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Enforcing Remedies from the Inter-American Commission on Human Rights: Forced Evictions and Post-Earthquake Haiti

By Nicole Phillips, Kathleen Bergin**, Jennifer Goldsmith***, and Laura Carr*****

INTRODUCTION

Nearly two million people were left homeless in the aftermath of the earthquake that struck Haiti on January 12, 2010. Most of them sought refuge under makeshift tents on open land where they struggled to survive without adequate food, water or sanitation facilities. The number of camps eventually topped 1,300, populated for the most part by families with small children, single mothers, orphans, the elderly, people with disabilities, and other vulnerable populations in dire need of aid and assistance. Less than 30 percent of these camps were registered with the United Nations (UN), however, and therefore the majority did not qualify to receive official international aid. Only one was recognized as an official camp by the Government of Haiti.

Adding to the humanitarian crisis, government agents and purported landowners began unlawfully evicting displaced people from these camps within weeks of the earthquake, often using life-threatening violence and coercion to terrorize communities to leave. Tons of concrete and debris still buried Port-au-Prince, so displaced people who had nowhere else to go were forced to choose between living homeless on the streets or under the constant threat of eviction in a displacement camp.

On November 15, 2010—ten months later—the Inter-American Commission on Human Rights (IACHR or Commission) granted precautionary measures in favor of internally displaced persons (IDPs) who faced the threat of forced eviction. At the request of a team of human rights advocates,¹ the Commission directed the Government of Haiti to adopt a moratorium on evictions from the camps and specific measures to protect the basic human rights of displaced people who remained in the camps.

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Photo courtesy of Water.org.

A camp for internally displaced persons in Haiti.

Though precautionary measures constitute a binding directive to governments that have failed to address a grave risk of irreparable harm to individuals within their jurisdiction, obtaining compliance and full implementation from the government is often an uphill battle. Almost two years after the earthquake in Haiti, an estimated 595,000 earthquake victims continue to live in approximately 900 camps in and around Port-au-Prince.² Still lacking appropriate food, water, toilets, shelter and safety precautions, these camps remain vulnerable to exploitation and are increasingly targeted for eviction by private individuals who claim to own the land, or local officials who want to rid their cities of the camps. As the government led by former President René Préval reeled from the aftermath of the earthquake, fraudulent elections, and a cholera epidemic, it lacked the political cohesion and will to address the Commission's recommendations and the greater humanitarian crisis that plagued the camps. The new Haitian President, Michel Martelly, who took office in May 2010, also refused to end impunity around forced evictions. President Martelly turned a blind eye to a new campaign of violent, extrajudicial evictions that began within weeks of his inauguration, which were carried out by local mayors and national police who claimed to have received their authority from the President.

In some cases, private Haitian lawyers have succeeded in fending off camp evictions for several months at a time by relying on the precautionary measures in court or in negotiations with landowners and police. However, in part because the elitist legal system in Haiti favors the interests of the rich, there are very few public interest lawyers to take on *pro bono* eviction cases, and most Haitians have little to no access to the formal justice system.³ Moreover, there are simply too many evictions being carried out for individual attorneys to remedy the problem on a case-by-case basis.

Adding to the humanitarian crisis, government agents and purported landowners began unlawfully evicting displaced people from these camps within weeks of the earthquake, often using life-threatening violence and coercion to terrorize communities to leave.

Despite these setbacks, the Commission's remedy nonetheless remains a significant victory. From the broader perspective of international human rights law, the precautionary measures mark the first time that an inter-governmental human rights body recognized the harm posed by unlawful forced evictions within the context of displacement caused by a natural disaster. They also endorse a "rights-based" approach to disaster response and recovery that obligates government actors to protect the safety and security of displaced people. In the context of Haiti, and the aftermath of the earthquake specifically, this was the first time that the government received binding instructions to prevent unlawful evictions and protect people in displacement camps. In this regard, the measures broaden the protections afforded displaced communities throughout the world, and provide a critical tool for national and international organizations advocating on behalf of displaced earthquake victims in Haiti.

THE ESCALATING PRACTICE OF FORCED EVICTIONS OF INTERNALLY DISPLACED PERSONS IN HAITI

The Petitioners seeking precautionary measures were five IDP camp communities who had been forcibly evicted or threatened with unlawful eviction. In each case, national police harassed, threatened, or physically abused camp residents, and nearly all of them were forced out of the camp without being provided an alternate place to live. Only one camp was directed to an alternative site, but the land lacked access to basic services and was uninhabitable.

Evictions were also carried out by denying access to humanitarian aid. In three of the camps, private individuals who claimed control of the land blocked aid agencies from providing food, drinking water, medical care, and sanitation facilities to the camps. One camp was evicted after dark without any prior notice when two trucks filled with armed national police shot their weapons into the air as state-owned bulldozers destroyed all the tents. In no case did the police or purported property owners properly notify residents of impending evictions, nor did they pursue a court order authorizing the eviction, as required by international and domestic law. As a result of the ongoing abuse and unstable living conditions, many people who had nowhere else to go left the camps, while thousands of others chose to stay behind rather than live on the streets.

Balancing the rights of land owners with displaced communities gives rise to a contentious legal issue. Many evictions are being carried out by private individuals who do not have rights to the land where the camps are located. Since only five percent of Haiti's land was officially recorded before the earthquake, and land records themselves are often contested, it is difficult in most cases to establish a clear and legitimate chain of title.⁴ Nonetheless, the police have evicted camp residents on behalf of private individuals without requiring proof that they own the land. Until the government is able to resolve land ownership disputes, and the police are required to verify legal ownership, camp evictions will continue without lawful justification.

Forced evictions in Haitian displacement camps have increased since the precautionary measures were issued in November 2010. These evictions are violent, threatening, and coercive. As of September 2011, an estimated 67,162 people had been forcibly expelled from camps since the earthquake, and the number of camps threatened with expulsion reached 348 in July 2011 (an increase of 101 cases since March 2011).⁵ A recent survey found that one-third of displaced persons reported leaving their camps because they were forced out by evictions.⁶

Of the five petitioner camps, four camps have been unlawfully evicted—including one since the grant of precautionary measures—and another faces a daily threat of eviction. Though it is sometimes difficult to track evicted camp residents, the evidence suggests that at least one-half end up living on the streets or settling in other camps that likewise face imminent eviction.⁷

PRECAUTIONARY MEASURES AGAINST FORCED EVICTIONS OF INTERNALLY DISPLACED PERSONS

The UN Committee on Economic, Social, and Cultural Rights defines a forced eviction as "the permanent or temporary removal against their will of individuals, families, and/or communities from their homes and/or lands, which they occupy without the provision of, or access to, appropriate forms of legal or other protection."⁸ Given their inherent vulnerability, displaced persons are entitled to special protections under the UN Guiding Principles on Internal Displacement (Guiding Principles), including *inter alia* protection from forced eviction.⁹ The Guiding Principles themselves are not binding, but they

provide guidance on how to interpret the human rights guaranteed under relevant international treaties.¹⁰ Under the Guiding Principles, forced evictions constitute a form of “arbitrary displacement” and are prohibited in all but a very limited set of circumstances. In situations involving natural disaster, forced evictions are prohibited except when it is necessary to protect the safety and health of those affected.¹¹ Even then the government must provide the people with due process protections such as consultation and adequate notice of eviction, as well as an alternate place to live that meets international standards.¹²

Victims of forced evictions suffer an extensive list of harms, including destruction of their tent homes; theft of their belongings; violent attacks by law enforcement and private thugs; arbitrary arrest; and the withholding of food, water, medical care, and sanitation services. In the situation in Haiti, each evicted community experienced at least some of these harms, and the remaining petitioning communities reasonably feared for their safety and well-being.

Petitioners brought their claims against the Government of Haiti pursuant to Article 25(1) of the Rules of Procedure of the IACHR, which authorizes the Commission to request a state member of the Organization of American States (OAS) to implement precautionary measures to prevent irreparable harm in a serious and urgent situation under that state’s jurisdiction.¹³ A precautionary measures proceeding is different than a proceeding to address the merits of a claim in two important respects. First, precautionary measures are issued when the risk of harm to an individual or community is sufficiently severe. However, under Article 25(9), this does not equate to a finding that the member has breached its human rights obligations under the American Convention on Human Rights (American Convention). Thus, although the Petitioners maintained that government officials were in fact carrying out forced evictions, or that they aided or refused to control private evictions, the precautionary measures request merely asked the Commission to acknowledge the irreparable harm posed by forced eviction, and to direct the Government of Haiti to take specific steps to prevent additional evictions.¹⁴ Petitioners argued that they would continue to suffer grave and irreparable harm if their request was denied.

Second, unlike a petition on the merits, a party can petition for precautionary measures without first exhausting domestic remedies, though proof of exhaustion weighs heavily in the party’s favor. In this case, Petitioners argued that the justice system in Haiti remained significantly impaired as a result of the earthquake and that government officials were the very individuals placing IDP camp residents at serious risk of irreparable harm.¹⁵

As Petitioners argued before the Commission, the list of harms resulting from forced evictions implicate basic human rights that are protected under international conventions that Haiti has ratified. For example, forced evictions violate several articles of the American Convention: (1) the right to life under Article 4 by preventing communities from obtaining resources such as food, water, medical care, and sanitation; (2) the right to physical integrity and cruel, inhumane, and degrading treatment under Article 5 by sending national police to attack displaced communities, arbitrarily arresting them, and failing to provide protection; (3) the right to privacy and dignity under Article 11 by failing to provide adequate security and allowing attacks on homes and dignity; (4) the right to personal property without compensation or due process of law in violation of Article 21; and (5) the rights of the child under Article 19 by failing to develop special protective mechanisms to displaced children.

Under the American Convention, displaced persons are entitled to due process of law before they are relocated and the opportunity to contest their relocation in court. Moreover, they cannot be evicted under circumstances that render them homeless, but must be relocated to areas that offer access to basic life necessities and essential services. The scope of destruction caused by the earthquake, coupled with the lack of progress towards meaningful reconstruction, makes it difficult to identify alternate housing in the vicinity of Port-au-Prince. However, Haitian officials cannot use forced eviction as a substitute for the legal settlement of land disputes or the government’s failure to establish a durable solution to continued displacement.

Forced evictions also implicate rights protected under Articles 3, 7, and 9 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belem do Para), which obliges states to prevent the sort of violence, sexual assault and prolonged

Though precautionary measures constitute a binding directive to governments that have failed to address a grave risk of irreparable harm to individuals within their jurisdiction, obtaining compliance and full implementation from the government is often an uphill battle.

Photo courtesy of Flickr.



Anti-eviction sit-in at Camp Mosaic in Port-au-Prince, Haiti.

displacement that results from forced evictions. The government forcibly evicted women, threatened them with eviction, and allowed private parties to do the same rather than abide by its obligations to attend to the needs of impoverished displaced women.

In a post-disaster context, the obligations imposed by these Conventions are interpreted in light of the UN Guiding Principles and the Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles).¹⁶ Under the Guiding Principles, states must protect displaced people and respect the international legal obligation to prevent and avoid displacement, including the prolonged displacement that results from eviction.¹⁷ The Guiding Principles also prohibit states from displacing people in a manner that violates their rights to life, dignity, liberty, and security.¹⁸ Pinheiro Principle 8 emphasizes the need for states to assist displaced communities, while Principle 5.4 calls on states to ensure that private parties within their jurisdictions do not contribute to displacement.

SIGNIFICANCE OF THE COMMISSION'S PRECAUTIONARY MEASURES

The Commission granted the Petitioners' request for precautionary measures, directing the Government of Haiti to: (1) adopt a moratorium on forced evictions until the election of a new government; (2) ensure that it relocates victims of forced eviction to places that meet minimum health and security standards; (3) guarantee IDPs effective access to judicial tribunals or other competent authorities; (4) implement security measures to protect IDPs physical safety while giving special protection to women and children; (5) train staff to protect IDPs' rights, particularly the right not to be forcibly evicted; and (6) ensure international organizations access to IDP camps.

This is a significant legal victory in several respects. First, it marks the first time that an inter-governmental human rights body has recognized the harms that forced evictions pose to persons displaced by natural disaster. Whereas precautionary measures in the past have been granted to protect individuals from direct threats to their life or their physical safety, in the case of forced evictions, the risk of harm includes not only the violent way evictions are carried out, but also harms secondary to forced eviction, including an increased risk of sexual violence

against women and girls, the lack of habitable living conditions in camps targeted for evictions, and the risk of being transferred to a similarly uninhabitable settlement. By issuing precautionary measures in this context, the Commission implicitly recognized that natural disasters cannot be used as an excuse to violate human rights, but that domestic frameworks for disaster response, recovery, and reconstruction must include protections for human rights.

Secondly, the precautionary measures reflect a rights-based approach to disaster response, consistent with the well-established principle that the right to adequate housing and shelter gives rise to a corresponding obligation on the part of the State not only to refrain from forced evictions, but also to prevent unlawful evictions by individual actors. This approach rejects the notion that governments can ignore existing threats to the safety and security of displaced people by claiming that resources are limited or the threat of harm is not sufficiently severe. A rights-based approach also implicitly rejects the "positive" versus "negative" rights distinction on which governments have historically relied to limit their responsibilities towards vulnerable populations, including displaced people, instead promoting the growing consensus that all human rights, however they are characterized, are indivisible.

Lastly, the precautionary measures provide an advocacy tool for displaced communities. Haitian advocates reference the Commission's recommendations in "know your rights" training sessions with camp communities and grassroots groups. Haitian lawyers also use the precautionary measures to pressure property owners, judges, and local government officials to stop forced evictions until the rights of displaced persons are respected. This tactic worked well until one of the petitioner camps was evicted in September 2011. New camps also face the threat of forced eviction.

TWO YEARS LATER

Despite the Commission's precautionary measures to the Government of Haiti, elected officials in Haiti have not taken steps to implement the recommendations. Interviews with local government and ministry officials in March and April 2010 revealed that the Haitian government did not have a coordinated strategy to prevent forced evictions or to respond to the precautionary measures. An official from the judicial division of the Ministry of Foreign Affairs—the body charged with collecting and disseminating communications from the Commission to the Haitian government—said the precautionary measures were "probably" delivered to the Ministry of Justice, but acknowledged that he was not personally familiar with the measures and that they had probably been "filed" or archived.¹⁹ In other interviews, ministry officers, mayors and local officials said they were not familiar with the precautionary measures.²⁰ The few who were had learned of them from residents of a displacement camp facing eviction.

The Government of Haiti has yet to adequately explain why it has failed to implement the precautionary measures. To be sure, it has grappled with structural instability in the midst of an immense disaster recovery process. Once its members termed out in May 2010, the country persisted without a parliament for

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almost a year. Subsequent parliamentary and presidential elections were marred by fraud and meddling from the international community, and an already over-burdened health system was overwhelmed by a cholera epidemic that has thus far infected 473,649 Haitians and taken 6,631 lives.²¹

Yet these conditions do not explain why government officials continue to perpetrate forced evictions. Within weeks of President Michel Martelly's election in May 2011, local mayors and police claiming to have executive authorization destroyed displacement camps on public land while threatening residents with machetes and batons. There is no indication that this pattern will change.

CONCLUSION

Despite difficulties with enforcement, precautionary measures remain a valuable tool for local, national, and international advocates. By publicly recognizing the government's affirmative obligation to prevent unlawful evictions, the Commission's directive provided displaced communities with a basis for organizing local human rights advocacy campaigns. It restated a baseline for human rights protection of Haiti's displaced families and provides leverage to Haitian public interest lawyers to defend against forced evictions.

Precautionary measures also provide international actors operating in Haiti, such as United Nations agencies, with a basis for holding the government accountable for the harms caused by forced eviction. Since the donors conference in March 2010 that pledged over \$5 billion to Haiti for earthquake relief and reconstruction, the international community has played an active role in coordinating reconstruction efforts and funding, often bypassing the Haitian government.²² As a result, international actors assumed typical government functions, such as providing water, housing, law enforcement, medical care, and rubble removal. The precautionary measures remind international actors to: (1) confirm that international aid is not directly or indirectly being used to support evictions, (2) encourage the Government of Haiti to prioritize human rights within the reconstruction process, and (3) build the capacity of the government to implement

the precautionary measures and protect internally displaced persons against evictions.

In the meantime, advocates can continue to work with the Commission to push the government of Haiti to abide by its human rights obligations. In light of the government's failure to implement the precautionary measures, Petitioners communicate regularly with the Commission to update them on the continuing forced evictions crisis. In October 2011, the Commission granted Petitioners a working meeting with the Haitian government to discuss ways in which the government could comply with the precautionary measures. Unfortunately, the government did not appear at the meeting. The Commission's repeated requests to visit Haiti to conduct a human rights investigation around forced evictions and other issues have not been granted.

Despite the government's unwillingness to be held accountable, Petitioners rely on venues such as the Commission to air ongoing human rights violations to people living in Haiti and to the international community. For example, Petitioner representatives spoke at a press conference and Congressional briefing the same day as the working meeting to apprise journalists and U.S. policymakers of the seriousness of the housing crisis in Haiti. Petitioners' advocacy in the short-term will focus on pressuring the government to grant the Commission's request to visit, and in the long-term on continuing to mount pressure on the Haitian government from all domestic and international angles available. As the government considers closing more IDP camps, advocates want to assure that the government and international actors give residents adequate notice and do not close camps until all residents are provided with alternative housing.

It is clear in the case of Haiti that precautionary measures themselves are not enough to protect displaced people from the grave and irreparable harm posed by forced evictions. They are nonetheless a necessary first-step towards holding the government accountable and ultimately providing the type of remedy that displaced people not only deserve, but are entitled to under international law.

Endnotes: Enforcing Remedies from the Inter-American Commission on Human Rights: Forced Evictions and Post-Earthquake Haiti

¹ The advocacy team consisted of the Bureau des Avocats Internationaux (BAI), Institute for Justice & Democracy in Haiti (IJDH), You.Me.We., the Center for Constitutional Rights (CCR), and the International Human Rights Law Clinic at American University's Washington College of Law.

² See generally The Int'l Org. for Migration, *Displacement Tracking Matrix V2.0 Update* (2011) (available at http://www.ccc-mhaiti.info/pdf/DTM_V2_Report_15_Mar_English%20_FINAL3.pdf) [hereinafter *IOM DTM Report*].

³ See Meena Jagannath, Nicole Phillips & Jeena Shah, *A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 NW. U. J. Int'l Hum. Rts. 7 (2011); see also Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, A View from Haiti*, 32 COLUM. HUM. RTS. L. REV. 201, 212-13 (2000).

⁴ United States Institute of Peace, *Haiti After the Quake: Six Months and Counting*, Peacebrief 41 at 3 (2010) (available at <http://www.usip.org/files/resources/pb41.pdf>).

⁵ Press Release, Humanitarian Coordinator in Haiti, *La Communauté Humanitaire en Haiti Preoccupe Par La Multiplication Des Expulsions Dans Les Camps* (Sept. 5, 2011) (available at <http://reliefweb.int/node/445114>); see generally *IOM DTM Report*.

⁶ *IOM DTM Report*, supra note 3 at 11.

⁷ *Id.*

⁸ See Committee on Economics, Social and Cultural Rights, *General Comment No. 7, Forced Evictions, and the Right to Adequate Housing* (Sixteenth Session, 1997), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/Gen/1/Rev.6 at 45, (2003).

⁹ Furthermore, it is a principle of customary international law that the state is primarily responsible for providing human rights protection and humanitarian assistance, which includes guarantees of shelter and safety.

¹⁰ The Guiding Principles reflect and are consistent with international human rights law and international humanitarian law. See Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement*, at Introduction OCHA/IDP/2004//01 [hereinafter *IDP Guidelines*]. The Commission adopted the Guiding Principles as the authoritative instrument in providing guidance and assistance when interpreting human rights law as applied to communities of displaced persons. See Inter-Am. Crt. Hum. Rts., *Third Report on the Human Rights Situation in Colombia*, at par. 92 (1999).

¹¹ *IDP Guidelines*, at Principle 6.

¹² *Id.* at Principles 6-7.

¹³ Rules of Procedure of the Inter-Am. Crt. Hum. Rts., Art. 25.1 ("In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.").

¹⁴ See Institute for Justice & Democracy in Haiti and partners, *Petition for Precautionary Measures Submitted to the IACHR (Redacted)* (IJDH and Partners) 2 (2010) (available at <http://www.ijdh.org/archives/17712>).

¹⁵ Inter-Am. Comm. H.R., *Haiti: Failed Justice or the Rule of Law?* (2006) (available at <http://www.iachr.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf>).

¹⁶ Representative of the Secretary-General, *Report on the Guiding Principles on Internal Displacement, delivered to the Commission on Human Rights*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) [hereinafter *U.N. Guiding Principles*]; Special Rapporteur on Housing and Property Restitution, *Final Report on the Principles on Housing and Property Restitution for Refugees and Displaced Persons, Delivered to the Commission on Human Rights*, U.N. Doc. E/CN.4/Sub.2/2005/17 (June 28, 2005) [hereinafter *Pinheiro Principles*].

¹⁷ *U.N. Guiding Principles*, supra note 13 at Principle 3, 5.

¹⁸ *Id.* at Principle 8.

¹⁹ See Benjamin N. Cardozo School of Law Haiti Social Justice Project Interviews with Haitian Government Officials and Residents of IDP Camps in Port-au-Prince, Haiti (April 15 – 21, 2011).

²⁰ See Fordham University School of Law Disaster Relief Network and Center for Constitutional Rights Delegation Interviews with Haitian Government Officials, International Organizations, United Nations Agencies, and NGOs in Port-au-Prince, Haiti (Mar. 13 – 17, 2011).

²¹ Sean Casey, *Cholera in Haiti: Still an Emergency*, *The Guardian* (Nov. 7, 2011) (available at <http://www.guardian.co.uk/global-development/poverty-matters/2011/nov/07/haiti-cholera-still-emergency-donors>).

²² Office of the Special Envoy for Haiti, *Has Aid Changed? Channeling assistance to Haiti before and after the earthquake*, 12-13 (2011) (available at http://www.haitispecialenvoy.org/download/Report_Center/has_aid_changed_en.pdf).