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# INDICATORS IN CRISIS: RIGHTS-BASED HUMANITARIAN INDICATORS IN POST- EARTHQUAKE HAITI

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**INTRODUCTION**

***The Catastrophe***

The earthquake that hit Port-au-Prince on January 12, 2010 has been called “the largest urban natural catastrophe in recorded history,” killing more than 222,570 people.<sup>1</sup> In addition, 300,572 people were injured. Some 2.3 million people—almost 25% of the entire national population—were displaced.<sup>2</sup> Thousands of civil servants died.<sup>3</sup> Virtually all of the major landmarks in the city were destroyed, and ministries and infrastructure crumbled.<sup>4</sup> This level of destruction would be horrific no matter where it took place. But the gravity of the loss was compounded by two things. First, the destruction happened in a country that was—even before the earthquake—the poorest in the Western Hemisphere, where more than half

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<sup>1</sup> *Haiti: One Year Later*, U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS [U.N. OCHA] (July 12, 2010), <http://ochaonline.un.org/tabid/6412/language/en-US/Default.aspx>.

<sup>2</sup> *Id.*

<sup>3</sup> Office of the Haiti Special Coordinator, *Haiti: One Year Later*, U.S. DEPT. OF STATE (Jan. 10, 2011), <http://www.state.gov/s/hsc/rls/154255.htm>.

<sup>4</sup> See GOV’T OF THE REPUBLIC OF HAITI, HAITI EARTHQUAKE PDNA: ASSESSMENT OF DAMAGE, LOSSES, GENERAL AND SECTORAL NEEDS 5 (March 2010) (describing destruction of 1300 schools, 50 hospitals and health centers, part of the main seaport, and most government and administrative buildings).

of the population lived on less than \$1.00 per day and where access to potable water and adequate food was a daily struggle for many.<sup>5</sup> Second, the earthquake hit in the place where the country's scarce infrastructure, denuded human capital, and governmental presence was concentrated—a city that has long been known as the “Republic of Port-au-Prince.” The losses to the country were thus multiplied; the population that survived was left in shock, grief, and dire material circumstances.

The world's reaction was swift. The U.S. military was deployed. Specially trained search and rescue units from cities across the world were dispatched. Communications and logistics specialists struggled to restore services and clear backlogs preventing aid from reaching its destination. Within days, the logos of every imaginable international humanitarian organization were visible. Logos featuring foreign acronyms, all manner of religious symbols, and multicolored hands emblazoned T-shirts, adorned banners, and were painted onto fleets of white 4 x 4 vehicles. Soon, these non-governmental organizations (NGOs) were providing badly needed assistance to the city's 1.5 million internally displaced persons (IDPs).<sup>6</sup> Programs for food aid and nutrition, water and sanitation, housing and shelter, health care and psychosocial support, education and camp management were rapidly organized by NGOs. In the first six months of the humanitarian response, 1.5 million people received some form of shelter; 4.3 million people were given food; and 1 million people were provided access to potable water on a daily basis.<sup>7</sup> Although cholera was later to appear, at the six-month mark major epidemics had not appeared in the camps, and civil unrest had not materialized.

Much of this work was made possible through donations made to NGOs based in the United States, Canada, Australia, and Europe. By July 2010, American NGOs alone had raised \$1.3 billion to aid Haiti's earthquake-affected population.<sup>8</sup> Donor states and international organizations pledged

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<sup>5</sup> See WORLD BANK, HAITI AT A GLANCE (2006), available at <http://siteresources.worldbank.org/INTHAITI/Resources/Haiti.AAG.pdf> (comparing Haiti's development indicators with overall development indicators for Latin American and Caribbean countries).

<sup>6</sup> See HUMANITARIAN BULLETIN (U.N. OCHA, Port-au-Prince, Haiti), June 30, 2010 available at [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/-EKIM-87343H-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/-EKIM-87343H-full_report.pdf/$File/full_report.pdf) (detailing humanitarian relief efforts as of July 2010).

<sup>7</sup> *Haiti: One Year Later*, supra note 1.

<sup>8</sup> *How Charities Are Helping Haiti: How Much They Raised and Spent*, CHRON. PHILANTHROPY, July 9, 2010, available at <http://philanthropy.com/article/How-Charities-Are-Helping/66243/>.

more than \$5.3 billion to assist the government of Haiti in its rebuilding efforts.<sup>9</sup> The Haitian government prepared and launched a bold plan for the “refounding” of Haiti, committing to economic, social, and institutional rebuilding.<sup>10</sup> The Haitian parliament approved legislation creating the Commission Intérimaire pour la Reconstruction d’Haïti (Interim Haiti Recovery Commission), co-chaired by former U.S. President Bill Clinton and Haitian Prime Minister Jean-Max Bellerive.<sup>11</sup> Major donors, together with the Inter-American Development Bank, the UN Development Group, and the World Bank, established the Haiti Reconstruction Fund, aimed at pooling donor resources to support the reconstruction hosted by the Bank to avoid gaps and duplication of effort.<sup>12</sup>

Despite this generous outpouring of assistance, much of the NGO money raised had not been spent, and the majority of government pledges had yet to materialize by July 2010.<sup>13</sup> Reports appeared decrying the lack of coordination among NGOs, between the NGO sector and the government, and between international NGOs and Haitian civil society.<sup>14</sup> For displaced

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<sup>9</sup> This total is for pledges promised for the first two years of reconstruction. Gov’t of the Republic of Haiti, PLATEFORME POUR LA REFONDATION D’HAÏTI, [http://www.refondation.ht/analytics/rc?sessionId=127930183202957&topmodel=\[Dashboard2\]&dashboardId=32](http://www.refondation.ht/analytics/rc?sessionId=127930183202957&topmodel=[Dashboard2]&dashboardId=32) (last visited July 16, 2010). As of July 11, 2010, only ten percent of these pledges had been disbursed. Jean-Max Bellerive & Bill Clinton, *Finishing Haiti’s Unfinished Work*, N.Y. TIMES, July 12, 2010, at A19.

<sup>10</sup> The concept of Haiti’s “refounding” is captured in the French title of the website designed to host rebuilding plans from the government, “refondation.ht”. See also GOV’T OF THE REPUBLIC OF HAITI, ACTION PLAN FOR NATIONAL RECOVERY AND DEVELOPMENT OF HAITI 8–9 (Apr. 12, 2010), available at [http://www.refondation.ht/resources/Action\\_Plan\\_12April.pdf](http://www.refondation.ht/resources/Action_Plan_12April.pdf) (describing the government of Haiti’s vision and approach for rebuilding).

<sup>11</sup> *Progress*, INTERIM HAITI RECOVERY COMMISSION, <http://www.cirh.ht/index.jsp?&lng=en> (last visited Oct. 1, 2010).

<sup>12</sup> *About the HRF*, HAITI RECONSTRUCTION FUND, <http://www.haitireconstructionfund.org/hrf/background> (last visited Oct. 1, 2010).

<sup>13</sup> Joe Johns & MaryAnne Fox, *Most Countries Fail to Deliver on Haiti Aid Pledges*, CNN WORLD, July 15, 2010, available at [http://articles.cnn.com/2010-07-14/world/haiti.donations\\_1\\_haitian-government-pledges-interim-haiti-recovery-commission?\\_s=PM:WORLD](http://articles.cnn.com/2010-07-14/world/haiti.donations_1_haitian-government-pledges-interim-haiti-recovery-commission?_s=PM:WORLD) (reporting that less than two percent of \$5.3 billion in aid promised by other governments had been turned over to UN for handling and distribution); see also Sharyl Attkisson, *Following the Aid Money to Haiti*, CBS EVENING NEWS, May 12, 2010, available at <http://www.cbsnews.com/stories/2010/05/12/eveningnews-main6477611.shtml> (noting that vast majority of aid received by five major NGOs had not been spent and will be used on long term rebuilding projects).

<sup>14</sup> See, e.g., TRANSAFRICA FORUM, HAITI CHERIE: MY DEAR HAITI 13 (2010), available at [http://www.transafricaforum.org/files/Haiti\\_Report.pdf](http://www.transafricaforum.org/files/Haiti_Report.pdf) (describing lack of coordination between INGOs and Haitian civil society); INURED, VOICES FROM THE SHANTIES 21 (2010), available at <http://www.inured.org/docs/Voices%20from%20the%20>

Haitians, life continued to be difficult and grew more perilous for many.<sup>15</sup> As of March 2011, only 60% of those IDPs who were living in large camps were in locations that benefitted from coordinated servicing by the humanitarian community,<sup>16</sup> leaving 40% of those displaced without secure access to basic goods and services. An estimated 1200 encampments were identified in Port-au-Prince, but only about 200 were officially recognized.<sup>17</sup> Rapes and other forms of gender-based violence were increasing, perhaps precipitously.<sup>18</sup> Tents and tarps, in service under the baking sun for half a year in many instances, were disintegrating or tearing in the midst of the rainy season.<sup>19</sup> Flooding of the camps was common, and in some areas grew dangerous.<sup>20</sup> Forced displacements had begun, spurred on by private landowners seeking to clear their land of IDP tent camps.<sup>21</sup>

Without adequate mechanisms to hold NGOs to account, expressions of dissatisfaction took different forms. In the rainy heat of Port-au-Prince, graffiti reading “*Aba ONG volè*” (Down with NGO thieves) began to

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Shanties\_INURED2010.pdf (describing rivalry among NGO representatives); Tèt Ansanm Pou Yon Nouvel Ayiti [Let’s Unite Ourselves for a New Haiti], Address at the OXFAM Consultation in Port-au-Prince, Haiti (Mar. 5, 2010), *available at* <http://www.haitiresponsecoalition.org/oxfam-consultation-on-march-5-2010/> (warning about lack of coordination between NGO sector and government).

<sup>15</sup> For an overview of the situation in the camps as of summer 2010 based on a randomized empirical study of 1 in 8 camps, *see* MARK SCHULLER, UNSTABLE FOUNDATIONS: IMPACT OF NGOS ON HUMAN RIGHTS FOR PORT-AU-PRINCE’S INTERNALLY DISPLACED PEOPLE ii (Oct. 2010), *available at* <http://ijdh.org/wordpress/wp-content/uploads/2010/10/Report-unstable-foundations-final-2.pdf> (finding that “seven months following the earthquake, 40 percent of IDP camps do not have access to water, and 30 percent do not have toilets of any kind. An estimated 10 percent of families have a tent; the rest sleep under tarps or even bed sheets.”).

<sup>16</sup> OFFICE OF THE SPECIAL ENVOY FOR HAITI, [http://www.haitispecialenvoy.org/relief\\_activities](http://www.haitispecialenvoy.org/relief_activities) (last visited Mar. 7, 2011).

<sup>17</sup> *See* Alice Speri, *Still Homeless from Haiti Earthquake, Thousands Fight Forced Evictions*, CHRISTIAN SCI. MONITOR, July 2, 2010, *available at* <http://www.csmonitor.com/World/Americas/2010/0702/Still-homeless-from-Haiti-earthquake-thousands-fight-forced-evictions> (noting that 206 refugee camps among 1241 were recognized by U.N. OCHA as of July 2010).

<sup>18</sup> *See* INST. FOR JUST. & DEMOCRACY IN HAITI ET AL., OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN’S FIGHT AGAINST RAPE 6 (July 2010) (documenting “alarming rates of rape and other gender-based violence” in IDP camps).

<sup>19</sup> OCHR estimated in July 2010 that 40% of the tents and many of the tarps distributed since the earthquake needed to be replaced. HUMANITARIAN BULLETIN, *supra* note 6, at 3.

<sup>20</sup> *See id.* at 2 (reporting that floods and heavy rains had destroyed tents at settlement sites and had killed at least one individual).

<sup>21</sup> *See* Speri, *supra* note 17 (noting that at least 30 camps had been forcibly evicted or were at risk of eviction by private landowners).

appear on walls in Port-au-Prince.<sup>22</sup> Several aid workers were kidnapped.<sup>23</sup> Foreign humanitarians huddled in their compounds in the evenings, afraid of becoming targets of IDP frustration.

In this fraught context, the desire to measure progress is compelling. Six months after the earthquake, humanitarians were hard at work evaluating their efforts. Conducting myriad real-time evaluations (“RTEs”) humanitarian agencies were assessing their work, measuring impact against expectations.<sup>24</sup> Very often the assessment of progress in the humanitarian sphere has involved the prominent use of indicators—packaged and labeled data used to measure and evaluate projects, sectors, or entire relief efforts. These metrics are at the heart of the humanitarian endeavor today, including in post-earthquake Haiti. But these metrics, aimed at responding to demands for quality and accountability, raise many questions of their own. For example, who is the audience for such indicators? Does striving to achieve universal indicators frustrate efforts to respond to local needs? This paper sets out to examine these questions, drawing on empirical and critical methods and focusing on the use of indicators in Haiti.

### *Map of the Article*

With Haiti as a case study, this Article examines leading standards and indicators developed by professional humanitarians in the last dozen years that have as their aim improving the quality, effectiveness, and accountability of their own response to disaster. The paper builds on analysis of human rights indicators previously carried out with AnnJannette Rosga.<sup>25</sup> Understanding industry-wide humanitarian indicators as a “technology of global governance,” the paper also draws on the theoretical

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<sup>22</sup> Author’s notes describing site visit to Port-au-Prince (June 2010) (on file with author). A humanitarian context analysis report released in late July also noted the appearance of this graffiti. RENCORET ET AL., HAITI EARTHQUAKE RESPONSE: CONTEXT ANALYSIS 20 (July 2010).

<sup>23</sup> See Marine Hass, *Two Kidnapped European Aid Workers Freed in Haiti*, REUTERS, Mar. 11, 2010, available at [http://www.reuters.com/article/2010/03/11/-idUSN11251709\\_CH\\_2400](http://www.reuters.com/article/2010/03/11/-idUSN11251709_CH_2400) (reporting the kidnapping of two European aid workers in March 2010).

<sup>24</sup> For a list of RTEs being undertaken in Haiti, see *Haiti Learning and Accountability Portal*, ACTIVE LEARNING NETWORK FOR ACCOUNTABILITY AND PERFORMANCE IN HUMANITARIAN ACTION [ALNAP], <http://www.alnap.org/current/Haitilearningportal.aspx> (last visited Mar. 2, 2011).

<sup>25</sup> AnnJannette Rosga & Margaret Satterthwaite, *The Trust in Indicators: Measuring Human Rights*, 27 BERKELEY J. INT’L L. 253 (2009).

framework set out by Kevin Davis, Benedict Kingsbury, and Sally Engle Merry in their work on indicators.<sup>26</sup>

The Article proceeds as follows: Section I will present the paper's methodology and discuss the key findings of an online survey of humanitarians undertaken for this study. The survey, conducted in May and June 2010, provides empirical information about how humanitarians with experience in Haiti use and view indicators. In order to create a finite period for analysis, this Article examines only first six months after the January 12, 2010 earthquake.

Section II of the Article presents a brief overview and genealogy of the two leading humanitarian indicators and benchmarks efforts, the Sphere Project's Minimum Standards in Disaster Response ("Sphere" or "the Sphere Project") and the Humanitarian Accountability Partnership's Standard in Humanitarian Accountability and Quality Management ("the HAP Standard"). Understanding this background is critical to comprehending the failures that the humanitarian system hoped to overcome by creating and deploying industry-wide indicators. This Section also considers the relationship between the standards and indicators and the relevant human rights law that influenced their development.

With that background, Section III of the Article approaches indicators through the analytical lens of "governmentality" to examine how sites of emergency are viewed as measurable and manageable spaces through the diffusion and use of professional standards and indicators.<sup>27</sup> Drawing on the series of interviews with experts in humanitarian assistance described in

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<sup>26</sup> Kevin Davis et al., *Indicators as a Technology of Global Governance* (on file with author). This paper's analysis incorporates the Sphere and HAP indicators and benchmarks, although the indicators and benchmarks are not rank-ordered and are not always numerical. They otherwise match the definition of indicators developed by Davis et al.:

An indicator is a named, rank-ordered presentation of past or projected performance by different units that uses numerical data to simplify a more complex social phenomenon, drawing on scientific expertise and methodology. The representation is capable of being used to compare particular units of analysis (such as countries or persons), and to evaluate their performance by reference to one or more standards.

*Id.*

<sup>27</sup> I draw here on governmentality scholars' analyses of how technologies of measurement such as audit, budgeting, and the use of indices are used to both understand and bring into the ambit of governance activities such "problem" spaces as the economy or industry. See Nikolas Rose, Pat O'Malley & Mariana Valverde, *Governmentality*, 2 ANN. REV. L. & SOC. SCI. 83, 94 (2006).

Section I, this Section examines how standards and indicators—as a distillation of technical expertise and specific ways of understanding—are attempts to make sense of sites of emergency as spaces that can be rationally managed and subject to particular forms of governance and order.<sup>28</sup> The paper suggests that humanitarian indicators allow for governance at a distance, drawing on the logics of audit, quantification, and management, as well as the language of human rights.<sup>29</sup> Infused with the concepts and language of management and business, HAP’s accountability and quality management benchmarks also embody in important ways the audit culture<sup>30</sup> introduced to the humanitarian world via its powerful governmental donors. Drawing on analysis developed with Rosga in relation to human rights indicators,<sup>31</sup> this paper suggests that HAP’s laudable goal—of improving the accountability of humanitarian actors to beneficiaries through the creation of transparent standards, voluntary compliance, and external certification—is partially frustrated by its reliance on the logics of audit. While compliance with the HAP Standard may well improve the relationship between disaster-affected communities and INGOs in specific ways, the search for compliance may also unintentionally encourage performances of “participation” and “consultation” aimed at fulfilling set benchmarks rather than the genuine engagement sought by disaster-affected communities. On the other hand, HAP’s efforts may well succeed at turning the management and auditing gaze back on humanitarians, effectively subverting the logics of audit by requiring emergency workers to meaningfully engage with beneficiaries. The HAP Standard—where it is used—demands that humanitarians ensure forms of accountability and redress from themselves as powerful outsiders in a setting where perhaps only self-regulation can hope to do so.

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<sup>28</sup> *Id.* I do not mean to suggest that humanitarian workers act with colonialist intentions or out of a desire to rule affected populations. On the contrary, the humanitarians I interviewed, and those writing from a critical perspective, plainly demonstrated the best intentions for their work and spoke of the need to make their work more accountable to beneficiaries. The analysis here is my attempt to understand dynamics that exist regardless of individual intentions operating at discursive, institutional, and transnational levels.

<sup>29</sup> *Id.* at 95 (“Indeed, as Power showed so clearly, the technologies of budgets, audits, standards, and benchmarks, apparently so mundane, were crucial for the operationalization of programs of governing at a distance that characterized the forms of new public management taking shape under rationalities of advanced liberalism.”) (citation omitted).

<sup>30</sup> As will be discussed below, the term “audit culture” is not meant to refer only to formal audit structures or practices. Rather, it refers to a type of practices that arise in specific contexts that are aimed at assessment and verification, and which bear specific resemblances to formal audit.

<sup>31</sup> See Rosga & Satterthwaite, *supra* note 25 (examining and noting difficulties with increased reliance on human rights indicators to monitor fulfillment and enjoyment of international human rights).

Similarly, the Sphere Minimum Standards and accompanying indicators encourage humanitarians to measure their efforts and to hold themselves accountable for quality services. However, Sphere also tends to depoliticize the issues of power and access to material resources that are most salient to communities affected by disaster. In the “problem space”<sup>32</sup> of emergency, humanitarians use rights-based approaches, standards, and indicators to govern the putatively ungoverned—those whose governments have failed, become predatory, or can no longer be counted on to provide protection.<sup>33</sup> In this process, key dilemmas and problems that would otherwise be seen as the grounds for political contestation are “rendered technical,” as Tania Murray Li explains.<sup>34</sup> Attention to the issues that recur as technical dilemmas in the humanitarian indicators debates can be unpacked to reveal unresolved political debates at the heart of the humanitarian endeavor.

Section IV revisits the issues discussed in Section III by presenting the results of empirical analysis<sup>35</sup> of indicators and benchmarks in the post-earthquake humanitarian crisis in Haiti. Data collected through an online survey, site visits, and interviews with human rights experts suggest that humanitarians are using indicators and benchmarks to monitor projects and ensure effective, measurable results in Haiti. This Section argues that such metrics also have unintended impacts in Haiti. Humanitarians have managed to deliver impressive, life-saving services to IDP camps in incredibly difficult conditions. However, the system has also failed to ensure predictable services to large swathes of the population; this may in part be because issues of coverage and scope are not as visible via monitoring and assessment tools like indicators as project quality and outcomes. Although some indicators include attention to issues of sustainability, by highlighting successes in improving outcomes they also inadvertently downplay the potential damage that humanitarian interventions can have on existing and nascent systems for delivering key

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<sup>32</sup> Rose et al., *supra* note 27.

<sup>33</sup> See MARK DUFFIELD, *DEVELOPMENT, SECURITY AND UNENDING WAR: GOVERNING THE WORLD OF PEOPLES* 111–132 (2007) (exploring how the concepts of “human security” and emergency are linked in efforts by the international system to contain crises in the Global South via the humanitarian action of INGOs).

<sup>34</sup> TANIA MURRAY LI, *THE WILL TO IMPROVE: GOVERNMENTALITY, DEVELOPMENT, AND THE PRACTICE OF POLITICS* 7 (2007).

<sup>35</sup> See Rose et al., *supra* note 27, at 99, for a discussion of why empirical analysis becomes important in governmentality studies (“The orientation of governmentality work, then, is not ideal typification, but an empirical mapping of governmental rationalities and techniques. Further, there is no assumption that the mere existence of a diagram of government implies either its generalized acceptance or implementation.”).

services. Finally, the quest for data seems to become less pressing when protection issues arise: the humanitarian system appears reluctant to count rapes and evictions despite rising calls for them to monitor such abuses.

## I. METHODS

This paper combines critical analysis with empirical research findings. Humanitarian texts, practices, and discourse are analyzed using a “governmentality” analysis. This approach, discussed more fully below, is based on a concept developed by Michel Foucault to examine the mentality of governance—“governmentality”<sup>36</sup>—to interrogate forms of contemporary rule. Although initially developed to understand the ways governments did things, scholars using “governmentality” analysis have expanded the focus to examine forms of rule that extend beyond the state.<sup>37</sup> Many governmentality scholars ask a set of questions tailored to analyze the technologies used by different governing bodies throughout dispersed systems of power. In this framework, the forms of knowledge that various institutions use to understand or to know about the populations with which they interact, and the strategies those institutions adopt based on those forms of knowledge, are understood as technologies of governance. Rose, O’Malley, and Valverde suggest that empirical research is crucial to studies of such technologies, asking:

Who governs what? According to what logics? With what techniques? Toward what ends? As an analytical perspective, then, governmentality is far from a theory of power, authority, or even of governance. Rather, it asks particular questions of the phenomena that it seeks to understand, questions amenable to precise answers through empirical inquiry.<sup>38</sup>

Focusing on the use of indicators and benchmarks, the empirical research that forms the basis for this paper sought data that would help provide answers about *who* is governing *what* through humanitarian indicators, and toward what ends.

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<sup>36</sup> See MICHEL FOUCAULT, *SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLÈGE DE FRANCE 1977–1978* (Michel Senellart ed., 2007) (deriving this concept).

<sup>37</sup> For an overview of this scholarship, see Rose et al., *supra* note 27.

<sup>38</sup> *Id.* Empirical inquiry is especially important in governmentality scholarship because the techniques of government vary greatly across space and time.

**a. Expert Interviews**

To understand the views of humanitarian experts involved in standards and indicators projects, two dozen semi-structured interviews were conducted by the author between May 23, 2010 and July 7, 2010.<sup>39</sup> About a dozen of the experts interviewed were humanitarians engaged in the design, drafting, and revision of the various editions of the Sphere Project's Minimum Standards in Disaster Response ("Sphere" or "the Sphere Project"), the Humanitarian Accountability Partnership's Humanitarian Accountability Standard ("the HAP Standard"), and several other standards and indicators projects. To supplement these views, the author conducted interviews with human rights experts familiar with humanitarian standards and indicators, and those with Haiti-specific experience. The expert sample was significantly weighted in favor of experts familiar with the Sphere Project.<sup>40</sup> Data gathered during these interviews is presented in Sections III and IV below.

**b. On-Site Visits**

The author visited Haiti twice during the research for this paper: once in March 2010 and once in June 2010. While there, the author witnessed earthquake damage, viewed IDP camps, attended humanitarian Cluster meetings in Port-au-Prince, and met with humanitarians and human rights advocates. Data gathered during these visits is integrated throughout the paper.

**c. Online Survey**

To understand the use of indicators by humanitarian workers in Haiti, an online survey was conducted in English and French between May 18 and June 15, 2010. One hundred thirty-eight unique respondents who met the inclusion criteria of working in the humanitarian or development field and having worked full-time in or in relation to Haiti at some point during the preceding two years, filled out the survey.<sup>41</sup> There are inherent limits in the

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<sup>39</sup> NYU's University Committee on Activities Involving Human Subjects provided review of the research and informed consent protocol for these interviews.

<sup>40</sup> Because the study was aimed at understanding how humanitarians themselves understood standards projects, interviews were not conducted with representatives of crisis-affected communities involved as such in development or use of those standards. This may be legitimately viewed as a shortcoming of the study design given the emphasis on beneficiary voice later in the Article.

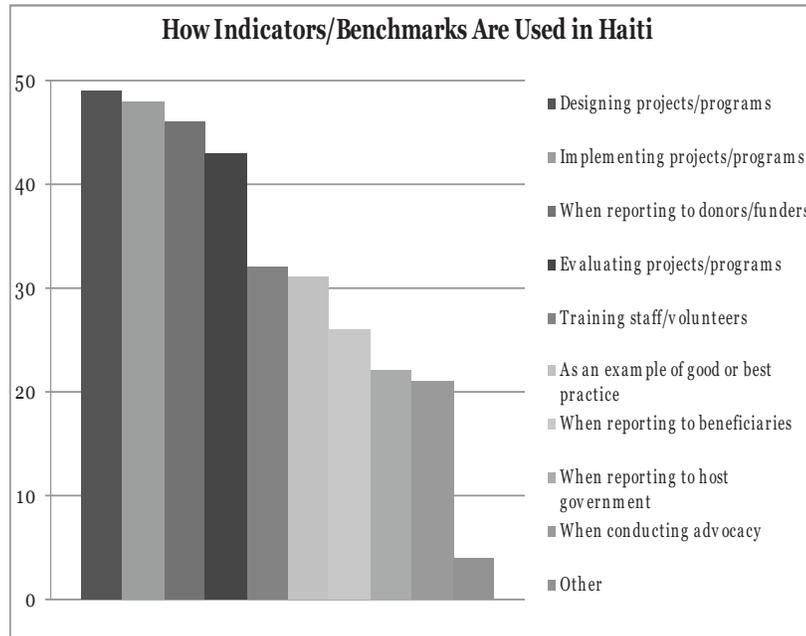
<sup>41</sup> NYU's University Committee on Activities Involving Human Subjects provided review of the research and informed consent protocol for this survey. A separate article examines the complete results of this survey. Amanda Klasing, P. Scott Moses & Margaret Satterthwaite, *Measuring the Way Forward in Haiti: Grounding Disaster Relief in the Legal Framework of Human Rights* (forthcoming).

data: not all respondents completed the survey, and respondents were recruited as a convenience sample. Respondents were recruited through online postings on humanitarian sites, targeted emails to the Haiti-based Humanitarian Clusters (the coordination mechanisms for emergency responders), and individual emails to humanitarians listed in the system's "3W" report for Haiti, which lists key contacts within the humanitarian system for a given emergency.<sup>42</sup> The lack of a robust completion rate, the self-selecting nature of the sample, and the limited reach of an online survey means that the data is of limited reliability. It is, however, at least indicative of issues arising among humanitarians with experience in Haiti.

Seventy percent of the survey respondents reported that they use some indicators in their Haiti-related work; of these, 74 percent use them at least weekly and a full 94 percent use them at least monthly. A striking 85 percent of those responding reported using a rights-based approach in Haiti. Seventy-three percent of those who answered a question about which type of standards they use reported using human rights treaties in relation to their work in Haiti; 62 percent use guidelines or standards prepared by the humanitarian system's Inter-Agency Standing Group; 45 percent use the HAP Standard, and 33 percent use Sphere. Respondents reported using indicators and benchmarks for a wide variety of activities (see Figure 1).

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<sup>42</sup> For an overview of the cluster approach, see HUMANITARIAN REFORM, <http://www.humanitarianreform.org> (last visited Mar. 2, 2011). The "3W" is a listing of "Who, What, Where" in a given emergency. It includes agency names alongside individual contacts with email addresses and telephone numbers. Professional contacts in Haiti were also asked to forward the recruitment email.

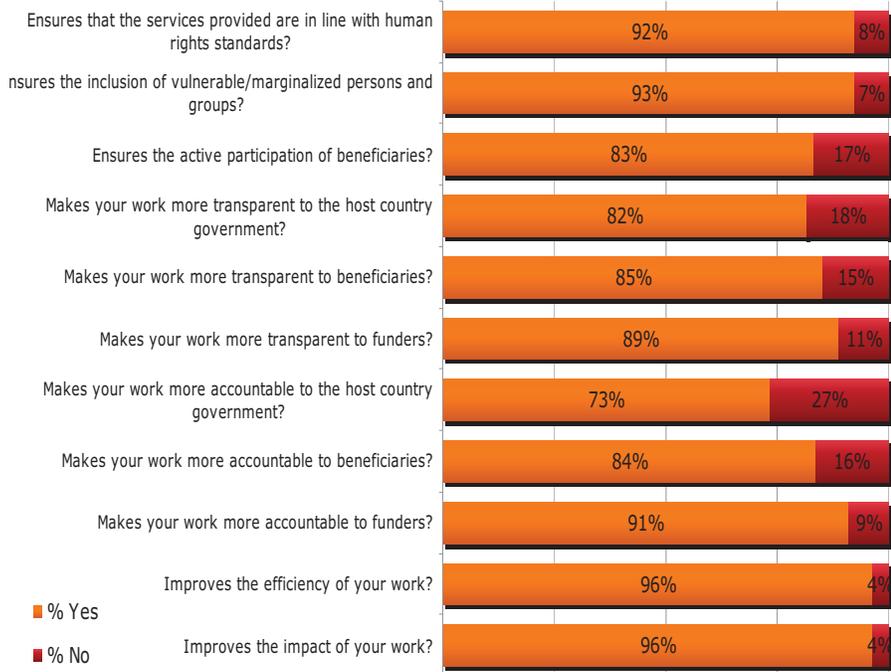
**Figure 1**

Taken together, these results suggest that indicators are routinely used among humanitarians in Haiti. Cross-referencing categorical responses with open-ended questions, it appears likely that respondents use project-based indicators with some frequency. Such standards are often based on existing industry standards like Sphere and HAP, which were both familiar to respondents (76 percent reported being familiar with Sphere; 54% were familiar with the HAP Standard). This means that although the proportion of respondents using Sphere and HAP may seem relatively small, the influence of these standards and indicators extend beyond their direct use.

When asked about the impact of using indicators and benchmarks, humanitarians overwhelmingly reported that such use improved accountability to both beneficiaries and donors, ensured alignment with human rights standards, enhanced inclusion and participation of beneficiaries, improved transparency to stakeholders, and improved both the efficiency and the impact of their work (see Figure 2 below).

**Figure 2**

**Using Indicators/Benchmarks in Haiti**



While the research for this paper was not designed to determine whether humanitarian indicators are in fact improving quality, efficiency, and accountability, the results of the survey and interviews suggest that humanitarians overwhelmingly believe indicators have such impacts. This belief alone means that indicators are worthy of careful attention as a technology of global governance.

## II. THE DEVELOPMENT OF THE SPHERE PROJECT AND THE HUMANITARIAN ACCOUNTABILITY PARTNERSHIP AND THEIR RELATIONSHIP TO HUMAN RIGHTS

This Section of the Article will briefly describe the humanitarian system and then examine the turn to standards and indicators within the humanitarian sphere, excavating several key turning points that contributed to this development. It will then discuss the creation of the Sphere's Project's Minimum Standards in Disaster Response and the Humanitarian Accountability Partnership's 2007 Standard in Quality and Accountability and their relationship to human rights. This background is critical to understanding how the humanitarian system hoped to overcome its failures in part by creating and deploying industry-wide indicators.

### *a. The Humanitarian Aid System*

Today, the formal humanitarian aid system is made up of a wide array of actors that have as their purpose assisting disaster-affected communities in their quest for survival and dignity. Perhaps the most well known actor in this system is the International Federation of the Red Cross and Red Crescent Societies ("IFRC"), which works alongside a wide variety of international NGOs ("INGOs"), key UN agencies concerned with crisis such as the Office for the Coordination of Humanitarian Affairs ("OCHA"), the Department of Peacekeeping Operations, and the emergency departments of UNICEF and UNFPA, and donor governments.<sup>43</sup> This formal system has developed institutions, networks, and practices that stretch across governments and span the globe, springing into action with set coordination structures,<sup>44</sup> joint funding mechanisms,<sup>45</sup> and common

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<sup>43</sup> For a discussion of the formal and informal systems, see ALNAP, *THE STATE OF THE HUMANITARIAN SYSTEM: ASSESSING PERFORMANCE AND PROGRESS—A PILOT STUDY 14* (2010). I use the term "system" to refer to those humanitarian actors that are part of the global humanitarian endeavor, including international and national NGOs, U.N. agencies such as the Office for the Coordination of Humanitarian Affairs, as well as the emergencies sections of operational programs such as the World Food Programme, UNICEF, and UNFPA. I also use "system" to avoid using the term "community," which seems to obfuscate the very real schisms within humanitarianism.

<sup>44</sup> International responses to humanitarian crises in the past have been unpredictable, due in part to the fact that only some sectors had clear lead agencies ("clusters"), which led to capacity and response gaps in sectors. As a response to this problem, in September 2005 the Inter-Agency Standing Committee (IASC) undertook the appointment of global "cluster leads" for humanitarian emergencies in nine sectors. These are essentially groupings of UN agencies, NGOs and INGOs around a sector or service provided during a humanitarian crisis. See *The Cluster System*, U.N. INTEGRATED MISSION IN TIMOR-LESTE,

understandings of best practice once disaster strikes, discussed in this paper. The formal system operates alongside an “informal” humanitarian system that includes affected governments, militaries, and local communities affected by crisis. The informal system is routinely part of crisis response but its composition, relationship to the formal system, and degree of participation in the various structures created by the international humanitarian system is context-dependent and widely variable.

In 2007 and 2008 alone, the formal humanitarian system responded to 52 humanitarian emergencies in the world.<sup>46</sup> In 2008, there were an estimated 26 million internally displaced persons and 11.4 million refugees in the world.<sup>47</sup> In 2008, there were about 210,800 emergency and rehabilitation workers responding to crises.<sup>48</sup> Although about 95% of INGO staff is drawn from the local population, the direction and policies of those organizations are, for the most part, directed from headquarters offices

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<http://unmit.unmissions.org/Default.aspx?tabid=760> (last visited Mar. 2, 2011) (describing establishment of nine cluster groupings by IASC in 2005). The goal of the cluster system is to strengthen humanitarian response through the establishment of predictable and accountable leadership. See INTER-AGENCY STANDING COMMITTEE [IASC], GUIDANCE NOTE ON USING THE CLUSTER APPROACH TO STRENGTHEN HUMANITARIAN RESPONSE (Nov. 24, 2006), available at <http://ocha.unog.ch/drptoolkit/PreparednessTools/Coordination/IASCGUIDANCENOTECLUSTERAPPROACH.pdf> (stating that aim of cluster system is to improve “system-wide preparedness and technical capacity to respond to humanitarian emergencies by ensuring that there is predictable leadership and accountability in all the main sectors or areas of humanitarian response”). For a summary of IASC decisions, see *List of IASC Decisions Regarding the Use of the Cluster Approach*, available at <http://www.humanitarianreform.org/humanitarianreform/Portals/1/-cluster%20approach%20page/List%20of%20IASC%20Decisions%20on%20the%20Cluster%20Approach.doc>.

<sup>45</sup> The Consolidated Appeals Process (CAP) is a tool for long-term humanitarian financing, through which various aid organizations come together to appeal for money from donors as well as coordinate their activities. *The Consolidated Appeals Process (CAP)*, U.N. OCHA, [http://ochaonline.un.org/humanitarianappeal/webpage.asp?Nav=\\_about\\_en&Site=\\_about&Lang=en](http://ochaonline.un.org/humanitarianappeal/webpage.asp?Nav=_about_en&Site=_about&Lang=en) (last visited Mar. 2, 2011). The Central Emergency Response Fund (CERF), on the other hand, is an emergency humanitarian funding mechanism established by the United Nations in order to provide timely aid in crisis situations (such as natural disasters and armed conflict). *What is the CERF?*, U.N. OCHA, <http://ochaonline.un.org/cerf/WhatistheCERF/tabid/3534/language/en-US/Default.aspx> (last visited Mar. 2, 2011).

<sup>46</sup> ALNAP, *supra* note 43, at 13.

<sup>47</sup> HUMANITARIAN ACCOUNTABILITY PARTNERSHIP [HAP] INT’L, HUMANITARIAN ACCOUNTABILITY REPORT 2009, at 12 (May 2010), available at <http://www.hapinternational.org/pool/files/a-the-2009-humanitarian-accountability-report.pdf> [hereinafter HUMANITARIAN ACCOUNTABILITY REPORT].

<sup>48</sup> ALNAP, *supra* note 43, at 18.

based in the Global North.<sup>49</sup> The six largest INGO federations had a combined expenditure of over \$4 billion, with \$1.7 billion allocated specifically to disaster programming.<sup>50</sup> Just over half of these resources come from private (individual, foundation, and corporate) sources, with the remainder provided by multilateral and state donors.<sup>51</sup> The broader crisis industry, which includes for-profit enterprises, has been estimated to command \$10 billion per year.<sup>52</sup>

***b. Founding Moments and Turning Points***

It is beyond the scope of this article to present an overview of the historical trends that produced the current humanitarian system. A few important moments should be noted here, since they make up the founding story that humanitarians tell about their sector's animating values. They also lay the scene for the crisis in humanitarianism that led to the creation of today's standards and indicators.

The first important moment was the famous awakening of conscience in a Swiss traveler, Henri Dunant, the father of modern humanitarianism. Instead of standing as a silent witness, Dunant implicated himself directly in a terrible battle between French and Austrian forces in 1859. "[G]etting together a certain number of women who helped as best they could to aid the wounded," he organized them to provide food, water, and palliative care to the battlefield stricken on both sides.<sup>53</sup> Out of this experience was born the International Committee of the Red Cross (ICRC), which put Dunant's experience and vision into action.<sup>54</sup> The ICRC pushed for the creation of the first Geneva Convention, which was adopted in 1864 by a dozen governments, and which defined battlefield medical services as "neutral."<sup>55</sup>

This concept of neutral aid knit together the many national societies that were founded in the late nineteenth century; those societies joined together in the aftermath of World War I in recognition that greater coordination was

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<sup>49</sup> *Id.* at 19–20.

<sup>50</sup> *Id.* at 20.

<sup>51</sup> HUMANITARIAN ACCOUNTABILITY REPORT, *supra* note 47, at 17.

<sup>52</sup> Craig Calhoun, *The Imperative to Reduce Suffering: Charity, Progress, and Emergencies in the Field of Humanitarian Action*, in HUMANITARIANISM IN QUESTION: POLITICS, POWER, ETHICS 73, 89 (Michael Barnett & Thomas C. Weiss eds., 2008).

<sup>53</sup> HENRI DUNANT, A MEMORY OF SOLFERINO 15 (1986).

<sup>54</sup> See *Who We Are: History*, INT'L FED'N OF RED CROSS & RED CRESCENT SOC'YS [IFRC], <http://www.ifrc.org/who/history.asp> (last visited Mar. 2, 2011) (describing Dunant's role in establishing ICRC).

<sup>55</sup> *Id.*

needed, eventually becoming the International Federation of Red Cross and Red Crescent Societies (“IFRC”) in the 1990s.<sup>56</sup>

With a special treaty-conferred status, the IFRC has expanded exponentially and clarified its animating values since its founding, providing assistance on the basis of principles of humanity, impartiality, neutrality, independence, universality, voluntary service, and unity.<sup>57</sup> These values served the humanitarian community fairly reliably until a series of crises in the late 1980s and 1990s.<sup>58</sup> During that period, a set of humanitarian disasters erupted before the eyes of the world, and despite the fact that these calamities were broadcast to the viewing public, the world’s powers failed to prevent tragedy after tragedy. After U.S. soldiers were dragged from burning helicopters and murdered in Somalia while on a humanitarian mission, Western governments constrained UN forces in Rwanda in 1994 as the genocide began and then failed to prevent the genocidal mass murder of Bosnian men in Srebrenica in 1995.<sup>59</sup> In each of these instances, Western governments turned to humanitarian agencies to staunch the flow, providing the band-aid of food, water, and makeshift shelter to survivors who had sought protection and succor. Humanitarian INGOs thus found themselves in the midst of moral dilemma. One response to moral ambiguity was to codify rules for action.

In 1994, humanitarians agreed on the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (“Red Cross Code of Conduct”). The genesis of the Code is described on the ICRC website as a response to the (over)reliance by Northern governments on humanitarian relief in complex situations of conflict.<sup>60</sup> Such reliance created a market for disaster aid, which in turn required clarification of the principles underlying such aid:

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<sup>56</sup> See *id.* (noting that IFRC’s stated goals were “to strengthen and unite, for health activities, already-existing Red Cross Societies and to promote the creation of new Societies”).

<sup>57</sup> FIONA TERRY, CONDEMNED TO REPEAT? THE PARADOX OF HUMANITARIAN ACTION 18–19 (2002).

<sup>58</sup> Of course this is an oversimplification. David Rieff, among others, explains that the foundations of the Red Cross and the humanitarian movement were shaken by the ICRC’s silence during the Holocaust. This later fed into the currents of thought that resulted in the founding of Médecins Sans Frontières in 1971. DAVID RIEFF, A BED FOR THE NIGHT: HUMANITARIANISM IN CRISIS 79–83 (2002).

<sup>59</sup> For a discussion of these crises, see Rieff, *id.* and TERRY, *supra* note 57, at 193–95.

<sup>60</sup> Bruce Biber, *The Code of Conduct: Humanitarian Principles in Action*, INT’L COMM. OF THE RED CROSS [ICRC] (Sept. 20, 2004), <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/64zahh?opendocument>.

[A] host of new, mainly non-governmental organisations suddenly came into existence. Although all claimed to be "humanitarian", many launched operations in the field according to questionable, vague, or sometimes inexistent ethical standards. As a result, the integrity of humanitarian action itself was threatened. Amongst such confusion, the Code of Conduct sought to establish common standards for disaster relief ... which must be provided on the basis of need alone and not as an instrument of government or foreign policy – ideals which correspond closely to the Red Cross / Red Crescent Principles of humanity, impartiality and independence.<sup>61</sup>

Like the Code of Conduct, the standards and indicators projects under examination in this paper were born of the major shifts in humanitarianism of the late 1980s and early 1990s. These efforts trace their origins much more explicitly to failures in the humanitarian system itself, including problems for which aid agencies were themselves deemed culpable. The major failures were exemplified by humanitarians' assistance to survivors of the 1994 genocide in Rwanda—including armed *génocidaires*—and their engagement in the so-called "safe area" where thousands of Bosnian civilians were massacred by Serb forces in Srebrenica in 1995. Humanitarian agencies were seen as having been part of systems that—at a minimum—failed to prevent calamities, and—at most—actually contributed to the prolongation of human suffering. Fiona Terry has explained that although "[a]id organizations do not inherit the responsibilities that others have failed to uphold," their decision to act in such scenarios does require them to assess what "share of responsibility [they] ought to assume" for these tragedies.<sup>62</sup>

*c. The Rwanda Joint Evaluation and the Birth of Sphere and HAP*

With respect to Rwanda, most of the blame for these events—in addition to the direct perpetrators, of course—was placed squarely on the failures in political will by the Security Council and Western governments. An unprecedented Joint Evaluation of Emergency Assistance to Rwanda ("Joint Evaluation") found that when the Security Council and Western governments failed to take concerted action, "Both inside Rwanda and in the camps of Goma, the humanitarian community was left to steer its own course, attempting to substitute for the lack of political and military

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<sup>61</sup> *Id.*

<sup>62</sup> See TERRY, *supra* note 57, at 17–18.

action.”<sup>63</sup> In this “untenable” situation, relief groups were found in numerous instances to have behaved unprofessionally, probably resulting in the unnecessary loss of life.<sup>64</sup> Finding that “[t]he need for NGOs to improve their performance is now widely recognized,” the Joint Evaluation recommended that NGOs should either set up self-regulation schemes aimed at improving performance, or be subject to binding regulation schemes run jointly by NGOs and official agencies.<sup>65</sup> The Joint Evaluation preferred the latter option.<sup>66</sup>

Although this recommendation went farther than the humanitarian NGOs would themselves have preferred, it was in line with efforts to improve NGO performance and quality that were already underway. Eager to avoid the mistakes made in Rwanda, humanitarians had been engaged in “considerable soul searching” about how their efforts may have fell short.<sup>67</sup> By 1996, humanitarian NGOs had set up the Active Learning Network for Accountability and Performance (ALNAP) and the “Standards Project,” which later became the Sphere Project, aimed at formulating standards for humanitarian assistance. Two early leaders of the Sphere Project explain that “meetings of the Multi-donor Evaluation Steering Committee also provided a forum to discuss the initial idea of a set of global standards and subsequently a more intimate environment to discuss with key donors whether they supported such a project.”<sup>68</sup> Support of donors—and especially large government donors—was key, since they held a great deal of influence over the sector, which was taking larger and larger portions of official foreign aid budgets.<sup>69</sup> It was also crucial to securing support for self-regulation rather than state-directed or officially verified regulation,

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<sup>63</sup> John Borton, Emery Brusset & Alistair Hallam, Overseas Dev. Inst., *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience, Study 3: Humanitarian Aid and Effects* ch. 9, at 1, J. HUMANITARIAN ASSISTANCE, May 6, 1996, available at <http://www.reliefweb.int/library/nordic/>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 6.

<sup>66</sup> *Id.*

<sup>67</sup> SPHERE PROJECT, FOSTERING ACCOUNTABILITY AND QUALITY AMONG HUMANITARIAN AID AGENCIES THROUGH A PROCESS OF ACCREDITATION, available at [http://www.sphereproject.org/component/option,com\\_docman/task,doc\\_view/gid,144/lang,english/](http://www.sphereproject.org/component/option,com_docman/task,doc_view/gid,144/lang,english/) (2006).

<sup>68</sup> Peter Walker & Susan Purdin, *Birth of Sphere*, 28 DISASTERS 100, 104 (2004) (citations omitted).

<sup>69</sup> James D. Fearon, *The Rise of Emergency Relief Aid*, in HUMANITARIANISM IN QUESTION: POLITICS, POWER, ETHICS, *supra* note 52, at 49, 51–55.

which was perceived by a sector that defined itself by its independence as a threat from both donor states and host states.<sup>70</sup>

An additional strand of concern that supported advances in self-regulation was the worry that humanitarians were not accountable to those whom they were meant to serve—disaster-affected communities. The Joint Evaluation had made separate recommendations about NGO performance and accountability but nonetheless presented the issues as interrelated. The Joint Evaluation affirmed the need for sector-wide standards and also suggested that an Ombudsman or other “NGO mechanisms for consultation with people affected by humanitarian emergencies” be established.<sup>71</sup>

The Sphere Project did not take this recommendation directly on board. Instead, it understood the concept of accountability as requiring humanitarians to provide high-quality assistance in a manner that advanced the rights of disaster-affected communities to a life with dignity.<sup>72</sup> This idea was translated into a set of standards and accompanying indicators meant to measure and demonstrate the extent to which assistance was imbued with quality and accountability. In this way, humanitarian organizations using Sphere would hold themselves accountable for achieving the standards, something that would be demonstrated through compliance with the indicators.<sup>73</sup> This form of accountability—to standards

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<sup>70</sup> See Lola Gostelow, *The Sphere Project: The Implications of Making Humanitarian Principles and Codes Work*, 23 *DISASTERS* 316, 317 (1999) (describing development of Sphere Project and noting NGO preference of using self-managed regulation over an international accreditation program). In particular, the post-genocide government in Rwanda had passed a series of laws governing the activities of NGOs in the country that the international NGO community perceived as intrusive and restrictive. Jean-Paul Kimonyo, Noël Twagiramungu & Christopher Kayumba, *Supporting the Post-Genocide Transition in Rwanda: The Role of the International Community* 52 (Neth. Inst. of Int'l Rel. 'Clingendael,' Working Paper No. 32, 2004); see also FRONT LINE, FRONT LINE RWANDA: DISAPPEARANCES, ARRESTS, THREATS, INTIMIDATION AND CO-OPTION OF HUMAN RIGHTS DEFENDERS 2001–2004, at 93 (2005), available at [www.frontlinedefenders.org/node/1040](http://www.frontlinedefenders.org/node/1040) (listing annual registration with the government, unannounced audits, and restrictive limits on expatriate staff as some of the draft laws proposed by Rwandan government).

<sup>71</sup> Borton et al., *supra* note 633, ch. 9 at 7.

<sup>72</sup> SPHERE PROJECT, HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER RESPONSE I (2000 ed.) [hereinafter SPHERE PROJECT 2000 ed.].

<sup>73</sup> One expert pointed out, however, that the language of “compliance” was not predominant during the development of the Sphere standards and indicators. Interview No. 21.

rather than to specific institutions or “stakeholders”—is one of the hallmarks of the Sphere Project.<sup>74</sup>

The more direct type of accountability was also debated in the years following the Rwandan genocide, but it proved more controversial. The Humanitarian Ombudsman Project brought together agencies interested in considering the establishment of an ombudsman system and identifying the best way to enhance accountability of the humanitarian system to beneficiaries.<sup>75</sup> There was significant overlap between agencies involved in the Sphere Project and those involved in the Humanitarian Ombudsman Project, but a separate initiative was needed when disagreements about accountability became intense.<sup>76</sup> Following in-depth research, the Humanitarian Ombudsman Project “recognized that an international Ombudsman was not a realistic approach to accountability problems in the international humanitarian sector. ‘Ombudsman’ systems, it was concluded, were only effective in societies with well-established public services and fair, effective and accessible judicial systems.”<sup>77</sup> Instead of an ombudsman, therefore, the Project recommended—and in 2003 the Chief Executive Officers of more than a dozen humanitarian agencies agreed to—the establishment of a self-regulatory body that would establish standards for accountability to disaster-affected communities and certify NGOs as compliant with the standard.<sup>78</sup> The new body, the Humanitarian Accountability Partnership (“HAP”), was registered in Geneva in 2003. For HAP, accountability was understood to mean “the responsible use of power,”<sup>79</sup> which was elaborated in seven “Principles of Accountability” concerning the following topics:

1. Commitment to humanitarian standards and rights
2. Setting standards and building capacity
3. Communication
4. Participation in programmes

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<sup>74</sup> It should be noted that some of the standards and indicators integrate specific forms of accountability to certain stakeholders. For example, Common Standard 1 on Participation requires agencies to involve beneficiaries in their programming, which could be seen as an aspect of accountability to beneficiaries.

<sup>75</sup> *History*, HAP INT’L, <http://www.hapinternational.org/about/history.aspx> (last visited Oct. 1, 2010).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> HAP INTERNATIONAL, THE GUIDE TO THE HAP STANDARD: HUMANITARIAN ACCOUNTABILITY AND QUALITY MANAGEMENT 4 (2008) [hereinafter HAP INTERNATIONAL, GUIDE TO THE HAP STANDARD].

5. Monitoring and reporting on compliance
6. Addressing complaints
7. Implementing partners<sup>80</sup>

These principles would become the basis for the HAP Standard. By rejecting the ombudsman process and instead committing to the creation of a standard and accreditation process to ensure compliance with the standard, HAP—like Sphere—was embracing the model of accountability to a standard, measured by benchmarks, rather than direct accountability to beneficiaries via a dispute-resolution mechanism like an ombudsman.<sup>81</sup>

*d. The Creation of the Sphere Project's Humanitarian Charter and Minimum Standards in Disaster Response*

The precursor to the Sphere Project was conceived by a small group of humanitarian professionals who gained early approval from the influential Steering Committee for Humanitarian Response, a body made up of executives from largely European-based international relief and development organizations.<sup>82</sup> In 1996, InterAction, the large and influential coalition of U.S.-based humanitarian and development NGOs, joined the effort, multiplying the Project's potential impact.<sup>83</sup> This broad buy-in at an early stage was seen as crucial since the standards were meant to encapsulate the operational community's sense of what counted as minimum standards.<sup>84</sup>

The language of rights was central to the project from the start. The project proposal explained that “any set of ‘industry’ standards must first be prefaced by a set of ‘consumer rights’; a beneficiaries or claimants charter, which highlights what, under existing international law and declarations, a

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<sup>80</sup> *History*, HAP INT'L, *supra* note 75 at 121

<sup>81</sup> Two caveats should be noted here. First, HAP offers both a “complaints advisory” service and a “complaints against members” service that can be accessed by beneficiaries in certain circumstances. Second, the HAP standard requires accredited agencies to create a complaints handling mechanism, providing a measure of direct accountability to beneficiaries. There is a significant difference, however, between these complaints mechanisms, which are created and maintained by humanitarian agencies and an external oversight body to which beneficiaries have unmediated access.

<sup>82</sup> Walker & Purdin, *supra* note 68, at 103–04.

<sup>83</sup> *Id.* at 104. InterAction “is the largest coalition of U.S.-based international nongovernmental organizations (NGOs) focused on the world's poor and most vulnerable people.” The coalition comprises 200 member organizations. *About InterAction*, INTERACTION, <http://www.interaction.org/about-interaction> (last visited Mar. 28, 2011).

<sup>84</sup> Walker & Purdin, *supra* note 68, at 101–03.

person should have a ‘right’ to in a humanitarian crisis.”<sup>85</sup> Several elements of this statement will become relevant to the analysis later in this paper; specifically, the invocation of “consumer rights” is relevant to understanding Sphere’s logics of standardization and audit. More pertinent here is the reference to existing international law.

The first edition of the Standards was preceded by a “Humanitarian Charter,” which was meant to draw together principles from international humanitarian law, international human rights law, and refugee law relevant to international humanitarian assistance. The Charter also incorporated by reference the Red Cross Code of Conduct. The Humanitarian Charter began by explaining that those setting out the Charter believe that “all possible steps should be taken to alleviate human suffering arising out of conflict or calamity, and that civilians so affected have a right to protection and assistance.”<sup>86</sup> This right to assistance was based on the fact that individuals have a “right to life with dignity” as guaranteed through human rights law concerning the right to life, the right to an adequate standard of living, and the right to be free from cruel, inhuman or degrading treatment.<sup>87</sup> The Charter then made the uncontroversial statement that “We understand an individual’s right to life to entail the right to have steps taken to preserve life where it is threatened,” coupled with the vague and thus less well-grounded assertion of “a corresponding duty on others to take such steps.”<sup>88</sup> The issue of who had the duty to take such life-preserving steps was clarified in a section entitled “Roles and Responsibilities.” There, the Charter explained that under international law, it was states and warring parties—not humanitarian agencies—that had duties to provide assistance or to refrain from blocking assistance to those affected by disaster.<sup>89</sup> However, the Charter also referred to “the reality that those with primary responsibility are not always able or willing to perform this role themselves.”<sup>90</sup> Because of this, it implied—but did not state—that humanitarian actors have something akin to a duty to intervene in order to help individuals access their right to life with dignity.

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<sup>85</sup> *Id.* at 105 (quoting STEERING COMM. FOR HUMANITARIAN RESPONSE [SCHR] & INTERACTION, *THE SPHERE PROJECT: MINIMUM STANDARDS IN HUMANITARIAN RESPONSE* 5 (July 1997)).

<sup>86</sup> SPHERE PROJECT 2000 ed., *supra* note 72, pt. 1, at 2.

<sup>87</sup> *Id.* pt. 1, at 2–3.

<sup>88</sup> *Id.* pt. 1, at 3.

<sup>89</sup> *Id.* See also James Darcy, *Locating Responsibility: The Sphere Humanitarian Charter and Its Rationale*, 28 *DISASTERS* 112, 115 (2004) (“Agencies and their staff are for the most part duty bearers in a moral rather than a legal sense. . . . With very limited exceptions, humanitarian agencies themselves have neither rights nor duties under human rights law.”).

<sup>90</sup> SPHERE PROJECT 2000 ed., *supra* note 72, pt. 1, at 4.

This move—from the rights of individuals to assistance to the duty of humanitarians to intervene—was part of the larger shift toward a “responsibility to protect,” an idea that was under urgent discussion following the genocide in Rwanda and which was fully realized in the 2001 report with the same title released by the International Commission on Intervention and State Sovereignty.<sup>91</sup> The Sphere Charter’s preamble carefully refrained from asserting that the duty to intervene had any grounding in international law, instead tracing the impetus to voluntary humanitarian action to “ethical obligations.”<sup>92</sup> Another subtle move was made by the Humanitarian Charter in linking beneficiaries’ right to a life with dignity to the commitment by humanitarians to provide quality services that meet minimum standards; through this connection, the rights of beneficiaries essentially became rights to specific forms of relief as set out in the Sphere standards and indicators.<sup>93</sup>

The drafters of the operational standards had hoped that the legal grounding for their work would be more robust. At the outset, the plan for each technical chapter was to open with relevant rights protections, to be followed by standards, then indicators to measure compliance with the standards, and guidance notes aimed at providing advice, information about dilemmas or challenges that might be encountered in the field when aiming to achieve a specific indicator.<sup>94</sup> When sector experts sought legal guidance from human rights treaties and humanitarian law conventions, however, they discovered that “the various rights charters and conventions are simply not drafted to that level of specificity.”<sup>95</sup> Human rights and humanitarian

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<sup>91</sup> INT’L COMM’N ON INTERVENTION AND STATE SOVEREIGNTY [ICISS], *THE RESPONSIBILITY TO PROTECT* (2001).

<sup>92</sup> This language of ethical obligations is in contrast to the reference to the “rights and duties enshrined in international law in respect of which states and other parties have established obligations.” SPHERE PROJECT, *HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER RESPONSE* 16 (2004 ed.) [hereinafter SPHERE PROJECT 2004 ed.].

<sup>93</sup> This transformation has been summarized as follows:

[A]s the declaration of human rights gets translated into the Sphere *Handbook* and the Sphere *Handbook* gets translated into agency practice a subtle shift takes place. The right of every human being to a life with dignity becomes the right of targeted beneficiaries to goods and services offered by agencies. In agency practice, the rights to basic needs fulfillment become a right to relief.

Monika Krause, *The Logic of Relief: Humanitarian NGOs and Global Governance* 156 (Jan. 2009) (unpublished Ph.D. dissertation, New York University) (on file with author).

<sup>94</sup> See Walker & Purdin, *supra* note 68, at 105–06 (describing the original plan for each chapter); see also SPHERE PROJECT 2004 ed., *supra* note 92, at 22 (explaining the relationship between standards, indicators, and guidance notes).

<sup>95</sup> Walker & Purdin, *supra* note 68, at 105–06.

law specialists were no help either, warning the Sphere drafters that attempts to use legal standards in the manner sought might backfire by suggesting that some rights could be viewed as more important than others, or that the necessarily incomplete articulation of rights elements within operational standards might be misunderstood as being comprehensive.<sup>96</sup>

The standards, indicators, and guidance notes themselves were created through an extensive consultative process that comprised 4000 people representing 400 organizations in 80 countries.<sup>97</sup> Standards were organized by sector: water supply and sanitation; nutrition; food aid; shelter and site planning; and health services.<sup>98</sup> The first version of the Sphere *Handbook* was finished in just over a year, and the first test version was available for piloting in 1998.<sup>99</sup> The first final print edition was published in 2000 and the Sphere *Handbook* was soon in wide use.

To ensure that the standards and indicators remained state-of-the-art, a full revision of the 2000 version of the *Handbook* was undertaken following extensive consultations and use in the field in 2003. At the same time, an in-depth, mixed-methodology evaluation of the Sphere Project was conducted. Both the new *Handbook* and the evaluation report were published in 2004. The evaluation lauded Sphere's rights-based approach:

To many of the framers of the Project, the adoption of a rights-based approach to humanitarian assistance represents a fundamental and drastic revision of the philosophy underlying emergency relief that prevailed until [the Rwandan genocide in] 1994. For the Sphere Project, relief is not charity; it is not only the generous outpouring of support from good-hearted individuals and governments that is always welcome, but not always adequate or effective. Instead, the Sphere Project sees international disaster response as an obligation, incurred by those who can help, to ensure that the rights of affected

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<sup>96</sup> *Id.*

<sup>97</sup> ALNAP ET AL., QUALITY AND ACCOUNTABILITY INITIATIVES: QUESTIONS AND ANSWERS 2 (2006).

<sup>98</sup> SPHERE PROJECT 2000 ed., *supra* note 72. Technical managers were seconded from InterAction and SCHR member agencies to manage the drafting of the chapters. Technical managers for each sector began by reviewing any relevant standards that agencies had created for the sector, alongside scientific research, policies, and best practice advice. Once drafted, the chapters were widely shared with Working Groups, presented in regional workshops, and revised as needed. Gostelow, *supra* note 70, at 318.

<sup>99</sup> See Walker & Purdin, *supra* note 68, at 109 (explaining that the first version took about a year to prepare); see also SPHERE PROJECT 2000 ed., *supra* note 72, front matter at 3 (noting that the first trial version was released in 1998).

individuals and populations are respected and accorded. In other words, it is a bold and unequivocal assertion that providing relief to those made vulnerable to disaster is more than a good thing to do—it is an implementation of the law.<sup>100</sup>

In a separate section, the evaluation report specifies that NGOs have a right to intervene, but not a duty; that duty lies with states.<sup>101</sup> This ambivalence, like that contained in the Sphere Humanitarian Charter, encapsulated the confusion in humanitarians' status under international law and their purpose in the face of global injustice.

The Sphere evaluation found that although the rights-based approach was boldly asserted in Sphere documents and eloquently set out in the Charter, this emphasis was not reflected in field use of the *Handbook*.<sup>102</sup> The *Handbook* was widely used in the field as a technical guide to good practice in the different sectors.<sup>103</sup> While many humanitarians were using the Sphere indicators, very few practitioners appeared to be referring to the Humanitarian Charter.<sup>104</sup> While the widely-used minimum standards and indicators “represent to a certain degree an attempt to quantify, in selected areas of work, what it takes to satisfy the legal obligations laid out in the Humanitarian Charter,” it was considered significant that agencies did not necessarily understand things this way.<sup>105</sup> The evaluation found that it was time to “take the next step” in advancing the rights-based approach to humanitarian assistance.<sup>106</sup>

The 2004 revised version of Sphere was intended to take this next step.<sup>107</sup> The Humanitarian Charter was not revised, but the rights framework was more thoroughly integrated into the sector chapters, which in this edition were renamed water, sanitation and hygiene promotion; food security, nutrition and food aid; shelter, settlement and non-food items; and health

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<sup>100</sup> MARCI VAN DYKE & RONALD WALDMAN, *THE SPHERE PROJECT EVALUATION REPORT 7* (2004).

<sup>101</sup> *Id.* at 30–31.

<sup>102</sup> *Id.* at 31–33.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 8, 31.

<sup>106</sup> *Id.* at 31.

<sup>107</sup> See Helen Young, *Linking Rights and Standards: The Process of Developing 'Rights-Based' Minimum Standards on Food Security, Nutrition, and Food Aid*, 28 *DISASTERS* 142 (2004) (describing incorporation of minimum standards into the 2004 edition of the Sphere handbook).

services.<sup>108</sup> Text describing “[l]inks to international legal instruments” was added at the outset of each chapter, providing information about the dimensions of the relevant rights under human rights and humanitarian law. For example, the 2004 Water, Sanitation and Hygiene Promotion chapter began by explaining that the right to water is guaranteed in international human rights treaties, which require that every person have sufficient, safe, acceptable, physically accessible and affordable water.<sup>109</sup>

This rights content is directly relevant to the minimum standards and was integrated where possible in the 2004 edition, for example by adding dimensions related to equality and non-discrimination to the standards themselves.<sup>110</sup> This section also specified that the right to water is linked to the right to health, housing, and adequate food.<sup>111</sup> It noted that humanitarian law prohibits destruction of water systems during armed conflict.<sup>112</sup> The other chapters provided similar framework information, and each chapter included general references to relevant human rights treaties and General Comments elaborated by the U.N. treaty bodies.<sup>113</sup> Advances in economic and social rights jurisprudence evidently proved helpful in the revision process: many of the human rights materials cited in Sphere were written between the time of the preparation of the 2000 and 2004 editions of the *Handbook*.<sup>114</sup>

In addition to integrating explicit references to the rights framework in the technical chapters, a set of “cross-cutting issues” was integrated throughout the 2004 *Handbook* and a new chapter setting out “Standards Common to All Sectors” was added. Rights issues such as gender equality, children’s rights, and protection were incorporated into the technical chapters and their rights basis was explained in a brief introduction presenting the cross-cutting issues as “important issues that have relevance to all sectors.”<sup>115</sup> Common standards were presented concerning participation; initial

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<sup>108</sup> SPHERE PROJECT 2004 ed., *supra* note 92, at 3.

<sup>109</sup> *Id.* at 55.

<sup>110</sup> For example, Water Supply Standard 1 on Access and Water Quantity was revised to include explicit reference to “equitable” access to water. Compare SPHERE PROJECT 2000 ed., *supra* note 72, with SPHERE PROJECT 2004 ed., *supra* note 92, at 63.

<sup>111</sup> SPHERE PROJECT 2004 ed., *supra* note 92, at 55.

<sup>112</sup> *Id.*

<sup>113</sup> See, e.g., *id.* at 98.

<sup>114</sup> See, e.g., United Nations, Econ. & Soc. Council, Comm. on Econ., Soc., and Cultural Rights, General Comment No. 15 (2002): The Right to Water (arts. 11 and 12 of the Int’l Covenant on Econ., Soc., and Cultural Rights), ¶ 54, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) (discussing the creation of national benchmarks for right to water initiatives).

<sup>115</sup> SPHERE PROJECT 2004 ed., *supra* note 92, at 10–13.

assessment; response; targeting; monitoring; evaluation; aid worker competencies and responsibilities; and supervision, management and support of personnel.<sup>116</sup> These cross-cutting issues and the Common Standards chapter were especially important from a rights perspective, since together they set out principles that were said to be drawn from human rights.<sup>117</sup>

The expanded and deepened relationship to human rights in the 2004 edition mirrored developments that had been taking place in the development domain. Between 2000 and 2004, the UN Development Group had taken on rights-based approaches to development and more and more INGOs were embracing this approach to programming. Since many INGOs using Sphere undertook both development work and humanitarian assistance, it made sense that the rights framework that was then becoming prevalent among development agencies would be strengthened in the 2004 edition of the *Handbook*. For example, participation of beneficiaries is one of the key elements of the rights-based approach to development, and its explicit inclusion in the Sphere Common Standards brought the Project into closer relationship with the growing attention to rights-based approaches to development.<sup>118</sup>

This close relationship has been deepened and expanded in the 2011 edition of the *Handbook*.<sup>119</sup> That edition will be discussed *infra*, but will not be

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<sup>116</sup> *Id.* at 24.

<sup>117</sup> *See id.* at 10–13, 25 (explaining the links between these issues and human rights standards). The Common Standards chapter explains the standards' links to human rights as follows:

Humanitarian agencies have the responsibility to provide assistance in a manner that is consistent with human rights, including the right to participation, non-discrimination and information, as reflected in the body of international human rights, humanitarian and refugee law. In the Humanitarian Charter and the *Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief*, humanitarian agencies undertake to make themselves accountable to those they seek to assist. The common standards outline the responsibilities of organisations and individuals when providing protection and assistance.

*Id.* at 25.

<sup>118</sup> *See, e.g.*, Office of the U.N. High Comm'r for Human Rights, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, U.N. Doc. HR/PUB/06/8 (2006).

<sup>119</sup> *See, for example*, the new chapter on “protection principles” in the revised 2011 edition (discussed *infra*). *See* SPHERE PROJECT, SPHERE PROJECT, HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER RESPONSE 26-47 (2011 ed.) [hereinafter SPHERE PROJECT 2011 ed.].

exhaustively analyzed since the 2004 edition was in use in Haiti during the period under analysis.

*e. HAP as Rights-Based Standards, Indicators, and Benchmarks—or Not?*

The differences that led to the creation of separate projects to promulgate minimum standards and construct accountability mechanisms are reflected in the differing content of Sphere and HAP. Sphere seeks to “improve the quality and accountability of performance by humanitarian professionals” through the development of substantive standards and measurable indicators.<sup>120</sup> Although Sphere includes language about the need to consult with and ensure the participation of beneficiaries in its Common Standards chapter and in specific indicators integrated into the technical chapters, that form of accountability is not the focus of Sphere. On the other hand, HAP seeks to “improve the quality and impact of humanitarian action through helping agencies to become more accountable to disaster survivors,” and it does this through benchmarks demonstrating that specific processes are followed to ensure accountability in practice.<sup>121</sup> HAP took the opposite approach from Sphere by promulgating a detailed Standard that is about an NGO’s relationship with beneficiaries and creating an accreditation process that would measure compliance with the standard. For Sphere, substantive standards (quality) are the means to improve quality and achieve accountability. For HAP, process standards (accountability) are the means to improve quality and achieve impact.<sup>122</sup>

HAP created a process for the development of its Standard in 2005, following the International Organization for Standardization’s *Rules for the Structure and Drafting of International Standards*.<sup>123</sup> The process entailed a stakeholder analysis and the creation of a reference group, which included—perhaps most importantly—“representatives of disaster-affected people,” as well as “NGOs, various humanitarian quality and accountability

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<sup>120</sup> ALNAP ET AL., *supra* note 96, at 4.

<sup>121</sup> *Id.*

<sup>122</sup> HAP traces its origins to the Rwanda evaluation, but it also reaches back to the early roots of humanitarianism for inspiration, noting that Henri Dunant himself was concerned with the abuses made possible by the power imbalance between those in dire need and those who witness and respond to that need. HAP includes the following remark in its *Guide to the HAP Standard*, drawn from Dunant’s description of the battle of Solferino: while some gathered to tend to the wounded and dead, “looters stole even from the dead, and did not always care if the poor wounded victims were still alive.” GUIDE TO THE HAP STANDARD, *supra* note 80, at 2 (quoting and citing DUNANT, *supra* note 52).

<sup>123</sup> *Id.* at 6.

initiatives, United Nations agencies, government donors, host authorities, and other interested individuals.”<sup>124</sup>

Although the Standard was based on the 2003 Principles of Accountability, those principles “did not include performance benchmarks or verifiable compliance indicators” and were thus seen as insufficient for monitoring compliance.<sup>125</sup> Transforming the early principles into the required format led to the creation of the “Humanitarian Accountability Covenant,” which included a preamble, a set of “Principles for Humanitarian Action,” a requirement that NGOs with additional interests outside the principles must declare those; a set of “Humanitarian Quality Management Benchmarks,” and guidelines for working with humanitarian partners.<sup>126</sup> The principles were organized into three tiers:

HAP Principles for Humanitarian Action

<i>Primary Principles</i>	<i>Secondary Principles</i>	<i>Tertiary Principles</i>
<ul style="list-style-type: none"> <li>• Humanity</li> <li>• Impartiality</li> </ul>	<ul style="list-style-type: none"> <li>• Informed Consent</li> <li>• Duty of Care</li> <li>• Witness</li> </ul>	<ul style="list-style-type: none"> <li>• Transparency</li> <li>• Independence</li> <li>• Neutrality</li> <li>• Complementarity<sup>127</sup></li> </ul>

This stratification had a functional purpose: the drafters of the HAP Standard knew that NGOs would face dilemmas in operational settings that would require them to choose among two bad choices, each one of which would violate one or more of the principles. The stratification of the principles was meant to guide the agency to ensure that the choice they made was in the service of the most relevant higher-order principle. Agencies that were forced to infringe upon one or more of the principles were required under the Standard to explain that choice by reference to a principle of a higher order than the one(s) violated.<sup>128</sup>

<sup>124</sup> *Id.* Three phases of development ensued. First, once a draft was prepared, stakeholder consultations were held in different regions of the world and the standard was submitted for field testing in Sri Lanka, Senegal, and Somalia. An Editorial Steering Committee then finalized the draft and submitted it for approval by the HAP Board of Directors. The Board of Directors, which was at the time chaired by the Secretary-General of Care International, approved the Standard in January 2007. Once approved, the certification function was tested by agencies in Denmark and Malaysia, some revisions were made in the auditing guidelines, and the Standard began to be used for certification. *Id.* at 6–7.

<sup>125</sup> *Id.* at 122.

<sup>126</sup> *Id.* at 126–30.

<sup>127</sup> *Id.* at 127.

<sup>128</sup> *Id.* at 122–23; *see also id.* at 34–36 (stating examples of such “exonerations”).

Agencies that wished to seek certification under the 2007 Standard were required to first demonstrate, before showing adherence to the Principles and benchmarks, fulfillment of four “qualifying norms.” These norms required the NGO to: commit to providing impartial humanitarian assistance; be “formally declared” as a non-profit organization in the state of registration and wherever the agency works; demonstrate compliance with relevant financial accountability laws; and publicly provide the organization’s “humanitarian accountability framework.”<sup>129</sup> This framework should include the Principles and set out how the agency will “ensure accountability to its stakeholders.”<sup>130</sup> Organizations must then meet the six HAP benchmarks, which will be discussed below.<sup>131</sup>

To what extent was the 2007 HAP Standard rights-based? The Preamble to the Standard explicitly mentioned rights twice: first, by affirming respect for “international humanitarian law, international refugee law, human rights law, and other relevant international treaties and national laws”; and second, by “[a]sserting the right of all in need to receive humanitarian assistance and protection on the basis of their informed consent.”<sup>132</sup> Perhaps more fundamentally, however, the grounding commitment to accountability, defined as the responsible use of power, was consonant with basic human rights principles. Also important was the requirement, set out as Benchmark 5, that agencies “establish and implement complaints-handling procedures that are effective, accessible and safe.”<sup>133</sup> Such mechanisms could provide concrete redress in situations where redress was often lacking. The extent to which this ensemble of norms was effectively rights-based depends on the perspective of the analyst: while it appears to integrate key human rights principles, the 2007 HAP Standard did not place itself into explicit conversation with such standards.

The HAP Standard was comprehensively revised in 2009-2010.<sup>134</sup> That edition will be discussed *infra*, but will not be exhaustively analyzed since the 2007 edition was in use in Haiti during the period under analysis.

### III. UNPACKING THE LOGICS OF HUMANITARIAN INDICATORS

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<sup>129</sup> *Id.* at 124.

<sup>130</sup> *Id.* at 146.

<sup>131</sup> *Id.* at 42–43.

<sup>132</sup> *Id.* at 126.

<sup>133</sup> *Id.* at 131.

<sup>134</sup> *See* 2010 HAP STANDARD IN ACCOUNTABILITY AND QUALITY MANAGEMENT at foreword (2010) (describing the revision process) [hereinafter 2010 HAP STANDARD].

This Section argues that humanitarian experts govern at a distance<sup>135</sup> via the technology of humanitarian standards, indicators, and benchmarks, which in turn draw on the logics of audit, quantification, and management, as well as the language of human rights.<sup>136</sup> They thus transform their understanding of sites of emergency, viewing them as “calculable and manageable spaces” through the use of professional standards, indicators and benchmarks.<sup>137</sup> These “forms of knowledge and expertise” are understood as attempts to “render these spaces thinkable” and subject to governance and order.<sup>138</sup> Using an empirical and analytical lens, this Section will include information gathered through a set of interviews conducted with humanitarian experts involved in indicators and benchmarks projects. Information from that empirical exercise suggests that while humanitarians are engaged in activities that bring with them many of the problems identified by scholars of governmentality, they also manage to subvert those logics by turning the governmentalizing gaze back upon themselves.

**a. *Humanitarians Governing at a Distance via Indicators and Benchmarks***

Using rights-based approaches, standards, and indicators, professional humanitarian actors govern the putatively ungoverned—those whose governments have collapsed, become predatory, or can no longer be counted on to provide protection.<sup>139</sup> At a material level, in many emergency settings, major INGOs effectively take the place of the state—or large swathes of it—for disaster-affected populations. They provide or facilitate access to the basic material goods needed for human survival, such as food, water, and shelter, and seek to impose order from chaos by setting up rational, managed camps and other systems where people’s needs are satisfied. They also seek—although to a lesser extent than in relation to material goods—to protect disaster-affected populations from certain types of security threats, such as sexual violence and child exploitation. These INGOs command enormous resources—in many cases, more than the government ministries whose tasks they often take on. To give a sense of the scale of humanitarian INGO resources: in 2007, the French NGO Médecins Sans Frontières spent more on humanitarian programming than

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<sup>135</sup> Peter Miller and Nikolas Rose have developed the notion of “government at a distance,” adapting Bruno Latour’s concept of “action at a distance” to examine indirect means of governing. PETER MILLER & NIKOLAS ROSE, *GOVERNING THE PRESENT* 22, 33–34 (2008).

<sup>136</sup> Rose et al., *supra* note 27, at 95.

<sup>137</sup> *Id.* at 94.

<sup>138</sup> *Id.*

<sup>139</sup> Duffield suggests that emergency actors govern when the ungoverned become unmanageable or uncontained. DUFFIELD, *supra* note 332, at 70–75.

any single Western state donor except the United States and the European Union.<sup>140</sup>

The growth of the INGO sector has been analyzed as—among other things—a complex form of outsourcing by Western and Northern donor states. Where Western states governed in the past through direct rule via colonialism and indirect rule via Cold War-era neocolonialism, such powers now outsource significant portions of their governance activities in the Global South to humanitarian and development INGOs. Mark Duffield explains that in the early 1980s, the majority of humanitarian aid was given directly to affected country governments via their relevant ministries.<sup>141</sup> This began to shift, however, as concerns about Southern state corruption grew. Donors began to increase their humanitarian aid to INGOs, which asserted an “organizational neutrality. . . between Third World Corruption and Western complicity.”<sup>142</sup> Duffield argues that in asserting their independence from any government—donor or host—INGOs had a comparative advantage since they could promote Western interests, but from a formally independent position while also working closely with Southern governments and populations.<sup>143</sup> With significant material resources and a specific form of “organizational neutrality,” INGOs developed a type of “sovereignty” by the late 1990s.<sup>144</sup> This INGO sovereignty was made possible through another shift in funding: since the late 1990s, the proportion of overseas governmental aid devoted to development and emergency programming shifted proportionally, with dramatic increases in emergency aid and concomitant decreases in development aid.<sup>145</sup>

Commanding significant resources, INGOs do not only provide subsistence goods and services. They are also engaged in more obvious governance efforts: in exercising their recognized power over the populations they serve, they set up camp management structures charged with ensuring fair access to goods and services, consult with camp committees and advisory groups, and ensure the vulnerable members of communities have priority access to services.<sup>146</sup> They conduct census counts, keep data on who enters

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<sup>140</sup> HUMANITARIAN ACCOUNTABILITY REPORT, *supra* note 46, at 17.

<sup>141</sup> DUFFIELD, *supra* note 32, at 72.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 90–91.

<sup>144</sup> *See generally id.* at 72, 91 (developing the concept of INGO “petty sovereignty”).

<sup>145</sup> *See* Fearon, *supra* note 69, at 49–51.

<sup>146</sup> *See, e.g.,* CCCM CLUSTER, CAMP MANAGEMENT AGENCY TERMS OF REFERENCE (2009), *available at* <http://oneresponse.info/Disasters/Haiti/Camp%20Coordination%20Management/publicdoc>

and departs from camps, and work to understand the needs and vulnerabilities of those under their care. Alex de Waal points out that these “emergency” actions can last many years—even decades:

Most protracted emergencies occur in fragile or failed states, in which governance is continually negotiated among actors on the basis of military power, social affinity and financial patronage. External actors, including peacekeeping missions and humanitarian programmes, quickly become part of the political fabric. Humanitarian programmes continue for five, 10 or 20 years, not only because the objective needs remain and national institutions are too weak to take on the burden of responding, but also because the external actor has become so embedded in the structures of patronage that it cannot withdraw without causing a crisis. Therefore, in countries such as Afghanistan, Democratic Republic of the Congo, Haiti, Sierra Leone and Sudan, international humanitarian agencies become a semi-permanent presence, managing major social welfare programmes on a long-term basis.<sup>147</sup>

Helpful insights into the tools of governance utilized by humanitarian INGOs can be gleaned from social science scholars who use the concept of “governmentality” to interrogate forms of rule in current times that extend beyond the state.<sup>148</sup> Rose, O’Malley and Valverde explain that governmentality scholars ask a set of questions tailored to analyze the technologies used by different governing bodies throughout a dispersed system of power:

Further, instead of seeing any single body—such as the state—as responsible for managing the conduct of citizens, this perspective recognizes that a whole variety of authorities govern in different sites, in relation to different objectives.<sup>149</sup>

Governmentality analysis is especially fitting in relation to INGOs, which Duffield suggests have been “governmentalized,” now exercising forms of

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uments/Camp%20Management%20Agency%20TOR.doc (providing a list of key responsibilities for agencies taking charge of the management of displacement camps in emergency settings).

<sup>147</sup> Alex de Waal, *The Humanitarians’ Tragedy: Escapable and Inescapable Cruelties*, 34 *DISASTERS* S130, S135–S136 (2010) (citations omitted).

<sup>148</sup> This scholarship is based on Foucault’s later writings. See FOUCAULT, *supra* note 35. For an overview of governmentality scholarship, see Rose et al., *supra* note 27.

<sup>149</sup> Rose et al., *supra* note 27, at 85.

sovereignty over emergency spaces.<sup>150</sup> Michel-Rolph Trouillot has theorized that NGOs produce wide-ranging “state effects” through planning, interpellation, and legibility practices in the Global South, giving Haiti as one example.<sup>151</sup> Erica Caple James has explained, in relation to Haiti, that “In the case of transnational humanitarian assistance the practices of governmentality often occur in place of the weak or failed state.”<sup>152</sup>

One of the forms of dispersed rule that governmentality scholars have identified is what Rose and Miller call “governing at a distance.”<sup>153</sup> This is a dynamic through which agents of governance, “acting from a center of calculation such as a government office or the headquarters of a nongovernmental organization” impact the “activities of others who were spatially and organizationally distinct.”<sup>154</sup> This concept is very helpful in analyzing the dynamics of governance through indicators and benchmarks

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<sup>150</sup> See DUFFIELD, *supra* note 32, at 72 (developing the concept of INGO “petty sovereignty”).

<sup>151</sup> See Michel-Rolph Trouillot, *The Anthropology of the State in the Age of Globalization*, 42 CURRENT ANTHROPOLOGY 125, 132 & n.22 (2001) (describing state-like nature of NGOs). Mark Schuller echoes this. See Mark Schuller, *Seeing Like a “Failed” NGO: Globalization’s Impacts on State and Civil Society in Haiti*, 30 POL. & LEGAL ANTHROPOLOGY REV. 67, 70–73 (2007) (describing the undermining of the state by powerful NGOs performing state functions).

<sup>152</sup> Erica Caple James, *The Political Economy of “Trauma” in Haiti in the Democratic Era of Insecurity*, 28 CULTURE, MED. & PSYCHIATRY 127, 131 (2004). But see Mary-Jo DelVecchio Good, Byron J. Good & Jesse Grayman, *Complex Engagements: Responding to Violence in Postconflict Aceh*, in CONTEMPORARY STATES OF EMERGENCY: THE POLITICS OF MILITARY AND HUMANITARIAN INTERVENTIONS 241, 262–63 (Didier Fassin & Mariella Pandolfi eds., 2010) (arguing that it is important to note that in some emergency settings INGOs do not have the capacity vis-à-vis other actors to “effect the forms of governance to which they are committed”).

<sup>153</sup> See MILLER & ROSE, *supra* note 135, at 34.

<sup>154</sup> Rose et al., *supra* note 27, at 89 (citing MILLER & ROSE, *supra* note 135). For a discussion of how this analysis applies to global dynamics, see Andrew Barry, *Ethical Capitalism*, in GLOBAL GOVERNMENTALITY: GOVERNING INTERNATIONAL SPACES 195, 202 (Wendy Larner & William Walters eds., 2004):

Writers on governmentality, following Foucault, have long emphasized that the activity of government cannot be reduced to the actions of the state. In an era when direct state control and ownership has declined (because of privatization and re-regulation), or is difficult (because of the transnational organization of companies), international institutions, NGOs, auditors, consultants and multinational corporations are together expected to perform the job of government at a distance. Global governmentality has been associated with the dispersion of governmental functions amongst a network of international and non-state institutions. Within this network, clear distinctions between the identities and functions of different institutions may sometimes be difficult to make.

*Id.*

in the humanitarian realm. There are three relevant dynamics that might be fruitfully understood as governing at a distance in the emergency context. The first and most obvious is the relationship already discussed, whereby INGOs govern disaster-affected populations through the provision of certain types of subsistence goods and services, and through management techniques such as census and the creation of camp management committees.

The second is the relationship between northern-based INGO direction and southern-based INGO line managers and field staff (as well as local NGO implementing partners). While those “in the field” are involved in the day-to-day dynamics of governing disaster-affected populations, the upper management is setting the policies, frameworks, and organizational structures through which that governance takes place. Major policy decisions, such as whether an INGO will use the Sphere standards and indicators or seek certification in the HAP Standard, are generally made by headquarters staff.<sup>155</sup> The third relationship is between donor states and INGOs, a relationship that is especially helpfully understood through the concept of governance at a distance. In part this governance occurs through forbearance: both donor states and INGOs are most effective when INGOs are understood as a formal matter to act independently, free of coercive legal requirements or strong-arming. Instead of such coercive practices, donors govern at a distance through the bureaucratic and technical exercises associated with granting funds, planning programs, and conducting monitoring and evaluation. Such exercises have increased, such that as donor states have retreated physically, they have become “increasingly present as regulators, interested in ‘outcomes’ and ‘accountability.’”<sup>156</sup>

This language of outcomes linked with accountability sounds in the specific discourse of project management utilized by Western donors and INGOs. These forms, known as “results-based management” (“RBM”) and the “logical framework” or “logframe,” came into vogue in the INGO world as state donor agencies adopted them widely in the 1980s.<sup>157</sup> As INGOs began

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<sup>155</sup> Interview No. 21. This expert emphasized, however, that in some instances related to the HAP Standard, field staff experienced with the Standard have been the ones to seek adherence by the organization as a whole of the Standard. *Id.*

<sup>156</sup> Janice Gross Stein, *Humanitarian Organizations: Accountable—Why, to Whom, for What, and How?*, in *HUMANITARIANISM IN QUESTION: POLITICS, POWER, ETHICS*, *supra* note 52, at 126, 127.

<sup>157</sup> Tina Wallace et al., *The Management of Development*, in *THE AID CHAIN: COERCION AND COMMITMENT IN DEVELOPMENT NGOS* 31, 32–33 (2006). For a discussion of the adoption and use of logframe analysis within the humanitarian INGO context, see Krause, *supra* note 93, at 89–93.

to receive more and more official development aid for emergency programming, they adopted the RBM and logframe approaches alongside their donors in order to demonstrate their accountability to the outcomes for which they were receiving funding. These frameworks use indicators as a key element:

The logframe is the most well-known tool for aid disbursement, used by almost all donors and NGOs in the UK, Europe and US; it is the basic project document that includes project goals, plans, timetables for implementation, required inputs and expected outcomes with associated measurements (indicators), and an analysis or listing of external factors and internal assumptions that may be a risk to the achievement of the goals.<sup>158</sup>

By the 1990s, many INGOs had begun to use logframes; in the last ten years, their use by INGOs (as well as local implementing NGOs via partnerships with INGOs) has become almost universal.<sup>159</sup> Logframes and RBM are rooted in ideas of control, predictability, and rational management of change.<sup>160</sup> These tools, which rely on “technocratic, mechanistic and positivist” rationalities came into wide use in the development and humanitarian sectors at about the same time that they were being rejected by some in the corporate world.<sup>161</sup> They may have been especially attractive to Northern funders and planners when faced with the post-Cold War world of disintegrating states, flaring civil wars, and unbounded migration.<sup>162</sup> Whatever the reasons behind their adoption, the logics behind logframes and RBM were proliferating within the humanitarian system by the time of the Rwanda Joint Evaluation. It is no wonder, then, that the same logic underpinning these rational management tools became an important strand of the logic undergirding both the Sphere standards and indicators and the HAP Standard and its benchmarks and certification scheme.

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<sup>158</sup> Wallace et al., *supra* note 157, at 34.

<sup>159</sup> *Id.* at 34.

<sup>160</sup> *See id.* at 34–35 (“[rational management] presumes that change can be controlled and directed, that a ‘good’ plan done in the public interest – or according to a commonly defined collective objective – can be carried out, leading to the desired change.”).

<sup>161</sup> *Id.* at 35.

<sup>162</sup> Analyzing the ISO 9000 family of quality standards, Staffan Furusten suggests that the standard, based on an idealized sense of how successful organizations work, ignores empirical research on the realities of organizational function in part because people who live in “the complexity and chaos of their own everyday lives” may “yearn for rules that would reduce the complexity, perhaps even re-create the ideal situation . . . .” Staffan Furusten, *The Knowledge Base of Standards*, in *A WORLD OF STANDARDS* 71, 84 (Nils Brunsson & Bengt Jacobsson eds., 2000).

***b. Humanitarian Indicators as Audit Practice***

Scholarship in the social sciences has identified “audit cultures” emerging in recent years in diverse settings where a quest for accountability is satisfied through specific forms of assessment. These assessments are “likened to audit” and they provide a “cultural stamp of accountability” through measurement and evaluation.<sup>163</sup> Economic analyst Michael Power has explained that the proliferation of audit practices outside of economic fields—what he calls an “audit explosion”—stems in part from the perceived ability of audits to both improve practice and to make those improvements visible.<sup>164</sup> Audit arises in a specific set of circumstances: where a “relation of accountability” is in place between the auditor and the auditee; where the auditors are at a distance from the auditees, making it impossible for them to verify all of the auditees’ actions directly; and where the auditor and auditee mistrust each other.<sup>165</sup>

These conditions exist in the humanitarian setting.<sup>166</sup> Humanitarian NGOs are in a “relation of accountability” to several sets of actors simultaneously, the most powerful of whom are at a great distance from their operational activities. These relations are often marked by mistrust. The conditions are therefore ripe for the use of audit. As discussed above, in addition to their legal accountability to Boards of Directors and other bureaucratic management structures, NGOs must account for their actions to donors. In addition to these at-a-distance auditors, in the post-Rwanda era, humanitarians must also be seen to be accountable to their beneficiaries, disaster-affected communities. Humanitarian agencies have responded to these competing demands by attempting to create audit mechanisms that will allow them to demonstrate accountability to *all* key “stakeholders”

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<sup>163</sup> Marilyn Strathern, *Introduction to AUDIT CULTURES: ANTHROPOLOGICAL STUDIES IN ACCOUNTABILITY, ETHICS, AND THE ACADEMY* 1, 2 (Marilyn Strathern ed. 2000) (“The concept of audit in turn has broken loose from its moorings in finance and accounting; its own expanded presence gives it the power of a descriptor seemingly applicable to all kinds of reckonings, evaluations and measurements.”)

<sup>164</sup> MICHAEL POWER, *THE AUDIT SOCIETY: RITUALS OF VERIFICATION* 10–11 (1997). Elsewhere and with a co-author, I have analyzed the use of indicators in human rights settings as “audit practice.” Rosga & Satterthwaite, *supra* note 25, at 279.

<sup>165</sup> See POWER, *supra* note 164, at 5, 11; see also Rosga & Satterthwaite, *supra* note 25, at 279–80 (describing three conditions leading to audits and noting that all three conditions arise in the field of human rights).

<sup>166</sup> Erica Caple James makes a similar argument about the “audit culture” within which what she calls “grant economies” operated in Haiti during the late 1990s. James traces the logics of this audit culture to the results-oriented approach introduced by USAID in the mid-1990s, which included the use of indicators as a key element. ERICA CAPLE JAMES, *DEMOCRATIC INSECURITIES: VIOLENCE, TRAUMA, AND INTERVENTION IN HAITI* 178–222 (2010) [hereinafter *DEMOCRATIC INSECURITIES*].

simultaneously. By demonstrating compliance with Sphere's rights-based minimum substantive standards, it is suggested, NGOs demonstrate that they are accountable to donors (for efficient service delivery) and to beneficiaries (for delivering goods and services that will satisfy their needs and improve their access to rights) at the same time. Agencies that undergo the HAP certification process submit themselves to an external audit that assesses compliance with the HAP Standard; if successful, they are certified in humanitarian accountability. Such certification is said to demonstrate that the agency is accountable to beneficiaries (via mechanisms set out in the HAP Standard to ensure such a relation of accountability), but it also signals accountability to donors (via mechanisms aimed at improving the quality of humanitarian services). In addition, some donor governments have recently begun to demand that NGOs demonstrate a relation of accountability to beneficiaries.<sup>167</sup> In this way, signals of accountability to beneficiaries are also often means of demonstrating accountability to donors as well.

These relationships are often fraught with tension. INGOs may be close "partners" of donors in emergency settings, but those donors also mistrust the INGOs on several key fronts. First, after the failures of the Rwanda era, donors have been eager to locate blame in INGOs for humanitarian failures—in part to deflect blame for their own failures, which were widely identified as the main reason for the international community's ineffective response to the genocide.<sup>168</sup> Further, there may be additional mistrust if the NGO engages in advocacy aimed at publicizing faulty aid practices or policies of the donor. At the opposite end of the accountability scale, the relationship between INGOs and beneficiaries is often marred by mistrust. Beneficiaries often chafe at the strategies used by INGOs to govern them, resisting census counts and subverting registration processes. At a more fundamental level, however, beneficiaries often view the power of INGOs—so obvious in its scope and depth—as illegitimate. This mistrust is encapsulated by the "*Aba ONG volè*" graffiti in Haiti.<sup>169</sup>

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<sup>167</sup> See generally KEYSTONE, DOWNWARD ACCOUNTABILITY TO "BENEFICIARIES": NGO AND DONOR PERSPECTIVES (June 2006), available at <http://www.hapinternational.org/pool/files/downward-accountability-to-beneficiaries-keystone-study.pdf> (discussing donor approaches to ensuring their grantees are accountable to beneficiaries).

<sup>168</sup> Several experts talked about the shift of blame by donors to NGOs in the post-Rwanda era. For example, see Interview No. 12 ("People were afraid of being blamed again," after Rwanda, when "everybody was doing 'blame the humanitarians.'").

<sup>169</sup> Also relevant here is the recently escalating violence against NGO workers across the world. See Abby Stoddard et al., *Providing Aid in Insecure Environments: 2009 Update* HPG POLICY BRIEF NO. 34 (Overseas Dev. Inst., London, U.K.), April 2009, at 1, available

The Sphere and HAP standards and indicators attempt to manage these tensions through the technique of audit and the technology of indicators and benchmarks. Although HAP and Sphere aim to improve quality and accountability to beneficiaries, neither has beneficiaries as its primary *audience*.<sup>170</sup> Instead, they are designed in the first place to be legible to internal audiences of INGO Boards, management, and staff, and external audiences of donors and the humanitarian community. Together, the relationships of accountability managed by Sphere and HAP might be seen as an example of the “mutual enmeshment” identified by Duffield:

NGOs, while remaining independent, self-acting and capable of respectful criticism, have come to see their own interests and those of their beneficiaries as overlapping with those of donor and recipient states. Through a process of mutual enmeshment, the administrative sovereignty of the NGO movement now works in new ways, with and between donors, recipient states, and beneficiary groups.<sup>171</sup>

A specific form of this dynamic is described by Erica Caple James when analyzing USAID’s performance-based approach to assistance, through which “convergences” among the donor, the host state, and the beneficiaries are purportedly captured through results-oriented planning tools.<sup>172</sup> To what degree do these efforts at mutual enmeshment succeed? Do beneficiaries’ interests merge with that of donors and INGOs? The next Section of the Article will examine these questions in relation to HAP.

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at <http://www.odi.org.uk/resources/download/3250.pdf> (finding that “[a]ttacks on aid workers in the most insecure contexts were increasingly politically motivated, reflecting a broad targeting of the aid enterprise as a whole.”); see also Paul O’Brien, *Rights-Based Responses to Aid Politicization in Afghanistan*, in *REINVENTING DEVELOPMENT? TRANSLATING RIGHTS-BASED APPROACHES FROM THEORY INTO PRACTICE* 201, 208–18 (Paul Gready & Jonathan Ensor eds., 2005) (discussing the murder of NGO workers in Afghanistan).

<sup>170</sup> One expert refuted this point wholeheartedly, stating that while the 2007 version of the Standard was technically complex and not accessible to beneficiaries, the 2010 version was carefully vetted by beneficiaries and communities in various parts of the world and was indeed aimed at being user-friendly for beneficiaries in holding NGOs accountable. Interview No. 21.

<sup>171</sup> DUFFIELD, *supra* note 33, at 91.

<sup>172</sup> DEMOCRATIC INSECURITIES, *supra* note 166, at 184–85.

c. ***Certifying Accountability: HAP's Audit System and the Management of Incommensurable Goals***

HAP is an attempt to explicitly use the framework of audit and implicitly use the relation of accountability between INGOs and their donors to improve the relation of accountability between INGOs and their beneficiaries. This effort, among others in the humanitarian sector, has been successful insofar as attention to “downward accountability”<sup>173</sup> has increased, best practice has been shared to improve accountability, and some donors now consider evidence of such a relation of accountability to be relevant to funding decisions.<sup>174</sup> To understand HAP’s use of the logic of audit, this Section will examine one of HAP’s benchmarks that is aimed at strengthening and demonstrating downward accountability. In its most recent iteration, the HAP Standard appears—insofar as it has been used by INGOs—to be harnessing, as effectively as possible, the logics of audit to hold individual humanitarian organizations to account.

The development of the HAP Standard was guided by the International Organization for Standardization’s (ISO’s) *Rules for the Structure and Drafting of International Standards*.<sup>175</sup> In addition, the formulation of one of HAP’s primary benchmarks, on quality management systems, was informed by the ISO’s 9000 family of standards.<sup>176</sup> The 9000 series of standards is concerned with quality, and is based on “internationally agreed principles and requirements for managing an enterprise so as to earn the confidence of customers and markets.”<sup>177</sup> These eight principles are:

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<sup>173</sup> Although this term is used in humanitarian literature, it has not been used or promoted by HAP; indeed, the concept of “downward accountability” was rejected as “at odds with” HAP’s “very mission and vision that beneficiaries ought to be the principal of humanitarian action.” Interview No. 21.

<sup>174</sup> See GEOFFREY SALKELD, REPORT ON AN EVALUATION OF THE HUMANITARIAN ACCOUNTABILITY PARTNERSHIP-INTERNATIONAL 45–47 (2009) (describing donors’ views on the importance of accountability in funding decisions, and noting importance of evaluating downward accountability). It should be noted that certain substantive portions of this evaluation were contested by the HAP Board, which released the evaluation publicly with a cover note mentioning specific disagreements. See HAP Board, *Note to HAP Evaluation*, in SALKELD, *supra*, at 1.

<sup>175</sup> INT’L ORG. FOR STANDARDIZATION [ISO] & INT’L ELECTROTECHNICAL COMM’N, RULES FOR THE STRUCTURE AND DRAFTING OF INTERNATIONAL STANDARDS (5th ed., 2004).

<sup>176</sup> See SPHERE PROJECT 2000 ed., *supra* note 67, at 1. The International Organization for Standardization (ISO) is:

A global network that identifies what International Standards are required by business, government, and society, develops them in partnership with the sectors that will put them to use, adopts them by transparent procedures based on national input and delivers them to be implemented worldwide.

ISO, ISO IN BRIEF 2 (2008) available at [http://www.iso.org/iso/isoinbrief\\_2008.pdf](http://www.iso.org/iso/isoinbrief_2008.pdf).

<sup>177</sup> Furusten, *supra* note 159, at 71 (internal quotation and citations omitted).

customer focus, leadership, involvement of people, process approach, system approach to management, continual improvement, factual approach to decision making, and mutually beneficial supplier relationships.<sup>178</sup> These principles form the backbone of a series of standards that are each tailored to different types of business or enterprise, such as manufacturing or service.<sup>179</sup> All have in common a focus on the *process of management* as the key to quality, where “improving quality is defined . . . precisely as enhancing the value of a product or service for the customer.”<sup>180</sup>

ISO 9000 has been widely adopted in business, and in some countries, by government agencies as well.<sup>181</sup> As early as 2002, at least one humanitarian organization had been certified as ISO 9000 compliant. Medair officials traced their desire for certification to an interest in improving accountability, achieving objectives via external certification, improving its internal learning capacity, improving efficiency and effectiveness, solidifying internal procedures through standardization, consolidating “institutional knowledge,” and enhancing downward accountability.<sup>182</sup>

Using ISO 9000 as a basis, HAP’s 2007 benchmark on quality management systems translated the standard’s “customer focus” into a focus on beneficiaries, and its principle of quality management into the requirement that NGOs create a “humanitarian quality management system.” To ensure that humanitarian organizations were managing their work in order to achieve quality, HAP was designed around six benchmarks, which can be summarized as follows:

- Humanitarian quality management
- Transparency
- Beneficiary participation
- Staff competencies
- Complaints handling
- Continual improvement

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<sup>178</sup> *Quality Management Principles*, ISO, [http://www.iso.org/iso/iso\\_catalogue/-management\\_and\\_leadership\\_standards/quality\\_management/qmp.htm](http://www.iso.org/iso/iso_catalogue/-management_and_leadership_standards/quality_management/qmp.htm) (last visited Mar. 1, 2011).

<sup>179</sup> Furusten, *supra* note 159, at 72.

<sup>180</sup> *Id.*

<sup>181</sup> See Ken R. Beattie, *Implementing ISO 9000: A study of its benefits among Australian organizations*, TOTAL QUALITY MANAGEMENT & BUSINESS EXCELLENCE, 10: 95, 100-101 (1999).

<sup>182</sup> David Verboom, *Medair Believed to be First Humanitarian Aid Organization Worldwide to Achieve ISO 9001:2000*, ISO MGMT. SYS. (ISO, Geneva, Switz.) Sept.–Oct. 2002, at 30–36.

These benchmarks included requirements and means for verifying that an organization was in compliance with the HAP Standard.<sup>183</sup> As discussed above, the Standard was based on HAP's "Principles for Humanitarian Action." Verification took place through document review and analysis followed by audits of the NGO's head office and one or more project sites, resulting in an audit report and if successful, HAP Certification.<sup>184</sup> In this way, HAP Certification is a classic form of audit and accreditation.<sup>185</sup> As such, the 2007 HAP Standard process brings with it both the positive and negative attributes of audit practices.

HAP's 2007 benchmark 3 is illustrative:

Beneficiary Participation and Informed Consent

The agency shall enable beneficiaries and their representatives to participate in programme decisions and seek their informed consent.<sup>186</sup>

HAP's focus on beneficiary participation, when coupled with the certification process, is one of the only instances of downward accountability with real bite. Sphere includes standards about beneficiary participation, and many INGOs have adopted a rights-based approach, which putatively requires beneficiary participation. But evaluation after evaluation of the humanitarian assistance sector has bemoaned the failure of INGOs to live up to their own stated ideals concerning beneficiary participation.<sup>187</sup> HAP is therefore a very significant development, and

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<sup>183</sup> *History*, *supra* note 75; GUIDE TO THE HAP STANDARD, *supra* note 79, at 43, 128–29.

<sup>184</sup> GUIDE TO THE HAP STANDARD, *supra* note 79, at 96–97.

<sup>185</sup> The classic form of audit has been modified, however, in that it does not rely only on review of documents and interviews with staff. Instead, the "HAP audit focuses extensively on observation at field sites and interviews with beneficiaries and local partners. As part of the audit process, each of the project sites submit a self-assessment (based on data from staff and from beneficiaries); the auditor reviews these self-assessments before randomly choosing one or two project sites" for direct observation. Interview No. 21.

<sup>186</sup> *Id.* at 64.

<sup>187</sup> See, e.g., KEYSTONE, *supra* note 167, at 3 (describing accountability as "highly elusive" and noting few efforts to address it systematically); CDA COLLABORATIVE LEARNING PROJECTS, THE LISTENING PROJECT ISSUE PAPER: "DISCUSS TOGETHER, DECIDE TOGETHER, WORK TOGETHER" 2 (2008), [http://www.cdawww.com/cdawww/pdf/issue/lp\\_issue20paper2020discuss20together20decide20together20work20together20oct20081\\_Pdf.pdf](http://www.cdawww.com/cdawww/pdf/issue/lp_issue20paper2020discuss20together20decide20together20work20together20oct20081_Pdf.pdf) (describing beneficiaries' desire for greater participation in humanitarian assistance efforts); HUMANITARIAN ACCOUNTABILITY

represents the strategic use by humanitarian agencies of the audit cultures introduced by donor governments for upward accountability to foster downward accountability as well. However, the choice of an audit structure to achieve this goal brings with it certain important downsides.

Perhaps most importantly, audit brings with it the risk that measures of performance will become targets. Anthropologist Marilyn Strathern, writing of audit cultures in the academy, notes that “[w]hen a measure becomes a target, it ceases to be a good measure.”<sup>188</sup> As the auditee conforms behavior to the benchmark or indicator to be audited, the relationship between the original substantive principle to be measured via the indicator becomes attenuated. Scholars have found this distorting effect to be present in the use of indicators in accountability efforts in the development sector.<sup>189</sup> In the context of HAP, the danger is that INGOs will focus on activities designed to live up to the benchmark’s specified “means of verification” rather than the principle itself. With participation, for example, this might mean that an INGO would become more concerned with providing “evidence, including existing records of meetings and interviews with a cross-section of community and staff, that participation takes place” instead of seeking the most meaningful methods for beneficiary feedback as might be required. Thus, the audit structure may create incentives for an INGO to conduct only enough meetings and interviews to meet the target, and to construct records of those meetings designed for the auditors rather than beneficiaries.

There is insufficient evidence to determine whether such gaming of the system has happened in relation to the 2007 HAP Standard, and empirical research for this Article did not focus directly on this issue. However, recent studies concerning beneficiary participation in humanitarian and development programs suggest that this concern is warranted. The Listening Project, which aims to understand how communities that have been on the receiving end of aid projects perceive such aid, has conducted dozens of “listening” exercises in countries across the world.<sup>190</sup> One of the

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REPORT, *supra* note 47, at 72 (noting that only half of INGO staff who responded to a survey in 2009 considered their agencies to be doing enough to ensure accountability).

<sup>188</sup> Marilyn Strathern, *‘Improving Ratings’: Audit in the British University System*, 5 EUR. REV. 305, 308 (1997). For a discussion of this issue in relation to human rights indicators, see Rosga & Satterthwaite, *supra* note 25, at 285–87.

<sup>189</sup> See Emma Mawdsley et al., *Trust, Accountability, and Face-to-Face Interaction in North-South NGO Relations*, 15 DEV. PRAC. 77, 78 (2005) (noting one effect of increasing audit practice within development NGO sector is an increasing response to requirements and performance targets rather than those whom NGOs are meant to serve).

<sup>190</sup> The Listening Project described itself as follows:

main findings is that many communities feel strongly that they should have the opportunity to participate more meaningfully in humanitarian programming. Efforts to enhance such participation, however, have been strongly criticized by local communities. The Listening Project quoted one respondent as explaining. “This is how the verb ‘to participate’ is conjugated [in the aid context]: I participate, you participate, they decide.”<sup>191</sup> Instead of meetings that produce “records of meetings,” beneficiaries are seeking decision-making power about key issues such as whether they want a specific program or not, how to hold NGOs accountable when they cause harm in a community, and how programs should be implemented.<sup>192</sup> A survey of donors and NGOs carried out in 2006 also found that such personnel conflate participatory evaluation and accountability to beneficiaries.<sup>193</sup> The Listening Project found that “too often in [aid recipients’] experience, results-based management systems result in reporting on projects and activities against pre-determined targets or indicators that do not measure success in the ways aid recipients would.”<sup>194</sup> In addition to critiquing the results-based management process

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Begun in late 2005, the Listening Project is a comprehensive and systematic exploration of the ideas and insights of people who live in societies that have been on the recipient side of international assistance (humanitarian aid, development cooperation, peace-building activities, human rights work, environmental conservation, etc.) It is motivated by our sense that if we could ask for and listen carefully to recipients' judgments of what has been useful (and not useful) and why, over the years of their experience on the receiving end of international interventions, then assistance providers and donors would learn a great deal about how to improve the effectiveness of their efforts.

The Listening Project, *General—Project Summary*, CDA COLLABORATIVE LEARNING PROJECTS,

[http://www.cdainc.com/cdawww/project\\_profile.php?pid=LISTEN&pname=Listening%20Project](http://www.cdainc.com/cdawww/project_profile.php?pid=LISTEN&pname=Listening%20Project) (last visited Oct. 1, 2010).

<sup>191</sup> THE LISTENING PROJECT, CDA COLLABORATIVE LEARNING PROJECTS, “DISCUSS TOGETHER, DECIDE TOGETHER, WORK TOGETHER” 3 (2008), *available at* [http://www.cdainc.com/cdawww/pdf/issue/lp\\_issue20paper2020discuss20together20decide20together20work20together20oct20081\\_Pdf.pdf](http://www.cdainc.com/cdawww/pdf/issue/lp_issue20paper2020discuss20together20decide20together20work20together20oct20081_Pdf.pdf).

<sup>192</sup> See Dayna Brown, *Listening to Improve the Quality of International Aid*, GROUPE URD NEWSL., Apr. 2008, *available at* [http://www.compasqualite.org/blog/IMG/pdf/Listening\\_to\\_Improve\\_the\\_Quality\\_of\\_International\\_Aid.pdf](http://www.compasqualite.org/blog/IMG/pdf/Listening_to_Improve_the_Quality_of_International_Aid.pdf) (summarizing initial Listening Project findings, including common criticism by communities that “pre-packaged” aid decisions waste aid resources because they are made by outsiders without consultation of communities they are intended to benefit).

<sup>193</sup> KEYSTONE, *supra note* 167, at 4.

<sup>194</sup> THE LISTENING PROJECT, CDA COLLABORATIVE LEARNING PROJECTS, INTERNATIONAL ASSISTANCE AS A DELIVERY SYSTEM 10 (2008), *available at*

and use of set indicators, aid recipients have critiqued the business model they see INGO taking on in increasing numbers.<sup>195</sup>

This critique may be relevant to the 2007 HAP Standard. In addition to being conceptually linked to business management frameworks, the *Guide to the HAP Standard* quotes management guru Peter Drucker when introducing Benchmark One, and summarizes his understanding of “quality” as follows:

[In Drucker’s words,] “Customers pay only for what is of use to them and gives them value. Nothing else constitutes quality.” . . . . Drucker’s formulation of what constitutes quality could be paraphrased for humanitarian agencies as follows: disaster survivors appreciate only what is of use to them and gives them value. Nothing else constitutes humanitarian value.<sup>196</sup>

This translation—from customer to beneficiary, and from payment to appreciation—is striking given that beneficiaries lack the most significant power that customers have: to choose the “products” they will use, and to “pay” for those they appreciate. As the Listening Project found, “While some agencies use the language of ‘clients,’ people on the recipient end of assistance tell us that they do not get to select the agencies that work in their communities,” making this terminology misleading.<sup>197</sup> In its 2007 version, the HAP Standard’s explanation of humanitarian value left out elements that beneficiaries have reported are especially important to them. Specifically, intangibles such as respect and a desire for aid workers to slow down and hear what beneficiaries want and expect have been underscored by participants in The Listening Project’s consultations.<sup>198</sup> These beneficiaries have also said that an overemphasis on efficiency has directly hindered agencies’ capacity to consult in a meaningful way.<sup>199</sup>

The 2010 revisions to the HAP Standard appear to focus in on these exact concerns by emphasizing actual implementation of accountability structures and making the Standard itself less complex and more accessible to disaster-affected communities. The 2010 HAP Standard keeps the same

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[http://www.cdainc.com/cdawww/pdf/issue/lp\\_issue20paper2020intl20assistance20as20a20delivery20system202008oct1\\_Pdf.pdf](http://www.cdainc.com/cdawww/pdf/issue/lp_issue20paper2020intl20assistance20as20a20delivery20system202008oct1_Pdf.pdf) [hereinafter DELIVERY SYSTEM].

<sup>195</sup> *Id.* at 3.

<sup>196</sup> GUIDE TO THE HAP STANDARD, *supra* note 79, at 45–46.

<sup>197</sup> DELIVERY SYSTEM, *supra* note 194.

<sup>198</sup> *Id.* at 4.

<sup>199</sup> *Id.*

basic structure as the 2007 standard but the language of “quality” is deemphasized in favor of the language of accountability, and talk of “systems” yields in favor of language about “implementation.” Thus, for example, while the 2007 Benchmark One formulation required agencies to “establish a humanitarian quality management system,” the 2010 version calls on agencies to “implement its accountability framework.”<sup>200</sup> These revisions appear to emphasize the need to ensure that systems for accountability to beneficiaries translate into actual accountability on the ground in terms that communities can appreciate.<sup>201</sup> For example, Benchmark Two has been significantly revised. The words “informed consent” were deleted from the title and the emphasis shifted from the simple participation of beneficiaries to the organization’s ability to actually listen to beneficiaries. The revised benchmark reads as follows:

Beneficiary Participation

The organisation listens to the people it aims to assist, incorporating their views and analysis in programme decisions.<sup>202</sup>

The benchmark is followed by a set of specific “requirements,” which set out particular processes and actions the organization must follow to meet the benchmark.<sup>203</sup> The 2007 Standard explained that the benchmark’s requirements would be measured through, *inter alia*, reviews of the INGO’s mechanisms and processes for enabling beneficiary participation, and appointing beneficiary representatives, as well interviews with staff about how they enable participation and “actual beneficiary input and impact on project design, implementation, monitoring, and evaluation,” including records of meetings with beneficiary representatives.<sup>204</sup> The 2010 Standard includes in its means of verification more elements related to direct beneficiary feedback.<sup>205</sup> For example, 2007’s “interview staff about the process for enabling participation” became three separate means of verification encompassing interviews with communities and staff on

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<sup>200</sup> *Id.* at 132; HAP INTERNATIONAL, 2010 HAP STANDARD, *supra* note 134, at 11.

<sup>201</sup> One expert deeply involved in revising the 2007 Standard noted that these revisions were motivated in part by the desire to make the Standard more user-friendly for disaster-affected communities. Interview No. 21.

<sup>202</sup> HAP INTERNATIONAL, 2010 HAP STANDARD, *supra* note 134, at 18. This new participation benchmark was changed to number four.

<sup>203</sup> The 2007 version has two such requirements; the 2010 version has five. Compare HAP INTERNATIONAL, GUIDE TO THE HAP STANDARD, *supra* note 79, at 66, with HAP INTERNATIONAL, 2010 HAP STANDARD, *supra* note 134, at 18-19.

<sup>204</sup> HAP INTERNATIONAL, GUIDE TO THE HAP STANDARD, *supra* note 79, at 66.

<sup>205</sup> See *id.*; see also HAP INTERNATIONAL, 2010 HAP STANDARD, *supra* note 134, at 18-19.

participant processes, as well as direct observations of such processes.<sup>206</sup> This change is emblematic of other changes in the 2010 edition that place a stronger emphasis on verification via direct communication with beneficiaries and contextual analysis.<sup>207</sup>

Thus, the 2010 revision of the HAP Standard goes as far as it can toward ensuring that agencies are truly engaging with beneficiaries. It is an impressive and earnest attempt to take the dominant frameworks of efficiency and results-based management and turn them into tools to hold the powerful to account for what—and how—they provide aid to beneficiaries.<sup>208</sup> Thus, in many ways, the HAP Standard and certification system represents a strategic use of the logics of audit and the technology of indicators against itself.<sup>209</sup> Instead of simply empowering expert humanitarians to carry out assessments of programming according to set definitions of quality programming, HAP requires that humanitarians engage with affected communities, seeking out their definitions of success and building programming responsive to such contextual meanings. The limits of HAP may in fact lie precisely in their very real impact, however: signing up requires significant change and real commitment—a commitment that only a handful of agencies that have pursued HAP certification have been willing to take on.<sup>210</sup>

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<sup>206</sup> See HAP INTERNATIONAL, *supra* note 79; HAP INTERNATIONAL, GUIDE TO THE HAP STANDARD, at 66; see also HAP INTERNATIONAL, 2010 HAP STANDARD at 18.

<sup>207</sup> For example, the benchmark on complaints handling mechanisms increased both direct verification with beneficiaries and contextual analysis in the 2010 version. Compare HAP INTERNATIONAL, GUIDE TO THE HAP STANDARD, at 82-83, with HAP INTERNATIONAL, 2010 HAP STANDARD, *supra* note 134, at 20-22.

<sup>208</sup> In many ways, HAP's results have yet to be proven; an external evaluation found that “[s]o far no significant evidence has emerged as to its impact on the beneficiaries of certified agencies.” SALKELD, *supra* note 174, at 47.

<sup>209</sup> It is possible that the best HAP can hope for is that more and more agencies will focus on chasing its benchmarks, creating evidence of compliance, and identifying ways to demonstrate a measurable commitment to accountability. Perhaps the dynamics would be different if the beneficiaries themselves were the auditors. Mary Kay Gugerty suggests something akin to this in her examination of voluntary non-profit accountability programs, concluding that “changing the current orientation of programs will require the delegation of concrete powers of verification and sanctioning to beneficiaries, something that nonprofits may be reluctant to do absent strong stakeholder pressure.” Mary Kay Gugerty, *Signaling Virtue: Voluntary Accountability Programs Among Nonprofit Organizations*, 42 POL’Y SCI. 243, 265 (2009).

<sup>210</sup> As of March 2011, only nine humanitarian NGOs had been certified. HAP International, CURRENT MEMBERS, <http://www.hapinternational.org/members.aspx> (last visited Mar. 27, 2011). A 2009 evaluation of HAP found many reasons for the reluctance on the part of NGOs to submit to certification: the process was characterized as being “highly technical,” and “not facilitative.” Further, a HAP Board member was reported as saying that “the

*d. Rendering Technical: The Sphere Standards and Indicators*

During 2009-2010, the Sphere Project undertook a revision of its Minimum Standards in Disaster Response. During this process, the dynamic of “rendering technical,” observed by Tania Murray Li in the development setting also could be seen in the way experts dealt with key problems. Dilemmas and problems that would otherwise be seen as the grounds for political contestation were often discussed as technical problems of measurement, strategy, and good practice. Sally Engle Merry has suggested that this kind of transformation—of issues that would otherwise be subject to deliberation and debate into technical problems to be decided by experts—is emblematic of certain indicators projects.<sup>211</sup> As Li explains, issues so rendered re-emerge; rendering technical “should be seen as a project, not a secure accomplishment.”<sup>212</sup> Thus, attention to the issues that recur as technical dilemmas can be unpacked to reveal political debates at the heart of the humanitarian endeavor. This Section will examine a number of the problems framed by humanitarians engaged in the indicators endeavor as technical ones, suggesting the political dilemmas that lurk behind debates over Sphere indicators.<sup>213</sup>

*i. Quantification*

Audit practices often include efforts to use quantitative data and other forms of measurement as techniques for the auditee to demonstrate its compliance with the standards relevant to the auditor.<sup>214</sup> Through the use of

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essential essence of HAP’s work seems to have been overshadowed by a seeming preoccupation with an approach to certification that simply doesn’t make sense to many NGOs at this time” because it was “cumbersome” and its value had not been established. SALKELD, *supra* note 174, at 40. It must be emphasized, however, that the HAP Standard has an impact far beyond the certification scheme, however, since it is often used by non-certified agencies as the basis for more tailored indicators and metrics of performance.

<sup>211</sup> See Sally Engle Merry, *Measuring the World: Indicators, Human Rights, and Global Governance*, 52 CURRENT ANTHROPOLOGY (SUPPLEMENT 3) S83, S88 (2011) (arguing that indicators transform the political process of judging and evaluating into a technical issue of measurement and counting); Rosga & Satterthwaite, *supra* note 25, at 305 (noting Merry’s critique that indicators often depoliticize choices that would otherwise be subject to debate in the public sphere); Bengt Jacobsson, *Standardization and Expert Knowledge, in A WORLD OF STANDARDS* 40, 41 (Nils Brunsson et al. eds., 2000) (characterizing standards as “impersonal” and “technical”).

<sup>212</sup> Li, *supra* note 34, at 10.

<sup>213</sup> Because the interviews conducted for this Article were conducted before the final 2011 edition of the *Handbook* was finalized and since the 2004 edition was what was used in Haiti, the 2011 edition is not fully analyzed here.

<sup>214</sup> For a discussion of this issue, see Rosga & Satterthwaite, *supra* note 25, at 254.

quantitative data, subjectivity is perceived to be reduced, and objectivity increased—something important in situations of mistrust where audit emerges.<sup>215</sup> Moreover, numbers are understood to cross borders easily due to their universality and rule-bounded nature, making quantification especially attractive in transnational endeavors like humanitarian assistance.<sup>216</sup> Numbers also make comparison possible in otherwise incommensurate settings.

Debates about whether and how to deploy numerical indicators in the Sphere Project surface frequently in the literature and in interviews with experts involved in Sphere drafting and revisions processes. An often-voiced concern is that the Sphere indicators may reduce complex dynamics and issues to simple numbers, stripping away key elements in the process.<sup>217</sup> Numbers have power, in part because of this reductive quality:

Numbers are the epitome of the modern fact because they seem to be simple descriptors of phenomena and to resist the biases of conjecture and theory since they are subject to the invariable rules of mathematics. Numbers have become the bedrock of systematic knowledge because they seem free of interpretation, as neutral and descriptive. They are presented as objective, with an interpretive narrative attached to them by which they are given meaning.<sup>218</sup>

While the impact of numerical indicators may stem in part from their objective quality, interviews with experts demonstrated the contingent and negotiated nature of key indicators. One example that came up frequently

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<sup>215</sup> See Theodore M. Porter, *Objectivity as Standardization: The Rhetoric of Impersonality in Measurement, Statistics, and Cost-Benefit Analysis*, in *RETHINKING OBJECTIVITY* 197, 206-07 (Allan Megill ed., 1994).

<sup>216</sup> See THEODORE M. PORTER, *TRUST IN NUMBERS: THE PURSUIT OF OBJECTIVITY IN SCIENCE AND PUBLIC LIFE*, at ix (1995) (explaining that rules for collecting and manipulating numbers can be easily transported “across oceans and continents”).

<sup>217</sup> See generally Charlotte Dufour, Véronique de Geoffroy, Hugues Maury & François Grünewald, *Rights, Standards and Quality in a Complex Humanitarian Space: Is Sphere the Right Tool*, 28 *DISASTERS* 124 (2004) (discussing critiques that Sphere Project indicators obscure complex factors in dynamic situations and focus disproportionately on results of activities rather than addressing greater issues of impact and process of intervention).

<sup>218</sup> Sally Engle Merry, *supra* note 211 at 32 (citing MARY POOVEY, *A HISTORY OF THE MODERN FACT: PROBLEMS OF KNOWLEDGE IN THE SCIENCES OF WEALTH AND SOCIETY* (1998)).

in interviews was the following indicator used to measure compliance with Water Supply Standard 1 on access and water quality<sup>219</sup>:

Average water use for drinking, cooking and personal hygiene in any household is at least 15 litres per person per day.<sup>220</sup>

This indicator appears objective and scientific; indeed, the casual reader is likely to assume that there is extensive research behind its choice. However, an expert involved in developing this indicator explained that debates over the number may have appeared technical, but were in fact—at least from his perspective—fraught with certain *misuses* of the number in mind.<sup>221</sup> A much lower number might have had greater scientific backing as a “minimum standard”: the indicator could have been pegged more closely to the amount of water needed by a human being for survival—estimated to be 2 to 3 litres per day.<sup>222</sup> However, this expert was concerned that such a low indicator would lead agencies to fulfill the target and stop. Conversely, when one influential agency suggested that the number be set at 20 liters per day, this expert argued against it, concerned that a higher number would be so hard to attain that it would render the indicator “aspirational” instead of operational.<sup>223</sup> His goal was a number that would be realistic enough to have compliance pull, but which would be high enough to keep agencies seeking continual improvement in the form of making more water available to beneficiaries. “I found that 50% of the countries could meet more than 15 liters a day and 50% couldn’t. That to me meant that this is where the indicator should be.”<sup>224</sup>

In addition, indicators were designed to be used both by agencies in programming and by donors in making funding decisions.<sup>225</sup> This strategic choice of indicator, then, was about getting additional resources for the humanitarian work itself, as well as being about monitoring of programming. This is a savvy, strategic use of the technology of indicators, intended to harness the powerful discourse of numbers to obtain more money for NGOs and therefore more water for beneficiaries. It “renders

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<sup>219</sup> “Water Supply Standard 1: access and water quantity” reads: “All people have safe and equitable access to a sufficient quantity of water for drinking, cooking and personal and domestic hygiene. . . .” SPHERE PROJECT 2004 ed., *supra* note 92, at 63.

<sup>220</sup> *Id.* This formulation has been retained in the 2011 revision. See SPHERE PROJECT 2011 ed., *supra* note 119 at 97.

<sup>221</sup> Interview No. 7.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

technical” the relationship humanitarian agencies play in mediating between beneficiary needs and donor resources.

This strategic use was mentioned by another expert as well, who pointed to an additional dynamic using the same indicator as an example: the power of numbers such as this one in negotiations with host governments and local NGOs.<sup>226</sup> With this specific number in hand, field staff can insist that their partner NGOs provide beneficiaries with at least fifteen liters of water per person per day, for example. They can also insist, when working with host governments, that this amount is what public systems should provide as they plan rehabilitative infrastructure projects following disasters.<sup>227</sup>

Despite the desire to create numerical indicators, many of the Sphere indicators are in fact qualitative. One of the experts who was central to the drafting process for the first edition of the *Handbook* explained that this is because achievements in some sectors are more easily quantified than others.<sup>228</sup> Health indicators, for example, could be based on a long history of evidence-based medicine.<sup>229</sup> There is no such history in relation to some other sectors, such as shelter.<sup>230</sup> This expert suggested that encouraging humanitarian professionals to engage in discussions of measurement is in itself a step forward:

Measurement is the tool that shows how human rights are being realized in the sense that those being affected by the crisis have equitable access. You can show that the services were being used at this rate. You can show that this marginalized group did have the same access to the service or goods as the mainstream group. At least [with Sphere] you have tools for giving evidence of this.<sup>231</sup>

This last comment—about the need to demonstrate rights compliance, access to services, and impact—was echoed by other experts. A gender expert said that evidence is especially difficult in her line of work, since measures that could demonstrate the impact of activities aimed at *preventing* discrimination or gender-based violence, for example, are

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<sup>226</sup> Interview No. 3.

<sup>227</sup> Interview No. 7. The example given was of a host government in Sub-Saharan Africa demanding that NGOs meet Sphere indicators. Interestingly, the expert who helped design the indicator found the use of the power of numerical indicators to be objectionable when a host government sought to hold NGOs to Sphere indicators.

<sup>228</sup> Interview No. 5.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

difficult, or even impossible, to design.<sup>232</sup> “How do you prove that something *didn’t* happen,” she asked. This leads to situations where information can be “evidence-based but not correct,” in the sense that numbers like reported cases of rape do not reveal dynamics that may have led to an increased—or decreased—willingness to report gender-based violence, for example.<sup>233</sup> Such distortions can have very real effects such as increases or decreases in funding, initiation or closure of programs.

*ii. Making Indicators More Like Indicators*

Several experts traced the desire to include more numerical indicators to donors, who routinely ask for certain forms of data.<sup>234</sup> During the 2010-2011 revision process, the Sphere Project engaged a monitoring and evaluation (M&E) specialist to ensure the indicators were presented with more “rigor” and were more “indicator-like.”<sup>235</sup> According to one expert, this included attempting to quantify indicators whenever possible and distinguishing things properly characterized as “key actions” from “indicators” (which should measure outcomes of actions).<sup>236</sup> The final result was a new structure that disaggregates “key actions” from “key indicators.”<sup>237</sup> The revision process also involved considering whether and how the indicators would fit into a logical framework or “Logframe.”<sup>238</sup> This reference to logframe analysis is a signal that the M&E expert was helping to ensure the Sphere indicators would be written in the language of major state donors, all of which use the logframe.<sup>239</sup> If Sphere indicators are amenable to such use, not only will they be more legible to funders, but new efficiencies will be created, since NGOs will be able to use the same indicator for grant writing, project planning, and monitoring and

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<sup>232</sup> Interview No. 6.

<sup>233</sup> *Id.*

<sup>234</sup> Interview Nos. 6, 7, 14.

<sup>235</sup> Interview No. 3. One indicator that was transformed into a quantitative indicator between the 2004 and 2010 editions of the *Handbook* was an indicator used to measure compliance with the Food Aid standard 3 on distribution. In the 2004 Edition, the indicator was: “The point of distribution is *as close as possible* to recipients’ homes to ensure easy access and safety. SPHERE PROJECT 2004 ed., *supra* note 92, at 168 (emphasis added). In the 2011 Edition, it was rewritten as: “Recipients should not have to walk more than 10 kilometres to the distribution site, i.e. no more than a four-hour walk.” SPHERE PROJECT 2011 ed., *supra* note 119, at 192 (emphasis added).

<sup>236</sup> Interview No. 3.

<sup>237</sup> See SPHERE PROJECT, SPHERE PROJECT 2011 ed., *supra* note 119, at 4 (describing the structure of the 2011 edition).

<sup>238</sup> *Id.*

<sup>239</sup> For a discussion of donors’ use of the LogFrame, see Wallace et al., *supra* note 157.

evaluation.<sup>240</sup> This kind of alignment, however, can have unintended consequences as well. What about innovative interventions, for example, for which measures have not yet been created?<sup>241</sup>

Even technically well-crafted indicators can have unintended consequences that some suggest can be deadly in the humanitarian context. Examining a program implemented in Sudan, Andre Griekspoor and Steve Collins report that decisions were made to limit the number of beneficiaries so that tight resources could be spent on a smaller population, thus allowing the program to meet Sphere standards on nutrition.<sup>242</sup> They conclude that:

This case study shows that trying to adhere to preset indicators when needs are overwhelming compared with the available capacity for response could promote inappropriate planning. The Sphere nutritional key indicators emphasize individual cure rates rather than overall impact at the population level.<sup>243</sup>

The Sphere Evaluation Report of 2004 noted with concern three more cases with a similar pattern.<sup>244</sup> Later editions of the Sphere standards and indicators have taken on these criticisms, adding specific technical fixes as well as much more emphasis on context and process. One expert explained that donors are very much alert to the potential dangers of applying Sphere indicators without careful contextual analysis and they now require grantees to demonstrate that they have undertaken such an analysis if they plan to use Sphere.<sup>245</sup> Questions about perverse incentives or potential distorting effects of the Sphere indicators were often met with comments about the importance of contextualizing the indicators.<sup>246</sup> This generally meant adjusting the standards downward to ensure that disaster-affected populations are not living at a significantly higher standard than the surrounding non-affected community.

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<sup>240</sup> Seeing through the eyes of the donors only went so far, however. While the M&E expertise was helpful, one humanitarian said, he also insisted that, “We’re not robots. We need to decide.” Interview No. 3.

<sup>241</sup> Paul Farmer, writing about Haiti, voices this concern. See Paul Farmer, *Introduction to Part 3 of PARTNER TO THE POOR: A PAUL FARMER READER* 295–96 (Paul Farmer, Huan Saussy & Tracy Kidder eds., 2010).

<sup>242</sup> André Griekspoor & Steve Collins, *Raising Standards in Emergency Relief: How Useful Are Sphere Minimum Standards for Humanitarian Assistance?*, 323 *BRIT. MED. J.* 740, 740–42 (2001).

<sup>243</sup> *Id.*

<sup>244</sup> VAN DYKE & WALDMAN, *supra* note 100.

<sup>245</sup> Interview No. 21.

<sup>246</sup> See, e.g., Interviews Nos. 1, 2, 3, 4.

Alternatively, one expert suggested that a contextual analysis would counsel humanitarians to add resources to the local community if the local conditions were below the Sphere indicators instead of adjusting the indicators downward.<sup>247</sup> One expert gave an example of an occasion when an indicator might need to be adjusted *upward* based on the local context: where a community in crisis is accustomed to having plentiful access to water, for example, and where it is not hugely difficult for humanitarians to provide water, the fifteen liters per day should be adjusted upward to ensure equity with the surrounding community.<sup>248</sup>

Prominent critiques of this response argue that if universal standards are in fact not universal, the very concept of “minimum standards” begins to lose meaning.<sup>249</sup> The impact of such changes, however, may be limited by the common (mis)use of the Sphere indicators alone, or the indicators and the standard without the “common standards,” where much of the important contextual and process issues are discussed.<sup>250</sup>

### *iii. Humanitarians Producing Numbers*

Certain techniques used by humanitarians to gather data have also been the subject of much debate and criticism. Refugee studies scholars Barbara Harrell-Bond, Guglielmo Verdirame, and Jennifer Hyndman have described striking examples, including coercive headcounts and “night swoops” on camps with the aim of ensuring accurate numbers.<sup>251</sup> These examples may

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<sup>247</sup> Interview No. 3. This strategy can only go so far in a very poor context, since humanitarians cannot be expected to provide a whole country humanitarian assistance sufficient to measure up to the Sphere indicators.

<sup>248</sup> See Interview No. 3.

<sup>249</sup> See Dufour et al., *supra* note 217, at 135 (“One cannot help notice a certain irony in a tool aiming to be ‘universal’ whereas it is inapplicable in many contexts in which its target audience works.”).

<sup>250</sup> This misuse is so common that the new electronic edition will have the “Common Standards” chapter zipped in with each technical chapter available for download on the Sphere site, making it impossible for users to download any technical chapter on its own. Interview No. 3.

<sup>251</sup> Barbara Harrell-Bond, *Can Humanitarian Work with Refugees Be Humane?*, 24 HUM. RTS. Q. 51, 61–62 (2002) (citations omitted). Harrell-Bond and Verdirame provide additional examples and trace the pressure on humanitarian agencies to produce numbers to donors. See GUGLIELMO VERDIRAME & BARBARA HARRELL-BOND, RIGHTS IN EXILE: JANUS-FACED HUMANITARIANISM 281–82 (2005) (noting that donors are to blame for some unrealistic conditions placed on agencies such as UNHCR). Jennifer Hyndman provides similar examples in her study of humanitarian practices. See Jennifer Hyndman, *Ordering Disorder: Sitreps, Headcounts, and Other Instruments*, in MANAGING DISPLACEMENT: REFUGEES AND THE POLITICS OF HUMANITARIANISM 117–119 (2000) (arguing that “there is no pure, apolitical, unadulterated way to deliver humanitarian assistance.”).

not be representative and some of the pressure that led to practices like this has been mitigated by the use of new technologies such as satellite imaging. However, this concern was echoed by a human rights expert who currently works in the domain of public health. She explained that numbers—even when used in “rights-based programming”—need to be interrogated to ensure that coercive practices are not behind their production.<sup>252</sup> Low levels of disease prevalence, for instance, may be proved by way of forced or coerced testing. Of course such rights violations would be misuses of Sphere, since Sphere also includes extensive discussions and standards concerning steps humanitarian workers should take to ensure the dignity of disaster-affected communities are protected. However, the power of numerical indicators within the humanitarian system is such that it may be hard for some actors, some of the time, to resist cutting dignity corners to obtain needed data and thus funding.

*iv. Sphere’s Silences: Measuring Protection*

A final issue rendered technical through Sphere is especially important to the rights-based indicators discussion. It has been said that elements of humanitarian relief that are hard to quantify are omitted from the Sphere indicators for that reason.<sup>253</sup> While a majority of the indicators in the 2004 Sphere *Handbook* are qualitative, that fact alone does not quiet this concern. Indeed, experts pointed to one rights-related area where Sphere had gotten significant criticism over the years for being too timid: protection.

Protection has been defined as “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law and refugee law.”<sup>254</sup> Theoretically, this includes activities aimed at

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<sup>252</sup> Interview No. 14. See also Sofia Gruskin & Laura Ferguson, *Using Indicators to Determine the Contribution of Human Rights to Public Health Efforts*, 87 BULL. WORLD HEALTH ORG., 714–719, 717 (2009) (calling for more attention to be paid to the human rights impacts of health research in assessing the appropriateness of a given rights-based indicator).

<sup>253</sup> See, e.g., Ruth Gidley, *Critics Find Fault with Sphere Standards for Relief Work*, REUTERS, Oct. 15, 2004, available at <http://www.trust.org/alertnet/news/critics-find-fault-with-sphere-standards-for-relief-work/> (noting criticism that important but difficult-to-quantify aid factors such as mental health, education, and protection of civilians are left out of the Sphere Handbook to its detriment because, for example, “it’s no use providing wells if women are raped on their way to collect water.”).

<sup>254</sup> Global Protection Cluster Working Group, U.N. High Commissioner for Refugees, *Handbook for the Protection of Internally Displaced Persons* 7 (2010), available at <http://www.unhcr.org/refworld/pdfid/4790cbc02.pdf> (noting, “This definition, which was originally developed over a series of ICRC-sponsored workshops involving some 50 humanitarian and human rights organizations, has been adopted by the IASC”)

ensuring respect for: (1) the rights to physical security and integrity; (2) economic and social rights concerned with basic subsistence such as the right to food and water; (3) additional economic and social rights such as the right to work and the right to education; and (4) additional civil and political rights such as the right to freedom of speech, access to courts, and free association.<sup>255</sup> Humanitarians have tended to focus on the first two categories since those are seen as most relevant to emergencies, but there is now increasing focus on the whole range of rights in emergencies.<sup>256</sup> Protection was not addressed at all in the first edition of the *Sphere Handbook*.<sup>257</sup> In the second edition, protection was integrated as a cross-cutting issue in the technical chapters.<sup>258</sup> As the revised 2004 *Handbook* explained:

This *Handbook* does not provide detailed descriptions of protection strategies or mechanisms, or of how agencies should implement their responsibility [to ensure protection]. However, where possible, it refers to protection aspects or rights issues—such as the prevention of sexual abuse and exploitation, or the need to ensure adequate registration of the population—as agencies must take these into account when they are involved in providing assistance.<sup>259</sup>

In other words, protection issues that relate directly to the provision of humanitarian aid were dealt with, but protection issues that relate to broader concerns of disaster-affected populations were not. This inclusion/exclusion dynamic is significant because it signals that humanitarians were willing to monitor and assess that which they could control (i.e. their employees' actions in abusing or registering beneficiaries) but not the interface between their activities and wider protection issues that may emanate from other actors and dynamics in the disaster-affected community. However, even those elements over which humanitarians have control were not addressed in a holistic manner in the 2004 edition of the *Handbook*. Protection issues that were not directly related to the technical standards were addressed only at the margins.<sup>260</sup> For example, in relation to shelter, standards and indicators were included that address security risks posed by humanitarian choices concerning the location and nature of

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<sup>255</sup> BROOKINGS-BERN PROJECT ON INTERNAL DISPLACEMENT, HUMAN RIGHTS AND NATURAL DISASTERS: OPERATIONAL GUIDELINES AND FIELD MANUAL ON HUMAN RIGHTS PROTECTION IN SITUATIONS OF NATURAL DISASTER 8 (2008).

<sup>256</sup> *Id.*

<sup>257</sup> SPHERE PROJECT 2000 ed., *supra* note 72.

<sup>258</sup> SPHERE PROJECT 2004 ed., *supra* note 92, at 12.

<sup>259</sup> *Id.*

<sup>260</sup> Interview No. 4.

shelters, but the issue of forced displacement was mentioned in passing only, as part of the relevant human rights law relating to shelter, despite the fact that forced displacement is a common problem in emergencies.<sup>261</sup> Freedom of movement, which is often especially relevant to displaced persons, was not mentioned at all.<sup>262</sup> As one expert said, “With respect to protection, Sphere becomes remarkably silent.”<sup>263</sup>

This silence stems at least in part from the historical ambivalence that the humanitarian system has demonstrated concerning protection. For many years, protection was viewed as the responsibility of so-called “mandated agencies.” This has been attributed to the fact that protection has been seen as a uniquely governmental responsibility, with the mandated agencies having a specifically defined role alongside states under international law. UNICEF and the UN Office of the High Commissioner for Human Rights (OHCHR) have protection mandates relevant to all emergencies, having interpreted their specific formal roles set out in treaty law—their “mandates”—as encompassing protection activities.<sup>264</sup> The UN High

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<sup>261</sup> See SPHERE PROJECT 2004 ed., *supra* note 92 at 211–15 (describing security risks in relation to choice of shelter solutions); *id.* at 207, which includes the following text, regarding forced evictions, in the introduction to the shelter chapters:

The right to housing is inextricably related to other human rights, including that of protection against forced eviction, harassment and other threats to physical safety and well-being, the right of everyone to be protected against arbitrary displacement from their home or place of habitual residence, and the prohibition of indiscriminate armed attacks on civilian objects.

For a discussion of forced displacement in emergencies, see GLOBAL PROTECTION CLUSTER WORKING GROUP, *supra* note 254, at 137–145; see also CENTER FOR HOUSING RIGHTS AND EVICTIONS, THE PINHEIRO PRINCIPLES: UNITED NATIONS PRINCIPLES ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS, *available at* <http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf>.

<sup>262</sup> Interview No. 4. For an analysis of freedom of movement for refugees, see VERDIRAME & HARRELL-BOND, *supra* note 251, at 179–82 (describing the right to freedom of movement for refugees in Kenya and Uganda).

<sup>263</sup> Interview No. 8.

<sup>264</sup> See Anthony Lake, Exec. Dir., UNICEF, Address to the 50th Annual Session of UNHCR, (Oct. 4, 1999), *available at* [http://www.unicef.org/media/media\\_11981.html](http://www.unicef.org/media/media_11981.html) (summarizing UNICEF’s “holistic approach” to protection under its mandate and emphasizing UNICEF’s commitment under its mandate to dealing with “humanitarian consequences of emergencies” as well as with “their root causes and solutions.”); Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25, art. 45, (Nov. 20, 1989) (entitling specialized agencies and other UN organizations and organs to be represented and to provide expert advice at any discussions regarding implementation of the Convention [of the Rights of the Child] “as fall within the scope of their mandate”); Office of the High Commissioner of Human Rights, Mandate, <http://www.ohchr.org/EN/ABOUTUS/Pages/Mandate.aspx> (last visited Oct. 3, 2010)

Commissioner for Refugees also has a protection mandate specifically related to displaced persons.<sup>265</sup> The Red Cross Movement has a Geneva Convention-based protection mandate concerning situations of armed conflict or violence.<sup>266</sup> In recent decades, protection has come to be seen as an important responsibility for the humanitarian system as a whole, though it is often dealt with as a specialized area, separate from the “technical sectors” such as food and water. Humanitarians’ proximity to armed conflict, their sense of responsibility following the failures in the Rwanda era, and the integration of human rights into the humanitarian endeavor all might be cited as factors contributing to this enlarged sense of responsibility for protection.<sup>267</sup> However, the system demonstrates ambivalence about its

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(stating the Office’s broad mandate to “promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and in international human rights laws and treaties,” which includes “preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining the United Nations system in the field of human rights.”). See generally High Commissioner for the Promotion and Protection of All Human Rights, G.A. Res. 48/141, U.N. Doc. A/RES/48/141 (Dec. 20, 1993) (creating the post of the High Commissioner of Human Rights); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/Res/217(III) (Dec. 10, 1948) (discussing protection of all human rights).

<sup>265</sup> See Statute of the Office of the United Nations High Commissioner for Refugees, G.A. Res. 428 (V), U.N. Doc. No. A/RES/428(V) (Dec. 14, 1950) (giving UNHCR authority to “assume the function of providing international protection” to all persons falling within scope of the Statute). This mandate does not explicitly include IDPs, but UNHCR’s expertise in displacement issues has given the agency a leading role in situations of internal displacement; this role has been institutionalized through the Cluster system, where UNHCR is the lead agency in shelter and camp management. See UNHCR, Internally Displaced People: On the Run in their Own Land, <http://www.unhcr.org/pages/49c3646c146.html>. However, UNHCR does not generally take the lead in setting where IDP situations arise due to natural disaster, as opposed to conflict. See *id.* (“Millions of other civilians who have been made homeless by natural disasters are also classified as IDPs. UNHCR is only involved with this group in exceptional circumstances.”)

<sup>266</sup> The ICRC was created by the Geneva Conventions, which mandate it to undertake the protection of persons affected by international armed conflict. In relation to internal armed conflict, the ICRC has a “a right of humanitarian initiative recognized by the international community and enshrined in Article 3 common to the four Geneva Conventions.” See ICRC, The ICRC’s Mandate and Mission, <http://www.icrc.org/eng/who-we-are/mandate/overview-icrc-mandate-mission.htm> (last visited April 24, 2011).

<sup>267</sup> See, e.g., Susanne Jaspars & Sorcha O’Callaghan, *Livelihoods and Protection in Situations of Protracted Conflict*, 34 DISASTERS 165, S166–67 (2010) (discussing wide range of protection activities by humanitarian agencies, from actions aimed at preventing abuse to actions “aimed at moving society as a whole towards norms to protect rights”). See generally David Chandler, *The Road to Military Humanitarianism: How the Human Rights NGOs Shaped a New Humanitarian Agenda*, 23 HUM. RTS. Q. 678 (2001)

specific role in this realm, and the 2004 edition of the *Sphere Handbook*'s relative silence on protection is an example of this attitude.

For the first time, the 2011 edition of the *Sphere Handbook* breaks that silence by including a stand-alone chapter on protection. The chapter is in many ways a bold change from the past, and is built on the following four principles:

1. Avoid exposing people to further harm as a result of your actions
2. Ensure people's access to impartial assistance – in proportion to need and without discrimination
3. Protect people from physical and psychological harm arising from violence and coercion
4. Assist people to claim their rights, access available remedies and recover from the effects of abuse.<sup>268</sup>

These principles are impressive in their breadth and clarity. However, unlike every other technical chapter in the book, the protection chapter does not include key actions, standards, and indicators. Instead, it provides a set of principles and guidance notes.<sup>269</sup> An early draft of the text explained that indicators were not included because “protection, by definition, depends on a contextual analysis of who is at risk, of what, from whom, and at what moment.”<sup>270</sup> This could be said about the other technical standards as well—food, health, and shelter all depend on contextual analyses in important respects. For example, the following food security indicator quite obviously requires a contextual analysis: “Households do not use negative coping strategies.”<sup>271</sup>

Several experts made an additional technical argument, explaining that indicators were inappropriate since there is not a body of evidence or “good practice” available in relation to protection the way there is in relation to the other sectors included in the *Sphere Handbook*.<sup>272</sup> This argument is

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(discussing transformation of humanitarian policy of agencies from more limited long-term involvement to broad interventionist approach).

<sup>268</sup> SPHERE PROJECT, SPHERE PROJECT 2011 ed., *supra* note 119, at 29.

<sup>269</sup> SPHERE PROJECT, SPHERE PROJECT 2011 ed., *supra* note 119, at 33-43.

<sup>270</sup> Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response (2010 Draft, on file with author).

<sup>271</sup> SPHERE PROJECT, SPHERE PROJECT 2011 ed., *supra* note 119, at 176.

<sup>272</sup> Interview No. 5 (commenting that there is not a relevant “body of evidence” for protection); Interview No. 11 (while there are some indicators for certain areas such as child protection, there are gaps in other areas and “we are not necessarily able to fill those gaps with best practices”).

undercut by the existence of several carefully researched, vetted, and piloted efforts to create protection standards and indicators. First, a set of NGOs have created the *Minimum Agency Standards for Incorporating Protection into Humanitarian Response*, which has been undergoing wide-ranging field testing.<sup>273</sup> The standards are explicitly based on the Sphere model and therefore include key indicators like those included in the Sphere technical chapters.<sup>274</sup> Myriad standards exist for refugee protection, and the Global Protection Cluster Working Group has published a *Handbook for the Protection of Internally Displaced Persons*, which was released provisionally in 2008 and then globally in 2010.<sup>275</sup> Because it is designed to guide humanitarian actors in developing protection programming and does not aim to identify standards for the sector, the *Handbook* is not organized like Sphere. However, it exhaustively identifies the relevant legal standards and associated guidelines, underscores the importance of using indicators in protection work, and provides examples of indicators for protection itself, as well as protection indicators to be integrated into other technical sectors.<sup>276</sup> It would have been the ideal tool for those revising the Sphere *Handbook* to use in creating protection indicators. Additional tools and *Handbooks* exist for child protection and protection against gender-based violence, among other specialized resources.<sup>277</sup>

Indeed, several experts argued that there was no valid reason that Sphere could not include indicators for protection.<sup>278</sup> “Agencies should ask themselves the difficult questions,” one expert said, mentioning the protection failures in the camps in Rwanda after the genocide as a

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<sup>273</sup> CARITAS AUSTRALIA, CARE AUSTRALIA, OXFAM AUSTRALIA & WORLD VISION AUSTRALIA, *MINIMUM AGENCY STANDARDS FOR INCORPORATING PROTECTION INTO HUMANITARIAN RESPONSE* (2008) (field testing version), available at [http://www.acfid.asn.au/what-we-do/docs\\_what-we-do/docs\\_humanitarian-and-emergencies/Minimum%20Agency%20Standards%20for%20Incorporating%20Protection%20into%20Humanitarian%20Response%20July%202008.pdf](http://www.acfid.asn.au/what-we-do/docs_what-we-do/docs_humanitarian-and-emergencies/Minimum%20Agency%20Standards%20for%20Incorporating%20Protection%20into%20Humanitarian%20Response%20July%202008.pdf).

<sup>274</sup> *Id.*

<sup>275</sup> GLOBAL PROTECTION CLUSTER WORKING GROUP, *supra* note 248.

<sup>276</sup> *Id.*

<sup>277</sup> See, e.g., INITIATIVE OF THE GLOBAL CHILD PROTECTION WORKING GROUP – PROTECTION CLUSTER, *CHILD PROTECTION COORDINATORS' HANDBOOK FOR CLUSTERS 2009* (2009), available at <http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/Child%20Protection%20Coordinators%20Handbook%20for%20Clusters%202009.pdf>; JUDY A. BENJAMIN & LYNN MURCHISON, *GENDER-BASED VIOLENCE: CARE AND PROTECTION OF CHILDREN IN EMERGENCIES* (2004), available at [http://www.reliefweb.int/rw/lib.nsf/db900sid/SHIG-7LDEUW/\\$file/SaveTheChildren\\_Dec2004.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/SHIG-7LDEUW/$file/SaveTheChildren_Dec2004.pdf?openelement).

<sup>278</sup> Interviews Nos. 4, 8, 12.

cautionary tale.<sup>279</sup> Creating indicators for protection is perceived to be an especially fraught exercise because humanitarians are not in control of the forces responsible for protection: they do not command police forces and cannot prevent armies, rebels, or criminals from attacking the disaster-affected populations with whom they work.<sup>280</sup> While this is perhaps most starkly true in relation to protection, it is not uniquely true. For example, in some situations forces beyond the control of humanitarian actors may impede the ability of an NGO to meet nutrition or water standards, but this has not been cited as a reason not to create indicators for those sectors. Another expert suggested that indicators had not been created to measure protection because “when you have indicators, you have accountability.”<sup>281</sup> Echoing this sentiment another added “you will only do what you have been paid to count. . . Everything will be an unstable compromise, but you want to be sure it cuts the right way” with respect to protection.<sup>282</sup> Debates over the 2010-2011 Sphere revision indicate that several of the issues “rendered technical” in the revision process were the subject of this kind of “unstable compromise.”

#### IV. HUMANITARIAN INDICATORS IN HAITI

##### *a. Introduction*

This Section draws on the analysis in Section IV to consider the dynamics at work in the use of indicators and benchmarks by humanitarians in post-earthquake Haiti. The Haiti context provides an opportunity to examine the status of humanitarian indicators in one specific, post-disaster setting. The analysis set out in this Section does not parallel that explored in Section IV; rather, it is organized to highlight issues specifically identified through interviews with experts with experience in Haiti, the findings of the online survey about indicator-use in Haiti, site visits, and analysis of humanitarian discourses related to Haiti. This evidence suggests that humanitarians are using indicators and benchmarks to monitor projects and to ensure effective, measurable results in Haiti. In their current form, such indicators encourage project-based management of encampments for internally displaced people (“IDPs”).

In managed IDP camps, INGOs work hard to ensure that beneficiaries can access the essentials, including water, food, shelter, and basic healthcare. However, less visible within such frameworks are issues of coverage and

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<sup>279</sup> Interview No. 4.

<sup>280</sup> Interview No. 8.

<sup>281</sup> *Id.*

<sup>282</sup> Interview No. 12.

scope—alongside more standards-compliant camps sit unmanaged camps, where humanitarian services are not guaranteed and IDPs live in peril of flooding and landslides. Humanitarians negotiate the continuum between emergency and development by contextualizing indicators and “rendering technical” issues that would otherwise be the basis for political struggle such as participation by the poor in rebuilding and decisions about the country’s future. Further, although some indicators include attention to issues of sustainability, by highlighting successes in improving outcomes they also inadvertently downplay the potential damage that humanitarian interventions can have on existing and nascent systems for delivering key services. Finally, the quest for data seems to slow when protection issues arise: the operational humanitarian system appears reluctant to count rapes and evictions despite rising calls for them to monitor such abuses.

*b. Historical Context*

It is impossible to sensibly discuss Haiti without referring to the country’s fraught history.<sup>283</sup> The founding of the nation, its troubled political history, its position in the global economic order and political imaginary, and its recent experiences of crisis and intervention, are all relevant to the current situation in Haiti. Briefly:

In August 1791, slaves in northern Saint-Domingue launched an uprising that spread throughout the colony and turned into a successful revolution that toppled both slavery and the French colonial order. The revolution took nearly thirteen years to unfold from the initial uprising to the proclamation of Haitian independence in January 1804.<sup>284</sup>

This proclamation was followed by a vigorous containment strategy imposed by France and its allies.

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<sup>283</sup> Indeed, one of the hallmarks of many reports on the current situation in Haiti is their frequent reference to—and even summary of—Haitian history. In genres such as the program evaluation, discussion of Haitian history appears out of place but is ubiquitous. See, e.g., FRANÇOIS GRÜNEWALD & BLANCHE RENAUDIN REAL-TIME EVALUATION OF THE RESPONSE TO THE HAITI EARTHQUAKE OF 12 JANUARY 2010, MISSION: 9-23 FEBRUARY 2010, MISSION REPORT, at 11-12 (Apr. 4, 2010), available at <http://www.alnap.org/pool/files/100517-rapport-de-mission-final-ang.pdf> (summarizing the history of Haiti); RENCORET, ET AL., *supra* note 22 (discussing Haiti’s history and social and economic context).

<sup>284</sup> MICHEL-ROLPH TROUILLOT, SILENCING THE PAST: POWER AND THE PRODUCTION OF HISTORY 37 (1995).

The denial of political existence was accompanied by other attacks on sovereignty. In 1825 the Haitian government agreed to pay an indemnity to France in return for diplomatic and economic relations. Exiled planters had been clamoring for such a payment for years: it was meant to repay them for what they lost in Saint-Domingue, including the money invested in their slaves, and amounted to a fine for revolution. Unable to pay, the Haitian government took loans from French banks, entering a cycle of debt that would last into the twentieth century.<sup>285</sup>

This indemnity payment was enormous, amounting to double the price paid by the United States for the territory gained in the Louisiana Purchase.<sup>286</sup> This payment is credited with directly contributing to Haiti's current situation:

The crippling legacy of debt begun in 1825 has stifled Haitian development ever since. The government could not invest in education, healthcare or infrastructure projects because all available funds went overseas. In 1915, for example, 80% of government revenues went to debt service. The need for hard currency forced Haitian farmers to favor financially or environmentally risky cash crops such as coffee and hardwood, rather than development of a diverse national economy. Over-farming and over-logging led, in turn, to catastrophic deforestation and soil erosion which put more pressure on the remaining arable land. Economic instability has engendered political instability: Haiti has been beset by dozens of coups, rebellions, foreign military interventions and a cycle of violence that paralleled the country's downward economic spiral. Today Haiti is the poorest country in the Western Hemisphere with 80% of its people living below the poverty line and is ranked 153rd out of 177 on the UN Human Development Index, far behind all of its Caribbean neighbors.<sup>287</sup>

Haiti's recent history has been one of "*permanent crisis*," according to anthropologist Gregory Beckett.<sup>288</sup> Since 1994, when the U.S. military

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<sup>285</sup> LAURENT DUBOIS, *AVENGERS OF THE NEW WORLD: THE STORY OF THE HAITIAN REVOLUTION* 303–304 (2004).

<sup>286</sup> Brian Concannon, Jr. & Anthony Philips, *Haiti Needs Justice, Not Charity*, S. FLA. SUN-SENTINEL, July 24, 2006, available at <http://www.globalpolicy.org/component/content/article/186/34476.html>.

<sup>287</sup> *Id.*

<sup>288</sup> Gregory A. Beckett, *The End of Haiti: History Under Conditions of Impossibility* 5 (2008) (unpublished Ph.D. dissertation, University of Chicago) (on file with author).

restored then-president Jean-Bertrand Aristide to power by ousting the ruling *de facto* regime, international engagement in Haiti has been conducted through the concepts and frameworks of state failure and cyclical emergency.<sup>289</sup> These frameworks shorten planning horizons and prioritize quick action over long-term change or justice.<sup>290</sup> This has meant, in material terms, that aid flows, which would otherwise be targeted to building, improving, and expanding Haiti's public infrastructure and systems, have in large part been channeled to INGOs, Haitian NGOs, and other donor-controlled entities charged with implementing programs.<sup>291</sup> As a result, the state—already weak and ineffective—was in important ways significantly *de-capacitated* through foreign aid instead of being strengthened.<sup>292</sup> This meant not only that governance was weakened, but also that systems—such as those providing healthcare, education, and potable water—were likewise starved of resources. To be sure, INGOs and some Haitian NGOs stepped in to provide aid in many cases, but the impact of this dynamic was that the resulting systems themselves did not belong to the state, were in important respects unregulated, and could not be counted on to sustainably provide services to all in an accountable manner.<sup>293</sup> By the time of the earthquake, Haiti was ranked number 12 out of 177 states in the Fund for Peace's Failed States Index and 129<sup>th</sup> of 141 states in the Index of State Weakness in the Developing World.<sup>294</sup>

When the earthquake hit, it decimated the already weakened public sector in Haiti: 27 of 28 national government buildings were destroyed, and somewhere near 20% of the whole Haitian civil service was killed

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<sup>289</sup> *Id.*; see also Greg Beckett, *Phantom Power: Notes on Provisionality in Haiti*, in ANTHROPOLOGY AND GLOBAL COUNTERINSURGENCY 46–47 (John D. Kelly, Beatrice Jauregui, Sean T. Mitchell & Jeremy Walton eds., 2010) (analyzing the operation of the “twin concepts of state failure and the state of exception” in relation to the forced removal from power of President Jean-Bertrand Aristide in 2004).

<sup>290</sup> See ERICA CAPLE JAMES, *supra* note 166 (discussing how economies in Haiti are affected by trauma and related discourses).

<sup>291</sup> See TERRY F. BUSS WITH ADAM GARDNER, HAITI IN THE BALANCE: WHY FOREIGN AID HAS FAILED AND WHAT WE CAN DO ABOUT IT 118–21 (2008) (exploring implications of service delivery by NGOs and donor management of projects).

<sup>292</sup> See Schuller, *supra* note 15, at 73 (internal citations omitted) (noting that as foreign aid was directed to NGOs, the Haitian state became an “apparent state.”).

<sup>293</sup> For a discussion of this dynamic in Port-de-Paix, northern Haiti, see CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, ET AL., *WÒCH NAN SOLEY: THE DENIAL OF THE RIGHT TO WATER IN HAITI* (2008); see also RENCORET ET AL., *supra* note 22, at 10–11 (discussing Haiti's history, social context, and economic context).

<sup>294</sup> RENCORET ET AL., *supra* note 22, at 8.

instantly.<sup>295</sup> The massive humanitarian effort, so badly needed, unsurprisingly bypassed the badly shocked Haitian government in the first few weeks of the crisis: by the end of January 2010, less than 1% of the earthquake aid had gone to the government of Haiti.<sup>296</sup> As understandable as that may have been in those first few weeks, this dynamic has been slow to change. As of July 2010, UN Deputy Special Envoy to Haiti, Dr. Paul Farmer reported that “of \$1.8 billion for earthquake relief sent to Haiti, less than 2.9% has so far gone to the government.”<sup>297</sup> In a setting like this, what impact do rights-based indicators and benchmarks have? Does their deployment bring these human rights issues into view, or obscure these dynamics even further?

*c. Spontaneous Settlements and Unmanaged Camps*

In the aftermath of the January 12 earthquake, surviving members of poor Haitian families whose houses had been destroyed took what belongings they could salvage from their homes and fled to the closest or most familiar open spaces. Flocking to public squares, parks, schoolyards, and golf courses, Haitians set up makeshift shelters using whatever materials they could find. In the early days, many of these shelters were made from bed sheets, cardboard, and sticks. As time went by, families added whatever reinforcements they could gather—for the lucky ones, tents or tarps and wood distributed by humanitarian agencies, or corrugated iron and cinder blocks hauled over from destroyed homes. For those less lucky, bed sheets, cardboard, and Styrofoam remained the best they could find.

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<sup>295</sup> Paul Farmer, Deputy Special Envoy for Haiti to the United Nations, Testimony to the Congressional Black Caucus: Focus on Haiti, *available at* <http://www.pih.org/haiti/news-entry/focus-on-haiti-the-road-to-recovery-a-six-month-review/#farmer> [hereinafter Farmer Testimony].

<sup>296</sup> *Haiti Government Gets 1 Cent of U.S. Aid Dollar*, MSNBC.COM, January 27, 2010, [http://www.msnbc.msn.com/id/35103622/ns/world\\_news-haiti/](http://www.msnbc.msn.com/id/35103622/ns/world_news-haiti/). Meanwhile, since the day of the earthquake, even very poor Haitian communities have been conducting broad-ranging humanitarian assistance projects of their own. Though rarely referred to in such terms, Haitian humanitarians led search-and-rescue efforts, digging out family members, neighbors, and strangers using whatever tools they could find. Families across the country took in displaced people—members of their families, members of their neighbors’ families, and even strangers, providing housing, clothing, and food for hundreds of thousands. Churches and community groups organized shelters using abandoned buildings such as withering hotels or unused clinics. Organized Haitian groups developed humanitarian aid programs that as of April 2010 were “offering shelter, medical care, community health care, food, water, children’s activities, leisure activities, and security.” BEVERLY BELL, *OTHER WORLDS, FROM DISASTER TO SOLIDARITY: BEST PRACTICES IN MEETING THE NEEDS OF HAITI’S EARTHQUAKE SURVIVORS 1* (2010). These efforts are often not acknowledged by—and may often seem invisible to—the international community.

<sup>297</sup> Farmer Testimony, *supra* note 295.

In Port-au-Prince, the humanitarian system responded by setting up camp management agencies (“CMAs”) within the spontaneous settlements. These CMAs were charged with assessing the needs of residents, coordinating and prioritizing aid, ensuring adequate governance systems within the camps, and assessing the camp sites for risk of landslide and flooding.<sup>298</sup> This is the standard approach for the humanitarian system in situations where IDPs have created spontaneous settlements; model “terms of reference” and guidance exist for such operations.<sup>299</sup> CMAs are usually large INGOs with significant experience running IDP or refugee camps in emergencies around the world. In Haiti, the CMAs with the largest number of IDPs under their care as of July 2010 were Concern, the American Refugee Committee, International Emergency and Development Aid, Catholic Relief Services, Première Urgence, Oxfam, World Vision, Save the Children, Croix Rouge de France, and Action Contre la Faim.<sup>300</sup> Despite the involvement of a wide range of major INGOs, there was an insufficient number of agencies available to manage the more than 800 camps in the city.<sup>301</sup>

INGOs work on a project model, through which they endeavor to service a specific grouping of camps or households with a set package of goods and services, usually measured through project indicators. To ensure that they can both ensure minimum quality standards and measure the impact of their programming, there has been a noted tendency of INGOs to prefer to work in locations and with populations where they can meet their minimum standards for service. When asked to define the term “indicator” in relation to their work in Haiti, a number of respondents to the online survey replied by describing project indicators.<sup>302</sup> These results mirror the findings of

<sup>298</sup> See, e.g., IASC CCCM CLUSTER, *supra* note 146 (providing a list of key responsibilities for agencies taking charge of the management of displacement camps in emergency settings).

<sup>299</sup> See, e.g., *id.*

<sup>300</sup> IASC CCCM CLUSTER HAITI, DISPLACEMENT TRACKING MATRIX SUMMARY REPORT (June 2010), available at [http://cccmhaiti.googlegroups.com/web/DTM+basic+Report+June+2010.pdf?gda=R\\_MSQIEAAACK-](http://cccmhaiti.googlegroups.com/web/DTM+basic+Report+June+2010.pdf?gda=R_MSQIEAAACK-)

[Tc7XQZwImTUbkanfGdfp\\_fVjWSJzYFn1RDBiF5IsdQ36T09zuWPmbP9RfJqmOJBaMpPxsoCN1XBgXznNBw9Uwk\\_6Qi3BU8HCN0q6OYwM5VxXgp\\_nHWJXhfr7YhqVgA](http://cccmhaiti.googlegroups.com/web/DTM+basic+Report+June+2010.pdf?gda=R_MSQIEAAACK-Tc7XQZwImTUbkanfGdfp_fVjWSJzYFn1RDBiF5IsdQ36T09zuWPmbP9RfJqmOJBaMpPxsoCN1XBgXznNBw9Uwk_6Qi3BU8HCN0q6OYwM5VxXgp_nHWJXhfr7YhqVgA).

<sup>301</sup> See, e.g., U.N. Office for the Coordination of Humanitarian Affairs, *Haiti Earthquake Situation Report #34*, at 2 (Apr. 16, 2010), available at <http://onerresponse.info/Disasters/Haiti/Coordination/publicdocuments/OCHAsitrep34.pdf> (noting that less than a quarter of these camps have Camp Management agencies).

<sup>302</sup> See, e.g., Response No. F1.13 (“[I]t is a way of quantifiably measuring specific project outputs and outcomes”); see also Response Nos. F1.32, F1.1, F1.6, F1.16, F1.25, F1.48, F1.57, F1.62.

Monika Krause, whose empirical research on humanitarian INGOs found that relief is organized according to the “logic of project management,” which

draws a boundary around an agency’s responsibility. Quantifiable results for chosen beneficiaries are maximized at the expense of the overall affected population. Those who are hardest to help often receive no assistance at all.<sup>303</sup>

This dynamic has been critiqued as “humanitarian containment” by Helen Young and her colleagues in a study examining assistance in Darfur, since it limits the positive impact that humanitarians can have on the entire affected population.<sup>304</sup> There is evidence of this dynamic in Haiti, where well-serviced camps sit alongside unmanaged camps.<sup>305</sup> Because CMAs are judged according to their ability to meet indicators of minimum quality and accountability in relation to a project’s beneficiaries, the incentives are to prioritize quality over coverage. Failures of quality and coverage *within* project sites are traceable to specific CMAs; failures of coverage for the entire disaster or affected population are traceable to the amorphous “humanitarian system” as a whole, where accountability is dispersed. Although the humanitarian system has developed methods for coordinating work across sectors in the past several years—notably through the use of the Cluster Approach, which has allowed for improved attention to coverage—the issue arises from a structural problem that cannot be solved by better coordination alone.<sup>306</sup>

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<sup>303</sup> Krause, *supra* note 93, at 14, 156.

<sup>304</sup> See HELEN YOUNG ET AL., FEINSTEIN INTERNATIONAL FAMINE CENTER, DARFUR: LIVELIHOODS UNDER SIEGE 117 (2005) (“Minimum standards can rarely be achieved at the height of an emergency and pragmatic decisions must be made as to the best strategy to achieve the progressive realisation of rights for all affected groups. The strategy among some international groups interviewed has been to expand their operations only when minimum standards have been achieved in their current programme. However, this is a strategy for humanitarian containment, not humanitarian action.”).

<sup>305</sup> See SCHULLER, *supra* note 15, at 18 (presenting results of a randomized study finding that “Data shows that camps with NGO managers are far better serviced than camps without managers”).

<sup>305</sup> *Haiti Cholera Death Toll Tops 4000*, ABC NEWS, Jan. 28, 2011, <http://www.abc.net.au/news/stories/2011/01/28/3123904.htm>.

<sup>306</sup> A recent evaluation of the Cluster Approach credits the system for better sectoral coordination and improved attention to coverage and “gap-filling.” See ABBY STODDARD, ET AL., CLUSTER APPROACH EVALUATION: FINAL 7-8 (2007) (stating, “Overall, we found observable improvement in addressing gaps thanks to the cluster approach,” but placing blame for the existence of gaps on the lack of resources in many situations sufficient to close gaps).

The impact on residents of unmanaged camps is significant: without agencies coordinating aid, goods and services are delivered irregularly, if at all.<sup>307</sup> A survey of ninety families in six different IDP camps in and around Port-au-Prince conducted by a coalition of groups in February 2010 found “sporadic, infrequent and apparently arbitrary” food distributions, contaminated water sources, and radically inadequate shelter.<sup>308</sup> A randomized study of one in eight camps carried out in summer 2010 concluded that “[d]ata shows that camps with NGO management are far better serviced than camps without management.”<sup>309</sup> In addition, despite efforts to mitigate the risks, some camps were still precariously situated in then-dry riverbeds, flood plains, and areas at high risk of landslides as of July 2010.<sup>310</sup> The humanitarian response aimed to encourage families to move out of such spontaneous settlements by lodging with families outside of Port-au-Prince or returning to their neighborhoods to camp near the ruins of their homes.<sup>311</sup> Although there was a mass exodus of 600,000 city residents to the provinces directly following the earthquake, the population movement slowed in the months that followed.<sup>312</sup> By June 2010, an estimated sixty-six percent of all IDP households in Port-au-Prince were in locations with CMAs.<sup>313</sup> This meant that a striking thirty-four percent of households were in sites where no agency was ensuring the delivery of coordinated services.<sup>314</sup> While CMAs might be able to boast fulfilled

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<sup>307</sup> See United Nations Development Programme [UNDP], *Haiti: Six Months After 7* (July 12, 2010), available at [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/KHII-87R3KT-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/KHII-87R3KT-full_report.pdf/$File/full_report.pdf).

(stating that in spontaneous settlements, “services are intermittent at best”).

<sup>308</sup> LAMP FOR HAITI ET AL., *NEGLECT IN THE ENCAMPMENTS: HAITI’S SECOND-WAVE HUMANITARIAN DISASTER 1* (2010), available at <http://ijdh.org/archives/10671>.

<sup>309</sup> SCHULLER, *supra* note 15, at 18 (finding dramatically better outcomes for managed camps in terms of water services, health care, and overall conditions).

<sup>310</sup> See UNDP, *supra* note 307, at 7 (noting that some camps are at high risk of flooding or and destruction from storms, flooding, and landslides).

<sup>311</sup> United Nations Office for Coordination of Humanitarian Affairs [OCHA], *Earthquake Situation Report #31*, at 11 (March 31, 2010), available at [http://oneresponse.info/Disasters/Haiti/Coordination/publicdocuments/OCHA\\_Situation\\_Report\\_No\\_32.pdf](http://oneresponse.info/Disasters/Haiti/Coordination/publicdocuments/OCHA_Situation_Report_No_32.pdf).

<sup>312</sup> See UNDP, *supra* note 307, at 33 (noting that 600,000 IDPs left Port-au-Prince after the earthquake).

<sup>313</sup> By June 2010, data revealed that 100% of households in the richest part of the city—Pétionville—lived in sites with camp management, while in the city’s largest slum, Cité Soleil, only 22% of households benefitted from camp management structures. IASC CCCM CLUSTER HAITI, *supra* note 300.

<sup>314</sup> One “service” that even unmanaged camps partake of is monitoring. The Camp Coordination and Camp Management Cluster hosts the “Displacement Tracking Matrix,”

Sphere and HAP indicators within their zones of work, the humanitarian system was failing large swathes of the IDP community six months after the earthquake.

*d. Impossible Indicators?*

Soon after the disaster response began, it became apparent to the experienced CMAs that Sphere indicators would be difficult and often impossible to meet in the spontaneously settled sites where they were working in Port-au-Prince. At the time of the earthquake, Sphere's shelter indicators specified that "[t]emporary planned or self-settled camps are based on a minimum surface area of 45m<sup>2</sup> for each person."<sup>315</sup> The fact that all of the original IDP camps were spontaneously settled, the extent of the destruction in Port-au-Prince the population density of the city before the earthquake and the relative lack of open land, combined to make this area indicator an unrealistic goal within many of the city sites. A number of respondents to the online survey commented that the shelter space indicators, among others, were impossible to meet in Port-au-Prince.<sup>316</sup> "Conditions in Port-au-Prince are difficult," a Sphere consultant reported in relation to the shelter space indicator.<sup>317</sup> "When agencies say it's so difficult to do Sphere here, I agree. It's incredibly difficult to follow these standards in that environment."<sup>318</sup> However, emphasizing that this difficulty should not be used as an excuse to ignore Sphere, the consultant counseled humanitarians not to "throw it out completely."<sup>319</sup>

One option is for humanitarians to "contextualize" universal indicators when they are impossible to meet for reasons specific to the setting or circumstances of the disaster. This term is frequently used by humanitarians to mean that an indicator may need to be relaxed to fit the situation.<sup>320</sup> This option was brought up by numerous survey respondents:

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through which mobile monitoring teams visit both managed and unmanaged camps and undertake assessments, collecting basic data about the number of residents in the camp, access to basic services, and protection problems including sexual violence and evictions. The goal is to identify gaps in service, identify trends, and to record accurate demographics of the entire disaster-affected community. See IASC CCCM CLUSTER HAITI, *supra* note 292. The DTM is a significant development, but even once gaps are identified, there are frequently insufficient incentives to encourage INGOs to close the gaps.

<sup>315</sup> SPHERE PROJECT 2004 ed., *supra* note 92 at 216.

<sup>316</sup> Response Nos. F3.18 and F3.24 (shelter space indicator); Response Nos. F3.4, F3.9, F3.31, F3.22, F3.23, F3.30 (other indicators or unspecified indicators).

<sup>317</sup> *Haiti: Humanitarian Best Practice—Dignity, not Just Digits*, IRIN, Apr. 9, 2010, <http://www.irinnews.org/Report.aspx?ReportId=88752>.

<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

<sup>320</sup> Interviews Nos. 3 and 4.

one respondent specifically noted that the Sphere surface area indicator needed to be “contextualized” for use in Haiti, while several others emphasized the need to contextualize indicators more generally in Haiti.<sup>321</sup> The 2004 edition of the Sphere *Handbook* addressed this issue as follows:

However, there is inevitably a tension between the formulation of universal standards and the ability to apply them in practice. Every context is different. In some instances, local factors may make the realisation of all standards and indicators unattainable. When this is the case, the gap between the standards and indicators listed in the handbook and the ones reached in actual practice must be described, and the reasons for it and what needs to be changed must be explained.<sup>322</sup>

One of the major issues that experts brought up when asked about contextualization was the need to adjust the Sphere indicators downward if using them in an unmodified form would mean that program beneficiaries would be better off than those in the general community.<sup>323</sup> The 2004 Sphere *Handbook* specifies that “it can be the case that the Minimum Standards exceed normal everyday living conditions. Since this can give rise to resentment, local conditions must be taken into account, and programmes should always be designed with equality of the affected and surrounding populations in mind.”<sup>324</sup> In Haiti, for example, where many non-displaced Haitians cannot access fifteen liters of water per person per day without assistance, contextualization might mean adjusting the water quantity goal downward within IDP camps. Otherwise, the better services offered by CMAs in camps could be a source of tension between IDPs and the general community.<sup>325</sup> Another option suggested by one expert is to provide services—here water—to the whole affected population.<sup>326</sup> This suggestion may have limited impact in situations where coverage of even those displaced by the earthquake is inadequate.<sup>327</sup>

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<sup>321</sup> Response No. F3.18. *See also* Response Nos. F3.24 (stating that the shelter indicator is impossible to meet in Port-au-Prince); Response Nos. F3.4, F3.9, F3.31, F3.22, F3.23, F3.30 (similar).

<sup>322</sup> SPHERE PROJECT 2004 ed., *supra* note 92, at 8–9.

<sup>323</sup> Interview No. 3.

<sup>324</sup> SPHERE PROJECT 2004 ed., *supra* note 92, at 14.

<sup>325</sup> Interview No. 3. Dr. Paul Farmer recently reported that “by some reports, [water insecurity] has lessened since the earthquake.” Farmer Testimony, *supra* note 295.

<sup>326</sup> Interview No. 3.

<sup>327</sup> The disaster-affected population reportedly received about five liters of water per day during the first three months of the response. FRANÇOIS GRÜNEWALD ET AL. *Inter-Agency Real-Time Evaluation in Haiti: 3 Months after the Earthquake* 54 (2010).

This contextualization process, seen as an important tool for adjusting to local conditions by humanitarians, could also be seen as a problematic departure from the putative rights-based nature of the minimum standards, especially since the 2004 *Handbook* made reference to the “core content” of the right to water.<sup>328</sup> As one respondent to the online survey said, “I found in my agency that NO ONE followed these standards [Sphere, HAP, IASC]! As if the catastrophic conditions in Haiti created a negligible window to apply any standards.”<sup>329</sup> Other respondents underscored the importance of the rights-based approach in the Haitian context; one opined that the rights-based approach was important following five hundred years of “rights-violation based approaches,”<sup>330</sup> while several others pointed to the failure of past international interventions in Haiti as underlining the need for the rights-based approach.<sup>331</sup>

*e. “Fake” Victims?*

Because most emergency aid is targeted at those defined as “disaster-affected,” humanitarians working in very poor settings worry not only about conflict erupting between those receiving services and those ineligible, they also worry about creating perverse incentives relating to eligibility criteria. Reports have surfaced suggesting that such incentives were resulting in “ghost camps” where “fake” victims set up shanties to obtain aid during the day but return to their homes in the evening. One report described the situation this way:

Known as “ghost” or “phantom camps” among international aid groups, fake encampments designed to capitalize on the overflow of handouts coursing through southeastern Haiti are springing up. . . . A small handful of people who claim to be residents populate the camps during the day and, when convoys pass by, lookouts alert others nearby to return to the site. With lightening speed, the community then launches into a theatrical display of hardship aimed at persuading aid workers their camp was somehow overlooked by

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<sup>328</sup> SPHERE PROJECT 2004 ed., *supra* note 92, at 55.

<sup>329</sup> Response No. F3.8. Another respondent added, “The emergency is so overwhelming that almost all (if not all) of the services delivered are substandard, so many people don’t really seem to have SPHERE in mind anymore. Or they do, but in a long term perspective.” Response No. F7.5.

<sup>330</sup> Response No. F8.1.

<sup>331</sup> Response Nos. F8.3, F8.4, F8.8, F8.13.

those responsible for earlier emergency tent and food distributions.<sup>332</sup>

Understood in this way, “ghost camps” challenge the ability of humanitarians to implement programming according to two of the main pillars of good practice in assistance: ensuring that the disaster-affected communities receive services, and targeting those most vulnerable within that community for priority assistance. Understanding who is and is not “disaster-affected” is at the heart of the humanitarian endeavor, and divides humanitarianism from development work. Where development aims to improve the lot of entire national populations over long periods, humanitarian assistance aims to improve the lot of specific populations affected by emergency events in the short term.<sup>333</sup> Despite the importance of this distinction, the Inter-Agency Standing Group reflected on its problematic nature in Haiti at the six-month mark:

The ability of the humanitarian community to identify the most vulnerable people in need of assistance has been, and continues to be, a major challenge. The underlying poverty and vulnerability across Haiti renders the qualification of ‘directly-affected by the earthquake’ somewhat irrelevant in any case, considering that almost everyone in the country has been affected in some way. The food security sector is an example of this: although 69% of households in large IDP camps suffer from food insecurity for example, approximately 52% of households across the entire country are food insecure.<sup>334</sup>

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<sup>332</sup> Jessica Leeder, *Fake Encampments Spring Up in Haiti*, GLOBE & MAIL (Can.), May 8, 2010. Beverly Bell similarly reports that

popular talk among some middle- and upper-class Haitians, and U.N. and NGO employees of ‘false victims.’ ‘False victims’ are those whose lives weren’t fully destroyed by the earthquake and who therefore, apparently, should not be entitled to any benefits. These are people who didn’t lose their own houses but who go hang out at the camps to get whatever aid might be distributed. As I’ve heard it described in an upscale Pétion-ville club and other places far removed from the suffering, these ‘false victims’ are making out like kings from the crisis.

Beverly Bell, *Citizen Mobilization for Housing in Haiti*, HUFFINGTON POST, July 30, 2010, [http://www.huffingtonpost.com/beverly-bell/citizen-mobilization-for\\_b\\_664893.html](http://www.huffingtonpost.com/beverly-bell/citizen-mobilization-for_b_664893.html).

<sup>333</sup> In some instances, the scope of the destruction itself makes this distinction problematic. Peter Redfield notes that after the Asian tsunami, MSF stopped taking donations targeted at tsunami relief when it realized that, due to the extensive destruction, INGO action would be inherently inadequate. Peter Redfield, *Sacrifice, Triage, and Global Humanitarianism*, in HUMANITARIANISM IN QUESTION: POLITICS, POWER, ETHICS, *supra* note 52, at 212.

<sup>334</sup> INTER-AGENCY STANDING COMMITTEE [IASC], RESPONSE TO THE HUMANITARIAN CRISIS IN HAITI FOLLOWING THE JANUARY 12, 2010 EARTHQUAKE 18 (2010).

Despite the acknowledgment that the distinction between “disaster-affected” and “not disaster-affected” is “somewhat irrelevant,” humanitarians still use this categorization to determine eligibility for limited quantities of aid. As one study demonstrated,

displaced populations in official camps had higher quality facilities and services than those staying with family. For example, those registered in camps have a better chance of living in a waterproof shelter, accessing a latrine or flush toilet, and seeing security patrolling the camps.<sup>335</sup>

Further, vulnerability operates even in very poor disaster-affected communities, and evidence shows that humanitarians may have failed to provide adequate services to some of the marginalized populations in Port-au-Prince. For example, by June 2010, data revealed that 100% of households in one of the richest parts of the city—Pétionville—lived in sites serviced by CMAs, while in the city’s most well-known slum, Cité Soleil, only 22% of households benefitted from CMAs.<sup>336</sup> A survey conducted by a Haitian think tank in Cité Soleil in February 2010 found that less than 28% of the 962 respondents had received assistance by the time of the survey.<sup>337</sup> Monika Krause notes that “[p]opulations *not* served or needs *not* fulfilled are never analyzed as part of the actually existing system of relief.”<sup>338</sup> Humanitarians have devised systems to monitor—at least at a very general level—the urgent needs of the entire affected population, including those outside managed camps.<sup>339</sup> However, this monitoring has been insufficient to close the gaps it reveals.

By July 2010, the humanitarian system concluded that although IDP numbers appeared to be fluctuating, since there had not been any major aftershocks or destructive flooding or landslides, “it seems reasonable to assume that additional IDPs arriving at settlement sites and requesting humanitarian assistance have not been directly-affected in terms of destruction of their homestead and are vulnerable for other reasons.” If this is the case, such “additional IDPs” need not be prioritized according to the

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<sup>335</sup> See RENCORET ET AL., *supra* note 22, at 31 (citing LOUISE IVERS ET AL., ASSESSMENT AND ANALYSIS OF HAITIAN HADR DATA (2010)).

<sup>336</sup> IASC CCCM CLUSTER HAITI, *supra* note 300.

<sup>337</sup> INURED, *supra* note 14, at 2; *see also* SCHULLER, *supra* note 15, at 19 (finding dramatic differences in services and conditions in camps in, for example, Cité Soleil and Pétionville).

<sup>338</sup> Krause, *supra* note 93, at 40.

<sup>339</sup> *See* discussion of the Displacement Tracking Matrix, *supra* note 314.

traditional humanitarian criteria. Longtime Haiti activist Beverly Bell questions the need to divide the “real” victims from the “fake” in such a context:

What's the standard for being a ‘real’ victim? That one lost everything but the clothes on one's back? That one is a corpse still lying, flattened, in one of many buildings across town that now serves as a mausoleum? And what would it mean if people's daily lives were so devastated that they had to go to crowded, muddy, inhumane refugee camps for an upgrade?<sup>340</sup>

According to Bell, the logic of emergency is what creates the “fake victim” dynamic, since it divides those “deserving” aid from those undeserving of assistance, and because it comprehends those in dire need of assistance—albeit for different reasons from those who lost homes in the earthquake—as perpetrating a fraud rather than maximizing their ability to access the goods and services they need and indeed have a human right to access. This logic also disguises a decision that has moral and ethical overtones—who should be eligible to obtain aid—with a set of calculations that appear technical, casting those seeking to avoid such line-drawing as fakers seeking to game the system.<sup>341</sup>

Anthropologist Erica Caple James points to a different potential impact of such line drawing: should humanitarians target only a certain category of Haitians considered “at risk,” such victims may “become subject to further stigma and resentment in their communities, as were victims of human rights abuses from the coup and postcoup years.”<sup>342</sup> Her work also suggests that “fake” victims be understood as appropriating a form of strategic agency. Writing about beneficiaries of aid projects in Haiti in the late 1990s, she explains that they “learned that benevolent aid is temporary, fleeting, and myopic” and responded by competing for the scarce resources available, sometimes using performance and commodification of their own victim status to access goods and services.<sup>343</sup> But where is the humanitarian system left if the very concepts of “disaster-affected,” “victim,” and “vulnerability” begin to fall apart? Should humanitarians refocus their work to target all poor Haitians, opening the beneficiary pool to many

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<sup>340</sup> Bell, *supra* note 332.

<sup>341</sup> I am grateful to Greg Beckett for pointing this out.

<sup>342</sup> DEMOCRATIC INSECURITIES, *supra* note 163, at xxiii.

<sup>343</sup> *See id.* at 223–269, 291 (tracing the social life of humanitarian assistance in Haiti from 1998 to 1999).

millions? Such a suggestion, though potentially promising, also carries hidden perils.

*f. Helping Beneficiaries, Harming Systems?*

The perils of responding to the problem of extreme poverty by expanding humanitarian services lie mainly in the tendency of humanitarians to create parallel systems when they act in “the uneasy boundary between humanitarianism and development.”<sup>344</sup> Humanitarians are concerned about the harmful impact such parallel systems can have on nascent or already-existing systems.<sup>345</sup> The 2004 Sphere *Handbook* included the following statement about this issue in the “What is Sphere” chapter: “In all contexts, disaster response should support and/or complement existing government services in terms of structure, design and long-term sustainability.”<sup>346</sup> Sphere endeavors to address this concern in the health sector through indicators directly discouraging the creation or use of parallel systems.<sup>347</sup> For example, the following indicators were included in relation to the health sector:

- Local health facilities are supported and strengthened by responding agencies.
- No alternate or parallel health facilities and services are established . . . unless local capacities are exceeded or the population does not have ready access to existing services. The lead health authority is consulted on this issue.<sup>348</sup>

Despite these promising indicators and efforts by humanitarians to address this issue by attending to what they call “early recovery,”<sup>349</sup> one respondent

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<sup>344</sup> Peter Redfield, *The Verge of Crisis: Doctors Without Borders in Uganda*, in CONTEMPORARY STATES OF EMERGENCY: THE POLITICS OF MILITARY AND HUMANITARIAN INTERVENTIONS 173, 174 (Didier Fassi & Mariella Pandolfi eds., 2010).

<sup>345</sup> For a discussion of how one humanitarian INGO negotiated the problem of contributing to the “aid economy” among other issues within the “uncertain zone of suffering” between crisis and normalcy, *see id.* at 173–74, 185.

<sup>346</sup> SPHERE PROJECT 2004 ed., *supra* note 92, at 7.

<sup>347</sup> It is striking that the Health Services Chapter has an entire section devoted to health systems and infrastructure. This is not true for other sectors such as water and sanitation or food and shelter. *See id.* (reporting that similar indicators are not present in other sectors).

<sup>348</sup> *Id.* at 261–62.

<sup>349</sup> The Cluster Approach includes an Early Recovery Cluster, with early recovery defined as follows:

Early Recovery is defined as recovery that begins early in a humanitarian setting. It is a multi-dimensional process, guided by development principles. It aims to generate self-sustaining nationally owned and resilient processes for post-crisis recovery. Early recovery encompasses

to the online survey commented that the way humanitarians use Sphere tends to weaken systems thinking in favor of chasing targets:

Many of the Sphere standards, though supposedly qualitative in nature, are interpreted as qualitative numbers, and were not being achieved even before the earthquake. [T]here is such a focus on “achieving” these “targets” which are merely outputs and do not reflect impacts or qualitative changes that can actually be contradictory to outputs. [I] cite the massive influx of health NGOs and provision of free health care in the initial months that has undermined the existing health system, forced several hospitals to close down, is threatening the health system workforce and may do more harm than good in the long term.<sup>350</sup>

Indeed, a number of hospitals went bankrupt amid the free services.<sup>351</sup> This is a much noted phenomenon in Haiti, which existed even before the earthquake. Catherine Maternowska identified a pattern similar to that noted here in relation to family planning services in Haiti in the late 1980s and early 1990s, when U.S. aid was funneled through NGOs as a way of avoiding the instability of the Haitian government.<sup>352</sup> Paul Farmer has noted the same pattern in foreign assistance in relation to health, education, water, and housing in Haiti.<sup>353</sup> Similarly, writing about the international response to the hurricanes in Haiti in 2004, Gregory Beckett has noted that the international community responded to the emergency through services that could be understood as “palliative care,” abiding the government’s “continued lack of permanent capacity,” through which “Haiti is integrated, in a highly dependent way, into a global system in which repeated interventions are authorized by the normalization of disaster and crisis.”<sup>354</sup>

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the restoration of basic services, livelihoods, shelter, governance, security and the rule of law, environment and social dimensions, including the reintegration of displaced populations. It stabilizes human security and addresses underlying risks that contributed to the crisis.

*Early Recovery Cluster Overview*, ONERESPONSE, <http://oneresponse.info/GlobalClusters/Early%20Recovery/Pages/default.aspx> (last visited Oct. 3, 2010). In Haiti, the performance of the Cluster system, including Early Response, was under review at the time of writing. See RENCORET ET AL., *supra* note 22, at 21 (discussing ongoing real-time evaluation of the Cluster Approach in Haiti).

<sup>350</sup> Response No. F11.1.

<sup>351</sup> GRÜNEWALD ET AL., *supra* note 319, at 50.

<sup>352</sup> See M. CATHERINE MATERNOWSKA, REPRODUCING INEQUITIES: POVERTY AND THE POLITICS OF POPULATION IN HAITI 134-48 (2006) (describing the failure of aid programs’ efforts to reduce fertility in the 1980s and 1990s).

<sup>353</sup> Farmer Testimony, *supra* note 295.

<sup>354</sup> Beckett, *supra* note 288, at 407.

An evaluation of the emergency response in Haiti found that the drive to assess using quantitative data “underestimate the importance of analyzing existing capacities and constraints.”<sup>355</sup>

By directly supplying services when the need is absolutely dire but without robust mechanisms for strengthening the public systems in Haiti, aid continues to de-capacitate Haitian systems, following the pattern discussed at the outset of this Section. Recognizing the pattern, Haitians are aware that INGOs often control more money, employ the most well-qualified Haitians, and make more wide-ranging decisions that impact their lives on a daily basis than their own institutions. The result, Catherine Maternowska’s fieldwork suggests, in a country that is proud of its history of revolution against slavery, may be resistance to the very improvement projects introduced in the name of helping Haitians, seen by many as so many attempts to subordinate Haiti to international priorities.<sup>356</sup>

***g. Participation, Not Politics***

Recognizing the disempowering effects of disaster relief efforts, humanitarians have integrated indicators into Sphere to ensure beneficiary participation in programming and benchmarks into HAP to ensure beneficiaries can hold INGOs to account for their actions. “Sphere is about people having rights to a life with dignity,” the Sphere consultant quoted earlier said in relation to Haiti.<sup>357</sup> Sphere’s common standards, where indicators concerning the process of providing relief can be found, include requirements for beneficiary participation and consultation.<sup>358</sup> Sphere is not meant to be (only) about chasing set targets; it is also about ensuring that those affected by the disaster have a say in the solutions to the most pressing problems. Similarly, the HAP Standard requires agencies to set up complaint-handling mechanisms with the intention of ensuring beneficiaries can access redress when things go wrong.

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<sup>355</sup> GRÜNEWALD ET AL., *supra* note 319, at 47.

<sup>356</sup> Maternowska identifies this pattern in relation to U.S.-sponsored family planning:

For Haitians, increasing dependence on foreign assistance has translated into an increasing loss of control, and power, over project design and crucial program aspects at almost every stage of the sector’s evolution. Surrendering power over the design and control of the family planning sector reflects struggles of power and national sovereignty on a much larger scale. The resistance is not new to Haiti; it is rooted in decades, if not centuries, of protest against external forms of economic, political, and public health control that began with the slave insurrection in 1791 and persists in modern-day Haiti.

MATERNOWSKA, *supra* note 352, at 148.

<sup>357</sup> IRIN, *supra* note 317.

<sup>358</sup> *Id.*

Further, human rights advocates have emphasized the need to consult Haitians in spontaneous settlements, suggesting that such consultation is a human rights imperative and can assist INGOs in creating more effective systems of distribution.<sup>359</sup> Two humanitarian accountability experts working in Haiti agreed during interviews, noting that participation can improve efficiency and dignity at once.<sup>360</sup> However, an evaluation of the first three months of the humanitarian response in Haiti found that the international response to the earthquake was “highly exclusive,” and that Haitians were “not consulted, informed or included in the design, planning, and implementation” of the relief effort.<sup>361</sup>

One advocate complained that in Haiti, “[T]he whole cluster [system] is ingeniously set up to insulate the people making the decisions from the information they need to make the decisions they are making.”<sup>362</sup> Cluster meetings, through which humanitarian organizations coordinate their work on a weekly basis, were routinely held at U.N. logistical base, far from the center of town and past a carefully guarded security gate known to turn away Haitians who arrived without specific invitations to be present.<sup>363</sup>

Still, eighty-three percent of those online survey respondents answering a question about the impact of indicators reported that using indicators and benchmarks “ensures the active participation of beneficiaries,”<sup>364</sup> suggesting that process-related indicators are viewed as an effective tool. However, when humanitarian aid is delivered via projects that are not well connected to the larger, existing Haitian systems, the impact of the humanitarian commitment to “participation” can be severely limited. One of the main factors limiting its impact is the unit of analysis for participation: while INGOs include language about participation and accountability to disaster-affected communities as a whole, the operational reality is that agencies frequently set up participation and accountability structures tied to their projects or their agencies. Thus, the concept of participation and accountability are limited by the logic of project management. As one advocate with decades of experience working in Haiti suggested, it would not be difficult to imagine methods for prioritizing Haitian participation in the *decision-making systems* of the humanitarian system, not only the

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<sup>359</sup> See LAMP FOR HAITI ET AL., *supra* note 308; Interview Nos. 16, 19.

<sup>360</sup> Interview Nos. 18.1, 18.2.

<sup>361</sup> GRÜNEWALD ET AL. *supra* note 319, at 41.

<sup>362</sup> Interview No. 16.

<sup>363</sup> On-site visit by author to U.N. logbase (June 2010) (on file with author).

<sup>364</sup> Online survey results (on file with author).

project implementation structures. This would mean, for example, ensuring that Haitians co-lead every Cluster and ensuring—as needed—that they are trained in the relevant skills and provided an orientation to the humanitarian system; making sure that all cluster meetings include Kreyòl translation; and reaching out to Haitian organizations to hear what their priorities are.<sup>365</sup> Although some of these steps have been taken in Haiti, they have not been systematically pursued.<sup>366</sup>

Moreover, evidence from the development field suggests that engaging populations in participation through projects can, among other effects, lead to manipulation of local knowledge for project ends; reinforce the power of those already powerful; be perceived as a method of exerting foreign control; and is structured in such a way that participation aimed at challenging existing power dynamics is made marginal.<sup>367</sup> Indeed, development analysts have suggested that “the language of empowerment masks a real concern for managerial effectiveness.”<sup>368</sup> This risk seems inherent in the humanitarian context, which is already replete with management talk and concern about marrying efficiency to effectiveness. A recent analysis of the humanitarian situation in Haiti noted that “there was a striking disconnect between the objectives and plans of the international community and the Haitians.”<sup>369</sup> An evaluation of the earthquake response similarly concluded that coordination between the humanitarian community and Haitian civil society and government actors was poor.<sup>370</sup>

The humanitarian commitment to political neutrality can lead agencies to ignore power relations and how they play out in the relief context. HAP recently documented this phenomenon within certain camp committees in Haiti, which it labeled as “Unaccountability Mechanisms” in some camps,

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<sup>365</sup> Interview No. 16.

<sup>366</sup> Interview Nos. 16, 19, and 17. For a discussion of these and similar issues, see RENCORET ET AL., *supra* note 22, at 19.

<sup>367</sup> See Bill Cooke & Uma Kothari, *The Case for Participation as Tyranny*, in PARTICIPATION: THE NEW TYRANNY? 1, 8–12 (Bill Cooke & Uma Kothari eds., 2001) (introducing various criticisms of participatory approaches to development).

<sup>368</sup> *Id.* at 14.

<sup>369</sup> LAMA KHOURI-PADOVA, U.N. PEACEKEEPING BEST PRACTICES UNIT, HAITI: LESSONS LEARNED 8 (2004), available at <http://smallwarsjournal.com/documents/haitilessonslearned.pdf>.

<sup>370</sup> REFUGEES INTERNATIONAL, HAITI: FROM THE GROUND UP (2010), available at [http://refugeesinternational.org/sites/default/files/030210\\_haiti\\_groundup.pdf](http://refugeesinternational.org/sites/default/files/030210_haiti_groundup.pdf); see also RENCORET ET AL., *supra* note 22, at 19.

where committees were essentially run by armed criminal groups.<sup>371</sup> One study conducted in summer 2010 found that “NGO-managed camps had worse governance indicators than those without.”<sup>372</sup> The dangers here are on all sides: while armed groups can turn participation mechanisms into tools for their own ends, humanitarians unfamiliar with the Haitian environment could be too quick to label certain practices as corrupt or undemocratic, marginalizing truly representative voices. For example, anthropologist Jennie Smith has documented misunderstandings by development practitioners of peasant organizing styles in Haiti as “undemocratic” because they tended to value strong leadership and certain forms of respect.<sup>373</sup> Further, Haitian popular organizations with an anti-colonial or pro-peasant orientation may be discounted or marginalized since they may call into question the very terms upon which the rebuilding is advancing.<sup>374</sup>

By approaching participation as a technical exercise, humanitarians “render technical” the very political issue of how poor people in Haiti can be an active part of their country’s rebuilding.<sup>375</sup> One Haitian NGO recently observed that during this time of reconstruction:

if public policy exists, it is defined by “experts” from international financial institutions (IFI), representatives of the diplomatic missions and international organizations accredited in Haiti, accompanied by some Haitian bureaucrats/technocrats and politicians and by so-called members of civil society.<sup>376</sup>

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<sup>371</sup> Human Accountability Partnership, *Camp Committees in Haiti: Un-Accountability Mechanisms?*, HAPINTERNATIONAL.ORG (May 28, 2010), <http://www.hapinternational.org/news/story.aspx?id=175>.

<sup>372</sup> SCHULLER, *supra* note 15, at 30.

<sup>373</sup> See JENNIE M. SMITH, WHEN THE HANDS ARE MANY: COMMUNITY ORGANIZATION AND SOCIAL CHANGE IN RURAL HAITI 181–86 (2001) (describing the interactions between organizational practices of aid practitioners’ and local groups in rural Haiti)

<sup>374</sup> See e.g., ACTIONAID USA ET AL., HAITIAN LED RECONSTRUCTION & DEVELOPMENT: A COMPILATION OF RECOMMENDATION DOCUMENTS FROM SEVERAL HAITIAN CIVIL SOCIETY AND DIASPORA CONFERENCES, ORGANIZATIONS AND COALITIONS (2010), available at [http://ajws.org/assets/uploaded\\_documents/haitian\\_led\\_reconstruction\\_and\\_development.pdf](http://ajws.org/assets/uploaded_documents/haitian_led_reconstruction_and_development.pdf) (presenting statements by Haitian NGOs that, *inter alia*, critique the failure to consult Haitian popular organizations when preparing the foundational documents for the reconstruction process).

<sup>375</sup> For a discussion of the concept of “rendering technical,” see LI, *supra* note 34, at 7–9.

<sup>376</sup> ROLAND BELZAIRE, PAPDA, POLITIQUE PUBLIQUES EN HAÏTI: A QUAND LA RUPTURE AVEC LA DEPENDANCE? [PUBLIC POLICY IN HAITI: WHEN WILL WE BREAK WITH DEPENDENCY?], at 19 (2010) (translation by author).

Is it wise, one might ask, for Haitians to spend a great deal of (unpaid) time consulting with INGOs about how best to implement a project, or would that time be better spent engaging in civic action and working to influence the country's future?<sup>377</sup> This is an especially complex question given that INGOs control so many of the reconstruction resources, making engagement with them crucial. Still, participation in specific assistance projects is not the same thing as direct engagement with the major institutions—such as the Commission Intérimaire pour la Reconstruction d'Haïti—that are setting priorities, disbursing funds, and coordinating reconstruction activities. Indeed, focus on participation in INGO programming may divert attention from the lack of participatory mechanisms built into the Commission and its counterpart bodies now governing the reconstruction in Haiti.<sup>378</sup>

As one humanitarian respondent to the online survey with years of experience in Haiti remarked:

I was at first blindly optimistic that my work with my agency would provide an opportunity to enhance a rights-based perspective, especially in the area of human rights [violations] but this was not the case. The agencies' mandate while rights based in theory was not fully functional in the emergency setting. Haiti is a country with a very strong democratic popular movement but no one in the international agencies dared to look at this as an asset.<sup>379</sup>

#### *h. No Indicators for Protection*

While there are very real problems introduced through the audit culture of indicators, the problems are not always about an overemphasis on metrics. Advocates working in Haiti have also underscored the *reluctance* of the humanitarian system to produce certain kinds of data: numbers about civil and political human rights violations occurring in the IDP camps. In Haiti, the silence of Sphere and other indicators projects in relation to protection has been perhaps most palpable in connection with gender-based violence

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<sup>377</sup> One commentator puts it this way: “[C]hanneling aid through international NGOs not only reduces local ownership, it also provides a disincentive for creativity, innovation and ultimately for assuming responsibility for change. How can Haitians demand more and better services from their government if most services are provided by international NGOs? Shifting resources from international to local actors and empowering them to make real decisions can provide a strong incentive for change.” Fabiola Córdova, *Haitians Need Their Own Voice*, AMERICASQUARTERLY.ORG, <http://www.americasquarterly.org/node/1741> (last visited 3/30/2011).

<sup>378</sup> I am grateful to Greg Becket for pointing this out.

<sup>379</sup> Response No. F8.8.

and forced displacement. Before the 2011 edition, Sphere included only one indicator specifically addressing gender-based violence (“GBV”): health service providers are instructed to “prevent and manage the consequences of gender-based violence.”<sup>380</sup> While gender-based violence has been addressed in relation to numerous principles in the new 2011 protection chapter, there are no indicators in this chapter, meaning that Sphere does not contain standards concerning monitoring cases of rape or sexual violence themselves.<sup>381</sup> Instead, the chapter includes the following guidance note on “Monitoring and Reporting” in reference to the principle of “Protection from Violence and Coercion”:

Humanitarian agencies should consider their responsibility to monitor and report grave violations of rights. They should also consider advocating for the rights of affected populations with relevant authorities and actors by reminding them of their obligations. They may use different modes of action including diplomacy, lobbying and public advocacy.<sup>382</sup>

As one advocate explained, humanitarians “are very reluctant to using any numbers at all” in relation to rape.<sup>383</sup> This is striking in a context where data and metrics otherwise abound: “[t]hey quantify the number of tarps they give,” said the rights advocate, but don’t count the number of sexual attacks that take place within their camps.<sup>384</sup> While the humanitarian system emphasized that “one rape is too many,” a Haitian women’s rights organization that had been collecting its own statistics reported that it had documented 230 cases of rape in the first two months following the earthquake—in only fifteen of the more than one thousand IDP camps.<sup>385</sup>

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<sup>380</sup> SPHERE PROJECT 2004 ed., *supra* note 92, at 288.

<sup>381</sup> *See id.* at 40, 56, 113, 170, 209, 269, 284–85, 289–90 (chapter introductions and guidance notes mentioning GBV).

<sup>382</sup> SPHERE PROJECT, SPHERE PROJECT 2011 ed., *supra* note 119, at 38.

<sup>383</sup> Interview No. 19.

<sup>384</sup> *Id.*

<sup>385</sup> *See* INST. FOR JUST. & DEMOCRACY IN HAITI ET AL., *supra* note 18, at 4, 20 (quoting the Gender-Based Violence Sub-Cluster and reporting that Haitian women’s NGO KOFIVIV had documented 230 rapes in 15 camps in the first two months following the earthquake). For a summary of the security context for women in the IDP camps, see KOFIVIV, RAPPORT SUR LA SECURITÉ DANS LES CAMPS (2010), *available at* <http://ijdh.org/wordpress/wp-content/uploads/2010/08/KOFIVIV-Rapport-Sur-La-S%C3%A9curit%C3%A9-Dans-Les-Camps.pdf> (explaining that IDPs have been forced to create informal security arrangements including the use of whistles as anti-rape mechanisms); SCHULLER, *supra* note 15, at 22 (reporting on GBV in camps surveyed).

Similar problems occur in relation to forced displacement. Private landowners have ousted IDPs from their land in the night, sometimes with the assistance of armed gangs, and in some cases helped by the Haitian National Police.<sup>386</sup> One advocate working on this issue was mystified about what she characterized as the passive way that INGOs greeted forced displacement.<sup>387</sup> Theorizing that perhaps the INGO workers were inured to suffering after witnessing so much disaster in country after country, she explained that a variety of INGOs were well aware of forced displacements being carried out by or at the behest of landowners.<sup>388</sup> In some cases, landowners were preventing INGOs from distributing food on their land.<sup>389</sup> There is no question of a lack of legal guidance for humanitarians concerning the human rights of IDPs, including specific rights concerning alternatives to displacement, as well as rights to security and dignity.<sup>390</sup> In addition to international legal materials, exhaustive operational guidance on how to ensure the protection of internally displaced persons<sup>391</sup> and persons affected by natural disasters has been published.<sup>392</sup> Despite these materials, the program management logics appear to contribute to protection gaps: CMAs are responsible only for monitoring protection in camps under their management<sup>393</sup>, and the Protection Cluster is generally charged with monitoring the protection situation in Port-au-Prince.<sup>394</sup> The Protection

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<sup>386</sup> See, e.g., INTERNATIONAL ACTION TIES, VANISHING CAMPS AT GUNPOINT: FAILING TO PROTECT HAITI'S INTERNALLY DISPLACED (2010), available at [www.internationalactionties.org/IAT\\_vanishing\\_camps\\_report\\_haiti.pdf](http://www.internationalactionties.org/IAT_vanishing_camps_report_haiti.pdf) (noting case of violent forced evictions of IDPs); Speri, *supra* note 17 (providing other examples of forced evictions of IDPs from unofficial refugee camps by private landowners and armed men).

<sup>387</sup> Interview No. 17.

<sup>388</sup> *Id.*

<sup>389</sup> *Id.*

<sup>390</sup> See, e.g., U.N. Rep. of the Sec'y Gen., *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) (summarizing applicable principles addressing specific needs of IDPs and noting that principles work to guide states, IGOs, NGOs, and "all other authorities, groups, and persons in their relations with internally displaced persons.").

<sup>391</sup> GLOBAL PROTECTION CLUSTER WORKING GROUP, *supra* note 254, at 137-45 (defining forced displacement, setting out human rights and humanitarian law provisions concerning such displacements, explaining when and how it becomes unlawful, and describing specific steps humanitarian actors should take to prevent, monitor, and advocate for the rights of those facing forced displacement).

<sup>392</sup> BROOKINGS-BERN PROJECT ON INTERNAL DISPLACEMENT, *supra* note 255, at 8.

<sup>393</sup> See IASC CCCM Cluster, *supra* note 146.

<sup>394</sup> See Haiti Protection Cluster, *Terms of Reference* (specifying that the Cluster will, *inter alia*, "[i]dentify protection issues and gaps and use that information to: 1. advocate with the Government and support it through capacity building initiatives aimed at preventing and addressing protection concerns; 2. coordinate agencies to respond to identified gaps"), available at

Cluster has engaged in advocacy with the government of Haiti and managed to obtain a temporary moratorium on forced displacements.<sup>395</sup> However, reports indicate that evictions continue; the Displacement Tracking Matrix reported “10 sites closed for eviction linked to private land” between May 3 and July 7, 2010.<sup>396</sup> In a randomized study of one in eight camps in Port-au-Prince, Professor Mark Schuller found that by summer 2010, 17 percent of camps had been closed through eviction.<sup>397</sup> This bare report is emblematic of what is publicly reported concerning forced displacement by the humanitarian system. Human rights advocates expect there were many more cases than those which had been publicized or counted.<sup>398</sup> One advocate suggested that as a general matter, unmanaged camps had been “abandoned”<sup>399</sup> to their fate.

Humanitarian indicators projects may shift attention away from violations like these by failing to include relevant metrics for such abuses, and by emphasizing the importance of creating well-planned, indicators-compliant camps. The 2011 edition of Sphere includes guidance notes on freedom of movement in the Protection chapter, including on that clearly states that “People should not be forced to stay in, or go to, a place that is not of their choice (such as a camp) nor should any other unreasonable restrictions be placed on their movement.”<sup>400</sup> Despite this clear statement, the lack of indicators may be in part to blame for the relative silence of the humanitarian community in the face of forced displacement.

Although the two dynamics may not be directly linked, this relative silence, coupled with the desire to move IDPs into planned camps, may create a situation in which forced displacement is inadvertently tolerated in the hopes that moving IDPs to Sphere-compliant camps will ensure their longer-term safety despite the unlawful nature of the movement and attendant human rights violations. The stated objective of not encouraging

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[https://www.cimicweb.org/cmo/haiti/Crisis%20Documents/Protection%20Cluster/TORs\\_Protection\\_Cluster\\_Haiti\\_Feb.2010.pdf](https://www.cimicweb.org/cmo/haiti/Crisis%20Documents/Protection%20Cluster/TORs_Protection_Cluster_Haiti_Feb.2010.pdf).

<sup>395</sup> See Ansel Herz, *As “Temporary” Camps Linger, Tensions Rise with Haitian Landowners*, IPS NEWS (June 9, 2010), <http://www.ipsnews.net/news.asp?idnews=51774> (reporting on UN-brokered three-week moratorium on forced displacements).

<sup>396</sup> IASC CCCM CLUSTER HAITI, *supra* note 300.

<sup>397</sup> SCHULLER, *supra* note 15, at Executive Summary; *see also id.* at 23–25 (exploring the evictions issue in greater detail).

<sup>398</sup> Interview No. 17.

<sup>399</sup> *Id.*

<sup>400</sup> SPHERE PROJECT 2011 ed., *supra* note 119, at 39.

IDPs who fled to the countryside to return to Port-au-Prince could also be part of this dynamic.<sup>401</sup>

As of July 2010, only one major planned, reportedly Sphere-compliant camp had been constructed near Port-au-Prince:

A few miles from Haiti's biggest ports and safely past its northernmost slums, Corail-Cesselesse is a blank canvas. On this vast stretch abutting one of the Caribbean's largest cities, in a country more densely populated than Japan, will rise garment factories, homes, stores and restaurants in one of the country's first planned communities, the planners say. Just before a March visit by former U.S. Presidents Clinton and George W. Bush, Preval said the government was taking over more than 7,300 hectares (18,500 acres) of that land to accommodate thousands of families at risk from the coming floods and hurricanes. A few hundred acres were picked out for the city's first, long-awaited relocation camp. The U.N. and U.S. military construction teams flattened and graded the land for a camp of deluxe "ShelterBox" tents. About 5,000 residents of the Petionville Club golf-course camp, run by actor Sean Penn, were bused in.<sup>402</sup>

This camp was said to offer food, potable water, sanitation, health care, education, child protection, cash-for-work, and disability services.<sup>403</sup> Tents were laid out in grids, and residents reportedly were given a hygiene kit and two weeks of food rations upon arrival, as well as fifty dollar cash grants two weeks later.<sup>404</sup> However, months after the camp opened, residents reported that the camp—while neat and orderly in many respects—was like a desert baking without protection from the sun.<sup>405</sup> In addition, while

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<sup>401</sup> This suggestion was made by Melinda Miles in a field report to the Haiti Response Coalition, which has been reporting on conditions in the unmanaged camps. See Melinda Miles, *Haiti's Answer for Six Months and Sixty Years*, HAITI RESPONSE COALITION (July 12, 2010), <http://www.haitiresponsecoalition.org/news/updates/field-reports/page/2/> ("The aid community has intentionally left the inhabitants of camps without access to better basic services. It is a strategy underway right now to avoid luring people back from the countryside with the promise of services in the camps.")

<sup>402</sup> *Fights Over Land Stall Haiti Quake Recovery*, CBSNEWS.COM, July 11, 2010, <http://www.cbsnews.com/stories/2010/07/11/world/main6668155.shtml>.

<sup>403</sup> IASC CCCM Cluster, *CCCM Update 3*, May 7, 2010.

<sup>404</sup> *Id.*

<sup>405</sup> See TRANSAFRICA FORUM, HAITI CHERIE: MY DEAR HAITI 7-8 (July 2010), available at [http://www.transafricaforum.org/files/Haiti\\_Report.pdf](http://www.transafricaforum.org/files/Haiti_Report.pdf) (reporting that the camp is located in a "barren, excruciating desert" with "no protection from the sun" and "no available

assistance may have been plentiful at first, many IDPs had abandoned Camp Corail by July 2010 because services were inadequate and it was so far away from the few livelihood opportunities and schooling options available in the city.<sup>406</sup>

Fears that (more) Sphere compliant camps might draw IDPs or create tensions with the surrounding community appear to have proven true, though with a twist: “squatter” camps have been set up alongside Corail-Cesselesse, and wealthy landowners are suspected of being behind recent intimidation attacks on these unmanaged camps.<sup>407</sup> Including protection indicators in the Sphere *Handbook*, which would require humanitarians to measure such dynamics, might be a significant step forward in this setting.

## V. CONCLUSION

Rights-based standards and indicators have become central to international emergency action. Integrating specific understandings of human rights, these self-regulation projects attempt to codify the “lessons learned” by the humanitarian community following a series of humanitarian failures, especially those in Somalia, Bosnia, and Rwanda. Using the language of management and the logics of audit, the indicators projects encapsulate the knowledge and expertise of professional humanitarians across key sectors. As such, they represent an impressive collaborative effort by a transnational network to learn lessons and evolve professional practices in an incredibly challenging environment. At the same time, the standards and indicators tend to “render technical” the core tensions that led to their creation, displacing rather than solving those issues. Indeed, current debates over what to measure and monitor via these indicators may be understood as symptoms of the unresolved tensions inherent in the humanitarian endeavor today.

These unresolved tensions lurk below the surface of the humanitarian response in Haiti. For example, indicators-related issues concerning coverage and scope of services, the management of the dividing line between emergency relief and development work, and the role of the operational community in ensuring protection of disaster-affected

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shade” and reporting rash of cases of heat- and exposure-related illnesses as result of lack of protection).

<sup>406</sup> *Id.*

<sup>407</sup> *Fights Over Land Stall Haiti's Recovery*, *supra* note 402. Further, news accounts indicate that landowners are seeking significant sums for the land that IDPs have begun to claim. *Id.*

communities, have been discussed as technical problems in Haiti. Meaningful discussion of the issues at the heart of post-disaster Haiti is thus sidelined.

In the end, data and measurement are not the problem. Indeed, more precise and accurate data is essential to ensuring that assistance to disaster-affected communities is carried out in ways that are more effective, rights-enhancing, and accountable. The problem lies in what is effaced once a data set becomes fixed as an “indicator:” once codified as such, the debates underlying what it means to provide quality assistance, to be accountable, and to ensure human rights tend to retreat from view. Indicators appear measurable, precise, and orderly. As such, they seem to be the inevitable product of a scientific method instead of one among many possible agreements at the end of a human process. More explicit attention to the tensions elided by these technical discussions could allow humanitarians—working together with affected communities themselves—to continue to harness the power of numbers and audit while also resisting the means through which indicators tend to disproportionately empower those with the greatest technical expertise—those governing at a distance.