolation, the Haitian government struck a reluctant deal with the French government—under threat of military action and a reinstitution of slavery, with French warships anchored off Port-au-Prince—that initiated Haiti's foreign debt problem. In 1825, Haiti

agreed to pay France 150 million Francs (equivalent to $21 billion in modern U.S. dollars[8]) as compensation to former colonizers and the French government for property lost during the Haitian revolution, in exchange for a formal recognition of Haitian independence by the government of France.[9] The Haitian government, bankrupt at the time, was forced to seek loans from French banks to pay the exorbitant sum. In 1838, given Haiti's severe financial position, France reduced the debt it sought from Haiti by one-third, asking for 60 million Francs to be repaid without interest over 30 years.[10] Haiti made its final payment to France nearly 50 years later in 1883,[11] but it was not until 1947 that Haiti fully paid off its "independence debt."[12] At the end of the nineteenth century, debt repayments to France devoured nearly 80 percent of Haiti's budget, thus restricting its ability to develop agricultural systems and other basic infrastructure required for modern development.[13]

In the early twentieth century, Haiti—still devastatingly poor—increasingly fell under the United States' sphere of influence. In the context of internal unrest in Haiti and the geopolitical lead-up to World War I, U.S. Marines invaded Haiti in July 1915, where they remained an occupying force until 1934.[14] Armed popular resistance to the occupation began immediately and for the next 29 years, both U.S. and Haitian troops violently suppressed any stirrings of opposition or dissent.[15] During that time, the light-skinned mulatto minority consolidated its political and economic control over Haiti and remained the dominant force in Haitian national politics until François "Papa Doc" Duvalier was elected in 1957.[16] His son, Jean-Claude "Baby Doc" Duvalier, succeeded him in 1971.

The Duvalier family ran a brutal dictatorship that lasted nearly 30 years; the legacy of this regime continues to haunt Haiti today. When Jean-Claude Duvalier fled Haiti in 1986, he left behind a country in economic and political ruin. Almost half of Haiti's current debt was incurred during the 29-year reign of the Duvaliers. Cumulatively, the Duvaliers racked up some $900 million of debt in multinational and bilateral loans, a significant portion of which went toward their own individual spending purposes.[17] Calls for loan forgiveness for this odious debt have been largely ignored in the past;[18] however, recent developments may finally provide Haiti with a chance for development. On April 18, 2008, the U.S. House of Representatives unanimously passed the Hastings Amendment to the Jubilee Act for Responsible Lending and Expanded Debt Cancellation of 2008, calling for the cancellation of Haiti's international debt.[19] The amendment authorizes the U.S. Department of the Treasury to expedite the cancellation of Haiti's debts to the World Bank, the IDB, and other multilateral financial institutions, and to urge an immediate suspension of debt service payments from Haiti. Immediate debt cancellation and the suspension of debt repayments are vital to halting the debt repayments required in 2008, which still amount to $1 million per week.[20]

Political turmoil also clouds Haiti's more recent history. Haiti's first democratically elected government, led by President Jean-Bertrand Aristide, was overthrown by a violent military coup in September 1991, only seven months into its term. The subsequent military regimes that ruled Haiti from 1991 until 1994 utterly plundered the national treasury, while inflicting widespread violence and injustice on the general population.[21] Democracy returned to Haiti in 1994, when a United Nations (UN) multilateral force entered the country to restore peace and security and Aristide was reinstated as President.[22]

In order to rebuild the nation, Haiti took out a series of loans from international financial institutions that came with a strict set of conditions, including requirements to privatize state-owned enterprises, cut spending on social services, and liberalize trade policies.[23] At the same time, Haiti was working to repay its Duvalier-era debts to various international financial institutions.

Réné Préval succeeded Aristide as President and held office from 1996 until 2001, when Aristide was again elected President amidst allegations that run-off elections for several parliamentary seats had been improperly conducted.[24] These allegations spawned a dispute that was followed by widespread political violence and the shunning of Haiti in international politics, including through the imposition of development aid sanctions.[25] President Aristide was again ousted in February 2004; after Aristide's overthrow, political opponents reported being violently targeted.[26]

The current Haitian government is again headed by President Réne Préval, who was elected in February 2006, following two years of rule by a controversial transitional government that had no political mandate.[27] While the Préval government has worked to free Haiti of some of its debt, the task has proven to be extremely daunting. As of September 2007, Haiti's total external public debt was $1.54 billion.[28] Despite the recent passage of the Hastings Amendment to the Jubilee Act (discussed *supra*)—which authorizes the U.S. Department of the Treasury to work with international financial institutions to cancel Haiti's debts—it is too early to be confident about Haiti's debt burden being lifted in the near future.

B. THE LEGACY OF DEBT: A SNAPSHOT OF HAITI TODAY

In order to whittle down its debt burden, by 2003 the Haitian government was spending between $50-80 million annually in payments to various international financial institutions.[29] From 1991 to 2007, Haiti spent a total of $631 million in payments to creditors and that number continues to grow.[30] The requirement to continually pay off its debilitating debt has left the Haitian government incapable of supporting the basic needs of its population. The Haitian government has been unable to funnel its limited resources into social infrastructure, such as health facilities, water and sanitation infrastructure, and education. In 2003, for example, Haiti's debt service was $57.4 million, whereas the Haitian government's combined budget for education, health care, environment, and transportation was $39.21 million.[31] In 2005-06, Haiti's $25 million health budget was less than half the amount spent on debt repayments.[32] The government's inability to address pressing social concerns has had—and continues to have—catastrophic effects on the health and well-being of the Haitian people.

Statistical indicators of health and wellness consistently place Haiti far below its neighbors in Latin America and the Caribbean. In 2007, Haiti ranked 146th out of 177 nations surveyed in the UN's Human Development Index, the lowest in the Western Hemisphere.[33] At 60.9 years of average life expectancy, Haitians have the lowest life expectancy in the Western Hemisphere, compared with the composite average of 73.1 years for people living in Latin America and the rest of the Caribbean.[34] Infant and maternal mortality rates in Haiti are equally appalling: 57 per 1,000 live births and 630 per 100,000 live births respectively.[35] This is compared to an average infant mortality rate of 22.2 per 1,000 live births and 82.8 per 100,000 live births respectively for the rest of Latin America and the Caribbean.[36]

> *Pwoblem dlo a koz moun al mouri nan lanmè.*
> The water problem has caused people to die in the sea.
> -From a focus group of fathers in Port-de-Paix, Haiti.

The prevalence of disease and malnutrition is staggering in Haiti. The country is plagued by the highest HIV rates in the hemisphere, representing nearly 60 percent of the known HIV infections in the Caribbean.[37] Tuberculosis remains endemic and is a significant cause of mortality.[38] Malaria—nearly non-existent in many other Caribbean countries—remains a deadly problem in Haiti.[39] Even simple prevention measures, such as childhood vaccination for tuberculosis, are woefully lacking.[40]

Water-related diseases are also rampant throughout Haiti. For example, in 1999, infectious diarrhea was found to be the second leading cause of death in Haiti.[41] The World Health Organization (WHO) estimates that 88 percent of diarrhea cases in the world result from the combination of unsafe drinking water, inadequate sanitation, and improper hygiene.[42] In the same 1999 study, intestinal infectious diseases were the leading cause of under-five mortality in Haiti.[43]

Intestinal parasitosis and amoebic dysentery are common illnesses in Haiti.[44] *Fyèv tifoid* (typhoid enteric fever, caused by the *Salmonella typhi* bacteria) is universally feared in Haiti; diseases like typhoid are passed from person-to-person and only persist in settings of poor hygiene and poor access to clean water.[45] Haiti lacks the financial, infrastructural, and human resources to deliver crucial preventive health and medical services to its citizens. There are only 25 doctors, 11 nurses, and one dentist per 100,000 people,[46] a paltry figure when compared to the 118 doctors, 184 nurses, and 84 dentists available per every 100,000 people in the neighboring Dominican Republic.[47]

> *Dlo yo chaje ak mikwob.*
> The water is full of microbes/germs.
>
> *Anpil fyèv, se dlo ki koz yo.*
> Many fevers, it's the water that is the cause.
> -From a focus group of young men in Port-de-Paix, Haiti

Poor health and weak infrastructures are only two of the many ills that plague the Haitian people. For example, catastrophic deforestation is a tremendous environmental problem in Haiti,[48] where forest now covers a mere 3.8 percent of Haiti's total land area; this figure has continued to fall an average of 0.6 percent annually between 1990 and 2005.[49] This problem is deeply aggravated by the fact that the use of wood and wood-based charcoal represents 71 percent of Haiti's energy use.[50] Yet despite this over-reliance on charcoal, Haiti's most impoverished citizens do not cook with wood or charcoal. Rather, they harvest charcoal purely as a cash crop to pay for food, school fees, housing, and medical care, which only adds to the risk of deforestation, as even the newest saplings are continually pulled from the ground in a desperate bid for daily survival.[51]

Deforestation leads to soil erosion, decreasing crop yield and productivity, and thereby increasing the need for arable land and prompting further clearing of trees.[52] This cyclical effect extends into the energy sector, as the silt from eroded topsoil has clogged hydroelectric plants and bay waters, increasing Haitians' dependence on wood as an energy source.[53] Additionally, deforestation has been a principal factor in tragic flooding in recent years;[54] during 2004, floods produced by tropical storms led to thousands of deaths in Haiti.[55]

The dismal state of the agricultural sector has contributed to a cycle of increased hunger, a decline in national income, and the draining of government coffers, thus erasing any potential for success from state-sponsored reforestation programs.[56] The consequences of a failed agricultural sector are well-known by the Haitian people; the price of basic food staples has dramatically increased recently, resulting in widespread hunger and social discontent at the Haitian government's inability to provide basic necessities to its population.[57] The prognosis is bleak for both rural Haitian farmers and the urban populations that rely on their products as, "agricultural systems become more and more vulnerable to drought, while soil degradation following from erosion brings the specter of famine, notably to subsistence farmers."[58]

> *Pwoblem dlo a konn fè nou pa ka manje.*
> The water problem sometimes makes us unable to eat.
> -From a focus group of young women in Port-de-Paix, Haiti

The systemic problems described above are even more devastating when one considers the impact they have on the rights of individuals in Haiti. The effects of limited spending on crucial social infrastructure reverberate across all but the very top social classes throughout the country and the resulting challenges are felt in all aspects of Haitians' lives, making basic survival a daily struggle for the 78 percent of the population living on less than $2 a day and the 54 percent living on less than $1 a day.[59] As subsequent chapters show, all of these problems are painfully visible in the coastal city of Port-de-Paix, where the Haitian public water system has dramatically failed to deliver this fundamental resource to the people.

II. LOANS AND WATER: THE IDB LINK

A. OVERVIEW OF THE INTER-AMERICAN DEVELOPMENT BANK

Established in 1959, the IDB (or "the Bank") is the primary source of multilateral financing for economic, social, and institutional development projects in Latin America and the Caribbean.[60] With 46 members, the IDB is comprised of member States of the Organization of American States (OAS) and donor nations in Europe, North America, and Japan.[61] It is the world's largest regional development bank, lending more than $9 billion annually.[62]

The IDB's Board of Governors is charged with governing the IDB and bears ultimate responsibility for overseeing the Bank's activities and administration.[63] The Board of Governors also oversees the Board of Executive Directors, which oversees daily Bank operations; establishes Bank policies; approves projects (loans); sets interest rates for Bank loans; authorizes borrowings in the capital markets; and approves the institution's administrative budget.[64]

The Secretary of the U.S. Department of the Treasury (the Treasury Department) holds the position of U.S. Governor on the IDB's Board of Governors.[65] The U.S. Executive Director (USED) at the IDB is also an official of the Treasury Department and reports directly to it.[66] The IDB's and the Treasury Department's offices are inextricably linked, with staff from both regularly transferring between the two.

Voting power within the IDB is based on each member country's subscription to the IDB's ordinary capital. Each member country holds 135 votes *plus* one vote for each share it holds of ordinary capital stock of the Bank. Under this structure, the U.S.—as the largest individual shareholder at the IDB—controls 30 percent of the voting power.[67]

B. SOCIAL SECTOR LOANS TO HAITI

In 1998, the IDB approved four social sector loans for Haiti, including one for much needed water projects.[68] To address the failing water system, the IDB approved a $54 million loan and a $965,000 grant to improve potable water and sanitation services and to establish a regulatory framework for the development of a waste water service. At the same time, the project aimed to enhance, and subsequently to sustain, the quality and coverage of potable water services in ten urban centers and five rural and peri-urban communities.[69] The loan projects were designed to improve "the quality of life—particularly for women and children—and to reduc[e] incidence of disease and child mortality."[70]

The city of Port-de-Paix was to be one of the water loan's first project sites. In its 1997 environmental assessment report, the IDB found that the potable water system in Port-de-Paix was "functionally incapable of meeting the basic water requirements of the population."[71] It also found that the quality and quantity of the available water was inadequate and that the presence of bacteria concentrations in the water was in excess of WHO standards.[72]

The IDB social sector loans to Haiti were drawn from the Fund for Special Operations (FSO), a fund within the IDB which serves the most impoverished States in the Americas. By this standard, Bolivia, Guyana, Haiti, Honduras, and Nicaragua are the States which have access to the FSO. The FSO resources are used for grants, subsidized loans, and debt relief, and funding comes

through IDB member States' contributions.[73] All IDB decisions concerning the FSO must be adopted by a three-quarter majority of the total voting power of the member States.[74] As the United States holds 30 percent of the voting power, it has veto power over FSO actions, allowing it to effectively control all decisions concerning the FSO.[75]

After the IDB approved the social sector loans for Haiti in 1998, Haiti ratified them in early 2000, signaling its formal acceptance of the loans' provisions. In early 2001, the Haitian government paid its outstanding arrears (overdue debt) to the Bank and met other contractual requirements to secure the release of the IDB loans. Ordinarily, the process to disburse the loans should have begun at that time, but the U.S. government suddenly expressed "significant concerns" about disbursing the loans. Internal communications obtained through a Freedom of Information Act (FOIA) suit in the United States have revealed that these concerns were political rather than related to the actual loans or the capacity to implement them, and that the Treasury Department—in concert with the USED's office at the IDB—made continuous efforts to block Haiti's access to loans in response to these political concerns.[76]

Internal email exchanges from that time strongly indicate that a discussion had been taking place behind the scenes, through which the U.S. government had sought ways to tie the loans' release to unrelated political benchmarks it wanted the Haitian government to reach. As the Treasury Department and the USED's office worked to hold back the loans, they offered their release as a reward for political change in Haiti. In December 2001, the Treasury Department circulated the following language to its own staff and to that of the USED:

> In return for the formation of a [Provisional Electoral Council] formed on this basis, the [U.S.] Ambassador may tell Aristide that the U.S. would not oppose the gradual release of [the loans] provided that the conditions for their disbursement are satisfied … the U.S. would adopt a helpful posture in the IDB on the release of some of the resources pending in that institution. The Ambassador should stress that the U.S., however, believes it is inappropriate for pending resources to be released.[77]

The IDB's Articles of Agreement explicitly prohibit taking such political considerations into account:

> [t]he Bank, its officers and employees shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighted impartially in order to achieve the purpose and functions stated in Article I.[78]

Instead of adhering to the Bank's Articles of Agreement—to which it had committed itself to give "full force and effect" when it became a member[79]—the U.S. government demonstrated every intention of using its power within the IDB to tie the release of the loans to its definition of political progress. It subsequently began to explore avenues within the IDB to block the release of these loans.

Treasury Department officials approached Bruce Juba, Special Counsel in the USED's office, about the possibility of blocking the loans. Mr. Juba responded that because the four loans faced no legitimate technical obstacles and had already been approved, the United States could not use its veto power in the FSO to block their disbursement.[80] On this matter, he was unequivocal,

stating that: "The 4 loans approved by Parliament have NO obstacles to disbursement at this point," and that, "THERE IS NO 'VETO' UNLESS CONDITIONS PRECEDENT HAVE NOT BEEN MET AND A BOARD WAIVER IS REQUIRED." [81] (emphasis in original).

Met with this obstacle, Juba suggested a different way of achieving the same goal: the U.S. government could, through various means, "slow" the disbursement process. It could do this, he said, by requesting a report be submitted to the Board of Executive Directors, prior to disbursement, on the issue of the delay between the Board's 1998 approval and Haiti's 2000 ratification of the loans.[82]

The Treasury Department seized upon Juba's suggestion and—to implement this "slowing" tactic—began drafting a letter for the USED's, Lawrence Harrington to send to IDB President Enrique Iglesias. The letter asked that the Board of Executive Directors be briefed on the issue of the delay between the approval and ratification of the loans and also that the Bank's management develop a plan, for the Board's consideration, for dealing with loans that have had a protracted delay between approval and execution.[83] The true purpose of the letter was clear in Juba's reference to it by email, when he wrote to Treasury Department staff saying, "I hope to get final OK to have Larry Harrington sign [the letter] tomorrow. *While this is not a 'bullet proof' way to stop IDB disbursements, it certainly will put a few more large rocks in the road.*" [84] (emphasis added).

As this discussion was taking place internally within the U.S. government, it was clear that there was no valid reason to continue withholding disbursement. The fact that the concerns being raised by the United States were irrelevant was evident in a presentation by the IDB's Country Division Chief, Richard Archi, to IDB member States at a Haiti Informal Donor's Meeting at the World Bank on April 4, 2001. In his presentation, Archi confirmed that: the loans were current, as they had been updated the previous year; the OAS position on the political situation in Haiti was irrelevant to the IDB's disbursement process, contrary to the implication made by the U.S. government; and finally, that Haiti had only $800,000 of arrears at that time, which would not affect disbursement.[85]

With all of the Board's concerns addressed, there was no reason for the IDB to continue withholding the loan disbursements. Nonetheless, the USED's Harrington sent the letter drafted by the Treasury Department to IDB President Iglesias, expressing that although "disbursements could normally begin … we do not believe that these loans can or should be treated in a routine manner and strongly urge you to not authorize any disbursements at this time."[86] In addition, despite Archi's earlier assertions that the OAS position was irrelevant to the disbursement process, Harrington asked for a "clear legal opinion" on the status of the Haitian Parliament at the time of the loans' ratification, in light of a March 14 OAS resolution on the matter.[87] Harrington was persistent, making a second attempt to request a delay or non-occurrence of disbursal in July 2001, citing the "protracted lapse of time since Board approval" and stating that "We […] believe each loan needs to be discussed by the Board before any disbursements get underway."[88]

Soon after receiving Harrington's April 2001 letter, President Iglesias acquiesced to the U.S. government's request and invited the OAS—whose position on Haiti with respect to the loans was irrelevant—to make a presentation to the IDB Board of Executive Directors. In June 2001, the OAS held a meeting attended by most members of the IDB's Board of Executive Directors. During this meeting the OAS's Secretary General and Assistant Secretary General, despite having no authority over IDB decisions, suggested an approach that would be in line with the U.S.

government's political goals, but patently inappropriate under the Bank's own rules: that the disbursement schedule should be proportional to President Aristide's progress toward ending political problems between rival parties in Haiti.[89]

In October 2001, the "slowed disbursement" policy pursued by the Treasury Department and the USED came to fruition. They could now cite a formal justification for withholding the loans, as Haiti fell back into arrears long enough to trigger IDB policies that prevent the Bank from releasing loans when arrears have accumulated for too long. By November 2001, Haiti's arrears totalled $5.5 million, more than one-third of which ($1.9 million) was from the commitment fees[90] —fees which the Bank was charging to hold the four undisbursed loans[91]—which were accumulated during, and *due to*, the IDB's refusal to disburse the loans.[92]

As these events were unfolding, the politicized attempts by the USED and the Treasury Department to block disbursement were finally made public in November 2001, when then-U.S. Ambassador to Haiti, Dean Curran, stated, "There now are a certain number of loans of the Inter-American Development Bank that are not yet disbursed with the objective of trying to request of the protagonists of the current situation, in the current political crisis, to reach a compromise."[93]

Despite its internal actions, the Treasury Department immediately panicked at the overt link made by the Ambassador between the withholding of the loans and the U.S. government's political concerns. On December 3, 2001, the Treasury Department's Deputy Assistant Secretary William Schuerch sent an email to Treasury Department and IDB staff titled "URGENT–Haiti–State Dept. & Amb. Major screwup!!!"[94] Schuerch's email was preceded by one from a Treasury Department employee that articulated the reason for panic—the U.S. Ambassador to Haiti had "made a comment that is easily interpreted as linking the hold-up in disbursement of loans at the IDB to the U.S. government's political concerns."[95] The Treasury Department was well aware of the fact that such a link would be in direct violation of the IDB's charter, or Articles of Agreement. Indicating that the Treasury Department had feared that this connection would be exposed and subsequently publicized, the employee also wrote, "We have strongly made the point to State many times in the past (most recently at the August PCC) that this sort of connection is not to be made."[96] The implication was that the connection was not to be made publicly since internal documents demonstrate that the Treasury Department had been making it internally for almost a year.

Following Ambassador Curran's public statements, the Haitian government should have had no remaining doubts that the loans would not be released unless it met the U.S. government's political demands. It was therefore not surprising when Haiti stopped expending its limited resources to meet the IDB's technical requirements for disbursal. In early 2002, the Haitian government suspended loan payments to the IDB "because of the fragility of net foreign exchanges and in the conviction that the Bank would not be proceeding to the disbursement of the ratified loans."[97] Thus, by February 2002, the U.S. government's plan to block the loans had succeeded. With the Haitian government placed on non-accrual status due to its accumulation of arrears, the loans were blocked indefinitely by IDB policies which, though now legitimate, were only triggered because the Treasury Department and the USED's office had intentionally slowed the disbursement process.

In the fall of 2002, there appeared to be movement toward disbursement when the OAS passed Resolution 822, supporting the normalization of relations between international financial

institutions and Haiti.[98] This Resolution was not binding since the OAS never had the authority to block the loans, but its suggestion of normalizing relations was an indication of its influence in the matter. These efforts came too late, however, as by this point, even if Haiti had cleared its arrears, debt service and disbursement schedules would have left it with a negative cash flow through the following year. A $50 million fast-disbursing Investment Sector Loan was reformulated and put back on the table, but obstacles continued to arise for Haiti. In order to activate the fast-disbursing loan, Haiti was told that—among other things—it would have to agree to a Staff Monitored Program (SMP) by the International Monetary Fund (IMF), which would have required the Haitian government to implement severe economic reforms in Haiti, including the removal of its petrol subsidy, which would have an immediate detrimental impact on Haitians across the country.[99]

After months of negotiations, in June 2003, an SMP was finally approved for Haiti. A month later, Haiti nearly emptied its national reserves to pay $32 million in accumulated arrears to the IDB.[100] In response to these steps leading up to disbursement, the U.S. government raised new obstacles for Haiti. The Treasury Department's Under-Secretary for International Affairs, John Taylor, raised the issue of human trafficking in Haiti. In testimony before the Senate Foreign Relations Committee, Taylor stated that Haiti's failure to address human trafficking had placed it in Tier Three status,[101] to which sanctions applied, and that unless it made progress within the next two months, "the U.S. Executive Directors would be required to vote 'no' and use their best efforts to deny lending or other assistance to Haiti by the international financial institutions."[102] He made clear that "a 'no' vote from the U.S. would block assistance to Haiti."[103]

Despite U.S. government resistance, the IDB reactivated its Haiti loans program in August 2003. The reactivation included a reformulation of the Investment Sector Loan and streamlining of the social sector loans. Toward the end of 2003, the IDB began taking steps toward disbursing the social sector loans. Even at that point—two years after implementation should have begun—not a single member State had spoken out publicly about the U.S. government's actions in violation of the Bank's charter. Throughout the formal withholding of the IDB loans they had remained silent, though in private meetings with the RFK Center in early 2003 certain member States agreed that the U.S. government's actions were inappropriate under the Bank's charter; however, they felt that their hands were tied due to the U.S. government's power within the Bank.[104]

In February 2004—a few months after the IDB had begun to take steps toward disbursement—President Aristide was ousted from Haiti amidst allegations that the U.S. government had both directly and indirectly caused his fall through its successful efforts to block direct funding to the Haitian government. Given the dramatic changes at every level of government, the disbursement process was placed on hold before any funds had actually been released to the Haitian government.

Although the loans are now technically in the "implementation phase," ten years after the IDB loans were first approved, the water projects have yet to be implemented in Port-de-Paix, the planned site for the first water project. Although initial bids have been taken for the project and certain payments have been made, as of spring 2008, no infrastructural improvements were in evidence. Several attempts by the RFK Center to seek an explanation from the IDB's Washington, D.C. Public Information Center regarding the status of these projects were unsuccessful, despite the Center's promises to provide the requested information.[105]

III. HAITI'S BROKEN WATER SYSTEM

A. METHODS

This chapter presents information about the water system in Haiti at the national level and in Port-de-Paix. Research for this chapter was undertaken using traditional international human rights methodologies, including: interviews with Haitian officials and members of the public; direct observation of the systems under examination; participant observation; and review of primary and secondary literature concerning the Haitian water system.

B. SCOPE

This chapter focuses on the Haitian water system as it relates to potable water. It refers in places to hygiene and sanitation systems insofar as they are directly relevant to drinking water. The chapter does not, however, provide a full picture of the water system in relation to all uses of water, including, for example, sanitation, household uses other than drinking, or irrigation.

C. OVERVIEW: A BROKEN SYSTEM

Haiti's dysfunctional water system is marked by a widespread lack of access to safe water. Recent studies demonstrate that only 55.2 percent of the population has access to an improved water source,[106] while close to 70 percent does not have direct access to potable water.[107] These figures, however, almost definitely overstate Haitians' access to improved water sources, since public systems are rarely available year round. As the World Bank has reported, "[i]n almost all urban areas water supply is intermittent."[108] In rural areas, water often becomes very difficult to access during the dry season.[109]

The lack of access to water is aggravated by unsanitary conditions; only 27 percent of the country benefits from basic sewerage,[110] and 70 percent of households in Haiti have either rudimentary toilets (34.9 percent) or none at all (34.7 percent).[111] Fecal contamination of the water supply is thus a leading cause of disease.[112] Both abysmal water coverage and poor sanitation are major factors in Haiti's health crisis.

As Haiti's Growth and Poverty Reduction Strategy Paper recently found, Haiti is "moving in [the] wrong direction" in terms of improving access to potable water.[113] According to the Haitian government, the percentage of the population *without* access to safe drinking water actually *increased* by seven percent between 1990 and 2005,[114] a clear indication that the Haitian water system is not only broken, but getting worse.

D. HAITI'S NATIONAL WATER SYSTEM

1. National Institutions

Two main agencies are officially charged with managing Haiti's water system.[115] The *Service National de l'Eau Potable* (SNEP), created in 1977, is responsible for water services outside of Haiti's capital.[116] The *Centrale Autonome Métropolitaine d'Eau Potable* (CAMEP), created in 1964, manages water in Port-au-Prince.[117] Although both SNEP and CAMEP are meant to function under the

supervision of Boards comprising representatives of various Ministries, no such Boards have actually been active for more than a decade.[118] Both agencies are currently supervised solely by the Ministry of Public Works, Transport, and Communications (MTPTC).[119] In 2006, SNEP published a national water strategy for rural areas. Entitled *Directives Opérationnelles: Stratégie nationale de développement du secteur de l'Eau Potable et Assainissement en milieu Rural*, the strategy was developed with World Bank financing.[120] The General Director of SNEP told the investigative team in spring 2008 that SNEP is revising this document.

The World Bank has found that although "there are competent and motivated managers and staff in the public Haitian water system," financial means and political support are often lacking, severely limiting the capacity of these agencies to fulfill even their basic functions.[121] Indeed, as demonstrated above, these entities are not equipped to meet the potable water needs of the country's estimated 9.6 million inhabitants.[122] This reality is complicated by the fact that no agency in Haiti is charged with directing efforts to improve sanitation.[123] The Haitian NGO, FOKAL, has summed the situation up in this way: "Organizations and institutions develop in the absence of clear direction, approaches, and different techniques and technologies—sometimes antagonistic—which result in a great diversity of situations on the ground."[124]

Very few Haitian homes—in fact, only between two and eight percent—have household water connections.[125] In addition to being unable to provide adequate potable water, there are virtually no sewage or wastewater treatment facilities in Haiti.[126] Because of these inadequacies in Haiti's water and sanitation systems, all water is vulnerable to contamination and it is therefore imperative to treat it before consumption.[127] Since Haiti lacks treatment facilities, this decontamination must occur at the "point-of-use" in the household—although nearly 70 percent of households provide no treatment whatsoever.[128] The most common method, boiling, is vitiated by the difficulty and expense of acquiring cooking fuel in this heavily deforested landscape.[129] As one government water expert told the investigative team, "it's necessary to place 'potable' and 'pure' in quotation marks. One must speak of access to water, but not of potable water. The resources are not protected, there is no practice of [water] treatment, the infrastructure is weak, and there is also a persistent problem of pollution."[130]

2. The Role of the Private Sector

Households without access to official water providers often obtain their water from private water vendors (in the form of tanks, buckets, or bottles), surface water, and wells.[131] The private water sector developed in earnest in the 1970s and has expanded significantly since that time.[132] In many cities, tanker trucks are among the most important distributors of water.[133] Tankers fill from wells or other public sources and reports indicate that the only fees they pay are to the owners of the pumping equipment.[134] Having filled up—without payment—to the local community or Haitian government, the tankers then deliver water to owners of cisterns.[135] Institutions and affluent private homes with cisterns purchase water by the truckload; poor households depend on local cistern owners who purchase water by the tanker and then sell it again by the bucket.[136] Some cistern owners treat the water, or at least claim to do so.[137] Others sell water as it is delivered. As the World Bank explains, "[i]n urban areas, [Haitians] pay high prices to water tankers and for bottled water."[138] FOKAL has determined that "the poorest populations pay the most for water, because of the diversity of tariff systems and the [variable] availability of water."[139] Due to a lack of funding for government oversight, there is no system in place to regulate private water sellers.[140] This means

that there are no checks on the ability of the private sector to draw from public water sources, no regulations ensuring the quality of water sold by private companies, and nothing to ensure that prices are fair. Reports indicate that tanker companies make significant profits in this unregulated atmosphere.[141]

3. The Role of Non-Governmental Organizations

Non-governmental organizations (NGOs) of all sizes are active in the water sector—from local branches of large international development organizations to very small local Haitian organizations.[142] A consortium of NGOs active in the sector comprise the *Plateforme des ONGs en Eau Potable et Assainissement* (PEPA).[143] These NGOs tend to focus their activities on the provision of water services.[144] A few NGOs have teamed with pharmaceutical companies and engineers to provide effective and simple point-of-use chemical treatment systems,[145] but the effects have been modest at best: in rural areas, more Haitians use lime juice than chemical packets to disinfect their water.[146] Very few NGOs in Haiti conduct sanitation or hygiene[147] programs.[148]

On the national level, some NGOs work directly with SNEP or CAMEP, and others are entirely autonomous.[149] SNEP has made an effort to coordinate with NGOs in the past few years. In its 2006 Strategic Plan, SNEP stressed the need for NGOs to partner with the government on projects to improve the water system.[150] To this end, the 2006 Strategic Plan included a model partnership agreement to be jointly completed by NGOs and SNEP, and called on NGOs to recognize the important role that SNEP can play in ensuring that water projects are effective and sustainable.[151] Despite these efforts, SNEP's inability—as a practical matter—to compel such coordination is striking. The investigative team was told by individuals knowledgeable about the water sector that NGOs often intervene without even providing advanced notice to SNEP. One individual told the investigative team that SNEP's role is diminishing in relation to NGOs. The impact is to effectively reverse the usual roles: in some communities, SNEP seeks assistance and support from large, well-funded NGOs and the NGOs can choose whether to coordinate with the government or not. Moreover, research indicates that many donors who fund NGOs do not require that they coordinate among each other or with the government.

FOKAL has emphasized the problem of ownership over water projects set up by NGOs: often when NGO-installed systems break down, they remain indefinitely unusable, with water pipes "desperately empty" while the community searches for the "owner" of the system to fix the problem.[152] Sustainability and maintenance are thus enormous problems for NGO-based projects in Haiti. FOKAL summarizes the NGO situation this way: their "different approaches often involve a true cacophony, especially as this period corresponds to a decline of the state institutions with successive political crises."[153]

4. The Role of Donor States and the United Nations

Several donor States fund water and sanitation projects in Haiti. At various times, these donations have been designated for support of SNEP and CAMEP, usually through loans provided by the World Bank or the IDB.[154] At other times, donor states have channeled their aid through NGOs active in the water sector.[155] The investigative team was told by several individuals knowledgeable about the water sector that international donors often fund NGOs or UN agencies that may act in the water sector without coordinating their activities with SNEP. In some instances,

this has reportedly led to projects being implemented without any consideration for which areas have the most pressing need.

UN agencies have also been active in the water and sanitation sector, with the UN Children's Fund (UNICEF) consistently involved in the sector.[156] In recent years, the UN Mission in Haiti (MINUSTAH) has provided funding for 41 "Quick Impact Projects" relating to water, amounting to several hundred thousand U.S. dollars in small project assistance.[157]

5. Proposed Water Sector Reforms

Reform of the water and sanitation sector has been the subject of discussion among the government of Haiti, donor states, and international financial institutions for more than a decade. A draft water and sanitation sector law has been under discussion since 1996.[158] Some of the funds from the IDB's Potable Water and Sanitation Sector Reform and Investment Program Loans were earmarked for reform of the water sector. Although the most recent version of the draft framework law (*loi cadre*) was unavailable to the investigative team at the time of this writing, its basic outlines are well known. The 2006 version of the *loi cadre* would:

- Separate the policy and regulatory functions from operating functions;
- Decentralize the water and sanitation system through the creation of regional water and sanitation companies;
- Introduce public-private partnerships;
- Create a Water and Sanitation Directorate within the Ministry of Public Works;
- Allocate legal responsibility for sanitation to the public sector; and,
- Allow for the transfer of authority for water and sanitation to the municipal level once the relevant agencies have demonstrated their capacity to govern effectively.[159]

In July 1996, the *Unité de Réforme du Secteur de l'Eau Potable* (URSEP) was created by the *Ministère des Travaux Publics, des Transports et des Communications* (Minister of Public Works, Transport, and Communication) to oversee the reform of the water sector using the IDB loans.[160] A small coordination body, the *Cellule Eau Potable et Assainissement*, was created within URSEP to manage the loan implementation process.

Under the *loi cadre*, SNEP and CAMEP were to be dissolved and new agencies—the *Office National de l'Eau Potable et de l'Assainissement* (ONEPA) and the *Conseil de Régulation de l'Eau Potable et de l'Assainissement* (CREPA)—were to be created.[161] In the interim, URSEP has been charged with finalizing the regulatory framework for the new agencies and with promulgating policies for the imposition of tariffs, rules concerning levels of service, arrangements for decentralization, and rules for the participation of the private sector.[162]

FOKAL has analyzed the *loi cadre* and concluded that, while it is impossible to determine whether the new structure would be more effective than the existing one, the reformed sector promises greater participation by the local community.[163] Among the most striking elements of the *loi cadre* is a provision that, according to the World Bank, would allow municipalities to "delegate service provision to the private sector, municipal water companies, or water committees."[164] Without more information on the regulatory aspects of the *loi cadre*, it is difficult to assess how this kind of privatization would function. Reports indicate that plans include the installation of water

meters aimed at "making users responsible and avoiding waste."[165] The General Director of SNEP told the investigative team that water counters would be installed as part of the reform process and affected households would be expected to pay for water by the volume consumed.

E. THE WATER SYSTEM IN PORT-DE-PAIX

> *"Sometimes we are forced to drink water we know is bad."*
> *~ Port-de-Paix community member*

1. The Water System in Port-de-Paix in 1997

In 1997, the IDB conducted an Environmental Impact Assessment (Assessment Report) in contemplation of the Potable Water and Sanitation Sector Reform and Investment Program Loans. The Assessment Report provides a succinct snapshot of the system one decade before the investigation described in this Chapter and the household study discussed in Chapter IV were undertaken.

In 1997, Port-de-Paix had a population of 30,000.[166] The main source of drinking water was the Source de Cacao, which had been used by the town since 1955.[167] Water was piped into the town via PVC piping that had been installed in 1980 to replace the cast iron piping installed in 1955.[168] The IDB explained that water was kept in a reservoir 50 meters above sea level and piped to individual connections and public fountains in town.[169] "In spite of this infrastructure," the IDB concluded that, "the potable water system in Port-de-Paix is functionally incapable of meeting the basic water requirements of the population."[170] The failures had several causes: the unplanned multiplication of connections along the lines on the way to town, which siphoned water away from the town center; leakage in the lines; and, wastage when taps were left on due to the unpredictable nature of the flow.[171] In 1997, "the town centre receive[d] water daily to the extent that water actually reache[d] the town and other areas receive[d] water a few hours per week."[172]

The actual quality of the water was also determined to be dire: IDB analyses showed that "water at source de Cacao is bacteriologically contaminated above WHO drinking water guidelines as a result of human and agricultural activity," and that the chlorination plants were not functioning at all.[173] Drainage was equally poor: "gutters and drainage channels are in a poor state of repair and are frequently blocked. Consequently, storm water and greywater form puddles that constitute a health hazard; flooding after rains is common."[174] As for sanitation, the IDB found that solid waste was "not adequately collected or managed" and that "wastes are dumped near the sea at a site without any environmental controls. Solid wastes are also used to construct dikes along the Port-de-Paix River to minimize flooding."[175]

2. The Water System in Port-de-Paix in 2007

Based on data gathered by the investigative team, it is clear that the public water system has greatly deteriorated since the IDB planned its water sector loans in the late 1990s. Notably, the population of the city has exploded exponentially, with one estimate by a government official projecting a current population of around 100,000 people, a stark comparison to the IDB's 1997 estimate of 30,000 people.[176] Such a population explosion would have predictably stressful impacts on the water system; beyond the problem posed by potential overuse, however, the biggest concerns about the public water system in Port-de-Paix revolve around the safety, sufficiency, and accessibility of water.

According to SNEP officials, the public system does have water in the rainy season but during times of rain scarcity, the public system has very little water to provide to the population. At these times, SNEP divides the city into three parts, and each receives water once a week. Even when there is water in the public system, it is not potable. The local SNEP office does not have sufficient expertise, personnel, or materials to regularly treat the water. The office must rely on technicians to come from Port-au-Prince to treat the water. Local officials often wait four to five months for a technician to arrive. The local SNEP officials are willing to learn to treat the water, but despite their requests, they have not been provided with access to the necessary training. The investigative team has also been told by the director of SNEP in Port-de-Paix that the engineers employed by SNEP are civil engineers who themselves often lack specific training in water management.

Maintaining and repairing the system appears to be very difficult for local officials. During the course of our investigation into the water system in Port-de-Paix in June 2007, SNEP officials took the investigative team via "public transportation" to observe the pipeline that brings water from the Source de Cacao to the town below. "Public transportation" consists of a collection of privately owned compact pick-up trucks that carry 15 to 20 passengers in the bed of the truck for about 25 *gourdes* (approximately 65 cents). While this is neither a safe nor comfortable way to travel, it is the routine manner by which SNEP engineers travel the 12 miles outside of town to the trailhead that leads to the spring. To reach the spring, SNEP engineers hike approximately two miles from the trailhead. On the day of the visit, the investigative team and engineers began the hike to the spring; however, more than an hour into the journey, the team found that a mudslide had wiped out the hillside trail, making it too dangerous to proceed. Along with the trail, the mudslide had ruptured the major pipelines that carry the water to the municipality.



FIGURE 1.
A break in one of the pipelines leading to Port-de-Paix.

In the opposite direction, the trail runs alongside Port-de-Paix's public pipeline toward the city. Together, the engineers and the investigative team followed the trail away from the source, photographing and measuring additional ruptures in the line. They witnessed numerous smaller breaks in the pipeline. In many places, the PVC pipe was visible and exposed. Such exposure was frequently witnessed where the pipes encountered streams, or where landslides appeared to have washed soil out from under the piping.

SNEP officials announced that they would request funds from the main office in Port-au-Prince to purchase materials to repair the pipeline when they returned from this trip. Apparently the funds were not forthcoming and, as a result, the major break in the line caused a complete interruption in the public water system during the summer of 2007. Although it visited every public fountain in Port-de-Paix over the course of the six weeks it spent there during the rainy season, the investigative team never once observed water in the public system.



FIGURE 2.
A non-functioning public fountain in Port-de-Paix being used as a tethering stand for donkeys.

SNEP officials explained to the investigative team that even when funds are available, materials necessary for most repairs cannot be purchased in Port-de-Paix, but must be ordered from Cap Haitien, a painfully rocky four hour drive from Port-de-Paix. These financial and logistical difficulties mean that basic maintenance and repairs of the public water system are perennially difficult in Port-de-Paix.

3. Filling the Gap: Private Water Providers in Port-de-Paix

In the absence of a functioning public water system, private water enterprises provide water to the majority of the population in Port-de-Paix. The director of SNEP in Port-de-Paix told the investigative team that by his estimates, the public water system provides 20 percent of the drinking water in the city, while the private sector provides 80 percent. The private water system has developed in proportionate relation to the increased unreliability of the quantity of water provided by public taps. Because private taps maintain some consistency in their output, individuals began selling water from their private taps. To make up for any reduced frequencies in these private tap flows, households build cisterns to tide them over through the dry periods.

Although there are different estimates from various members of the community, some time between three and six years before the investigation, private companies began to fill the void left by the public system. These companies pump water from wells dug next to the Trois-Rivières and sell it to large tanker trucks. The trucks, in turn, sell the water to households that have cisterns or basins. Many of these households then resell the water by the bucket to families in their neighborhood. The departmental director of the Ministry of Public Health reported to the investigative team that an international organization studying the quality of water from such private cisterns in 2006 found high levels of sediments and bacteria.[177] This information is consistent with the findings documented by this study and discussed in Chapter IV.

There are five or six private pumping stations located on the western edge of Port-de-Paix where water trucks fill up. The investigative team visited four of these: *Mama Eau, Kler D'Eau, Jan-MMRR,* and *Sarafina*. Several of the companies that run the stations claim to treat the water with chemicals every four to six weeks; the investigative team was unable to determine what chemicals were used for this purpose or in what quantities. According to the personnel at the pumping stations, there had never been a dry spell in the preceding six or seven years that caused the wells to dry up.

A tanker truck can hold several thousand gallons of water. The cost of water to water retailers is determined on a per-truck basis and depends on the distance between the cistern and the pumping station. For deliveries nearest to the source, the cost of one truck of water in 2007 was about 875 *gourdes* (approximately $20); at the center of town, the same quantity costs about 1,000 to 1,250 *gourdes* (approximately $30); finally, on the farthest side of town, this amount costs about 1,500 *gourdes* (approximately $40). When water is resold by basin owners, the cost per five-gallon bucket also reflects the geographical differentiation in price. In 2007, water nearest the pumping stations cost four *gourdes* per bucket; in the middle of town, five *gourdes* per bucket; and at the far east of town, six to seven *gourdes* per bucket.

At least two private companies sell pre-packaged, treated water at 50 *gourdes* (or $1.25) per five gallon container, which is about ten times as expensive as water sold by local cistern owners and far more than most households can afford on a regular basis, considering an average daily income of $1 in most of the country.[178] Therefore, few households have consistent access to such pre-packaged, treated water. Water testing undertaken in the course of the household study discussed in Chapter IV found that—other than a single, salinated well—pre-packaged, treated water was the only potable water available to the public in Port-de-Paix.[179]

4. The Role of NGOs in the Water Sector in Port-de-Paix

A number of NGOs, including *Action Contre La Faim, Initiative Développement*, and a variety of smaller NGOs, have significant water projects in Port-de-Paix. The Director of SNEP in Port-de-Paix told investigators that NGOs coordinate their work effectively with the local SNEP office. Indeed, he explained that NGOs routinely ask for authorization to work on the water system and that such authorizations are memorialized through cooperation agreements—as set out in SNEP's *Directives Opérationnelles*—and reflected by the fact that SNEP often works on-site with NGO staff members. Demonstrating the difference between NGOs and the public water sector in Port-de-Paix, the director of SNEP told investigators that NGOs sometimes donate funds to his office.

5. Drinking Water for the Desperately Poor: *Sous Dlo* at Trois-Rivières

Desperately poor households without money to purchase water often travel to the Trois-Rivières to gather drinking water. Here they dig shallow holes in a dry area of the riverbed and wait for the holes to fill up with water; filtered of visible sediment by the soil, the water appears clear at first glance. Users then carefully scoop the clear water using a bowl or cup to fill their buckets. Although community members refer to these holes as "*sous dlo*," a Kreyòl term meaning groundwater spring, the water in these holes is nothing more than river water.[180] The investigation team observed the collection of water using such *sous dlo* on the banks of the Trois-Rivières.



FIGURE 3.
Water collection from a *sous dlo*.

Investigators also observed animals such as burros and horses tethered nearby, waiting to take their owners home. Their excrement was visible on the banks of the river near to where the *sous dlo* holes were dug. Water testing undertaken in the course of the household study discussed in Chapter IV found that this water was contaminated with bacteria.[181]



FIGURE 4.
Women washing clothes and donkeys tethered near the banks of the river and *sous dlo*.

Although no private company fills its trucks directly from the river, private pumping stations draw from the water table shared by this river. In addition to the *sous dlo*, households without the means to purchase drinking water also rely on unprotected wells and rainwater.

6. Sanitation in Port-de-Paix: Non-existent

According to the IDB's 1998 Environmental Impact Assessment Report, an estimated 75 percent of the households in Port-de-Paix relied on latrines for the disposal of sanitary waste, while a shocking 15 percent of households had no facilities whatsoever for the disposal of sanitary waste.[182] Ten years after the Assessment Report was published, there is still no functioning sanitation system in Port-de-Paix. The dismal sanitation system forces some households to use a small area of Port-de-Paix's coastline for sanitary purposes. There, solid waste lacks any public removal system; instead, the ditches and canals dug through the city for drainage fill up with solid waste, and pigs and goats can be seen picking through the trash. The solid waste blocks the drainage of wastewater and rainwater, causing water to stand in fetid pools and creating an obvious breeding ground for mosquitoes.



FIGURE 5.
Solid waste can be seen collecting in the Port-de-Paix river.
A large hog is resting in the collected waste.

7. The Status of the IDB Potable Water and Sanitation Sector Reform and Investment Program Loans

At the time of this writing, the water project in Port-de-Paix funded by the IDB loans was finally moving toward the implementation phase. However, although initial bids have been taken for the project and certain payments have been made, as of spring 2008, no infrastructural improvements were in evidence. The potable water and sanitation sector loans were originally meant to finance numerous projects in Port-de-Paix, including advancing the utilization of extensive groundwater sources beneath the mountains to the south and the rehabilitation of the existing system. More specifically, they included drawing supply from a water source which would require the construction of a new water intake structure and a transmission line; the installation of at least five points along the transmission line where water would be taken to supply rural needs; the construction of a reservoir; and the rehabilitation of the distribution network in the town. [183]

In addition, projects were intended to include the rehabilitation of both the reservoir and a transmission pipe already in place, as well as the construction of an equalization reservoir.[184] Also, Port-de-Paix's storm water drainage system was to be rehabilitated and 27 metered, public fountains were to be added to the town.[185] Other works that the IDB said it would finance in urban areas included the drilling and cleaning of wells and the supply and installation of pumping equipment and treatment facilities.[186]

In 2003, the IDB modified certain preconditions on the loans so that they could be disbursed.[187] Despite these shifts, implementation continues to proceed at an extremely slow pace.

During the course of the investigation described in this Chapter, bids were collected for numerous elements of the project in Port-de-Paix, including the extension and rehabilitation of the water distribution system and studies into options for the treatment of wastewater.[188] While information on the amount of funding that has been dedicated to Port-de-Paix under the loans has still not been made available, aggregate information—which includes projects in four other Haitian cities, as well as reform of the national water sector—is available. The following table shows the aggregate amounts for contracts of more than $1 million each that had been reported at the time since 2005:

	2005	2006	2007	2008
Goods	$1.3 Million	$9.9 Million	$9.0 Million	$3.3 Million
Consulting		$1.02 Million		
Grand Total	**$24.52 Million (Source: IDB website)**			

Despite the large amount of money already committed, investigators found no tangible improvements in the system in Port-de-Paix. An interview with a technical specialist engineer at the URSEP confirmed that "the contracts are already signed" for the IDB-funded project and anticipated that the projects would be completed by 2010.

According to the director of SNEP in Port-de-Paix, the project will include the construction of water kiosks. The URSEP engineer specified that 35 kiosks will be constructed in poor neighborhoods in Port-de-Paix. He also explained that the main firms involved in the implementation are Marvar and Associates, a firm based in the Dominican Republic, and SOHECO, a Haitian firm. A Canadian company is slated to provide project supervision. The projects are projected to be completed by July 2009. As for management of the rehabilitated system, the URSEP engineer explained that URSEP was studying the possibility of awarding a contract to a private international firm that would manage the system for two years, after which it would be self-managed.

The URSEP website explains that projects implemented under the IDB loans will operate under a "tariff policy," which will, "rest on the principles of economic efficiency, financial viability, and social equity."[189] The URSEP website further explains that tariffs will be "based on volume," and that meters will be installed in each connection, whether via kiosk or household connections.[190] This principle was modified somewhat by Emmanus Dorval of URSEP, who explained that tariffs for those who had the means to pay more would likely include surcharges to allow Haiti to repay the IDB loans, whereas poor households would only be required to pay tariffs that cover the functioning of the water system. The principle of pay-as-you-go must be modified by human rights principles before it is implemented in Haiti. Modifications that may be necessary include the provision of basic quantities of free water to the poor, the use of cross subsidies between high- and low-income users, and the use of subsidies for low-income users.[191]

IV. COMMUNITY FOCUS: RIGHT TO WATER STUDY IN PORT-DE-PAIX

A. INTRODUCTION

As of the summer of 2007, limited systematic data existed on the ability of Haitians to access potable water in areas that would have benefited from the IDB social sector loans.[192] Some country-level research had been conducted on access to clean water;[193] however, data from this research were not disaggregated by municipalities and did not focus on water as a human right. Recognizing the importance of reliable data in any advocacy effort, the International Human Rights Clinic at New York University School of Law, Partners In Health, Zanmi Lasante, and the Robert F. Kennedy Memorial Center for Human Rights developed a study to examine the right to water in Port-de-Paix, one of the municipalities scheduled for first-year projects under the IDB loans.

The study sought to systematically document violations of the human right to water in Port-de-Paix, Haiti, as defined by international standards. Specifically, the study assessed whether water was accessible, affordable, and of acceptable quality and quantity. In addition, the study aimed to document unfair burdens or discrimination experienced by certain groups (e.g. children and women) with respect to the right to water. The study also sought to describe health outcomes that are prevalent in settings with compromised water quality (e.g. high levels of diarrheal disease, child mortality, etc.).

No protocol within the legal arena existed for the type of human rights study needed to collect necessary data. The study was designed by adapting methods from the social sciences and public health, including surveys, participant observation, and focus groups. A legal analysis of the right to water laid the foundation for the design of each research instrument.

For this legal analysis, the study relied heavily on the normative framework for the right to water set out by the UN Committee on Economic, Social and Cultural Rights (ESCR Committee) in General Comment 15.[194] The ESCR Committee has identified the right to water as implicitly protected in Articles 11(1) and 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR): the right to an adequate standard of living and the right to the highest attainable standard of health.[195] Further, the ESCR Committee has recognized the right to water as "inextricably related" to the right to health, the right to housing, and the right to food, and considers it fundamentally related to the right to life—a right protected by customary international law.[196] According to the ESCR Committee's General Comment 15, the right to water must be treated primarily as a social and cultural good, before being recognized as an economic one.[197] The minimum core obligations in relation to the right to water can be summarized as entitling individuals to water that is sufficient in quantity, safe in quality, acceptable in taste and odor, physically accessible and affordable.[198] By focusing on these aspects of the right to water, the research instruments for the study were designed to elucidate the extent to which the people of Port-de-Paix are unable to enjoy the right to water.

B. METHODS

Port-de-Paix is a port city in the northwestern region of Haiti. It is the capital of the *Département du Nord-Oeust*. In 1997, when conducting its Environmental Assessment of the proposed water project, the IDB estimated the population of Port-de-Paix to be 30,000.[199] Based on the 2003

census data and the estimated annual increase for the department, the projected population of Port-de-Paix in 2007 was significantly higher.[200] Based on national estimates, it is likely that nearly 23,000 children under the age of five reside in the city.[201]

The study utilized both quantitative and qualitative methods. A household survey was conducted in randomly chosen households to collect quantitative data. Qualitative methods employed included participant observation, open-ended interviews, and focus group discussions. Focus groups were conducted with community members and key informants familiar with the water systems in Port-de-Paix. In addition, household survey data were also augmented by qualitative data drawn from in-depth medical interviews with a second set of randomly chosen households. The study was therefore able to provide information about the water infrastructure in Port-de-Paix and its impact on the local population.

1. Household Survey

The survey was administered through random cluster sampling of households in Port-de-Paix in areas that would have benefited from water infrastructure improvements if the IDB loans had been released in 2001. The investigative team included both Haitians and Americans with either legal or medical backgrounds. Since updated census data on Port-de-Paix were not available, sampling of clusters was performed using Google Earth and a handheld global positioning system (GPS) device. Using Google Earth, waypoints were marked on a digital map of Port-de-Paix, according to the estimated boundaries of areas that would have benefited from the proposed water project. Distances between the waypoints were calculated using the ruler function of Google Earth and the dimensions of the survey area were estimated at 8.1971 square kilometers.[202] Fourteen GPS clusters from within the survey area were randomly selected using a random number generator and then documented on the Google Earth map. Interviewers then used the GPS to locate the randomized cluster. The house closest to the GPS waypoint was marked using the GPS and this house was the first house surveyed in the cluster. In addition to the home closest to the waypoint, the next three houses closest to the waypoint completed the full cluster to be sampled. If a household did not agree to participate in the survey, the next house nearest to the north was surveyed. Two randomly selected clusters were not populated. Therefore, out of the remaining 12 clusters, 49 households were approached and 48 agreed to participate in the survey, resulting in an acceptance rate of almost 98 percent. In addition, there was missing information for three households, resulting in an effective sample size of 45 households.

The study questionnaire was structured and designed to collect quantitative data on seven general topics: (1) household demographics; (2) household water usage; (3) personal hygiene and sanitation; (4) children in the household; (5) general health; (6) household economic activity; and (7) household environment, including questions about housing, household hygiene, and household animals. The survey was designed to collect data that could be used to determine whether or not water in Port-de-Paix was sufficient in quantity, of safe and acceptable quality, accessible, and affordable. Items for the questionnaire were in part derived from key indicators and checklists developed by the Centre on Housing Rights and Evictions (COHRE) for use by States and those monitoring States.[203] While these indicators and checklists focus on State duties, they served as a model for developing standard questions appropriate for rights-holders. These questions were modified as needed to match the local context.

The questionnaire was prepared in English and then translated into Haitian Kreyòl. Upon arrival in Port-de-Paix, edits and changes to the instrument were translated directly into Haitian Kreyòl and the English version was revised accordingly. Prior to its launch, the investigative team obtained feedback from focus groups on those aspects of the right to water considered most important to the community. Given the rights-based approach of the study, the field team sought to encourage active participation of community members, to aid in capacity building, and to increase awareness of issues concerning the right to water.[204] The team then piloted the survey in two randomly selected homes in the community; the data from the piloted surveys were not included in the results of the formal survey. The English version of the survey instrument is included as an appendix to this report.

2. Focus Group Discussions

Focus group discussions (FGDs) were conducted at two stages in the study: before the implementation of the household survey and again at the conclusion of the study. Input received from community members in the initial focus groups allowed investigators to adapt the survey questionnaire to the local context. Further, the FGDs allowed for the collection of more in-depth, extensive qualitative data on the water situation in Port-de-Paix. FGDs also provided a forum for community participation and feedback regarding the objectives of the study.

FGDs were conducted exclusively in Haitian Kreyòl. The investigative team held focus groups with young mothers, older mothers and fathers, and young adults without children. Investigators chose to conduct the FGDs in these groups to solicit responses from a wide range of perspectives. Young mother FGDs provided input that included the point of view of children too young to participate. Older mothers and fathers added a broader perspective of the water system over time and the impact of the water situation on the population. Young adults without children contributed a unique perspective on the burdens of collecting water before school, not having water available in school, and the challenges of daily life without sufficient water.

Seven FGDs were conducted in total. Each focus group provided responses and feedback on 11 key factors impacting the quality, quantity, accessibility, and affordability of water in Port-de-Paix: (1) daily source(s) of water; (2) treatment of drinking water; (3) persons in the household in charge of collecting water and any interference on children's education caused by their collection of water; (4) whether the water situation has become better or worse in the last five years; (5) the health consequences of the water situation; (6) other consequences of the water situation; (7) impact of the cost of water; (8) public information about the water system; (9) participation in public discussion on the water system; (10) complaint mechanisms for problems in the water system; and,, (11) availability of water in public places.

3. In-depth Medical History Interviews

To complement the household survey, the study also involved in-depth medical history interviews, which provided a richer context for examining how the water situation has affected health in Port-de-Paix. The sample area for these interviews was a neighborhood south of the major commercial area in the city and north of the cemetery and hospital. Every tenth household was selected for an interview.[205] Twenty households were interviewed, with a total of 160 persons in the sample. The in-depth medical interviews were conducted by a physician fluent in Kreyòl with more

than ten years of experience working in Haiti. A Haitian bio-ethicist accompanied the physician for the interviews. The physician used an open-ended questionnaire based on the household survey for background information on the household and its water usage. The questionnaire included questions on: (1) the main source of water for the household; (2) the average number of times the household has no access to water; (3) the reasons for not having water; (4) the actions the household takes to fulfill its needs when no water is accessible; (5) if the household ever has to decide between buying food and buying water; and,, (6) whether or not the household currently had water at the time of the interview. After obtaining a census for each household, all members present at the interview were asked directly about their medical history. In addition, an adult member of the household provided medical histories for household members who were not present at the time of interview.

4. Water Quality Analysis

The quality of water was tested using a standard water testing kit appropriate for the field and based on U.S. Environmental Protection Agency (EPA) standards. The H_2O Watersafe Test Kit provided results on water quality.[206] For the purposes of the study, the level of bacteria in the water was the indicator of interest. Assessing the presence or absence of coliform bacteria is a standard method for evaluating bacterial content of water and also reflects the level of fecal contamination. The EPA sets the standard for the maximum level of microbial contaminants in water at zero since ingesting any amount of such contaminants can have adverse health effects.[207]

The investigative team used GPS cartography to map the location of water sources in communities in Port-de-Paix. Since the public water system was not functional at the time of the survey, investigators collected water directly from natural sources or private distributors, as these were sources used by the community. The investigative team chose 19 different sites that exemplified the different types of sources for evaluation of water quality. Bottled water purchased from a private treatment facility served as a control. Water collection sites included rivers in Port-de-Paix, the hospital, tanker trucks, treated five-gallon jugs, and household containers which held either rainwater or water from private cisterns. The investigative team followed a standard protocol for testing to ensure samples were not contaminated during the collection process.

a. Informed Consent

The New York University Committee on Activities Involving Human Subjects (UCAIHS) reviewed and approved the study design.[208] To obtain consent and maintain compliance, the investigative team designed and implemented all informed consent and study procedures in accordance with standards mandated by the UCAIHS. Accordingly, the investigative team stored consent forms for participation separately from all survey data and these forms did not contain information that would link participant information to survey data. In addition to confidentiality, the informed consent protocol emphasized the voluntary nature of the study and the respondent's right to end participation at any time. The study regarded the informed consent process to be an opportunity for community capacity-building concerning rights and entitlements. Therefore, the investigative team offered prospective participants education regarding the informed consent process and how it protects the rights of study participants.

b. Study Limitations

The sample size from the quantitative survey included 45 households, limiting statistical power. However, given the highly structured protocol for random selection of clusters and households, the sample offered a fair representation of the target area of Port-de-Paix and therefore provided useful descriptive statistics. Second, the highly sensitive nature of some of the survey questions may have caused some individuals to under-represent difficulties related to water or illnesses in the household. In some households, the investigative team perceived that the inability to purchase water or food for the household was a source of shame and felt that some individuals sought to portray a healthier image of the household than the reality. While investigators tried to create an environment where respondents could comfortably discuss these sensitive issues, inaccurate responses by some households in this manner may have underestimated the extent to which the right to water has been denied in the study community. Therefore, the data contained within the report allow for a conservative analysis of the extent of these denials.

c. Results

Empirical data were analyzed from 45 households randomly selected in Port-de-Paix to participate in a survey on the right to water. In particular, the study assessed the quantity, quality, accessibility, and affordability of water. Table 1 presents data that reflect the availability, quantity, and quality of water in the target area. Eighty percent of respondents indicated that water quantity had either declined or stayed the same in the five years before the survey was conducted, with 55.6 percent reporting that it had declined. The median number of buckets of water used on a daily basis was only three per household, or about 15 gallons of water per day. Although affordability of water was problematic for a large majority of people, 77.8 percent reported that they were unable to obtain water from their main source even when they had sufficient resources to purchase water, indicating that availability was also a significant challenge.

Table 1. Availability/Quantity and Quality of Water: Household Survey Results

Water quantity		
Status of water quantity in past five years: % reporting water quantity in past five years	Stayed the same	24.4%
	Declined	55.6%
Number of buckets of water for household used per household per day	Median number	3 buckets
Inability to obtain water from main source even when household had money	Unable to obtain	77.8%
Water quality		
Status of water quality in past five years: % reporting water quality in past five years	Stayed the same	35.6%
	Declined	53.3%
Water treatment at point of use (n=39)	Never	33.3%
	Sometimes	35.9%
	Often	15.4%
	Purchased Water	15.4%
Consistent access to treatment materials (n=20)	Never	20.0%
	Sometimes	55.5%
	Often	25.0%
***** Sample size is 45 unless otherwise indicated due to missing data or skip patterns in the questionnaire.		

According to the survey results, 88.9 percent of the population reported that water quality had declined or stayed the same in the past five years, with 53.3 percent indicating that water quality had gotten worse. Only 15.4 percent mentioned that their water was often treated at the point of use, versus 33.3 percent reporting that their water was never treated at the point of use. Nearly 20 percent indicated that they never had consistent access to water treatment materials. These data are consistent with the results of water testing performed by the investigative team: assessment of water quality at 19 different sites throughout Port-de-Paix indicated that 14 were contaminated with coliform bacteria (73.7 percent) (see Table 2). Of the five sites that tested negative, three samples were collected from treated water purchased by the investigative team from different vendors and one was collected from a covered well that was salinated, making the water suitable only for washing. Only a single water sample taken from household sites tested negative for coliform bacteria. A woman from this household told the investigative team that the owner of the private basin from which the water was purchased proudly tells customers that she treats the water regularly. Of interest is the fact that although the majority of the population had observed the water conditions worsening, only 24.4 percent had been given the opportunity to participate in public decision-making through meetings, neighborhood groups, community committees, etc., regarding the water system in Port-de-Paix.

BOX 1. QUANTITY AND QUALITY IN CONTEXT

WATER QUANTITY:
The WHO suggests a minimum of 20 liters of water per person per day for basic survival, and 50 to 100 liters per day per person to meet most health needs.[209]

The data from Port-de-Paix indicate that the average household consumption of approximately 15 gallons (57 liters) per day falls below basic survival according to WHO standards. Since mean household size in the study population was 6.5, this results in only 9.2 liters (2.43 gallons) per person per day on average, far below the quantity needed for basic survival.

An insufficient quantity of water is associated with negative health outcomes such as diarrheal disease, skin and eye diseases (e.g. trachoma), and typhus.[210]

WATER TREATMENT:
Due to the possible pathogenic contamination of the large majority of sources of water in Haiti, it is imperative to treat it before consumption.[211] Since many locations in Haiti lack treatment facilities this decontamination must be performed at "point-of-use" in the household.[212]

TABLE 2. WATER TESTING SITES AND SOURCES: WATER QUALITY ANALYSIS RESULTS

Test #	Site	Water Source Type	Bacteria Results
1	Pumping Station for Private Basins #1	Private basin	**Positive**
2	Trois-Rivières	Unprotected river/spring	**Positive**
3	Borehole dug off the banks of Trois-Rivières	Unprotected river/spring	**Positive**
4	Hospital Drinking Water	Private basin	**Positive**
5	Pumping Station for Trucks #2	Private basin	**Positive**
6	Water from Household #1	Private basin	**Negative**
7	Water from Household #2	Private basin	**Positive**
8	Pumping Station for Trucks #3	Private basin	**Positive**
9	Rivière Port-de-Paix	Unprotected river/spring	**Positive**
10	Community Well	Protected well	**Negative***
11	Culligan Sachet	Purchased bottled water	**Negative**
12	Culligan Bottled Water	Purchased bottled water	**Negative**
13	Water from Household #3	Private basin	**Positive**
14	Water from Household #4	Private basin	**Positive**
15	Water from Household #5	Rainwater collection	**Positive**
16	Treated five-gallon Bottle	Purchased bottled water	**Negative**
17	Water from Household #6	Rainwater collection	**Positive**
18	Water from Household #7	Private basin	**Positive**
19	Private Basin	Private basin	**Positive**
*Water from this site was reported as too salty for drinking by the local community.			

BOX 2. WATER TESTING SITES, SOURCES AND RESULTS IN CONTEXT

Using quantitative risk assessment analyses, a series of studies, from Lesotho to New Jersey, have found that the presence of certain bacteria (Coliform, Streptococcus, and Enterococcus) is associated with an increased risk of gastrointestinal illness.[213,214]

Children under five years of age, in particular, are at greater risk of malnutrition, dehydration, and mortality as the incidence of gastrointestinal illness increases.[215]

Table 3 (below) shows data that illustrate the accessibility of water in the target area of Port-de-Paix. The data indicate very limited access to improved water sources: 8.9 percent reported access to a protected well; 6.7 percent indicated that they had access to a public connection at some point during the previous five years;[216] 4.4 percent reported having access to a household connection; and 4.4 percent purchased bottled water. Overall, only 26.7 percent had access to at least one improved water source. The vast majority of households (82.2 percent) purchased water from a private basin, which in turn received water distributed by trucks throughout the city. Based on testing for the presence or absence of coliform bacteria, water from three different truck distributors came back positive, indicating that the water was unsafe for drinking at the point it was delivered to the basins.

TABLE 3. ACCESSIBILITY OF WATER: HOUSEHOLD SURVEY RESULTS

Primary sources of water for daily use[217]	Household connection	4.4%
	Public connection	6.7%
	Protected well	8.9%
	Unprotected well	8.9%
	Private connection	2.2%
	Rainwater collection	11.1%
	Unprotected river/spring	28.9%
	Purchase water from private basin (truck)	82.2%
	Purchase bottled water	4.4%
Number of times water is collected per day	Median	2-3 times/day
Time of day water is usually collected	4:01 a.m.-7 a.m.	55.6%
	7:01 p.m.-10 p.m.	2.2%
	10:01 p.m.-1 a.m.	2.2%
	1:01 a.m.-4 a.m.	4.4%
Amount of time it takes to collect water	Median (n=43)	25-35 minutes
	% 35 minutes or more (n=43)	44.2%

BOX 3. ACCESSIBILITY OF WATER IN CONTEXT

WATER SOURCE:
UNICEF's definition of an improved water source includes water from any of the following: household connection; public standpipe; borehole; protected dug well; protected spring; and rainwater collection. Access to an improved source or safe water supply can result in a significant reduction in a number of infectious illnesses, including diarrheal disease, intestinal worms, trachoma, schistosomiasis, and cholera. A significant degree of morbidity can be prevented, such as blindness from trachoma, severe anemia, and malnutrition. Worldwide, about 4 billion cases of diarrheal disease cause approximately 2.2 million deaths each year, primarily in children less than five years of age.[218]

WATER COLLECTION TIME:
According to the WHO, where a water point is farther than 100 meters from a household, or where collection time is greater than five minutes, it is unlikely that collection of water will reach the minimum requirement of 20 liters per person per day.[219] Since 44.2 percent of the study population's water collection time was 35 minutes or greater, according to WHO standards, this segment of the population has "no access" to water (defined as water collection time greater than 30 minutes, whereby adequate consumption "cannot be assured").[220]

The survey found that a large majority of the population obtains water from unimproved water sources. In addition, results show that the population spends a significant amount of time and resources to collect water: households collect water two to three times (median) per day and the median amount of time for each trip to collect water is 25 to 35 minutes; 44.2 percent of households spend 35 minutes or more. This suggests the median amount of time spent collecting water on a daily basis in Port-de-Paix ranges from approximately one to one and a half hours.

Households also collect water during the night or very early in the morning, with 55.6 percent collecting water between 4:00 and 7:00 a.m. and 4.4 percent reporting that they collect water between 1:00 and 4:00 a.m. Female adult members of households are most likely to collect water (57.8 percent); they are typically assisted by female (44.4 percent) or male (42.2 percent) children. In fact, 19.2 percent of respondents indicated that the collection of water prevents or inhibits their children from attending school. Access to clean drinking water is also very limited in schools: 73.3 percent reported that water was not available at school, with 55.3 percent carrying water to school and 60.5 percent purchasing water while attending school (see Table 4).

TABLE 4. IMPACT ON WOMEN AND CHILDREN: HOUSEHOLD SURVEY RESULTS

Members of household who collect water most frequently	Female child of household	44.4%
	Male child of household	42.2%
	Female adult member of household	57.8%
	Male adult member of household	33.3%
Water available at school for children	No	73.3%
When water (at no charge) is not available at school, method by which children have access to water at school	Carry water with them (n=38)	55.3%
	Purchase it at school (n=38)	60.5%
Collection of water prevents/ inhibits child's school attendance	Yes (n=26)	19.2%
* Sample size is 45 unless otherwise indicated due to missing data or skip patterns in the questionnaire.		

BOX 4. IMPACT ON WOMEN AND CHILDREN IN CONTEXT

A 2006 Tibetan study demonstrated alarmingly high rates of poor maternal and child health outcomes (e.g. miscarriage and infant loss, preventable childhood illnesses, hepatitis, tuberculosis, etc.) and showed a strong and significant association between morbidity and the time it takes to obtain water (OR=9.9).[221]

BOX 4.1. CHILDREN AT RISK

Children under five years of age tend to be particularly vulnerable to negative health outcomes when they lack access to adequate, clean water. They are at higher risk of malnutrition, dehydration, and mortality due to diarrheal disease, which is often caused by contaminated water in developing countries. UNICEF's recent *State of the World's Children 2008* report indicates that availability of safe drinking water is a key input for improving child survival throughout the developing world.[222]

Table 5 provides data on the affordability of water in the survey area; 60.0 percent mentioned that during the past five years, the price of water increased and 17.8 percent indicated the price stayed the same; 17.8 percent reported that it decreased. The median cost of a bucket of water was five *gourdes* (approximately $.13). A typical household using approximately three buckets per day

would spend approximately 105 *gourdes* (approximately $2.65) per week, which is more than 10 percent of the median household expenditure for basic necessities, which include food, water, medical expenses, and charcoal for cooking (see box 5 for Haitian household income averages). In addition 86.7 percent indicated that there were times when they could not afford to pay for water; this lack of affordability persisted even among those who spend more than 1000 *gourdes* (approximately $25) per week to cover basic needs (91.3 percent). When water is too expensive, individuals go to the highly contaminated and garbage-filled Trois-Rivières or Rivière Port-de-Paix to meet their household water needs, including for drinking (31.1 percent). In addition, some households forego bathing (22.2 percent) or cooking (26.7 percent) when water is not affordable.

TABLE 5. AFFORDABILITY OF WATER: HOUSEHOLD SURVEY RESULTS

Cost of a bucket of water	Median price	5 *gourdes*
Change in price of water over 5 year period	More Expensive	60.0%
	Less Expensive	17.8.%
	Stayed the Same	17.8.%
Are there times when you cannot afford to pay for water?	Always	20.0%
	Sometimes	66.7%
	Never	2.2%
	% among those spending more than 1,000 *gourdes* on basic needs	91.3%
Reasons for not being able to afford	Too expensive	2.2%
	Other necessary expenditures	2.2%
	Other economic problem	84.4%
How is water obtained if you cannot pay for it?	River	31.1%
	Forego bathing	22.2%
	Forego cooking	26.7%
	Buy water on credit	20.0%
	Ask for from friend or neighbor	46.7%
Does Household spend more money on water than food?	Yes	6.7%
	No	93.3%
Weekly cost of water	Estimate based on median of 5 *gourdes* per bucket and 3 buckets per day	105 *gourdes*
	As percentage of median household expenditure for basic necessities	10%
*500 *gourdes* =$14.22 as of 6/1/07 (time of study).		

Given the lack of access to and the limited affordability of water in Port-de-Paix, symptoms of infectious disease are highly prevalent. 84.4 percent of households reported at least one symptom of an infectious illness, such as fever (69.1 percent) and diarrhea (19.1 percent). At least two deaths in the last five years were documented among the study population; according to household

members, these deaths were linked with lack of recovery from illness. One of these deaths was of a three year-old boy hospitalized for two days with fever, who did not recover.

Participants indicated that their usual source of health services included a doctor or nurse (86.7 percent) or a religious leader or traditional medicine doctor (11.1 percent). A majority of the population reported that when they sought medical attention, they typically could not follow the prescribed treatment due to the expense (53.0 percent). Most households were found to practice basic hygiene: 100 percent indicated that they wash hands after using the toilet; 97.8 percent use water for laundry; and, 97.8 percent use water for food preparation. Of the households surveyed, 93.3 percent of participants reported bathing one or more times per day; 100 percent reported washing hands with 62.2 percent washing hands two or more times per day. Based on the report's finding that the median number of buckets of water used per day in households was three, it is likely that the reported frequency of hand washing and bathing reflects overestimates and may suggest a reporting bias. However, these estimates also indicate that the study population has a reasonable level of knowledge about basic hygiene.

BOX 5. AFFORDABILITY OF WATER IN CONTEXT

The average amount spent on water per person/day was 2.3 *gourdes*. Based on a GNP per capita of $400 (14,200 Haitian *gourdes*),[223] this indicates that, on average, the study population spent approximately 6 percent of their income on water in a given year. However, it is important to note that this is for a sub-standard quantity of water. For the average amount paid during the survey period for water to purchase 20 liters per person per day (the minimum requirement according to WHO),[224] each family would actually have to spend approximately 12 percent of their annual income on water.

To place this into context, for a family of four living at the poverty level in the United States ($20,444 per year),[225] this would be comparable to asking this family to spend nearly $2,500 per year for their water.

TABLE 6. IN-DEPTH MEDICAL HISTORY INTERVIEW RESULTS[226]

- The city of Port-de-Paix has one large public hospital— *Hôpital Immaculée Conception*, in which all care is provided on a fee-for-service basis. The water for drinking and bathing at the hospital comes from the same infected private wells that supply the majority of the water to Port-de-Paix.[227]
- Interviews uncovered a recent history of typhoid in 2.5 percent of respondents, and in 15 percent of household's surveyed.[228]
- Abdominal complaints were common, with more than one-third of respondents reporting gastrointestinal symptoms.
- Eighteen people (more than 10 percent) reported recent or active diarrhea.
- Nine respondents reported symptomatic parasitosis.
- 25 percent of homes had no water at the time of their interview.
- Five water samples were obtained from the 20 homes who participated in this health survey; all were bacterially contaminated, including two rainwater samples strongly suggesting that the storage vessels available to households in Port-de-Paix are a potential source of infection.
- Of the 160 individuals represented in this survey, less than half reported seeing a doctor in the last five years.

Data collected from the in-depth medical history interviews supported the data collected in the household survey. Out of 20 households, five had no water available in the household at the time of the interview. Further, five water samples were taken randomly from the 15 households participating in the in-depth medical interviews that did have water available. Two of the samples came from rainwater collection and three from water purchased from private basins supplied by water trucks; all five samples tested positive for bacteria. Three households reported a total of four illnesses that, after extensive questioning about clinical and treatment history, can be identified as cases of typhoid; therefore, 15 percent of the households interviewed reported probable cases of typhoid through self-report. Two cases of death over the previous five years—both of young people and likely from infectious disease—were reported among the 160 persons whose medical history was obtained.

> *Nou achté dlo pou lajan, men se maladi nou achté. Nou dépansé plis lajan toujou. Menm yon sèkèy vann milyon nan Pòdépè.*
> We buy water for money, but its sickness that we're really buying. We spend more money still. Even a casket costs thousands in Port-de-Paix.
> -From a focus group of fathers in Port-de-Paix, Haiti.

Of the 160 persons represented in the medical history interviews, less than half reported having visited the doctor in the last five years. Therefore, while data from the household survey indicated that the usual health service provider of more than 85 percent of participants was a trained medical professional, the qualitative interviews revealed that many cannot regularly access medical services.

V. THE RIGHT TO WATER: THE SOURCES AND CONTENT OF LEGAL PROTECTIONS

This Chapter provides an overview of the legal rights implicated by the deficient water conditions in Haiti. Individuals have a human right to the minimum set of resources required for human life—including water—as evidenced by international law through treaties and custom. These legal protections generate a responsibility for States to respect, protect, and fulfill the right to water. This requires that States refrain from violating the right, protect the right from being violated by others, and take positive steps toward the full realization of that right.[229]

The right to water is both an independent right and a component of other human rights. Some legal instruments enshrine the right to water as a right in itself, thus placing the entire power of the legal instrument behind the fulfillment of that right specifically. Other instruments do not explicitly protect the right to water, but rather envision protection of the right to water as one required element in the fulfillment of other explicitly-named rights. One scholar has concluded that water may not have been identified as an independent human right in many treaties because it is "so fundamental a resource, like air, that it was thought unnecessary to explicitly include reference to it at the time these agreements were forged."[230]

Access to adequate and healthy water is one of the most fundamental conditions for survival. It is both a right in and of itself, as well as a necessary factor for the realization of numerous other human rights, which together are essential for the achievement of basic human dignity. The right to water is a component of the right to health, the right to life, the right to an adequate standard of living, the right to adequate housing, the right to education, and the right to food. These rights are "inextricably related" to the right to water.[231]

Regardless of whether the right to water is explicitly or implicitly protected by human rights instruments, States have specific obligations under human rights law to ensure that it is implemented. To determine whether the right to water has been respected, protected, and fulfilled, three factors are relevant: availability, quality, and accessibility.

I. *Availability*—The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, sanitation, washing of clothes, food preparation, and personal and household hygiene.[232]

Availability: 77.8 percent of respondents in Port-de-Paix reported that when they had enough money to buy water they were unable to obtain water from their main water source.

II. *Quality*— The water required for personal and domestic use must be safe; therefore it must be free from hazards that constitute a threat to a person's health.[233]

Quality: 14 out of 19 sites in Port-de-Paix were contaminated with coliform bacteria (73.7 percent).

III. *Accessibility*—Water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State Party. Accessibility has four overlapping dimensions: physical accessibility, economic

Accessibility: 86.7 percent of respondents in Port-de-Paix indicated there were times when they could not afford to pay for water.

accessibility, non-discrimination, and information accessibility.[234]

Economic, social and cultural rights, such as the right to water, are inextricably linked to democracy, the rule of law, and development.[235] In Haiti, these rights are protected by domestic law—through the Haitian Constitution—and international law, through regional and international commitments by Haiti and the international community, as well as customary international law.

A. THE RIGHT TO WATER IS IMPLICIT IN THE HAITIAN CONSTITUTION

While the right to water is not explicitly guaranteed by the Haitian Constitution, it is implicitly provided for because it is necessary for the achievement of other rights that are specifically mentioned. Domestically, economic, social, and cultural rights are protected by the Constitution, the preamble of which states: "The Haitian people proclaim the constitution in order to . . . strengthen national unity by eliminating all discrimination between the urban and rural populations, by accepting the community of languages and culture and by recognizing the right to progress, information, education, health, employment and leisure for all citizens."[236]

The Constitution explicitly guarantees the rights to health, decent housing, education, food, social security, and work.[237] The right to water is a necessary precursor to the fulfillment of all of these rights; a more detailed discussion of how the right to water relates to each of these rights can be found in the following section.

B. THE RIGHT TO WATER IS BOTH EXPLICITLY AND IMPLICITLY PROTECTED BY INTERNATIONAL TREATIES

The right to water began to garner international attention in the 1970s when access to safe drinking water was declared a human right by UN member States in the Mar del Plata Action Plan, which asserted that regardless of a country's level of development, all people "have the right to have access to drinking water in quantities and of a quality equal to their basic needs."[238] Since that time, it has been explicitly and separately recognized in two major human rights treaties: The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[239] and the Convention on the Rights of the Child (CRC).[240]

In addition to explicit recognition of the right to water, international and regional human rights bodies and national and international courts have interpreted the right to water as being an implicit part of other human rights, such as the right to life, the right to health, the right to an adequate standard of living, the right to food, the right to housing, and the right to education.[241] These rights have been enshrined in both UN and regional human rights instruments, including: the International Covenant on Economic, Social and Cultural Rights (ICESCR);[242] the International Covenant on Civil and Political Rights (ICCPR);[243] the American Convention on Human Rights (American Convention)[244] and its Additional Protocol (Protocol of San Salvador),[245] and the American Declaration on the Rights and Duties of Man (American Declaration).[246]

1. Children are an Especially Vulnerable Group with a Greater Need for Clean Water

Children are considered a special category of persons under international law, particularly when it comes to the attainment of basic necessities, such as water. The right to water is particularly important for children because although adults and children both suffer from dehydration, research shows that infants can lose a critical percentage of the body's water faster than adults.[247] The CRC explicitly recognizes a child's right to water in Article 24 (2)(c) by requiring that State Parties take appropriate measures "to combat disease and malnutrition . . . through inter alia the … provision of adequate nutritious foods and clean drinking water."

Other international human rights instruments contain provisions that indicate that children hold a special position under international human rights law. Article 24 of the ICCPR mandates that the laws of a State Party must reflect the special status of a minor and afford special protection to children;[248] the Human Rights Committee has confirmed that Article 24 has a relation to economic, social, and cultural rights.[249] The ICESCR Articles 10(3) and 12(2) emphasize that children should receive special protection and that States should take steps necessary to ensure the healthy development of the child.[250] Access to clean and sufficient water is necessary to ensure the healthy development of children. Article 19 of the American Convention, Article 15 of the Protocol of San Salvador, and Article 7 of the American Declaration all contain similar specific provisions for children.

2. Women Have an Equal Right to Water

Right to Non-Discriminatory Access: Female adult members of households are most likely to spend their time collecting water (57.8 percent)

The burden of daily household duties, including the collection of water, has traditionally been placed on women, both in Haiti and throughout the world. Human rights law recognizes the discriminatory impact of the disproportionate burden on women and girls for household chores such as fetching water; the principle of full equality demands that steps be taken to redress this imbalance. Some international conventions attempt to redress this disparity by implicitly articulating a right of non-discriminatory access to water.[251] CEDAW, for example, explicitly recognizes the right to water in Article 14(2), which stipulates that States must make efforts to "eliminate discrimination against women in rural areas in order to ensure such women the right . . . [t]o enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply."

Article 26 of the ICCPR also prohibits States from discriminating against women. This is an independent non-discrimination and equal protection provision, which applies whenever a substantive right exists under the law. Thus, any legal protection concerning the right to water must be implemented in a non-discriminatory manner.[252] The Human Rights Committee has confirmed that Article 26's non-discrimination guarantee applies to all types of rights, including economic, social, and cultural rights, such as the right to water.[253] The Committee on Economic, Social and Cultural Rights (ESCR Committee) in General Comment 16 underlines the obligation of States to remove obstacles that prevent women from fully enjoying all economic, social, and cultural rights, including the right to water.[254] These provisions demonstrate that the right to water must be guaranteed in a non-discriminatory, equality-enhancing way to men and women.

3. Without Water, There is No Chance for Life

The right to life implies a corresponding right to the fundamental conditions necessary to support life, such as water. There is a strong factual connection between contaminated or limited water supplies and deprivation of life, including increased infant mortality, lowered life expectancy, and the incidence of an array of fatal but preventable diseases.[255] Without water, no human being can survive for more than six days; in fact, death by dehydration can occur in less than three days.[256] Thus, effective realization of the human right to life necessarily implies that there is an equivalent right to water and that the right to life is dependent on the achievement of the right to water. The "lack of access to drinking water and sanitation endangers the lives of millions of people who are consequently not guaranteed their right to life."[257]

Multiple international human rights treaties have recognized the right to life for all individuals. Article 6 of the ICCPR guarantees the right to life and the Human Rights Committee has called for a broad interpretation of this article, thus requiring that States take measures to "reduce infant mortality, increase life expectancy, especially . . . to eliminate malnutrition."[258] The CRC Article 6 recognizes each child's inherent right to life and requires that States "ensure to the maximum extent possible the survival . . . of the child."[259]

Both the American Convention Article 4 and the American Declaration Article 1 recognize the right to life. The right to life has been interpreted by the Inter-American Court of Human Rights as requiring States to ensure access to conditions necessary for a dignified existence;[260] the right to water can be considered one such condition, especially since the Inter-American Commission on Human Rights has directly linked the right to water with the right to life.[261]

4. A Healthy Body Requires Sufficient and Safe Water

The right to water is crucial to the successful realization of the right to health. The WHO has stated that a clean water supply and adequate waste disposal are of primary importance to basic standards for health facilities.[262] Many human rights treaties provide for a right to health for all individuals, visualizing a right to the highest attainable standard of mental and physical health.

The ICESCR Article 12 identifies water as inter-related to the right to health; by this definition, the right to health includes the "underlying determinants of health, such as access to safe and potable water."[263] The right to water is further recognized by the ESCR Committee in General Comment 15, which addresses the independent right of all individuals to accessible and quality water as "one of the most fundamental conditions for survival," noting that it is "inextricably related to the right to the highest attainable standard of health."[264]

Right to Health: 84.4 percent of households surveyed reported at least one symptom of an infectious illness, such as fever (72.3 percent) and diarrhea (26.0 percent). At least two people in the study group died from their inability to recover from these illnesses, one of whom was a three-year old boy.

The CRC Article 24 guarantees the right to the highest attainable standard of health; the Committee on the Rights of the Child has recognized that access to clean water is key to improving the health of children.[265] The CEDAW Committee has recognized that clean water is necessary for drinking and preparing disease-free food[266] and critical for the prevention of disease and promotion of good health care,

especially for lactating women.[267] Other instruments that codify the right to health include Article 10 of the Protocol of San Salvador and Article 11 of the American Declaration.

5. Without Adequate Water, an Adequate Standard of Living is Out of Reach

Article 11 of the ICESCR provides that State Parties must recognize the "right to an adequate standard of living, including adequate food, clothing, and housing, and to the continuous improvement of living conditions."[268] The ESCR Committee's General Comment 15 clarifies that Article 11 specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living "including adequate food, clothing, and housing."[269] The Comment stresses that the use of the word "including" indicates that this catalogue of rights was not intended to be exhaustive and that the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living.[270]

The right to an adequate standard of living is also recognized in CEDAW Article 14(2) and Article 27 of the CRC; the Committee on the Rights of the Child has recognized the necessity of sufficient access to drinking water and sanitary conditions in order to fulfill that right.[271] In addition, Article 11 of the Protocol of San Salvador protects the right to an adequate standard of living,[272] a right that has been affirmed by the Inter-American Commission on Human Rights.[273]

6. Education and Water: Inextricably Linked

Right to Education: 73.3 percent of households reported that water was not available at school.

A number of studies have linked access to water with increased attendance in school.[274] This can be attributed to a number of factors, including a decrease in time spent collecting water and positive health outcomes due to access to clean, disease-free water. Girls are especially affected because they are more likely to stay home to fetch water or care for the sick.[275] Girls, particularly after puberty, are more likely to skip school or drop out when the school does not have adequate sanitation facilities as they are unable to properly care for and clean themselves during their menstrual period.[276]

Right to Education: 19.2 percent of households indicated that the collection of water prevents or inhibits their children from attending school.

The right to education is recognized in Article 28(1)(e) of the CRC; the Committee on the Rights of the Child has urged parties to make certain that schools do not pose health risks to students by ensuring access to water and sanitation facilities in school.[277] The connection between the right to education and proper sanitation (right to water) was made in several concluding observations by the Committee on the Rights of the Child as well.[278] In addition, the right of women and girls to education is recognized in CEDAW Article 10,[279] and specifically requires State Parties to decrease the female student drop-out rate, which could be achieved, in part, by increasing access to water in schools. The right to education is also recognized in Article 13 of the ICESCR, Article 13 of the Protocol of San Salvador, and Article 12 of the American Declaration.

7. Food and Water: Basic Necessities

The right to food aims to guarantee that all people have the ability to feed themselves. People have a right to the basic amount of food necessary for survival, but they also have a right to food of high enough quality and quantity to live in adequate dignity. The right to water is an important element of the right to food; water is an integral component of an individual's nutritional requirements.[280] Furthermore, sufficient water for the irrigation of agricultural land is a key part of the right to food.[281]

Right to Food: When water is too expensive, 26.7 percent of respondents forego cooking.

The ICESCR Article 11 recognizes that all individuals have the right to adequate food and to be free from hunger. In addition to the protections found in the ICESCR, this right is also articulated in many other human rights instruments: CEDAW Article 12(2) recognizes the right of pregnant and lactating women to food and nutrition and CRC Article 24(2)(c) recognizes the right of children to adequate food and clean drinking water.[282] Furthermore, Article 12 of the Protocol of San Salvador and Article 11 of the American Declaration both recognize the right to food.

8. Adequate Housing Requires Access to Water

It has been recognized that the right to water is a necessary element for the fulfillment of the right to housing.[283] The right to housing is protected within Article 11(1) of the ICESCR.[284] The Special Rapporteur on the Right to Housing has affirmed that "access to safe drinking water and sanitation is intrinsically linked to full realization of the right to adequate housing."[285] Article 14(2)(h) of the CEDAW and Article 27(3) of the CRC protect the right to housing for rural women and children respectively. Article 11 of the American Declaration also protects the right to housing generally.

C. THE RIGHT TO WATER IS PROTECTED BY CUSTOMARY INTERNATIONAL LAW

In addition to the domestic law and international treaty commitments named above, the right to water is protected under other international instruments. These instruments are useful indicators of norms accepted by the international community and reflect evidence of political will to make access to water a priority. Furthermore, some international instruments have obtained the status of customary international law, thus creating legal obligations for States.

Customary international law is derived from a clear consensus among States as to a legal rule, which is evidenced by widespread conduct by States accompanied by a sense of legal obligation to adhere to such a rule, known as *opinio juris*.[286] The ESCR Committee has found that the minimum core of the main economic, social, and cultural rights have become customary international law and are thus binding on all States, regardless of whether they have signed or ratified treaties protecting those rights—a position supported by many scholars.[287] In addition, the right to life is protected by customary international law[288] and, as a necessary component of the right to life,[289] the right to water is thus implicitly protected by customary international law.

1. Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, articulates the basic human rights that should be guaranteed to all individuals. Though not originally meant to be binding, many scholars argue that through the emergence of State practice and new understandings of international law, the Declaration can be considered to have passed into customary international law.[290]

Article 25(1) states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care."[291] While water is not explicitly mentioned, the term "including" indicates that the list was not meant to be exhaustive but rather serves as an illustration of the potential factors that may be included in the attainment of an adequate standard of living.[292] It would not be possible to satisfy the standards articulated in Article 25 without access to a sufficient quality and quantity of water to maintain human health and well being.[293] Furthermore, Article 3 proclaims more generally that every individual has the right to life which, as discussed above, encompasses basic necessities for survival, such as water.[294] However, the view that Article 25—and specifically a right to water—has become a norm of customary international law is disputed by States themselves.[295]

2. Declaration on the Right to Development

In 1986, the UN General Assembly adopted the Declaration on the Right to Development, in which the right to development is described as an "inalienable human right by virtue of which … all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development."[296] Article 8(1) of the Declaration addresses access to basic resources; the inclusion of water as a basic resource is supported by the UN General Assembly, in Resolution 54/175, where it was acknowledged that, in interpreting Article 8(1), "the rights to food and clean water are fundamental human rights and their promotion constitutes a moral imperative for both national governments and for the international community."[297] As a non-binding General Assembly Resolution, the Declaration does not carry the force of law but, rather, is viewed as a reflection of the international community's aspirations.[298]

3. Millennium Development Goals

The Millennium Development Goals (MDGs) were established by the Millennium Declaration in 2000 and serve as a framework for developing and developed nations to work together for a "shared future."[299] Goal 7—ensuring environmental sustainability—contains within it the goal of "reducing by half the proportion of people without sustainable access to safe drinking water."[300]

Given the "universal participation of states in the preparation and adoption of the MDGs," it can be argued that at least some of the MDGs reflect norms of customary international law.[301] This claim is credible because the universality, content, and priority of the MDGs are not contested.[302] Furthermore, the MDGs have been "endorsed in an endless array of policy documents adopted not only at the international level but in the policies and programs of the national governments to whom they are of the greatest relevance."[303]

STATES' OBLIGATIONS TO SECURE HAITIANS' RIGHTS

A. HUMAN RIGHTS OBLIGATIONS: THE RESPONSIBILITY OF GOVERNMENTS TO RESPECT, PROTECT, AND FULFILL RIGHTS

Without corresponding responsibilities, legal rights would provide no real protection to individuals. The responsibility for the fulfillment of rights is therefore an integral part of all legal rights. Generally, the government of each State bears the primary responsibility to ensure the protection and achievement of human rights for those on its territory or otherwise under its jurisdiction. A State's human rights obligations are based on national, regional, and international law—both as codified in treaties and as developed in customary international law, which are legal norms widely accepted by the international community. This chapter focuses on international human rights law enshrined in treaties.

When a government consents to be bound by an international human rights treaty, that government assumes certain obligations that bind its actions from that moment forward. When a State *signs* a treaty, the State is required to refrain from any action that would contradict the object and purpose of the treaty, and when a State *ratifies* a treaty, the State is required to immediately take positive steps to realize the rights contained in that treaty.[304] Furthermore, even if a State has neither signed nor ratified a human rights treaty, it still has certain obligations stemming from customary international law, which protects the most fundamental human rights and which, as a general matter, applies to all States.

1. Types of Duties

Human rights treaties generally specify three different kinds of duties relating to the rights set out in the treaty: the responsibility to respect, the responsibility to protect, and the responsibility to fulfill.

- *Respect*—The obligation to *respect* requires governments to refrain from interfering directly or indirectly with the enjoyment of an individual's rights.

- *Protect*—The obligation to *protect* requires governments to prevent the violation of human rights by others. This means that States must take actions to prevent, investigate, and punish individuals, companies, or other entities that harm individuals' human rights.

- *Fulfill*—The obligation to *fulfill* requires governments to adopt whatever measures are necessary to achieve the full realization of human rights for all. This means that governments will be required to provide subsidies, services, or other direct assistance to the most vulnerable and needy members of society when they cannot otherwise access their rights.

Making Sense of Responsibilities:
State Duties to Respect Protect and Fulfill in Relation to the Right to Water
(As outlined by the Committee on Economic, Social and Cultural Rights' General Comment 15)[305]

Responsibility to Respect: In relation to the right to water, the obligation to respect means that States must, for example:[306]

- Ensure that government agencies or employees do not take any actions that deny or limit equal access to adequate water, for example by the arbitrary or unjustified disconnection or exclusion from water services or facilities, or discriminatory increases in the price of water.
- Ensure that the government does not arbitrarily interfere with customary or traditional arrangements for water allocation. This means, for example, that States may not arbitrarily deprive a community of its access to a traditionally used river or stream by building a dam or otherwise diverting the water source.
- Refrain from unlawfully diminishing or polluting water, for example, through waste from State-owned facilities or through use and testing of weapons.
- Ensure that they do not bar access to water as a punitive measure. This means that governments may not cut off or destroy water services and infrastructure in retaliation for the political views of a particular population or community. For example, governments may not shut off water supplies or block humanitarian water delivery to poor neighborhoods because they are seen as sympathetic to certain political parties.

Responsibility to Protect: In relation to the right to water, the obligation to protect means that States must, for example:[307]

- Formulate rules and standards for companies and other private water-sellers to ensure that water sold for drinking and household use is suitable for such use.
- Adopt laws and regulations to prohibit individuals, groups, and companies from denying equal access to adequate water.
- Prevent individuals, companies, and other entities from polluting or hoarding water resources, including natural sources, rivers, public fountains, and other water distribution systems.

Responsibility to Fulfill: In relation to the right to water, the obligation to fulfill means that States must, for example:[308]

- Adopt a national water strategy and plan of action to realize the right to water for all sectors of society.
- Ensure that water is affordable for everyone, and if it is not, provide free water or subsidies to those in need.
- Facilitate sustainable access to improved water, particularly in rural and deprived urban areas.

2. Whose Duties? To Whom?

States each bear the primary responsibility for the fulfillment of human rights for people within their territories and subject to their jurisdiction. States also assume certain obligations as a result of membership in the international community. A State's human rights obligations also apply when it acts as part of a multilateral or international organization, such as the UN or the World Bank.[309] In this way, the international community bears part of the responsibility for the achievement of individuals' human rights across the world.

As will be set out below, governments are obliged to respect, protect, and fulfill the human rights of all individuals under their jurisdiction—whether those individuals are within the territory of the State or come under the jurisdiction of the State through its extraterritorial actions. Governments also have the obligation to abide by human rights treaties when they act internationally in ways that affect other States, such as when engaging in development assistance or as members of international organizations. [310]

It is clear that governments must respect, protect, and fulfill the rights of all persons within their territory and subject to their jurisdiction. It is less clear what the exact nature of a State's duties is when acting within international organizations. What is clear is that—at a minimum—all States have an obligation to *respect* human rights at all times and in all places where the State acts—in other words, the human rights framework requires that States refrain from harming the human rights of individuals who are directly affected by their actions, regardless of where those people are located.[311] The obligation to respect applies in all circumstances, regardless of whether the individuals affected live inside or outside the territory, or whether the violation is taking place by one State individually or in concert with others.[312]

B. OBLIGATIONS OF THE GOVERNMENT OF HAITI

The Haitian government is primarily responsible for guaranteeing and fulfilling the human rights of everyone within its territory.[313] As *rights-holders*, all Haitians have a particular set of entitlements and the Haitian government—as the primary *duty-bearer*—has a particular set of corresponding obligations. The inability of many Haitians to access even the most basic forms of these entitlements means that the Haitian government is violating not only its constitutional obligations concerning economic and social rights, but also many of its treaty obligations guaranteeing basic civil and political rights, such as the right to life, personal liberty, and security.[314]

The Haitian Constitution requires the Haitian government to recognize and protect Haitians' rights to health, decent housing, education, and food.[315] Because the right to water is an important component of these rights, the Haitian government has a responsibility to ensure the full realization of the right to water through national legislation and policies. A national water strategy should elaborate how the right to water is to be realized and should include concrete goals, policies, and a time-frame for implementation.[316] Of course, many developing nations—including Haiti—may not have the necessary resources to immediately realize the right to water for their people. International human rights law recognizes these limits and allows States to bring about the progressive realization of economic and social rights, so long as they immediately and without discrimination meet the minimum core obligations and take steps to fulfill economic and social rights by allocating the maximum available resources for the realization of the full content of those rights.[317]

Haiti is a party to the ICCPR, the CEDAW, the CRC, the OAS Charter, and the American Convention; it is thus responsible for all the obligations found within each of these treaties. The Haitian government has signed, but not yet ratified, the ICESCR and the Protocol of San Salvador, both of which enumerate many of the rights at issue in this report; thus these treaties do not strictly bind the government of Haiti. However, as a signatory, Haiti has an obligation to refrain from actions that will frustrate the object and purpose of these treaties.[318] Furthermore, given that the Haitian Constitution protects the rights to health and food, the Haitian government has an obligation to ensure—at the very least—the satisfaction of minimum essential levels of each of these rights, of which access to water is an integral component.

Furthermore, the ESCR Committee has found that the minimum core of the main economic, social, and cultural rights have become customary international law and are thus binding on all States, regardless of whether they have signed or ratified treaties protecting those rights; this is a position supported by many scholars.[319] As discussed in the previous chapter, is it not clear that all elements of the right to water have reached the level of customary law; however, the minimum core of the right certainly has. In addition, some rights interrelated to the right to water—such as the right to life—are clearly part of customary international law and thus create binding legal obligations. Together, these obligations plainly mean that the Haitian State has the obligation to meet the minimum core requirements of the right to water necessary for human survival.[320]

Research for this report did not uncover evidence indicating that the Haitian Government has purposefully impeded access to water leading to a deprivation of life. Instead, there is evidence that the Haitian government has worked within its resources to bring clean water to communities throughout the country.

C. OBLIGATIONS OF STATES WHEN ACTING WITHIN THE INTERNATIONAL COMMUNITY

The fulfillment of human rights does not rest only with the Haitian government. While the government is the *primary* guarantor of the rights of Haitians, the international community is not without obligations and has a vital role to play to ensure respect for the basic rights of Haitians.[321]

1. States Have Extraterritorial Obligations under International Human Rights Law

Human rights treaty obligations apply not only within the territory of the signing or ratifying State, but also to a State's behavior outside of its borders through the concept of jurisdiction.[322] Many international human rights instruments refer to a State's jurisdiction—either in addition to or rather than—the State's territory, in defining the scope of application for treaty obligations. For example, the ICCPR speaks of "all individuals within [a State's] territory and subject to its jurisdiction."[323] The CRC speaks of "each child within [a State's] jurisdiction."[324] The American Convention requires member States to "respect the rights and freedoms recognized herein and [to] ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms."[325] While the ICESCR contains no jurisdictional clause, the relevance of the concept of jurisdiction instead of territory has been confirmed by the ESCR Committee in defining ICESCR obligations. For example, with regard to the right to water, the Committee has noted that "water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State Party."[326]

Beyond treaty obligations, many argue that States have an obligation to not violate customary international law in their extraterritorial activities.[327] As discussed above, the minimum core content of the right to water—as well as rights inextricably linked to the right to water, such as the rights to life and health—are themselves plainly considered part of customary international law.

Whether arising from international treaties or customary international law, States' international human rights obligations should not be considered to be limited to their territory: the strict territorial application of human rights obligations is now outdated.[328] This means that States must protect the human rights of all individuals within their jurisdiction, and that—with respect to the right to water—they should "refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries."[329]

State action on the international level can take many different forms, but the most relevant for this report is when States act individually on the international level, and when they act as members of international organizations, particularly international financial institutions (IFIs).

2. Obligations of States when Acting Internationally

The human rights of individuals in many parts of the world—including the right to water—are directly affected by the actions that some States take at the international level through international organizations, development programs, and, most importantly for this report, IFIs. The Maastricht Guidelines—which were developed by international human rights experts to clarify what actions constitute violations of economic, social, and cultural rights—assert that a State Party's duty to protect human rights extends to its "participation in international organizations, where they act collectively."[330] For example, donor States—defined as States involved in development assistance to other countries, either independently or through international organizations—play a part in ensuring access to rights in places far from their territory. Donors must take reasonable steps to ascertain how their donations have been used and are responsible for the role their donations may play in impeding access to rights.[331] Under emerging human rights law, donor States have identifiable obligations to ensure that their actions do not harm individuals' access to economic and social rights whenever they act in other countries or make decisions that affect those countries. In other words, donor countries have an obligation to ensure that their development assistance projects do not have negative rights effects, since such effects would violate the duty to respect human rights.[332]

In addition to development assistance activities as donor States, States' actions through membership in international organizations and bodies—specifically IFIs—may have an effect on the right to water outside their own territory.[333] IFIs may be best described as multi-State actors, since they are composed of member States.[334] States accede to IFIs by ratifying the relevant constituent treaties of the organizations, often in the form of the institution's Articles of Agreement. In so doing, States accept the "rights and obligations" associated with their membership and create the competence and structure of the IFIs themselves.[335] IFIs are the "sum of their parts, and the parts consist of member States, some with more power than others."[336] All member States that are party to these bodies share responsibility for the actions of that body. However, certain member States—by virtue of their disproportionate shareholding—exert more influence than others.[337] Indeed, rich States—most notably the United States—hold sufficient shares to block key IFI actions, as well as exercising influence in other ways, for example, by exerting political pressure and appointing IFI heads.[338] Through their actions within IFIs, States "greatly influence the resources available for

economic and social development necessary for the improvement in levels of human rights enjoyment."[339]

Actions taken by IFIs, as authorized by member States, may directly help with the fulfillment of human rights, through, for example, financing the construction of infrastructure needed to deliver and treat water. On the other hand, actions taken by IFIs may harm the enjoyment of human rights, through, for example, requirements that governments minimize social programs or privatize core services as a precondition to receipt of grants or loans. In such cases, the actions of IFIs may interfere with the target State's ability to fulfill its human rights obligations.[340] In order to effectively ensure the realization of the right to water, member States of IFIs must be held accountable for those actions they take through IFIs that have a direct impact on the human rights of individuals located outside their territory.[341] At a minimum, member States must abide by their duty to *respect* human rights in their actions as members of IFIs.[342]

The ESCR Committee—responsible for interpreting and monitoring compliance with the ICESCR—has made clear that States are bound by human rights obligations when acting as members of IFIs.[343] In particular, the ICESCR provides in Article 2(1) that States must "take steps, individually and *through international assistance and cooperation*" to fulfill the rights set out in the Convention.[344] The Committee has urged States—through its role monitoring compliance with the treaty—to abide by their obligations under the ICESCR during their negotiations with IFIs and to ensure that rights were not undermined in the process.[345] In addition, the Committee has repeatedly urged States "to do all [they] can" to ensure that the "policies and decisions" of the IFIs "are in conformity with the obligations of States parties under the Covenant."[346] Numerous Comments issued by the Committee—which clarify the content and meaning of rights, including the rights to food, health, and water—have espoused similar interpretations of treaty obligations.[347]

With regard to the right to water specifically, the Committee has noted, in General Comment 15, that "States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures."[348] Member States of the IDB are included in this reference and, as such, they are expected to ensure that the IDB does not take actions that would impede individuals' right to water. General Comment 15 further stipulates that "water should never be used as an instrument of political and economic pressure."[349]

Of course, States only bear human rights obligations insofar as they have contracted to do so by treaty or insofar as those obligations are recognized as customary international law. Many of the member States of IFIs have ratified core human rights treaties. Indeed, the vast majority of members of the World Bank Group and International Monetary Fund (IMF) are party to the ICESCR and the ICCPR, and many of these States exercise decisively large voting rights.[350] The ICCPR has been widely ratified—including by the United States—and can be seen as providing protections of the right to water as an element of the right to life, which is central to the ICCPR. In addition, the ICESCR has been ratified by all European Union countries, which are thus obligated to comply with its provisions. While the United States has not ratified the ICESCR, it has signed the treaty and thus must refrain from acting in a manner that would frustrate the object and purpose of the treaty.[351] Furthermore, many IDB member States are also members of the OAS and thus also party to the OAS Charter, as well as—depending on the State—a variety of treaties, including the American Convention and the Protocol of San Salvador. Moreover, as discussed above, the

minimum core content of the key economic and social rights are regarded as customary international law, binding non-ratifying States such as the United States.

Given all of these obligations, it is clear that actions taken by the United States in blocking IDB development loans earmarked for water projects in Haiti were a direct violation of the U.S. government's human rights obligations.[352] The Haitian people were injured twofold by this action; the Haitian government suffered as a result of the blocking of the loans themselves, which were essential for the development of the water sector. In addition, Haiti paid arrears out of its budget in expectation that the loans would be delivered and that the IDB would fulfill its promise to implement the water projects. The blocking of the loans had an even more significant impact on the Haitian people, as Haiti was not only denied the loans, but was also without much-needed funds to implement social projects out of its own budget. In this case, the United States actively impeded the Haitian State's ability to fulfill the Haitian people's human right to water through its actions, thus breaching its duty to respect human rights. Such blatant frustration of the object and purpose of the human rights treaties to which the United States is a signatory or a State party is a clear violation of international law.

VI. RECOMMENDATION: ADOPTING A RIGHTS-BASED APPROACH

For several years, the IDB withheld loans earmarked for water projects in Haiti with disastrous consequences. This report has documented these consequences, and has demonstrated how the withholding directly impeded the Haitian government's ability to respect, protect and fulfill its citizens' right to water. While the Government of Haiti is primarily responsible for ensuring this right, other key actors, such as international financial institutions (IFIs), foreign States, non-governmental organizations, and private companies also have a role in solving Haiti's water crisis. To ensure a sustainable solution, we recommend that, in addition to the Haitian government, all of these actors adopt a rights-based approach to the development and implementation of water projects. Such an approach would enhance the Haitian government's ability to deliver these services and the Haitian population's right to access safe and sufficient water.

This chapter provides a brief explanation of a rights-based approach to development and considers what this approach means for water security in Haiti.

A. THE RIGHTS-BASED APPROACH[353]

A rights-based approach to development is a conceptual framework that is based on international human rights law and methodology. It integrates the norms, standards and principles of international human rights law into the plans, policies and processes of development. Under international law, each State must respect, protect and fulfill human rights for those within its jurisdiction. For the territorial State (in this case, Haiti), the government is accountable for its human rights obligations through mechanisms such as the courts, the electoral process and dialogue with civil society. However, in countries like Haiti, which are heavily indebted and reliant on foreign assistance for a large proportion of their treasury, non-State actors and other countries also heavily influence enjoyment of basic rights. Such actors should also be accountable for the human rights outcomes of their involvement in poor countries, although in most cases the standard and means of ensuring accountability will be different and less direct than that for the Haitian government.

To bridge any potential protection and accountability gaps, all actors influencing rights enjoyment in Haiti should adopt a rights-based approach to development. In short, a rights-based approach to development draws on the duties of States under international human rights law[354] and recognizes that inter-governmental and non-governmental organizations and the private sector should also support the ability of impoverished States to fulfill human rights. While a rights-based approach implicates and involves many actors, the individual is at its core. The ultimate goal of the rights-based approach is to empower people to change their own lives—both independently and through those institutions that represent them or otherwise affect their lives. A rights-based approach facilitates this by requiring, among other things, that the population be routinely consulted on development matters—both in providing input on project design and in ensuring necessary modifications to the projects to maximize the realization of human rights. A rights-based approach ensures that the voices of the Haitian people are heard and listened to in corridors of government and in the international agencies and private organizations that influence their human rights. However, a strategy of empowering rights-holders to demand their rights only goes so far—a government must meet its obligations to fulfill the human rights of its people, and international agencies cannot, as is the case documented in this report, thwart the government's plans to do so.

To this end, empowerment of rights-holders is only one of the five main principles on which the rights-based approach to development is based:

- *Empowerment:* A human rights-based approach shifts the language of development from charity to empowerment. Rather than viewing donor agencies as philanthropists, a rights-based approach views the beneficiary of development assistance as the owner of a right. The power in the relationship is transferred from the duty-bearer, who has a responsibility to develop access to the rights in question, to the rights-holder, who is no longer the recipient of charitable donations, but instead is accessing that to which he/she is legally entitled.

- *Indivisibility and Interdependence:*[355] A rights-based approach considers the full range of indivisible, interdependent and interrelated rights (civil, cultural, economic, political, and social) and recognizes that a policy affecting one right will necessarily have an impact on the others.

- *Non-Discrimination and Attention to Vulnerable Groups:* A rights-based approach requires each actor to ask: who is vulnerable, and on what basis? Particular attention must be paid to groups that have been historically excluded from the political process and prohibited access to basic services.

- *Accountability:* A rights-based approach identifies rights-holders and their entitlements and duty-bearers and their obligations. The approach looks at both the positive obligations of duty-bearers (to protect and fulfill) and their negative obligations (to respect, or to abstain from violations). Through a rights-based approach, development ceases to be about charity and is instead about human rights *obligations* for which duty-bearers are accountable. Accountability falls primarily on the government of Haiti, but also attaches to the actions of donor States and private actors (e.g. those actors providing public services) concordant with the nature and extent of their obligations in a particular situation. Accountability applies at all levels—from high-level decision makers to specific departments or individuals involved in project implementation—and at all stages of a development project, including design, approval, adoption, implementation, and outcome. Transparency is crucial to achieving greater accountability. For example, in the case of donor States, relevant stakeholders must have access to information on distribution of resources and the impact of aid flows to analyze the effectiveness of aid and to decrease corruption.[356]

- *Participation:* A rights-based approach requires duty-bearers to ensure a high degree of participation from communities, civil society, minorities, indigenous peoples, women and other marginalized groups. Such participation must be active, free and meaningful; merely formal contacts with program beneficiaries are insufficient for participation to be meaningful. Further, participation must occur at each level of the development process, from the initial needs assessment and project identification to project planning, implementation and evaluation.[357] In the case of vulnerable and disadvantaged groups, participation may require positive measures to address and reduce structural inequalities or disadvantages and even to give appropriate preferential treatment to such groups. As with accountability, transparency is necessary to facilitate and provide for true participation.

B. THE RIGHTS-BASED APPROACH TO WATER PROJECTS IN HAITI

The Haitian government has the primary responsibility for ensuring the right to water in Haiti. In order to comply with its international human rights obligations and to ensure a solid foundation for the right to water in Haiti, the Haitian government should develop a national water strategy that follows a rights-based approach. This approach should incorporate the five principles outlined above, with a view to achieving the substantive rights guarantees set out in Chapter V and VI. The strategy should also provide a framework that adequately accounts for the roles of different actors in Haiti. This includes the international community because of Haiti's reliance on foreign assistance, and also private organizations that provide water services. Such a strategy should take process issues into account, such as effective participation and feasible implementation plans. With this foundation, all actors—States, IFIs, NGOs, private water companies—should adhere to the principles of the national water strategy which would include participation, transparency, and accountability mechanisms. Such an approach would ensure coordination among the various entities involved in water projects in Haiti with the goal of strengthening the Haitian government's ability to respect, protect, and fulfill the right to water.

A rights-based approach to developing the water sector in Haiti requires all actors to incorporate the principles outlined above into their work.

- **Participation**: Community members must be involved in all efforts to improve the water situation. Community members should be consulted during the development of water projects (especially concerning issues such as location of water sources, availability of water, sanitation precautions, timeframes for implementation, cost of water, and quality of water). Effective participation requires regular consultations with the community in developing a project, followed by regular community consultation as the project is implemented. It also requires that information about the project be easily accessible to the community, for example via posters, meetings, and radio programs. This participation would help to ensure that water projects are empowering the Haitian people as rights-holders, and that the projects are adequately and accurately meeting their needs.

- **Transparency**: There are a number of steps that must be taken to provide greater transparency in the manner that work on the right to water in Haiti is conducted. For example, since the government does not yet have the capacity to effectively regulate the private sector, all groups responsible for water distribution or sale should be responsible for checking the safety of sources used for drinking water on a regular basis. The results from such testing should be made public. A rights-based approach also requires transparency of all entities involved in the development and implementation of water projects. This suggests that, for example, all water providers should report regularly on the status of projects and provide information on the following, among other things: monies available for projects, monies spent, specific timelines for implementation of activities and project completion, and any changes to original implementation plans. As another example, international entities should have mechanisms for transparency in their work in Haiti, for example through publications that document the status of project implementation and detail how funds allocated for water sector projects are being spent.

- **Accountability**: A rights-based approach requires that each implementing entity have a clear and accessible accountability mechanism (or mechanisms) through which community members may report project problems. Adequate accountability for work on the right to water in Haiti should include, at a minimum, mechanisms for redress from all actors, including international organizations, States, IFIs, NGOs, and private entities. These mechanisms need to be locally focused and easily accessible. Such mechanisms should also have a transparency mechanism built in so that community members are informed about the status of grievances lodged or complaints filed and the public is aware of the outcomes of such grievances or complaints. Accountability is not just the responsibility of rights-holders; the government should also build internal accountability mechanisms into its national water strategy, including through identifying benchmarks for measuring the extent to which the right to water is being realized.

For too long, the right to water has been compromised in Haiti. A rights-based approach is an essential strategy in sustainable development work and could provide the basis for a particularly effective approach to water projects in Haiti. In addition to the government of Haiti, we therefore urge all entities involved in the development and implementation of water projects in Haiti to adopt this approach. The rights-based approach will help Haitians to realize that which has been so thoroughly denied to them for too long—the right to water.

APPENDIX: THE HOUSEHOLD SURVEY

Household Survey on the Right to Water in Port-de-Paix, Haiti
English Version

Informed Consent (to be completed by the PI)

1) Has the informed consent been administered?
   1=no 2=yes
2) Has the informed consent form been separated from this survey and placed in folder in secure bag?
   1=no 2=yes

REMINDER: Place informed consent in lock box upon return to lodging.

Background Data

1) Number of members of household: ___ ___ (DK=88)

2) Who is responsible for the household?

   Respondent's Answer: _____

   NOTE to INVESTIGATOR: Code for gender of Head of Household – according to respondent's answer.

   Gender of Head of Household
   1= Male
   2= Female

   NOTE to Investigator: Based on Participants response, write the relationship of respondent to head of household: _____ (Son/Daughter, Husband/Wife, etc).

   FOR INVESTIGATOR: Gender of Respondent
   1= Male
   2= Female

Water

1) Where do you most frequently get water for your household's daily usage?
   1=Household connection
   2=Public connection
   3=Protected well
   4=Unprotected well
   5=Private connection
   6=Rainwater collection
   7=Unprotected river/ spring
   8=Buy water from private basin (truck water)
   9=Buy Bottled water
   10=Other
   Describe: _____

2) How long have you used this source?
   0= < 1 yr
   1= 1 year
   2= 2 years
   3= 3 years
   4= 4 years
   5= 5 years
   6= > 5 years
   8=DK

3) As far as you know, is water from the source treated?
   1=no
   2=yes
   8=DK

4) Who most frequently collects water for the household to use (all that apply)

Female child member of household	1=no 2=yes	Ages: _____
Male child member of household	1=no 2=yes	Ages: _____
Female Adult member of household	1=no 2=yes	
Male Adult member of household	1=no 2=yes	
Female Restavek	1=no 2=yes	
Male Restavek	1=no 2=yes	
Adult female domestic servant	1=no 2=yes	
Adult male domestic servant	1=no 2=yes	
Outsourced	1=no 2=yes	
Other	1=no 2=yes	
Describe _____		
N/A [water connection in home]	1=no 2=yes	

5) [If children collect water for the household] Does collecting water prevent or inhibit children in the household from going to school?
   1= no
   2=yes

6) How many times per day is water collected?
   1= One time
   2= Two times
   3= Three times
   4= Four times
   5= Other

7) When in the day is it usually collected? (Include all that apply)

4:01 am – 7 am	1=no 2=yes
7:01 am – 10 am	1=no 2=yes
10:01 am – 1 pm	1=no 2=yes
1:01 pm – 4 pm	1=no 2=yes
4:01 pm – 7 pm	1=no 2=yes
7:01 pm – 10 pm	1=no 2=yes
10:01 pm – 1 am	1=no 2=yes
1:01 am – 4 am	1=no 2=yes

8) How long does it take to collect water each time (the trip to and from water source, plus time at source)?
   0= 0-5 minutes
   1= 5-10 minutes
   2= 10-15 minutes
   3= 15-20 minutes
   4= 20-25 minutes
   5= 25-30 minutes
   6= 30-35 minutes
   7= 35-40 minutes
   8= 40-45 minutes
   9= 45-50 minutes
   10= 50-55 minutes

11= 55-60 minutes
12= > an hour

9) Besides this main source of water, please tell us other sources of water for your household in the last five years.

Household connection	1=yes	2=no
Public connection	1=yes	2=no
Protected well	1=yes	2=no
Unprotected well	1=yes	2=no
Private connection	1=yes	2=no
Rainwater collection	1=yes	2=no
Unprotected river/ spring	1=yes	2=no
Private basin (truck water)	1=yes	2=no
Bottled water	1=yes	2=no
Other	1=yes	2=no

Describe: _____

10) Uses of Water in the Household

For washing hands after using the toilet	1=no	2=yes
For laundering clothing	1=no	2=yes
For food preparation	1=no	2=yes

a) [If yes] How many times a day is water used to prepare food?
1= One time
2= Two times
3= Three times
4= Other: _____

For Hygiene	1=no	2=yes
b) [If yes] To bathe?	1=no	2=yes

i) [If yes] How often?
1= One time a day
2= 2 times a day
3= 3 times a day
4= Every 2 days
5= Other: _____

c) [If yes] To wash hands?	1=no	2=yes

i) [If yes] How often?
1= Once a day
2= 2 times a day
3= Before every meal
4= After using the toilet
5= Other: _____

d) [If yes] To wash face?	1=no	2=yes

i) [If yes] How often?
1= Once a day
2= 2 times a day
3= Before every meal
4= After using the toilet
5= Other: _____

e) [If yes] To wash mouth/ brush teeth?	1=no	2=yes

i) [If yes] How often?
1= Once a day
2= Twice a day
3= After each meal
4= Other: _____

For Cleaning of and around the household	1=no	2=yes
For Drinking	1=no	2=yes
Other Uses	1=no	2=yes

Describe: _____

11) Do you get your drinking water from the same place where you get water for other household usages?
1=no 2=yes

12) [If yes "for drinking"], do you treat your drinking water?

1= Never treat water
2= Sometimes treat water
3= Often treat water
4= Purchase water to drink
5= Don't know
9= NA

13) [If yes "for drinking"], do you consistently have access to the materials you need to treat your water?
1= Never
2= Sometimes
3= Often
8= Don't know
9= Not applicable

14) What is the material of the vessel used to carry and store drinking water for the household?
1= Plastic
2= Metal
3= Other material: _____
9= Not applicable

15) What type of vessel is used to carry and store drinking water for the household?
1= A vessel with a small mouth with a cap (a vegetable oil container):



2= Vessel with small mouth *without* cap
3= Bucket with secure cover
4= Bucket without secure cover
5= 5 gallon *gwo* gallon (Culligan bottle)
6= Other: _____ ____

16) Can you estimate how many buckets of water the household uses each day?
1= 1
2= 2
3= 3
4= 4
5= 5
6= 6
7= 7
8= 8
9= 9
10= 10
11= More than 10
88= Don't know
99= Not applicable

17) How much does a bucket of water cost?
1= 1 Haitian dollar (5 goud)
2= Other
How much? _____

[Deleted Section for the Investigator – does not change numbering]

18) [If the household purchases treated separate water for drinking] Can you estimate how many 5 gallon jugs of water the household purchases each week for drinking?
1=1
2=2
3=3
4=4

5=5
6=6
7=7
8=8
9=9
10=10
11= More than 10
88= Don't know
99= Not applicable

[Deleted Section for the Investigator – does not change numbering]

19) Over the past five years, do you believe the quality of water has gotten better or worse?
1= Better – describe: _____
2= Worse – describe: _____

20) Over the past five years, do you believe the quantity of water has gotten better or worse?
1= Better – describe: _____
2= Worse – describe: _____

21) Over the past five years, do you believe the price of water has gotten more expensive or less expensive?
1= More expensive – describe: _____
2= Less expensive – describe: _____

22) Has the public water source near you ever been disconnected?
1=No
2=Yes

23) [If yes] How often?
1= Always
2= Sometimes
3= Never
88= DK

24) [If they purchase water] Are there times when you cannot afford to pay for water?
1= Always
2= Some of the time
3= Never
4= Don't know

25) If there are times you cannot pay for water, please cite the reasons why.
1= Water is too expensive
2= We have to spend money on something else
- what other things: _____
3= Other: _____
8= Don't know
9= Not applicable

26) What do you do if you cannot pay for your water?

Go to a river/spring near river for water	1=no	2=yes
Do not bathe that day	1=no	2=yes
Do not cook that day	1=no	2=yes
Buy water on credit	1=no	2=yes
Ask for water from neighbors or friends	1=no	2=yes
Other	1=no	2=yes

Describe: _____

27) Are there times when (even if you have enough money to buy water) you cannot get enough water from your main water source?
1=no
2=yes

28) [If yes] How often?
1= Daily
2= Weekly
3= Monthly
4= Every couple of months
5= Twice a year
6= Once a year
7= Other: _____
8= Don't know
9= Not applicable

29) For what reason?
_____
_____

30) Is there water available at school for children?
1=no
2=yes

31) [If no] What do children do for water at school?
1= Carry water with them
2= Buy water at school
3= Other
Explain: _____

32) Have you ever received an announcement or public information about water system in Port-de-Paix?
1=No
2=Yes

33) [If yes] In what manner did you receive this information?
1= Radio
2= Print
3= People walking through streets giving info by megaphone
3= Community Leaders
4= Healthcare Providers (at the hospital)
5= Children's School
6= Church announcements
7= Other
Describe: _____
8= Don't know
9= Not applicable

34) What kind of information do you receive?

Information about water quality	1=no	2=yes
Information about water availability	1=no	2=yes
Information about the public water system	1=no	2=yes
Other	1=no	2=yes

Describe: _____

35) [If response is yes] Who provided this information?
1= Government officials
2= Community leaders
3= Representatives from international organizations
4= Other: _____
8= Don't know
9= Not applicable

36) What specific information was provided? _____
_____

37) Can you (do you know how to) speak to someone about it or make a formal complaint?
1= No

2= Yes

38) [If yes] How and to whom? _____

39) Have you had the opportunity to participate in public decisions about the water system in Port-de-Paix?
1= No
2= Yes

40) Have you ever received water for free from the government or an organization?

From the government	1=no	2=yes
From an organization	1=no	2=yes

41) [If yes to "from the government"] From the government: When?
   a. When? (month/year__ __/ __ __ (DK= 88/88)
   b. How often (in the past 5 years)?
      1= Often
      2= Sometimes
      3= Never
      4= Other
         Describe: _____
      8= Don't know
      9= Not applicable
   c. From which source: _____ (DK= 88)

42) [If yes to "from an organization"] From an organization
   a. When? (month/year) __ __/__ __ (DK=88/88)
   b. How often (in the past 5 years)?
      1= Often
      2= Sometimes
      3= Never
      4= Other
         Describe: _____
      8= Don't know
      9= Not applicable
   c. From which source?
      _____

Hygiene and Sanitation

1) Does the house have toilets/latrine facilities?
1= No
2= Yes

2) What type?
1= Toilet connected to public sewer
2= Toilet connected to a septic tank
3= Pour-flush latrine
4= Simple pit latrine
5= Other
   Describe: _____
9= Not applicable

3) Does the household share the latrine with other households?
1= No
2= Yes

4) [If yes] How many people are in that family? __ __ (DK=88)
   Approximate number of people in total that use the latrine: __ __ (DK=88)

5) Does the household have to pay to use these facilities?
1= No
2= Yes

6) [If yes] How much? _____

7) Do you use your latrine for anything other purpose other than sanitation?
   1= Clean, Wash, or Bathe
   2= Storage
   3= Disposal of solid waste (trash)
   4= Other:
      Describe for which other use:_____

8) Is there water located near the toilet for washing hands?
   1=No
   2=Yes

9) [If yes] What is the source of water?
   1= Covered Container
   2= Uncovered Container
   3= Running water (home connection)
   4= Other Describe which other source: _____

10) Where does the household dispose of trash (solid waste)?

Into the lakou	1=no	2=yes
In the house	1=no	2=yes
In the street	1=no	2=yes
We burn it	1=no	2=yes
We bury it	1=no	2=yes
Other	1=no	2=yes

Describe: _____

11) How do you dispose of waste water from bathing and washing? _____
    Where?
    1= Into the drainage canal
    2= In street
    3= Into a yard/lakou
    4=Other
       Describe: _____

12) Where does your household bathe?
    1= In facilities in the house
    2= In the lakou/yard
    3= In facilities in the latrine
    4= In a stream or river
    5= Other
       Describe: _____

Children in the Household

1) Demographics of children in household

	Gender	Age	Relation to Head of Household	List Vaccinations Received
Child 1				
Child 2				
Child 3				
Child 4				
Child 5				
Child 6				
Child 7				
Child 8				

2) If any child has not received vaccinations, why not? _____

3) Concerning infants or babies under 18 months:
   a. Number being breastfed exclusively: __ (DK=8)
   b. Number being breastfed and fed by other means: __ (DK=8)
   c. Total Number of infants or babies being breastfed currently: __ (DK=8)
   d. Number of infants or babies not being breastfed: __ (DK=8)
   e. Number of infants or babies who were breastfed but have been weaned: __(DK=8)

4) For the last baby in the household who has already weaned (if applicable), please indicate when the baby was weaned and why:
   1= Cessation at 0-1 months
   2= Cessation at 0-2 months
   3= Cessation at 2-4 months
   4= Cessation at 5-6 months
   5= Cessation at 7-8 months
   6= Cessation at 9-10 months
   7= Cessation at 11-1 year
   8= Cessation at 13-15 months
   9= Cessation at 16-18 months
   10= Cessation at 19-21 months
   11= Cessation at 22- 2 years
   12= Cessation at more than 2 years.
   88= DK

5) Why?
   _____

6) If baby is given food, what is the baby given for food?
   _____
   _____

7) If this is mixed with water, (if you don't purchase treated water), is the water treated in any way?
   1=No
   2=Yes

8) [If water is treated] How is it treated?
   1= AquaTab
   2= Filter the water
   3= Boiling
   4= Clorox
   5= Other: _____
   8= Don't know
   9= Not applicable

General Health

1) Have you or anyone in the household ever visited a healthcare provider? (or another place people go for healthcare?)
   1=No
   2=Yes

2) [If yes to 1]Who has the household consulted? (CHOOSE ALL THAT APPLY)

Doctor or nurse	1=no	2=yes
Traditional Birth Attendant	1=no	2=yes
Trained Health Agent	1=no	2=yes
Doctè fey	1=no	2=yes
Houngan/manbo/boko	1=no	2=yes
Priest or other religious leader	1=no	2=yes
Other	1=no	2=yes

Describe:_____

3) Who/what is your usual source of health services? (CHOOSE ONLY ONE)
   1= Doctor or nurse
   3= Trained Health Agent
   5= Doctè fey
   6= Houngan/manbo/boko
   7= Priest or other religious leader
   8= Don't know
   9= Other: _____

4) When do you visit this health professional? [All that apply]

For check-ups for children in household	1=no	2=yes
For check-ups for adults in household	1=no	2=yes
During pregnancy	1=no	2=yes
During illness	1=no	2=yes
For vaccinations	1=no	2=yes
Other	1=no	2=yes

Describe:_____

Date of Illness [Month/Year] If don't remember, write time in past and season						
Relation to Head of Household [Son, Husband, etc.]						
Age						
If known, name of illness.						
Symptoms						
Fever 1=No 2=Yes 3=DK						
[If diarrhea] Describe the diarrhea: (How long did s/he have it? How many times a day? Watery? Bloody? Etc)						
What do you think caused the illness?						
Was a health care provider consulted? 1=No 2=Yes						
[If yes] Who?						
Was the diagnosed treatment followed?						
[If No or partially] Why was treatment not followed completely? 1=Medicine was not available 2= Too expensive 3= Didn't believe or agree with the diagnosis/ treatment 4= Other: _____						
Did the person recover? 1=No 2=Yes						
[If no] Did the person die? 1=No 2=Yes						
[If no] Do problems still persist? 1=No 2=Yes						
[If Yes] What problems?						
How long was the person sick? (How many days did the person rest/ stay in bed, not go to work/ school?]						
Was any else in the household sick at the same time? 1=No 2=Yes						
[If yes] Who?						

5) [If a person in the household health chart reported having diarrhea] Has anyone in your household serious diarrhea in the past few years?

Serious diarrhea = diarrheal disease requiring assessment and treatment with a health professional or diarrheal disease requiring specific treatment of any kind or requiring missed work, school, other daily responsibilities

1=No
2=Yes

General Household

Investigator: Fill out Household Economic Activity Chart for each economically active person in the household

	Sex	Relation to Head of Household	Occupation/ Trade/ Work	Does this person work in Port-de-Paix or its environs? 1= No 2= Yes	[If no] Where does s/he work? 1= Cap Haitien 2= Port-au-Prince (where in P-au-P : _____) 3= Elsewhere in Haiti (Where:_____) 4= Dominican Republic 5= Other foreign country
Person1					
Person 2					
Person 3					
Person 4					
Person 5					
Person 6					

[Direction to Investigator deleted]

1) Can you estimate about how much your household spends per week on water, food, electricity, necessary household items, etc.?
   1=1-100 goud
   2=101-200 goud
   3=201-300 goud
   4=301-400 goud
   5=401-600 goud
   6=601-800 goud
   7=801-1000 goud
   8=more than 1000 goud
   88=DK
2) Does the household spend more money water than on food?
   1= No
   2= Yes
   3= Same amount
3) What kind of fuel do you cook with?

Gas	1=no	2=yes
Charcoal	1=no	2=yes
Wood	1=no	2=yes
Other	1=no	2=yes
(Specify: _____)		

Can we take a look around your household?
1= No
2= Yes

Observations of Investigator (To be completed by the investigator)

Housing

1) What materials make up the house?
   a. Walls
      1= Mud
      2= Wood
      3= Concrete
      4= Tin/ Aluminum

5= Other
Describe: _____

b. Roof
1= Tin/ Aluminum
2= Concrete
3= Thatch
4= Other
Describe: _____

c. Floor
1= Wood
2= Concrete
3= Other
Describe: _____

2) Describe the latrine
   a. Is there sufficient privacy?
      1=No
      2=Yes
   b. Odor
      1=No
      2=Yes
   c. Near toilet?
   d. Presence of standing water?
      1=No
      2=Yes
3) Are there any animals or birds in the yard?
   1=No
   2=Yes
4) What types?
   1= Chicken
   2= Dogs
   3= Cats
   4= Other
      Describe: _____
   8= Don't know
   9= Not applicable
5) How many of each?
   Chicken: __ (DK=88)
   Dogs: __ (DK=88)
   Cats: ___ (DK=88)
   Other: __ (DK=88)

6) Where is cooking done?
   1= Indoors
   2= Outdoors
   3= In a separate kitchen or other cooking facilities
   4= Other
      Describe: _____

7) Are there flies visible in the house?
   1=No
   2=Yes

8) Are there flies visible in the cooking area?
   1=No
   2=Yes

[DELETED #8]

Yard Area/ Lakou

1) Are there any animals or birds in the yard/lakou?
   1=No
   2=Yes
2) What type?

1= Chicken
2= Pig
3= Dogs
4= Donkey
5= Horse
6= Cow
7= Goat
8= Other
Describe: _____
9= DK
10= NA

3) How many?
Chicken: __ (DK=88)
Pig: __ (DK=88)
Dogs: __ (DK=88)
Donkey: __ (DK=88)
Horse: __ (DK=88)
Cow: __ (DK=88)
Goat: __ (DK=88)
Other: __ (DK=88)

4) Is there any visible excrement in the yard/garden/lakou?

Human	1=No	2=Yes
Animal	1=No	2=Yes
Unknown	1=No	2=Yes

Thank you for your time. Your assistance with this project is invaluable and we hope that our work may help raise awareness about the water situation in Port-de-Paix and hopefully help bring changes. Before we go, may we ask one last question?

[If yes] How does the water situation impact your daily life?

ENDNOTES

[1] D.C. ESTY & P.K. CORNELIUS, EDS., ENVIRONMENTAL PERFORMANCE MEASUREMENT: GLOBAL REPORT 2001-2002 (2002). Comparison chart *available at* http://www.unesco.org/bpi/wwdr/WWDR_chart2_eng.pdf.
[2] *See, e.g.,* MADISON SMARTT BELL, TOUSSAINT L'OUVERTURE: A BIOGRAPHY 3 (2007).
[3] *See, e.g.,* C.L.R. JAMES, THE BLACK JACOBINS: TOUSSAINT L'OUVERTURE AND THE SAN DOMINGO REVOLUTION (2001); LAURENT DUBOIS, AVENGERS OF THE NEW WORLD: THE STORY OF THE HAITIAN REVOLUTION (2005).
[4] *See, e.g.,* ANTONIA BENÍTEZ ROJO, THE REPEATING ISLAND : THE CARIBBEAN AND THE POSTMODERN PERSPECTIVE (POST-CONTEMPORARY INTERVENTIONS) (1992); ALAIN FOUBERT, FORGERONS DU VODOU (1990).
[5] *See* PAUL FARMER, THE USES OF HAITI 63-64 (2005).
[6] *See, e.g.,* ARY BORDES, ÉVOLUTION DES SCIENCES DE LA SANTÉ ET DE L'HYGIÈNE PUBLIQUE EN HAÏTI (1980); DAVID PATRICK GEGGUS, YELLOW FEVER IN THE 1790S : THE BRITISH ARMY IN OCCUPIED SAINT DOMINIGUE (1979).
[7] *See* DUBOIS, *supra* note 3.
[8] Unless otherwise noted, all amounts are in U.S. dollars.
[9] Jubilee USA Network/Institute for Justice and Democracy in Haiti, *Fact Sheet: Haiti's Debt* (2006) a*vailable at* http://www.jubileeusa.org/fileadmin/user_upload/Resources/Haiti_2006.pdf (last visited June 14, 2008).
[10] *See* ROBERT DEBT HEINL, NANCY HEINL & MICHAEL HEINL, WRITTEN IN BLOOD: THE STORY OF THE HAITIAN PEOPLE 1492-1995 162-63 (1996).
[11] José De Côrdoba, *Impoverished Haiti Pins Hopes for Future on a Very Old Debt,* WALL ST. J. (Jan. 2, 2004), *available at* http://www.odiousdebts.org/odiousdebts/print.cfm?ContentID=9636.
[12] Anthony Philips & Brian Concannon Jr., *Economic Justice in Haiti Requires Debt Restitution*, AMERICAS PROGRAM, INT'L RELATIONS CENTER, (Sept. 7, 2006), *available at* http://americas.irc-online.org/pdf/commentary/0609Haiti'sDebt.pdf.
[13] FARMER, *supra* note 5, at 77; *see also* PETER HALLWARD, DAMMING THE FLOOD. HAITI, ARISTIDE, AND THE POLITICS OF CONTAINMENT 12 (2007).
[14] It is widely accepted that protecting U.S. business interests played a large role in the U.S. decision to occupy Haiti. The Haitian American Sugar Company was among the most prominent business interests. *See, e.g.,* MARY RENDA, TAKING HAITI: MILITARY OCCUPATION AND THE CULTURE OF U.S. IMPERIALISM, 1915-1940 (2001); HANS SCHMIDT, U. S. OCCUPATION OF HAITI (1915-1934) (1995).
[15] Also of note, the Haitian Army was established in a treaty approved by the U.S. Congress in 1915. With no meaningful foreign threats to defend against, the Haitian Army has been an instrument of oppression against the Haitian people, acting behind various governments or acting independently, ever since. The military was officially disbanded (but not disarmed) by President Aristide in 1994, only to re-form in 2003 during the build up to the *coup d'état* against President Aristide on February 29, 2004. The re-formed Army had the audacity to demand "back-pay" for the 10 years they were disbanded—which the Latortue government paid in 2004. The Haitian Army remains an influential force in Haiti. *See, e.g.,* DeWayne Wickham, *Payoffs to Haiti's Renegade Soldiers Won't Buy Peace*, USA TODAY, Jan. 3, 2005, *available at* http://www.usatoday.com/news/opinion/columnist/wickham/2005-01-03-haiti-wickham_x.htm.
[16] While the elections in 1957 were probably corrupt (many believe the Haitian Army assisted in vote rigging), François Duvalier initially had significant popular support. This was based largely on a *noiriste* political appeal to the Afro-Haitian majority. A lighter-skinned *mulatto* class has controlled Haiti politically and economically throughout the nation's history. This minority rule only strengthened after U.S. occupation, laying the groundwork for Duvalier's rise. The brutality and terror regime of Duvalier's *Tonton Makout*, devastating corruption, and U.S. support for the Duvalier regime as a "bulwark against Latin American Communism" have all been well documented. An estimated 30,000 Haitians were killed during the Duvalier regime. *See* BERNARD DIEDERICH, PAPA DOC AND THE TONTON MACOUTES (2005); ELIZABETH ABBOTT, HAITI: THE DUVALIERS AND THEIR LEGACY (1991).
[17] *See* MATS LUNDHAL, THE HAITIAN ECONOMY: MAN, LAND AND MARKETS 33 (1983); Jubilee USA Network/Institute for Justice and Democracy in Haiti, *supra* note 9.
[18] Mark Schuller, Institute for Justice and Democracy in Haiti, *Haiti's Debt: Progress Made but More Must be Done* 1-2 (2007), *available at* http://www.ijdh.org/pdf/headline5-17-07.pdf.
[19] The Hastings Amendment was authored by U.S. Representative Alcee L. Hastings (D-Miramar), and provides an amendment to H.R. 2634, the Jubilee Act for Responsible Lending and Expanded Debt Cancellation of 2008. The bill directs the Secretary of the Treasury to work with international financial institutions to provide debt-cancellation to low income countries.
[20] Nicole C. Lee, *Many Starve in Haiti*, *Country Struggles to Repay International Debt*, NEW AMERICA MEDIA, Mar. 8, 2008, *available at* http://news.newamericamedia.org/news/view_article.html?article_id=6206f2ea34833d5535dba63ca962279a; Institute for Justice and Democracy in Haiti, *Cancel Haiti's Odious and Onerous Debt*, *available at*

http://www.ijdh.org/articles/article_recent_news_2-10-08menu.html; Institute for Justice and Democracy in Haiti, *Haiti and HIPC FAQ*, *available at* http://www.ijdh.org/pdf/headline2-12-08b.pdf; *see also* Haiti Reborn, *Haiti Reborn Program Update* (Feb. 12, 2008), *available at* http://salsa.democracyinaction.org/dia/track.jsp?v=2&c=RSC3w5i4RjuO%2Fd7gggfCoa%2FRkMJjg6ZX.

[21] Marie Clark, *Enslaved by Debt, in* LET HAITI LIVE: UNJUST US POLICIES TOWARDS ITS OLDEST NEIGHBOR 173 (Melinda Miles & Eugenia Charles, eds., 2004).

[22] S.C. Res. 940, U.N. Doc. S/RES/940 (Jul. 31, 1994).

[23] Clark, *supra* note 21, at 174. In 2000-2001, Haiti was forced to cut social spending from 3 percent of Gross Domestic Product to 2 percent. *See* Schuller, *supra* note 18.

[24] The presidential election in November 2000 was claimed by Aristide's opposition to be unfair due to disputed percentage calculations for seven senate runoff elections. *See* Stephen Lendman, *The Sorrow of Haiti*, COUNTER PUNCH, Oct. 18, 2005, *available at* http://www.counterpunch.org/lendman10182005.html.

[25] Foreign aid donors suspended at least $500 million in aid to Haiti. *See, e.g.,* P. Farmer, M. Smith Fawzi & P. Nevil, *Unjust Embargo of Aid for Haiti*, 361 THE LANCET 420 (2003); Farah Stockman & Susan Milligan, *Before Fall of Aristide, Haiti Hit by Aid Cutoff*, THE BOSTON GLOBE (Mar. 7, 2004), *available at* http://www.boston.com/news/nation/articles/2004/03/07/before_fall_of_aristide_haiti_hit_by_aid_cutoff/.

[26] *See, e.g.,* Athena R. Kolbe and Royce A. Hutson, *Human Rights Abuse and other Criminal Violations in Port-au-Prince, Haiti: A Random Survey of Households*, 368 THE LANCET (2006).

[27] *See* International Crisis Group, *Crisis Group Latin America/Caribbean Report N°10, A New Chance for Haiti?*, (Nov. 18, 2004).

[28] Ministère de l'Economie et des Finances de la Republique d'Haïti, *Dette externe du secteur public* (2007), *available at* http://www.mefhaiti.gouv.ht/downloadpdf.php?dwn=dette%20externe_sep07.pdf.

[29] *See, e.g.,* José De Côrdoba, *Impoverished Haiti Pins Hopes for Future on a Very Old Debt,* WALL ST. J. (Jan. 2, 2004), *available at* http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=9636; Mark Schuller, Jubilee USA Network, *Break the Chains of Haiti's Debt* (2006), *available at* http://www.jubileeusa.org/fileadmin/user_upload/Resources/Policy_Archive/haitireport06.pdf.

[30] Schuller, *supra* note 18.

[31] *Id.*, at 2.

[32] Institute for Justice and Democracy in Haiti, *Haiti Debt Relief Conditions Add Injustice to Injury* (2007), *available at* http://www.ijdh.org/pdf/headline8-5-07.pdf.

[33] The Human Development Index is a single statistic which serves as a frame of reference for both social and economic development. It combines indicators of life expectancy, educational attainment and income. UN DEVELOPMENT PROGRAM (UNDP), HUMAN DEVELOPMENT REPORT 2007/2008 (2007), *available at* http://hdr.undp.org/en/humandev/hdi.

[34] Pan American Health Organization, *Health Situation in the Americas: Basic Indicators* 10 (2007), *available at* http://www.paho.org/english/dd/ais/BI_2007_ENG.pdf.

[35] *Id.,* at 8.

[36] *Id.*

[37] The prevalence of HIV for adults ages 15-49 in Haiti was 3.8 percent. The next highest national prevalence in the Americas and Caribbean is the Bahamas, at 3.3 percent. The population of persons living with HIV in Haiti is estimated at 170,000, or 58 percent of the 290,000 in the Caribbean at large. UNAIDS, 2006 REPORT ON THE GLOBAL AIDS EPIDEMIC (2006), *available at* http://www.unaids.org/en/KnowledgeCentre/HIVData/GlobalReport/.

[38] Tuberculosis prevalence in Haiti in 2005 was 405 cases per 100,000 population. This compares (all per 100,000 population) to 3 in the U.S., 116 in the Dominican Republic, 10 in Jamaica, and 11 in Cuba. World Health Organization, *World Health Statistics 2007* (2007), *available at* http://www.who.int/whosis/whostat2007/en/index.html.

[39] In 2005, the Pan American Health Organization noted 21,778 reported cases of malaria in Haiti – representing 73 percent of reported cases in the Latin Caribbean. The Dominican Republic, in comparison, had just 3,837 reported cases. Pan American Health Organization, *supra* note 34. Note that considering a number of factors, such as the lack of access to trained health workers (discussed above), inadequate laboratory and diagnostic capacity, and an under-funded public health reporting infrastructure, the number of actual cases may be significantly higher.

[40] The following percentages of one-year-old children in Haiti have been vaccinated against the respective diseases: Tuberculosis, 75 percent; Polio, 52 percent; Measles, 58 percent. In the Dominican Republic, by comparison: Tuberculosis, 95 percent; Polio, 85 percent; Measles, 99 percent. Jamaica: Tuberculosis, 90 percent; Polio, 86 percent; Measles, 87 percent. Cuba: Tuberculosis, 99 percent; Polio, 89 percent; Measles, 99 percent. United Nations Children's Fund (UNICEF), *The State of the World's Children 2008: Child Survival,* 123 (2007), *available at* http://www.unicef.org/sowc08/report/report.php.

[41] Pan American Health Organization (Regional Office of the World Health Organization), *Health Situation Analysis and Trends Summary: General Situation and Trends* (1999), *available at* http://www.paho.org/english/dd/ais/cp_332.htm.
[42] World Health Organization, *Combating Waterborne Disease at the Household Level*, 7 (2007), *available at* http://www.who.int/water_sanitation_health/publications/combating_diseasepart1lowres.pdf.
[43] Pan American Health Organization, *supra* note 41.
[44] CP Raccurt et al., *Enteric Parasites and AIDS in Haiti: Utility of Detection and Treatment of Intestinal Parasites in Family Members*, 66 MED. TROP. 461 (2006).
[45] Centers for Disease Control and Prevention, *Typhoid Fever: Technical Information* (2005), *available at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/typhoidfever_t.htm.
[46] World Health Organization, *World Health Statistics 2007: Core Health Indicators— Haiti* (2007), *available at* http://www.who.int/whosis/database/core/core_select_process.cfm?country=hti&indicators=healthpersonnel.
[47] World Health Organization, *World Health Statistics 2007: Core Health Indicators—Dominican Republic* (2007), *available at* http://www.who.int/whosis/database/core/core_select_process.cfm.
[48] Anthony Catanese, *Rural Poverty and Environmental Degradation in Haiti: Occasional Paper No. 5* (Center for the Study of Global Change, 1991); *see generally* UNDP, *La vulnérabilité en Haïti: Chémin inévitable vers la pauvreté? Rapport national sur le développement humain – Haïti* (2004) [hereinafter "RNDH"].
[49] UNDP, *supra* note 33, at 304.
[50] RNDH, *supra* note 48, at 40.
[51] In our experience, Haitian peasant farmers understand the consequences of cutting down trees very well, but with more than 80 percent of the population living below the absolute poverty line they are left with few other options than harvesting charcoal in an attempt to survive. Alternative means of subsisting are further restricted by the country's 50 percent illiteracy and 70 percent unemployment rates. *See* Central Intelligence Agency, The *World Factbook 2008* (2008), *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html#Intro.
[52] Catanese, *supra* note 48, at 30-31.
[53] "The damage directly flowing from the lowering of river levels and the water tables, the silting up of dams and irrigation canals, and the loss of productivity of hydroelectric plants has been estimated at one hundred million dollars (USD 100,000,000) per year. (Groupe de travail du Colloque sur le reboisement, 1987)." RNDH, *supra* note 48, at 41.
[54] *Id.*, at 55.
[55] Reuters, *Haiti Puts Deaths From Flooding Just Over 3,000*, N.Y. TIMES, Oct. 6, 2004, at A6, *available at* http://www.nytimes.com/2004/10/06/international/americas/06haiti.html?_r=1&oref=slogin.
[56] Deforestation is largely an economic phenomenon in Haiti; solutions thus need to be based on economic investment, not simply education or one-time donation of tree stock. *See* Catanese, *supra* note 48, at 30-31.
[57] *See, e.g., Food Riots Turn Deadly in Haiti*, BBC NEWS, Apr. 5, 2008, *available at* http://news.bbc.co.uk/2/hi/americas/7331921.stm; ASSOC. PRESS, *Haiti: Thousands Protest Food Prices*, N.Y. TIMES, April 8, 2008, *available at* http://www.nytimes.com/2008/04/08/world/americas/08briefs-THOUSANDSPRO_BRF.html; Joseph Guyler Delva and Jim Loney, *Haiti's Government Falls After Food Riots,* REUTERS, Apr. 12, 2008, *available at* http://www.reuters.com/article/topNews/idUSN1228245020080413?feedType=RSS&feedName=topNews.
[58] RNDH, *supra* note 48, at 41.
[59] 54 percent of the Haitian population lives on less than $1 a day, 78 percent live on less than $2 a day. World Bank, *Haiti Country Brief* (March 2008), a*vailable at* http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/HAITIEXTN/0,,contentMDK:21040686~pagePK:141137~piPK:141127~theSitePK:338165,00.html.
[60] Inter-American Development Bank ("IDB"), *What is the IDB?*, *available at* http://www.iadb.org/aboutus/index.cfm?language=English.
[61] Bank Information Center, *An Introduction to the Inter-American Development Bank: A Fact Sheet for Civil Society Groups*, [hereinafter "BIC Fact Sheet"] *available at* http://www.eartheconomics.org/resources/publication_documents/IDB_factsheet.pdf.
[62] *Id.*
[63] IDB, *About the IDB: Board of Governors*, *available at* http://www.iadb.org/aboutus/IV/bog.cfm?language=English; IDB, *About the IDB: Board of Executive Directors*, *available at* http://www.iadb.org/aboutus/IV/boe.cfm?language=English; BIC Fact Sheet, *supra* note 61.
[64] *Id.*
[65] IDB, *About the IDB: Inter-American Development Bank list of Governors*, *available at* http://www.iadb.org/aboutus/IV/go_governors.cfm?language=English; U.S. Dept. of Treasury, *Duties & Functions: Secretaries of the Treasury*, *available at* http://www.treas.gov/education/duties/treas/sec-treasury.shtml (lists among the "duties and functions" of the Treasury Secretary the role of "U.S. Governor of the International Monetary Fund, the

International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the European Bank for Reconstruction and Development.")

[66] The current U.S. Executive Director, Hector Morales, is listed as a "Treasury Official" on the U.S. Dept. of Treasury's website. *See* U.S. Dept. of Treasury, *Treasury Officials*, *available at* http://www.ustreas.gov/organization/bios/morales-e.html.

[67] IDB, *About the IDB: Capital Stock and Voting Power*, [hereinafter "IDB Voting Power"] *available at* http://www.iadb.org/aboutus/IV/go_voting.cfm?language=English.

[68] IDB, *Press Release: IDB, Haiti Sign $97 million for Programs in Health, Education and Water Supply: Long-term, low-interest loans for social investments and development projects,* (Oct. 5, 1998), *available at* http://www.iadb.org/exr/PRENSA/1998/cp23298e.htm; IDB, *Projects: HA0014: Drinking Water and Sanitation Sector Reform*, *available at* http://www.iadb.org/projects/Project.cfm?project=HA0014&Language=English. The other loans included health, education and rural roads projects.

[69] IDB, *Potable Water and Sanitation Sector Reform and Investment Program, Loan Proposal, Project HA-0014*, Executive Summary, (July 21, 1998), *available at* http://www.iadb.org/projects/Project.cfm?project=HA0014&Language=English.

[70] *Id.*, at 34 ¶ 4.27(a).

[71] IDB, *Potable Water and Sanitation Sector Reform and Investment Program Environmental Assessment Annex II*, IDB Document No. HA-0014/ENV-SUM A-II (July 1997), at 12 ¶ 1.36 [hereinafter "Environmental Assessment Annex II"].

[72] *Id.*, at 14 ¶ 1.43.

[73] *See* Agreement Establishing the Inter-American Development Bank, Art. IV §3 (done at Washington, DC on April 8, 1959, entered into force for the United States on December 30, 1959; 10 U.S.T. 3029; T.I.A.S. No. 4397, as amended) [hereinafter "IDB Articles of Agreement"]. *See also* IDB, *Financial Resources: Fund for Special Operations, available at* http://www.iadb.org/aboutus/III/financialresources.cfm?language=English.

[74] IDB Articles of Agreement, *supra* note 73, at Art. IV, §9.

[75] *See* IDB Voting Power, *supra* note 67.

[76] The Robert F. Kennedy Memorial Center for Human Rights (RFK Center) filed a FOIA request with the U.S. Dept. of Treasury in August 2003. The request sought access to internal communications between the Treasury Department and the IDB regarding the social sector loans to Haiti. In August 2006, after receiving no documents and little response for three years, the RFK Center filed a complaint against the Treasury Department in the United States District Court for the District of Columbia. By January 30, 2007, the Treasury Department released 4,606 pages of documents to the RFK Center. These included emails and correspondence between the IDB, Treasury and the U.S. State Department. The documents are on file with the RFK Center and form the basis of much of the analysis in this chapter.

[77] Email from Ivy Kosmides, Treasury Department, to Steven Backes, Director of the Treasury Department's Office of Latin American and Caribbean Nations, Sara Paulson, Department of Treasury Office of Multi-Lateral Development Banks Robert Conley, Treasury Department, Stephen Altheim, Treasury Department, and Bruce Juba, Special Counsel, Office of U.S. Executive Director, Inter-American Development Bank (Dec. 5, 2001, 14:33 EST). The quoted language was excerpted by Kosmides from a cable that Treasury's Deputy Assistant Secretary had previously sent to the U.S. Ambassador. Kosmides was emailing the excerpt in response to a question from Treasury's Director of the Office of Latin American and Caribbean Nations, who had asked what deficiencies justified their claim that there must be an improved political situation. In this email, Kosmides also wrote that she was "expecting points from State regarding the political situation (resolution of disputed election and working with the opposition being the main ones)."

[78] *See* IDB Articles of Agreement, *supra* note 73, at Art. VIII, §5(f).

[79] The Bank was established pursuant to the IDB Articles of Agreement, *supra* note 73. The United States accepted membership in the Bank under the authority of the Inter-American Development Bank Act, Public Law 86-147, 22 U.S.C. §283, as amended.

[80] Email from Helen Racinos, Department of State, to John Ralyea, International Monetary Fund, Ivy Kosmides, Treasury Department, Bruce Juba, Special Counsel, Office of U.S. Executive Director, Inter-American Development Bank, Mary Garrison, Anne Margaret Low, Steven Backes, Director, Department of Treasury Office of Latin American and Caribbean Nations, L. Redifer, John Hu, Inter-American Development Bank, Larry Harrington, U.S. Executive Director, Inter-American Development Bank, Robert Conley, Department of Treasury, and Sara Paulson, Department of Treasury Office of Multi-Lateral Development Banks (Mar. 16, 2001, 14:52 EST) (Juba wrote, "The 4 loans approved by Parliament have NO obstacles to disbursement at this point. They only thing we can do to SLOW disbursement is to formally request a report to the Board before disbursements resume, citing the lapse of time between Board approval (1996/97) and parliamentary approval (last Nov/Dec). THESE LOANS HAD ALREADY BEEN APPROVED BY THE BOARD - THERE IS NO 'VETO' UNLESS CONDITIONS PRECEDENT HAVE NOT BEEN MET AND

A BOARD WAIVER IS REQUIRED.") (Caps in original); Email from John Ralyea, International Monetary Fund, to Robert Conley, Treasury Department (Mar. 16, 2001, 14:46 EST).
[81] Email from Helen Racinos, *supra* note 80.
[82] *Id.*
[83] Email from Luyen Tran, to Sara Paulson, Department of Treasury Office of Multi-Lateral Development Banks, and Stephen Altheim, Treasury Department (Apr. 4, 2001, 13:06 EST); Email from Stephen Altheim, Department of Treasury to Ivy Kosmides, Department of Treasury, Helen Racinos, Department of State, Todd Crawford, Ann Low, L. Redifer (Apr. 4, 2001, 14:41 EST); Email from Ivy Kosmides, Treasury Department, to Bruce Juba, Special Counsel, Office of the U.S. Executive Director, Inter-American Development Bank (Apr. 4, 2001, 17:12 EST) (These emails mention, in regard to the letter to Iglesias, that it isn't a "bullet-proof way to stop IDB disbursements, [but] it certainly will put a few more large rocks in the road.").
[84] Email from Bruce Juba, Special Counsel, Office of the U.S. Executive Director at the Inter-American Development Bank, to Ivy Kosmides, Treasury Department and Stephen Altheim, Treasury Department (Apr. 4, 2001, 17:13 EST).
[85] Presentation by Richard Archi, Inter-American Development Bank, at Haiti Informal Donor's Meeting at the World Bank, Apr. 4, 2001 (for which Archi stated/wrote, "The IDB has commitments to Haiti for $456 mn with $263mn in implementation, including four projects recently ratified by the Haitian parliament totaling $145.9mn. The four loans had been updated last year and deemed relevant. Current country status with the OAS does not interfere with loan disbursement. The IDB is preparing a Country Assistance Strategy. Haiti currently has arrears of $800,000 to the IDB.").
[86] Letter from Lawrence Harrington, U.S. Executive Director of the Inter-American Development Bank, to Enrique Iglesias, President of the Inter-American Development Bank (Apr. 6, 2001).
[87] *Id.*
[88] Letter from Lawrence Harrington, U.S. Executive Director of the Inter-American Development Bank, to Enrique Iglesias, President of the Inter-American Development Bank (July 16, 2001).
[89] Mr. Gaviria, Secretary General of the OAS and Mr. Luigi Eunadi, Assistant Secretary General of the OAS, briefed the Board on the political negotiations taking place between Haiti's two opposing political parties, the majority Fanmi Lavalas party and the opposition Democratic Convergence party. Although Mr. Gaviria left the ultimate fate of the loans in the IDB Directors' hands, as the OAS has no authority over the IDB's decisions, he suggested that the disbursement schedule should be proportional to President Aristide's progress towards ending the political problems between the two parties. *See* Letter from Eriq Pierre, Senior Counselor, World Bank, to Prime Minister Chérestal (July 31, 2001).
[90] Commitment fees amount to 1 percent of an undisbursed amount, and the idea behind them is that in order to unlock funds, countries should move quickly with the process of ratification, signature, compliance and the drawing and executing of loans. *See* email from Bruce Juba, Special Counsel, Office of the U.S. Executive Director at the Inter-American Development Bank, to Robert Conley, Treasury Department, Steven Altheim, Treasury Department, and Ivy Kosmides, Treasury Department (Dec. 7, 2001, 15:56 EST) (Juba wrote, "the idea of the commitment fee is that the money is locked up and countries should get on with the business of ratification, signature, compliance and drawing/executing the loans. The case of Haiti is admittedly extreme in that ratification by parliament was delayed and now, disbursements have been not forthcoming due to a variety of concerns by the Bank and Board.").
[91] Email from Ivy Kosmides, Treasury Department, to Bruce Juba, Special Counsel, Office of the U.S. Executive Director, Inter-American Development Bank, and Robert Conley, Treasury Department (Dec. 7, 2001, 15:58 EST).
[92] These commitment fees were eventually waived after significant advocacy by human rights groups and U.S. Members of Congress.
[93] Interview with Dean Curran, U.S. Ambassador to Haiti, location unknown (Nov. 21, 2001).
[94] Email from William Schuerch, Deputy Assistant Secretary, Treasury Department, to Sara Paulson, Treasury Department, Steven Altheim, Treasury Department, Lawrence Harrington, U.S. Executive Director at the Inter-American Development Bank, Bruce Juba, Special Counsel, Office of the U.S. Executive Director to the Inter-American Development Bank, and John Hu, Inter-American Development Bank (Dec. 3, 2001, 9:16 EST).
[95] Email from Ivy Kosmides, Treasury Department, to William Schuerch, Deputy Assistant Secretary, Treasury Department, Robert Conley, Treasury Department, Sara Paulson, Treasury Department, Steven Altheim, Treasury Department, and Rachel Jarpe (Nov. 29, 2001, 13:07 EST).
[96] *Id.*
[97] Faubert Gustave, Governor for Haiti, Address at Annual Meeting of the Inter-American Development Bank Board of Governors (Mar. 25, 2003).
[98] CP/RES. 822 (1331/02), *Apoyo al Fortalecimiento de la Democracia en Haiti* (Sept. 4, 2002), *available at* http://www.oas.org/consejo/sp/resoluciones/html/res822.htm.

[99] Dan Beeton, *What the World Bank and IDB Owe Haiti*, GLOBAL POLICY FORUM (July 24, 2006) *available at* http://www.ijdh.org/pdf/RoundupJuly21-Aug12006.pdf (stating "The Aristide Administration took other steps in attempts to see the aid money released. In 2003, the government agreed to meet the IMF requirements for the Staff Monitored Program - including, despite the devastating impact it would have on the populace - lifting its petrol subsidy. Then, seeing that no IDB funds would be forthcoming as long as the Bank demanded the arrears payments, Aristide's government nearly emptied their national reserves to pay $32 million in arrears in mid 2003.").
[100] U.S. Dept. of State, Office of the Spokesman, *Factsheet: Haiti and the International Financial Institutions*, (Dec. 29, 2003), *available at* http://www.state.gov/r/pa/prs/ps/2003/27565.htm.
[101] Tier Three is the lowest ranking a country can receive under the United States' ranking system, and can subject countries to non-humanitarian and non-trade sanctions. It applies to "Countries that neither satisfy the minimum standards nor demonstrate a significant effort to come into compliance." *See* U.S. Dept. of State, Office to Monitor and Combat Trafficking in Persons*, What do the Tiers of the Trafficking in Persons Report Mean?*, (June 3, 2005), *available at* http://www.state.gov/g/tip/rls/other/48236.htm.
[102] *Successes & Challenges for U.S. Policy to Haiti*, *Hearing Before the S. Foreign Relations Comm.*, 108th Cong. 1st Sess. (2003) (statement by John Taylor, U.S. Treasury Secretary).
[103] *Id.*
[104] Meetings between RFK Center staff and officials of several Member States of the IDB, 2003.
[105] *See infra* pages 14 and 25-26 for a discussion of the publicly-available information about funds disbursed under the loans as of the time of writing of this report.
[106] The following were considered to be improved water sources: public or household connection to a public water source (36.3 percent); protected well (12.2 percent); protected spring (4.6 percent); and rainwater (2.1 percent). MICHEL CAYEMITTES ET AL., ENQUETE MORTALITE, MORBIDITE ET UTILISATION DES SERVICES, HAÏTI, 2005-2006 20 (2007) [hereinafter "EMMUS-IV"], *available at* http://www.measuredhs.com/pubs/pdf/FR192/FR192.pdf. In 2004, 52 percent of city-dwellers and 56 percent of households in the countryside had improved access according to the WHO, JOINT MONITORING PROGRAMME FOR WATER SUPPLY AND SANITATION, COVERAGE ESTIMATES: IMPROVED DRINKING WATER: HAITI (2006), *available at* http://www.wssinfo.org/en/238_wat_latino.html. As improved water sources may not be regularly available year round (such as certain public sources that may dry up during the dry season or public connections that may fall into disrepair), this figure may in fact overstate the coverage of the water system in Haiti. Research in Port-de-Paix uncovered both of these problems with the public water system; *see* discussion *infra* pages 19-26.
[107] RNDH, *supra* note 48at 74.
[108] World Bank, *Project Appraisal Document on a Proposed Grant In the Amount of SDR 3.4 Million (US$5 Million Equivalent) to the Republic of Haiti for a Rural Water and Sanitation Project*, World Bank Report No: 38080, 28 [hereinafter "World Bank Appraisal"], *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rendered/PDF/38080.pdf.
[109] FOKAL, ETUDE SUR L'APPROVISIONNEMENT EN EAU POTABLE EN HAÏTI: ETAT DES LIEUX, PROPENSION A PAYER, MODE DE GESTION ET POSSIBILITES D'APPROPRIATION DES SYSTEMES D'ADDUCTION EN EAU POTABLE POUR LES USAGERS 28 (2005) [hereinafter "ETUDE SUR L'APPROVISIONNEMENT"].
[110] Basic sewerage exists in only 27 percent of the country. PAHO, SITUATION OF POTABLE WATER IN HAITI (2004), *available at* www.paho.org/english/dd/ped/Water.ppt.
[111] Open latrines (20.7 percent) and hanging toilets (on stilts) (14.1 percent) and "other" (0.1 percent) were considered to be rudimentary toilets. EMMUS-IV, *supra* note 106, at 21.
[112] RNDH, *supra* note 48, at 74. Studies elsewhere have shown the link between unsanitary water and diarrheal disease transmission. *See* J.C. Semenza et al., *Water distribution system and diarrheal disease transmission: a case study in Uzbekistan*, 59 AM. J. OF TROP. MED. AND HYGIENE 941 (1998). Untreated water contains many diarrhea-inducing pathogens that particularly decimate children under five. RNDH, *supra* note 48, at 102; PAHO, *Country Profile: Haiti* 24 EPIDEMIOLOGICAL BULLETIN 13 (2003); Ferdinand Ross, *Assessing the causes of under-five mortality in the Albert Schweitzer Hospital service area of rural Haiti* 18 PANAMERICAN J. OF PUB. HEALTH 178 (2005).
[113] MINISTRY OF PLANNING AND EXTERNAL COOPERATION, GROWTH AND POVERTY REDUCTION STRATEGY PAPER 42 (2007) [hereinafter "GPRSP"].
[114] *Id.* at 42. This opinion was shared by the Technical Specialist Engineer interviewed for this investigation, who remarked on the degradation of the water infrastructure in the last ten years, during a population explosion in Haiti.
[115] In addition to these two agencies, the *Postes Communautaire d'Hygiène et d'Eau Potable* (POCHEP) are theoretically charged with helping to run the rural water system under the authority of the Ministry of Health. However, "this unit is small and inactive for lack of funds." World Bank Appraisal, *supra* note 108, at 2.

[116] *See* Loi Organique du Service National d'Eau Potable, *Le Moniteur*, Oct. 10, 1977.
[117] *See* MINUSTAH, "L'Eau potable: un besoin de plus en plus pressant en Haïti," Mar. 25, 2008, *available at* http://www.reliefweb.int/rw/RWB.NSF/db900SID/EGUA-7DASHF?OpenDocument [hereinafter "L'Eau potable"].
[118] *See* World Bank Appraisal, *supra* note 108, at 28-29.
[119] *Id.*
[120] SNEP, *Directives Opérationnelles: Stratégie nationale de développement du secteur Eau Potable et Assainissement en milieu Rural* 2006 [hereinafter "Directives"].
[121] World Bank Appraisal, *supra* note 108, at 29.
[122] GPRSP, *supra* note 113, at 19.
[123] *See* World Bank Appraisal, *supra* note 108, at 2, 28.
[124] ETUDE SUR L'APPROVISIONNEMENT, *supra* note 109, at 72 (translation by authors).
[125] Two percent have taps in the house and 8 percent have them in the courtyard. EMMUS-IV, *supra* note 106, at 20.
[126] RNDH, *supra* note 48, at 41.
[127] A recent national study found almost equivalent levels of diarrhea in children drinking from improved versus non-improved sources. EMMUS-IV, *supra* note 106, at 134. The UN recently reported that the quality of the water distributed by the three potable water agencies in Haiti is not regularly assured. RNDH, *supra* note 48at 42.
[128] RNDH, *supra* note 48, at 20.
[129] LIBRARY OF CONGRESS, COUNTRY PROFILE: HAITI 10 (2007), *available at* lcweb2.loc.gov/frd/cs/profiles/Haiti.pdf.
[130] Interview with Emmanus Dorval, *Ingénieur Spécialiste Technique, Ministère des Travaux Publics, Transports et Communications, Cellule Eau Potable et Assainissement* (URSEP).
[131] EMMUS-IV, *supra* note 106, at 20.
[132] *See* Shoshana Guy, *Haiti: The Struggle for Water* (2004), *available at* http://www.pbs.org/frontlineworld/fellows/haiti/indexa.html.
[133] *Id.*
[134] ETUDE SUR L'APPROVISIONNEMENT, *supra* note 109, at 55.
[135] *See* Guy, *supra* note 132.
[136] *Id.*
[137] *See* discussion, *infra* page 22.
[138] World Bank Appraisal, *supra* note 108, at 28.
[139] ETUDE SUR L'APPROVISIONNEMENT, *supra* note 109, at 8 (translation by authors).
[140] *See* Guy, *supra* note 132.
[141] *Id.*
[142] International organizations involved in the water sector in Haiti include: World Vision, CARITAS, Oxfam, and Action Contre la Faim. *See* MINUSTAH, Haiti: NGOs/Agencies per Commune – Water and Sanitation Sector, *available at* http://www.reliefweb.int/rw/RWB.NSF/db900SID/AHAA-6WWSF9?OpenDocument. Numerous smaller NGOs—many affiliated with religious organizations or missions—conduct water projects in Haiti. For a few examples, *see* Clean Water for Haiti, *available at* http://www.cleanwaterforhaiti.org/; and Water for Life for Haiti, *available at* http://www.wflhaiti.com/. For an excellent overview of the role of NGOs in the water sector in Haiti, *See* ETUDE SUR L'APPROVISIONNEMENT, *supra* note 109, at 45-46.
[143] *See* ETUDE SUR L'APPROVISIONNEMENT, *supra* note 109, at 44-45.
[144] *See* World Bank Appraisal, *supra* note 108, at 34.
[145] *See, e.g,* Geneviève Brin, *Evaluation of the Safe Water System in Jolivert Haiti by Bacteriological Testing and Public Health Survey, available at* http://www.jolivert.org/research.htm (evaluating an NGO-led project to implement a simple point-of-use water treatment system in northern Haiti).
[146] EMMUS-IV, *supra* note 106, at 20. The study discussed in Chapter IV made similar findings in relation to Port-de-Paix.
[147] Behavior has been one bar to instilling proper sanitary protocols, but children with better-educated mothers are slightly less prone to water-borne maladies. EMMUS-IV, *supra* note 106, at 134.
[148] *See* World Bank Appraisal, *supra* note 108, at 34.
[149] *Id.*
[150] Directives, *supra* note 120, at 32.
[151] *Id.*, at 30-32.
[152] *See* ETUDE SUR L'APPROVISIONNEMENT, *supra* note 109, at 69.
[153] *Id.*, at 26 (translation by authors).
[154] *See id.,* at 45.
[155] *See id.*

[156] *See id.*
[157] *See* L'Eau potable, *supra* note 117.
[158] *See* World Bank Appraisal, *supra* note 108, at 2.
[159] *See id.*, at 2-3.
[160] *See generally*, URSEP, at http://www.ursep.org/.
[161] *See id.*
[162] *See id.*
[163] *See* ETUDE SUR L'APPROVISIONNEMENT, *supra* note 109, at 46-47.
[164] *See* World Bank Appraisal, *supra* note 108, at 3.
[165] *See* L'Eau potable, *supra* note 117 ("Entre autres actions en cours, l'installation de compteurs dans les domiciles afin de 'responsabiliser le consommateur et d'éviter le gaspillage.'").
[166] Environmental Assessment Annex II, *supra* note 71, at 11 ¶ 1.33.
[167] *Id.*, at ¶ 1.34.
[168] *Id.*
[169] *Id.*, at ¶ 1.35.
[170] *Id.*, at ¶ 1.36.
[171] *Id.*, at ¶¶ 1.36-1.37.
[172] *Id.*, at ¶ 1.37.
[173] *Id.*, at ¶ 1.39.
[174] *Id.*, at ¶ 1.40.
[175] *Id.*, at ¶ 1.42.
[176] *Id.*, at ¶ 1.33.
[177] Dr. Laurent Beauge, Departmental Director of the Ministry of Public Health (*Ministère de la Santé Publique et de la Population—Département Sanitaire du Nord-Ouest*).
[178] *See* World Bank, *supra* note 59.
[179] *See* Table 2, Chapter IV, at page 33.
[180] *See also* Geneviève Brin, Liam Bossi, Pablo Buscemi, Heather Cheslek, Alexa Gangemi, Michelle Millu, Donald Rose, & Chad Stevens, *Water Resources and Wetlands Study for Haiti and the U.S. Virgin Islands,* M.I.T., 15 (2003), *available at* http://ceemeng.mit.edu/reports.html (describing the harvesting of water from *sous dlo* by community members in Jolivert, Haiti, near Port-de-Paix).
[181] *See* Table 2, Chapter IV, at page 33.
[182] Environmental Assessment Annex II, *supra* note 71, at 13 ¶ 1.41.
[183] *Id.*, at 18 ¶ 1.56.
[184] *Id.*, at 18 ¶ 1.57.
[185] *Id.*, at 19 ¶ 1.60.
[186] Inter-American Development Bank, *Potable Water and Sanitation Sector Reform and Investment Program*, IDB Document No. 1010/SF-HA (approved Aug. 12, 1998) at 15 ¶ 2.13.
[187] Dorval Interview, *supra* note 130.
[188] *See* Inter-American Development Bank, *Project Procurement Information,* IDB Document No. HA0014, *available at* http://condc05.iadb.org/idbppi/aspx/ppProcurement.aspx?pProject=HA0014&planguage=ENGLISH.
[189] *See supra* note 160.
[190] *See id.*
[191] For a discussion of how tariffs and pay-as-you-go schemes can be implemented in a rights-respecting manner, *see* AAAS, COHRE, SDC & UN-HABITAT, MANUAL ON THE RIGHT TO WATER AND SANITATION (2007) Chapter 10, *available at* http://www.cohre.org/store/attachments/RWP-Manual-water.pdf [hereinafter "MANUAL ON THE RIGHT TO WATER"].
[192] For a full discussion of these loans, *see* Chapter II.
[193] UNICEF, *Child Alert: Haiti* (2006), *available at* http://www.unicef.org/childalert/haiti/content/Child%20Alert%20Haiti%20(En).pdf
[194] A more detailed legal analysis of the human right to water and related rights and obligations will be discussed in Chapters V-VI, *infra* pages 39-52. The work of the Centre On Housing Rights and Evictions was especially helpful in the design of the legal framework for the study.
[195] UN Comm. on Econ., Soc. and Cultural Rts. (ESCR Committee), General Comment No. 15, *The Right to Water*, ¶ 1, 3, U.N. Doc. E/C.12/2002/11 (Nov. 11-29, 2002) [hereinafter "ESCR Committee General Comment No. 15"].
[196] *Id.*, ¶ 3. For a full discussion of the legal content of these rights, *see* Chapter V.
[197] ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 11.

[198] *See id.*, at ¶ 39; *see also* World Health Organization, *Health and Hum. Rts. Pub. Series No. 3, The Right to Water,* 12 (2003), *available at* http://www.who.int/water_sanitation_health/rtwrev.pdf.
[199] Environmental Assessment Annex II, *supra* note 71, at 11 ¶ 1.33.
[200] The population of Port-de-Paix estimated by the IDB in 1998 differs significantly from the population projection for 2007: 30,000 as compared to 171,314. Investigators were unable to determine whether the geographical units of measurement were the same for both estimates. For example, the population estimates for one may be based on the city population and the other on the population of the commune (or arrondissement), all named Port-de-Paix.
[201] UNICEF, *supra* note 40, at 123.
[202] For a detailed description of how to develop a spatial sample area from GPS waypoints, *see* LES ROBERTS, INTERNATIONAL RESCUE COMMITTEE STRATEGIES FOR DOCUMENTING WATER & SANITATION COVERAGE AND NUMBERS OF BENEFICIARIES: GUIDELINES FOR QUANTITATIVELY ASSESSING AND EVALUATING PROGRAM REQUIREMENTS AND ACCOMPLISHMENTS (1999). Please note: the introduction of Google Earth technology allowed the primary investigator in this study to more efficiently mark waypoints and determine sample area without physically traveling along the periphery of the area to mark the points.
[203] *See generally* VIRGINIA ROAF, ASHFAQ KHALFAN, & MALCOLM LANGFORD, HEINRICH BÖLL STIFTUNG in cooperation with COHRE & BROT FÜR DIE WELT, GLOBAL ISSUE PAPERS NO. 14, MONITORING IMPLEMENTATION OF THE RIGHT TO WATER: A FRAMEWORK FOR DEVELOPING INDICATORS, (2005), *available at* http://www.cohre.org/store/attachments/right%20to%20water%20-%20indicators%20framework.pdf. *See also* MANUAL ON THE RIGHT TO WATER, *supra* note 191.
[204] A rights-based approach to development is a conceptual framework for the process of human development. It integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The human rights community expects States, development NGOs, intergovernmental organizations and multilateral banks to follow a rights-based approach to development. Thus, the study team felt that the human rights community should hold itself to the same standards. This project was designed according to a rights-based approach with the aim of amplifying the voices of the Haitian people concerning the right to water and thereby contributing to the empowerment of the citizens of Port-de-Paix as rights-holders. A rights-based approach incorporates the following elements: empowerment, indivisibility and interdependence, non-discrimination and attention to vulnerable groups, accountability and participation. These concepts are based on core human rights norms and have been formulated and adopted by UN agencies in their "Common Understanding" of the rights-based approach to development cooperation. *See* UN, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies: Attachment 1 to Report of The Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform* (2003), *available at* http://www.undp.org/governance/docs/HR_Guides_CommonUnderstanding.pdf. The United Nations Office of the High Commissioner for Human Rights (OHCHR) has developed a detailed guide to understanding the human rights-based approach to development. *See* OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development* (2006), *available at* http://www.ohchr.org/Documents/Publications/FAQen.pdf.
[205] The area was selected by triangulating the three most central randomized points from the household survey randomization process. Using Google Earth, lines were drawn along the outer-most streets and paths located in the triangulated area. The line created a loop. Using satellite images and by walking the along the loop, investigators estimated the number of households in the area. The rough estimate was around 200 households. The goal for medical interviews was 20 households; therefore, the estimated number of households was divided by the ideal number of interviews. The resulting number, 10, was the interval of household by which the interviews were conducted.
[206] The All-In-One Home Drinking Water Test Kit, *available at* http://www.h2okits.com/site/1286521/product/WS-425B.
[207] Environmental Protection Agency, GROUND WATER AND DRINKING WATER, SETTING STANDARDS FOR SAFE DRINKING WATER (2006), *available at* http://www.epa.gov/safewater/standard/setting.html.
[208] UCAIHS Approval HS#6113, approved May 14, 2007; extended Jan. 28, 2008.
[209] G. HOWARD AND J. BARTRAM, DOMESTIC WATER QUANTITY, SERVICE LEVEL AND HEALTH 22 (World Health Organization, 2003).
[210] *Id.,* at 9.
[211] The latest study found almost equivalent levels of diarrhea in children drinking from improved versus non-improved sources. EMMUS-IV, *supra* note 106, at 52.
[212] *Id.*, at 20.

[213] E.P. Donovan, D.F. Staskal, K.M. Unice, J.D. Roberts, L.C. Haws, B.L. Finley, & M.A. Harris, *Risk of Gastrointestinal Disease Associated with Exposure to Pathogens in the Sediments of the Lower Passaic River.* APPLIED AND ENVIRONMENTAL MICROBIOLOGY, 74 (4), 1004-1018 (2007).
[214] J.D. Kravitz, M. Nyaphisi, R. Mandel, & E. Petersen, *Quantitative bacterial examination of domestic water supplies in the Lesotho Highlands: water quality, sanitation, and village health*, 77(10) Bulletin of the World Health Organization, 829-836 (1999).
[215] UNICEF, *supra* note 40.
[216] Although there was no public water available at the time of the survey, there had been water available intermittently through the public system during the previous five years.
[217] Some families reported using multiple primary sources of water.
[218] UNICEF, *UNICEF Statistics: Water* (2005), *available at* http://www.childinfo.org/areas/water/monitoring.php.
[219] HOWARD AND BARTRAM, *supra* note 209, at 22.
[220] *Id.* at 3.
[221] P.M. Foggin, M.E. Torranceb, D. Dorjec, W. Xuric, J.Foggin, & J. Torrance, *Assessment of the health status and risk factors of Kham Tibetan pastoralists in the alpine grasslands of the Tibetan plateau,* 63 SOCIAL SCIENCE & MED. 2512–2532 (2006).
[222] UNICEF, *supra* note 40.
[223] World Bank Group, *World Development Indicators 2005* (2005), *available at* www.worldbank.org/data/countrydata/aag/hti_aag.pdf.
[224] HOWARD AND BARTRAM, *supra* note 209, at 22.
[225] C. DeNavas-Walt, B.D. Proctor, & J. Smith, *Income, Poverty, and Health Insurance Coverage in the United States: 2006*, U.S. GOV'T PRINTING OFFICE (U.S. Census Bureau, 2007), *available at* http://www.census.gov/prod/2007pubs/p60-233.pdf.
[226] Household census and health interviews were performed by an experienced clinician at 20 randomly chosen households in a neighborhood, again, randomly chosen within the study boundaries. Health information was gathered for everyone who lived in a selected household. If the person was present, a complete medical history and (when possible) physical exam were performed with them directly. For household members not present, health history was obtained from adult family members.
[227] A water sample taken from a central tap by investigators at *Hôpital Immaculée Conception* was bacterially contaminated.
[228] "Typhoid fever" was reported by an even higher percentage of respondents. We are reporting 4 cases in 160 individuals. These numbers represent only cases with enough details of history, reported laboratory findings, and response to appropriate therapy. While this is a high incidence of typhoid in a small sample size and no statistical conclusions can be drawn, the case histories for typhoid in each case were very convincing. The frequent fear of and concern for typhoid should also be underlined. The citizens who participated in this study were very concerned about water-borne illness.
[229] The obligations to respect, protect, and fulfill human rights will be discussed in Chapter VI.
[230] P.H. Gleick, *The Human Right to Water*, 1 WATER POL'Y 487, 490 (1998).
[231] ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 3.
[232] *Id.*, at ¶ 12.
[233] *Id.*
[234] *Id.*
[235] Inter-Am. C.H.R., Annual Report 2002, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2003).
[236] Constitution of the Republic of Haiti (1987) [hereinafter "Haiti Constitution"].
[237] *Id.*, at arts. 19, 22, 23, 32 and 35.
[238] UN Water Conference, Mar del Plata Action Plan, preamble, G.A. Res. 32/158 (1977).
[239] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted December 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981.
[240] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990.
[241] *See, e.g., Free Legal Assistance Group et al v. Zaire*, Afr. Comm'n on Human & Peoples' Rts., Comment No. 25/89, 47/90, 56/91, 100/93 (1995) (African Commission on Human and People's Rights held the failure of the Government to provide basic services such as safe drinking water . . . constitutes a violation of the Article 16 right to health); *Menores Comunidad Paynemil s/ accion de amparo,* Expte. 311-CA-1997. Sala II. Cámara de Apelaciones en lo Civil, Neuquen, (1997) (Argentina court required States to address pollution of drinking water sources); *F.K. Hussain v. Union of India,* O.P. 2741/1988 (1990) (considering opposing views regarding the impact of a government agency's plans to dig wells on a set of islands on water quality); *Government of the Republic of South Africa & Others v. Grootboom & Others* 2001 (1) SA 46 (CC) (S. Afr.) (addressing obligations of States to progressively fulfill socio-economic rights, including water).

[242] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.
[243] International Covenant on Economic, Social and Cultural Rights (ICECSR), adopted December 16, 1966, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 993 U.N.T.S. 195, entered into force January 14, 1969.
[244] Organization of American States, American Convention on Human Rights (American Convention), O.A.S. T.S. No. 36, 1144 U.N.T.S. 123 (1969), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), entered into force July 18, 1978.
[245] Additional Protocol to American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), adopted November 17, 1988, O.A.S. T.S. No. 69 (1988), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992), entered into force November 16, 1999.
[246] American Declaration on the Rights and Duties of Man, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System (American Declaration), O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc. 6 rev.1 at 17 (1992), entered into force July 18, 1978. Although the Declaration is not legally binding itself, the Inter-American Court of Human Rights expressly recognizes that the American Declaration defines the fundamental human rights referred to in the OAS Charter. *See* Interpretation of American Declaration of the Rights and Duties of Man, 1989 Inter-Am. Ct. H.R., (ser. A) No. 10 at ¶ 43, Advisory Opinion OC-10/89 (1989).
[247] Freidrich Manz, *Hydration in Children*, 26 J. OF THE AM. C. OF NUTRITION 562 (2007).
[248] MANFRED NOWAK, UN COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY, 424-5 (1992).
[249] UN Human Rts. Committee, General Comment No. 17, *Rights of the Child*, ¶ 3, U.N. Doc. A/44/40 (1989). *See also* UN Human Rts. Committee, Concluding Observations of the Human Rights Committee (Canada) U.N. Doc. CCPR/C/79/Add.105 (1999) (concerning the denial of benefits to some children of low-income families and the high poverty rate among single mothers leading to a denial of protections their children are entitled under the ICCPR).
[250] ICESCR, *supra* note 243, art. 12(2)(a).
[251] *See* John Scanlon, Angela Cesar and Naomi Nemes, *Water as a Human Right?* Int'l Union for the Conservation of Nature Environmental Policy and Law Paper No. 51 (2004).
[252] NOWAK, *supra* note 248, at 628. While most violations established by the UN Human Rights Committee have been caused by unreasonable (discriminatory) provisions in legislative enactments, in a few cases it was the discriminatory application of the law that was the decisive ground for finding a violation; *see Brok v. The Czech Republic*, §7.4, U.N. Doc. CCPR/C/73/D/774/1997 (2001).
[253] *See Broeks v. Netherlands*, U.N. Doc. CCPR/C/29/D/172/1984 (1984) and *Zwaan-de-Vries v. Netherlands,* U.N. Doc. CCPR/C/29/D/182/1984 (1984); *see also* NOWAK, *supra* note 248, at 628.
[254] ESCR Committee, General Comment No. 16, *The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights,* ¶ 4, U.N. Doc. E/C.12/2005/4 (2005).
[255] *See* El Hadji Guiseé, Special Rapporteur under Sub-Commission Resolution 1997/18, *The Right of Access of Everyone to Drinking Water Supply and Sanitation Services*, Working Paper E/CN.4/SUB.2/1998/7, ¶ 21 (1998).
[256] Rehydration Project, *Why is Dehydration So Dangerous*?, *available at* http://rehydrate.org/dehydration/index.html.
[257] Guiseé, *supra* note 255, at ¶ 13.
[258] UN Human Rts. Committee, General Comment No. 6, *The Right to Life*, ¶ 5, U.N. Doc. HRI/GEN/1(1982).
[259] CRC, *supra* note 240, at art. 6(2).
[260] *See* Villagrán Morales et al., Inter-Am. Ct. H.R., Judgment of Nov. 19, 1999, Ser. C No. 63 (1998), ¶ 144 (finding that the right to life requires States not only to ensure it is not arbitrarily denied, but also that States do not prevent access to conditions that guarantee a dignified existence).
[261] *See* Inter-American Commission on Human Rights, 1995 Annual Report, *available at* http://www.iachr.org/annualrep/95eng/TOC.htm (directly linking the right to water with the right to life by analogizing environmental law violations with human rights violations, and stating that the provisions of Article 4 of the American Convention (right to life) necessitate government protection of water).
[262] World Health Organization, Regional Office for the Western Pacific, District Health Facilities: Guidelines for Development & Operations, 106 (1998), *available at* http://www.wpro.who.int/internet/files/pub/297/part1_1.7.pdf.
[263] UN Committee on Econ., Soc., and Cultural Rts, General Comment No. 14, *The Right to the Highest Attainable Standard of Health,* ¶ 11, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter ESCR Committee General Comment No. 14].
[264] ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 3. The ESCR Committee has called upon States to specifically address the problem of access to safe drinking water in order to combat problems of malnutrition, especially among children, hygiene and water-related diseases. *See, e.g.,* ESCR Committee, Concluding Comments (Senegal), ¶ 55,

U.N. Doc. E/C.12/1/Add.62 (Sept. 24 2001).
[265] *See, e.g.,* UN Committee on the Rights of the Child (CRC Committee), Concluding Comments (Benin) para. 52, U.N. Doc. CRC/C/BEN/CO/2 (2006); CRC Committee, Concluding Comments (Peru), ¶ 50, U.N. Doc. CRC/C/PER/CO/3 (2006).
[266] UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation No. 24, ¶ 28, U.N. Doc. A/54/38 (1999).
[267] *Id.; see also* CEDAW Committee, *Report on 20th-21st Session*, U.N. Doc. A/54/38/REV.1 (Supp. No. 38) (1999).
[268] ICESCR, *supra* note 243, art. 11.
[269] ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 3.
[270] *Id.*
[271] *See, e.g.,* CRC Committee, Concluding Observations of the Committee on the Rights of the Child: Central African Republic, ¶¶ 68-9, U.N. Doc. CRC/C/15/Add.138 (Oct. 2000).
[272] Protocol of San Salvador, *supra* note 245, art. 11.
[273] Report on Human Rights Situation in Brazil by the Inter-American Commission on Human Rights, *available at* http://www.cidh.org/countryrep/brazil-eng/index%20-%20brazil.htm.
[274] *See* Water Aid, *Water and Sanitation: The Education Drain*, *available at* www.wateraid.org/documents/education20report.pdf.
[275] UNICEF, *State of the World's Children,* 23 (2004), *available at* www.unicef.org/sowc04/files/SOWC_O4_eng.pdf.
[276] *Id.*, at 55, 88; *see also* Jackie Kirk & Marni Sommer, *Menstruation and Body Awareness: Linking girls' health with girls' education*, *available at* www.schools.watsan.net/content/download/323/2726/file/Kirk-2006-Menstruation-KIT%20paper.pdf.
[277] CRC Committee, General Comment No. 4, *Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, ¶ 17(b), U.N. Doc. CRC/GC/2003/4 (2003).
[278] The CRC Committee has called attention to the link between the right to water/sanitation and the right to education in its concluding comments for many countries, including: Tanzania, Kenya, Guinea-Bissau, Sri Lanka, Nepal, Myanmar, Syrian Arab Republic and Indonesia. *See* U.N. Doc. CRC/C/TZA/CO/2, ¶ 55 (Tanzania) (2006); U.N. Doc. CRC/C/KEN/CO/2, ¶ 57 (Kenya) (2007); U.N. Doc. CRC/C/15/ADD.177, ¶ 34 (Guinea-Bissau) (2002); U.N. Doc. CRC/C/15/ADD.207, ¶ 45 (Sri Landa) (2003); U.N. Doc. CRC/C/15/ADD.261, ¶ 82 (Nepal) (2005); U.N. Doc. CRC/C/15/ADD.237, ¶ 67 (Myanmar 2004); U.N. Doc. CRC/C/15/ADD.212, ¶ 45 (Syrian Arab Republic) (2003); U.N. Doc. CRC/C/15/ADD.223, ¶ 72 (Indonesia) (2004).
[279] CEDAW, *supra* note 239, at art. 10(f).
[280] *See also* Report by the Special Rapporteur on the Right to Food, ¶¶ 36-51, U.N. Doc. E/CN.4/2003/54 (2003); *see also* Food and Agriculture Organization of the U.N. (FAO), Voluntary Guidelines, *available at* http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm (supporting the proposition that to support the right to adequate food, access to water in sufficient quantity and quality is essential for life and health).
[281] *See, e.g.* ESCR Committee, General Comment No. 12, *The Right to Adequate Food*, ¶ 12, U.N. Doc. E/C.12/1999/5 (1999) [hereinafter "ESCR Committee General Comment No. 12"].
[282] CRC, *supra* note 243, art. 24(2)(c). The interconnectedness of the right to water with the right to food is particularly strong when it comes to children since food for children and babies is often mixed with unclean water. *See, e.g.,* Report submitted to the Commission on Human Rights by the Special Rapporteur on the right to food, para. 25, U.N. Doc. E/CN.4/2002/58 (2002) (prepared by Jean Ziegler).
[283] ESCR Committee, General Comment No. 4, *The Right to Adequate Housing*, ¶ 8(b), U.N. Doc. E/1992/23 (1991) [hereinafter "ESCR Committee General Comment No. 4"].
[284] ICESCR, *supra* note 243, art. 11.
[285] Special Rapporteur on the Right to Adequate Housing, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, ¶ 62, U.N. Doc. E/CN.4/2001/51 (2001) (prepared by Miloon Kothari).
[286] *See* Statute of the International Court of Justice, Oct. 24, 1945, 59 Stat. 1031, T.S. No. 993, art. 38(1).
[287] *See, e.g.* ESCR Committee, Concluding Comments (Israel), E/C.12/1/Add.90 (May 23, 2003), ¶. 31 ("basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law"); *see also* SIGRUN I. SKOGLY, BEYOND NATIONAL BORDERS: STATES' HUMAN RIGHTS OBLIGATIONS IN INTERNATIONAL COOPERATION, 124 (2006); and MARGOT E. SALOMON, GLOBAL RESPONSIBILITY FOR HUMAN RIGHTS: WORLD POVERTY AND THE DEVELOPMENT OF INTERNATIONAL LAW , 124-5 (2007). Whether or not all elements of the right to water are included in the minimum core is uncertain; some States have asserted that there is no right to water under customary international law, however, there is no clear consensus on this issue. In submissions to the Office of the High Commissioner for Human Rights (OHCHR) regarding the legal right to water, the United States, the United Kingdom. and Turkey stated there is no right to water under customary international law. Finland referenced

international instruments, such as the Millennium Development Goals, as evidence of a pressing need to address the legal right to water. While it could be argued that the failure to deny such a right means that a State has acquiesced, in the case of the right to water it would be a weak contention as there has not been a strong movement to recognize water as a right falling within the boundaries of customary international law. State submissions to the OHCHR on the issue of the legal right to water are available at: http://www2.ohchr.org/english/issues/water/contributions.htm.

[288] *See* B.G. RAMCHARAN, ED., THE RIGHT TO LIFE IN INTERNATIONAL LAW (1985).

[289] ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 3.

[290] *See* THEODOR MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW, 79 (1989); Bruno Simma & Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles,* 12 AUSTL. Y.B. INT'L L. 82, 84 (1992); *but see* J.S. Watson, L*egal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law*, 3 U. ILL. L.F. 609 (1979) (providing a skeptical view of the Universal Declaration of Human Rights as customary law).

[291] Universal Declaration of Human Rights (UDHR), G.A. Res. 217A, art. 25(1), U.N. Doc A/810 (Dec. 12, 1948).

[292] Scanlon et al., *supra* note 251, at 4.

[293] Gleick, *supra* note 230 at 487-503.

[294] UDHR, *supra* note 291, art. 3; see *supra* discussion of right to water within the right to life.

[295] *See* United States' Submission to the Office of the High Commissioner on Human Rights on Human Rights and Water, ¶ 15 (2007) (United States argued there is no right to water under international law, but noted that "as a matter of policy and good government it is manifest that water is essential for the life of all individuals, and indeed for all life on earth."), *available at* http://www2.ohchr.org/english/issues/water/contributions/UnitedStatesofAmerica.pdf.

[296] Declaration on the Right to Development, G.A. Res. 41/128, art. 1, U.N. Doc A/41/53 (1986).

[297] G.A. Res. 54/175, U.N. Doc. A/RES/54/175 (2000).

[298] *See* IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 583 (5th ed. 1998) ("the right to development already has a prominent position both in literature and in diplomacy, and is the subject of a Declaration on the Right to Development").

[299] The Millennium Development Goals Report 3 (2007), *available at* www.un.org/millenniumgoals/pdf/mdg2007.pdf.

[300] *Id.*, at 24.

[301] Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT'L L. 691, 789 (2006).

[302] Philip Alston, *A Human Rights Perspective on the Millennium Development Goals*, ¶ 36, *available at* http://www.hurilink.org/tools/HRsPerspectives_on_the_MDGs--Alston.pdf.

[303] *Id.*, at ¶ 40.

[304] Vienna Convention on the Law of Treaties (VCLT), art. 18, May 23, 1969, 1155 U.N.T.S. 331. Note that there are other ways for States to consent to be bound, e.g., through accession.

[305] ESCR Committee General Comment No. 15, *supra* note 195.

[306] *Id.*, at ¶ 21.

[307] *Id.,* at ¶ 23.

[308] *Id.,* at ¶ 25.

[309] The ESCR Committee has repeatedly called on States to comply with their obligations under the Covenant when acting within international financial institutions, including in relation to the right to water. *See* ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 36; ESCR Committee General Comment No. 14, *supra* note 263, at ¶ 39; ESCR Committee General Comment No. 12, *supra* note 281, at ¶ 41; and ESCR Committee, General Comment No. 18, *The Right to Work*, ¶ 30, U.N. Doc E/C.12/GC/18 (2006). Numerous scholars have argued that States remain responsible for their human rights commitments in their roles as member States of IFIs. Margot Salomon writes, for example, that "The majority of States belonging to the international financial institutions, for example, have ratified the major human rights conventions, including the ICESCR, and are thereby bound to honour their human rights obligations. . . through their actions in international organizations.") SALOMON, *supra* note 287, at 136. In addition, Bahram Ghazi, notes that "it is clear that contractual conventional norms are valid for States in all their activities inside or outside an international institution. BAHRAM GHAZI, THE IMF, THE WORLD BANK GROUP AND THE QUESTION OF HUMAN RIGHTS, 136 (2004). Smita Narula argues that when IFIs "disregard or violate human rights, it reflects the failure of these member States to abide by their international human rights obligations." Narula, *supra* note 301*,* at 742.

[310] *See generally* Sirgun I. Skogly, *The Obligation of International Assistance and Co-operation in the International Covenant on Economic, Social and Cultural Rights*, in HUMAN RIGHTS AND CRIMINAL JUSTICE FOR THE DOWNTRODDEN: ESSAYS IN HONOUR OF ASBJØRN EIDE, 403 (M. Bergsmo, ed., 2003).

[311] *See, e.g.*, *Alejandre v. Cuba*, Case 11.589, Inter-Am. C.H.R., Report No. 86/99, OEA/Ser.L/V/II.06, doc. 3 rev. ¶ 25 (1999) (for proposition that when agents of a State exercise power or authority over persons outside national territory,

the State's obligation to respect human rights continues); *see generally,* EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES (Fons Coomans and Menno T. Kamminga, eds., 2004).

[312] Rolf Künnemann, *Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights*, in Fons Coomans & Menno T. Kamminga, eds., *supra* note 311, at 201, 216.

[313] For the sake of brevity, this chapter often refers to the rights of "Haitians." The reader should bear in mind that the Government of Haiti bears responsibility for the rights not only of those who live in Haiti and have Haitian nationality (Haitians), but also for anyone under the State's jurisdiction, as explained in Chapter V.

[314] Haiti has ratified the ICCPR and the American Convention, both of which guarantee these rights. Haiti has signed but not ratified the ICESCR. *See* UN Treaty Database, Status by Country, *available at* http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet (comprehensive list of what treaties the Government of Haiti has and has not ratified). Violations of the most basic economic and social rights, such as the right to food, water, and health, may amount to violations of the rights to life, personal liberty and security.

[315] Haiti Constitution, *supra* note 236, at arts. 19, 22, 23 and 32.

[316] FIAN International, BREAD FOR THE WORLD, IDENTIFYING AND ADDRESSING VIOLATIONS OF THE HUMAN RIGHT TO WATER: APPLYING THE HUMAN RIGHTS APPROACH 5, *available at* www.menschenrechtwasser.de/downloads/violations_human-rights-water.pdf.

[317] ICESCR, *supra* note 243, at art. 2(1).

[318] *See* VCLT, *supra* note 304*, at* art. 18.

[319] *See, e.g.* ESCR Committee, Concluding Comments (Israel), *supra* note 287, at ¶ 31 ("basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law"); *see also* SKOGLY, *supra* note 287, at 124; and SALOMON, *supra* note 287, at 124-5.

[320] Core obligations in relation to the right to water include: (*a*) To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease; (*b*) To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups; (*c*) To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household; (*d*) To ensure personal security is not threatened when having to physically access water; (*e*) To ensure equitable distribution of all available water facilities and services; (*f*) To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups; (*g*) To monitor the extent of the realization, or the non-realization, of the right to water; (*h*) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups; (*i*) To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation. ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 37.

[321] States have an obligation not only to "do no harm" with regard to individuals' human rights, but high income States may also have a "responsibility to provide appropriate international assistance and cooperation for low-income countries." Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, ¶ 61, U.N. Doc. A/HRC/7/11 (2008) (prepared by Paul Hunt). While this argument was formulated in relation to the right to health, it could be extended to other human rights.

[322] *See id.*, at ¶ 31.

[323] ICCPR, *supra* note 242, at art. 2(1).

[324] CRC, *supra* note 240, at art. 2(1).

[325] American Convention, *supra* note 244, at art. 1(1).

[326] ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 12(c). *See also id.,* at ¶¶ 31, 44(b), 53. The ESCR Committee has consistently used the jurisdiction standard in its comments on rights contained in the ICESCR. *See*, *e.g.,* ESCR Committee General Comment No. 12, *supra* note 281, at ¶ 14; ESCR Committee General Comment No. 4, *supra* note 283, at ¶ 13; ESCR Committee General Comment No. 14, *supra* note 263, at ¶¶ 12(b), 51.

[327] For a discussion of this point, *see* John Cerone, *Out of Bounds? Considering the Reach of International Human Rights Law,* (CHRGJ, Working Paper No. 5, 2006), *available at* http://www.nyuhr.org/docs/WPS_NYU_CHRGJ_Cerone_Final.pdf.

[328] All of the major UN human rights treaty bodies have found that human rights obligations extend extraterritorially. *See, e.g.,* UN Human Rts. Committee, The Nature of the General Legal Obligations Imposed on State Parties to the Covenant, General Comment No. 31, ¶ 10, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004); UN Committee Against Torture, Implementation of Article 2 by States Parties, General Comment No. 2, ¶ 16, U.N. Doc. CAT/C/GC/2/CRP.1.Rev.4; ESCR Committee Concluding Comments (Israel) *supra* note 287, at ¶ 31. The

International Court of Justice has agreed with this approach. *See, e.g.,* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 131, ¶¶ 109-113. For scholarly support, *see generally* SKOGLY, *supra* note 287.

[329] ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 31.

[330] U.N. ESOCOR, *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, *19*, U.N Doc. E/C.12/2000/13 (2000).

[331] SKOGLY, *supra* note 287, at 192.

[332] *Id.*, at 194.

[333] *See* Narula, *supra* note 301, at 742 (for the same argument relating to the right to food).

[334] *Id.*, at 738.

[335] SIGRUN I. SKOGLY, THE HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND 26 (2001).

[336] Narula, *supra* note 301, at 742.

[337] GHAZI, *supra* note 309, at 86.

[338] The United States holds 30 percent of the voting power in the Inter-American Development Bank, enough to give the country veto power over decisions of the Bank. The head of the World Bank is always from the United States, while the head of the International Monetary Fund is always a European. Narula, *supra* note 301, at 740.

[339] Sigrun I. Skogly & Mark Gibney, *Transnational Human Rights Obligations*, 24 HUM. RTS. Q. 781, 784 (2004).

[340] GHAZI, *supra* note 309, at 47 – 51.

[341] Narula, *supra* note 301, at 742.

[342] Given that member States generally do not exert "effective control" through their actions via IFIs, arguments for the duty to protect and fulfill are more difficult to support under existing legal standards. Effective control occurs when one State has control over a foreign territory or population as a result of occupation or otherwise, thus bringing that population within its jurisdiction. The concept has been used to apply a State's treaty commitments to its extraterritorial actions. The most familiar context is when a State's armed forces occupy another territory. *See Loizidou v. Turkey*, 20 Eur. H.R. Rep. 99, 139 (1995); *Issa v. Turkey*, 41 Eur. H.R. Rep. 567, 588 (2005). Effective control may also be achieved through the activities of a State's troops as a contingent in peacekeeping forces. *See, e.g.,* UN Human Rights Committee, The Nature of the General Legal Obligations Imposed on State Parties to the Covenant, General Comment No. 31, ¶ 10, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004); *see generally* Künnemann, *supra* note 312.

[343] *See, e.g.*, GHAZI, *supra* note 309, at 138.

[344] ICESCR, *supra* note 243, at art. 2(1) (emphasis added).

[345] ESCR Committee, Concluding Comments (Egypt), ¶ 28, U.N. Doc. E/C.12/1/Add.44 (2000).

[346] ESCR Committee, Concluding Comments (Great Britain & Northern Ireland), ¶ 26, U.N. Doc. E/C.12/1/Add.79 (2002); ESCR Committee, Concluding Comments (Belgium), ¶ 31, U.N.Doc. E/C.12/1/Add/54 (2000).

[347] *See, e.g.,* ESCR Committee., General Comment No. 2, *International Technical Assistance Measures,* (1990) [hereinafter "ESCR Committee General Comment No. 2"]; ESCR Committee General Comment No. 12, *supra* note 281; and ESCR Committee General Comment No. 14, *supra* note 263. Several scholars have taken these remarks as "evidence of a 'duty to fulfill' placed on third-party States. *See, e.g.* Narula, *supra* note 301, at 736 (*citing* Fons Coomans, *Some Remarks on the Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights*, in Fons Coomans and Menno T. Kamminga, eds., *supra* note 311, at 183, 196).

[348] ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 60. *See also* Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, ¶¶ 107-10, Addendum, Missions to the World Bank and the International Monetary Fund in Washington, D.C. (Oct. 20, 2006) and Uganda (Feb. 4-7, 2007) (prepared by Paul Hunt).

[349] ESCR Committee General Comment No. 15, *supra* note 195, at ¶ 32.

[350] GHAZI, *supra* note 309, at 136.

[351] *See* VCLT, *supra* note 304, art. 18.

[352] The United States has ratified the International Covenant on Civil and Political Rights, which protects the right to life (Art. 6). *See* UN Treaty Database, Status by Country, *available at* http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet (comprehensive list of which international human rights treaties the Government of the United States has and has not ratified). The United States is also bound by customary international law, which protects the minimum core of economic and social rights. Both of these sources of law impose obligations on the United States concerning the right to water. *See* discussion, *supra* Chapter V.

[353] The analysis in this section draws in part from documents created by the UN Office of the High Commissioner for Human Rights, available at: www.ohchr.org; see especially *Frequently Asked Questions on a Human Rights-Based Approach to Development*, *supra* note 204.

[354] *See* Chapter VI for a discussion of the duties of states relevant to the right to water.
[355] All human rights, whether they are civil and political rights (such as the rights to life, equality before the law and freedom of expression), economic, social and cultural rights (such as the rights to work, social security and education), or collective rights (such as the rights to development and self-determination), are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others. *See* OHCHR, *What are Human Rights? available at* http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx.
[356] *See generally* Jonathan Fox, *Transparency for Accountability: Civil Society Monitoring of Multilateral Development Bank Anti-Poverty Projects*, 7 DEVELOPMENT IN PRACTICE 151 (1997).
[357] *See, e.g.,* ESCR Committee General Comment No. 2, *supra* note 347, at ¶ 8(d)(recommending that rights contained in the Covenants be considered at each stage of development).

WÒCH NAN SOLEY:
The Denial of the Right to Water in Haiti

Wòch nan dlo pa konnen doulè wòch nan soley.
The rocks in the water don't know the suffering of the rocks in the sun.

The title of this report draws on a Haitian proverb which laments that the rich do not know the suffering of the poor. Living in the most impoverished nation in the Western Hemisphere, the Haitian people live the sad truth of this proverb, as the "rocks in the water"—Haiti's elite and the international community—not only ignore, but often contribute to violations of ordinary Haitians' most basic human rights, including the right to water. This report presents the findings of a study on the right to water jointly undertaken by four organizations in the northern Haitian city of Port-de-Paix, where an already water-deprived community has doubly suffered from the effects of having loans that were earmarked to extend and rehabilitate its water system deliberately blocked. The report draws on both human rights and public health methodologies to examine the status of the right to water in Haiti. The report finds that issues around access to water are impacted by actors at all levels, from the local to the international. This report thus culminates in a series of recommendations to States, international institutions, and non-governmental actors involved in the water sector in Haiti, calling on these actors to adopt a rights-based approach at all stages of intervention in the water sector so that the rights of the "rocks in the sun" may be finally realized.

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Left: A young woman collects water for her household's consumption from a *sous dlo*, a small hole dug to filter sediment from the contaminated water of the Trois-Rivières river.

Right: A public water kiosk in Port-de-Paix—useless due to failures of the water system—serves an alternative function as a cool locale for mango storage.

Additional cover photos: Broken taps in the public water system in Port-de-Paix are one symptom of Haiti's dysfunctional water system.

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